DEFINITIONS AND META VIEWS

I

Defining War

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In international law and just war theory, war is treated as normatively and legally unique. In the context of international law, war's special status gives rise to a specific set of belligerent rights and duties, as well as a complex set of laws related to, among other things, the status of civilians, prisoners of war, trade and economic relationships, and humanitarian aid. In particular, belligerents are permitted to derogate from certain human rights obligations and to use lethal force in a far more permissive manner than is the case in other kinds of conflicts and in domestic law enforcement operations. Given war's unique status, the task of defining war requires not just identifying the empirical features that are characteristic of war but explaining and justifying war's special legal and moral status.

In this chapter, I propose a definition of war that captures war's unique features and can offer insights into when and how some forms of unarmed conflict could count as wars. The definition I will defend is as follows:

A war exists when all the following conditions are met:

(1) There are two or more organized groups.
(2) These groups are engaged in intense hostilities.
(3) No party to the conflict and no other third party has the authority and ability to effectively adjudicate between the opposing sides, punish them, and otherwise maintain effective control in the arena of the conflict.

I will argue that this definition can account for war's unique legal status, is consistent with the purposes of the legal framework governing war, and permits a deeper understanding of the nature of contemporary conflicts. My definition will not include any claims regarding *jus ad bellum* and *jus in bello* criteria, except in so far as these categories are only taken to apply to conflicts that are classified as war.

In Section 1, I discuss the normative and legal significance of defining war. In Section 2, I defend my definition of war, and in Section 3, I apply my definition to three case studies discussed in this volume: lawfare, economic sanctions, and cyber war. I argue that it is possible for these forms of unarmed conflict to meet my definition of war. This possibility raises hard questions about how traditional categories, such as the categories of combatants and civilians, can be applied to unarmed conflicts, and I offer some suggestions for how such concepts could be interpreted in the context of unarmed conflicts.

DEFINING WAR

The Legal and Normative Implications of Defining War

The complex legal framework governing war (including international humanitarian law (IHL), of which the Geneva Conventions are part) governs a wide range of issues, including the status of civilians and refugees in war, asylum laws, treaty obligations, as well as the legal rights and obligations of belligerents in a conflict (International Legal Association (ILA) 2010, 4). For example, regardless of the justness of their cause, belligerents on both sides have the right to kill enemy forces without warning and the right to detain prisoners of war without trial for the duration of the conflict (ILA 2010, 2). In addition, it is legally permissible for belligerents to cause some harm to civilians if doing so is a side effect of a necessary military operation, and the harm is not directly intended and is not disproportionate to the importance of the military objectives of the operation (Luban 2002, 9).[1]

The laws of armed conflict also restrict how enemy forces may be treated. Since "fighting back is a legitimate response of the enemy" (Luban 2002, 9), enemy combatants may not be tried or punished for their participation in a conflict (even if their cause is unjust), they may not be tortured or mistreated if they are captured (International Committee of the Red Cross (ICRC) 2010), and if captured they must be released upon the cessation of hostilities.[2]

The legal freedoms and constraints imposed on belligerents reflect distinct features of armed conflicts. First, armed conflicts typically occur in circumstances in which a state's domestic authority and law enforcement either do not apply to the conflicting parties (as in conflicts between states, or between states and foreign non-state groups) or cannot apply (as in cases of severe civil unrest where domestic authority has broken down). Thus in a typical war there is either no authority that has jurisdiction over the parties involved (as in inter-state wars), or there is no authority that is capable of enforcing its jurisdiction over the conflicting parties (as in a civil war or insurgency).

This feature of war gives rise to practical and political reasons in favor of maintaining the current legal framework of armed conflict, even if one believes

that, morally speaking, some belligerents do not have a right to fight back and some combatants should be punished for fighting for unjust causes. For example, while Jeff McMahan (2006; 2009) has criticized the view that combatants on both sides of a conflict are morally equal, he defends the legal equality of combatants:

> The law must of course permit just combatants to kill enemy combatants. ... And it would be wholly inefficacious to forbid unjust combatants to do the same; therefore the law must at present permit all combatants to kill their enemy counterparts. (McMahan 2009, 109)

An additional practical reason in favor of the current legal status of belligerents is that it may be impossible to resolve such conflicts without the freedoms that belligerent status involves. For example, it would be impossible to apply the high evidentiary standards characteristic of law enforcement operations to a war situation. Likewise, it may be impossible for military forces operating in a combat zone to gain sufficient intelligence to enable them to restrict the use of force only to military targets, and so it may be impossible to avoid inflicting some harm to civilians and civilian infrastructure. The urgency of ending a conflict might also rule out the use of law enforcement operations such as long-running infiltration of enemy groups, and surveillance operations.

Thus, even though the laws of armed conflict are more permissive both in terms of the evidentiary standards that are required to be met before enemy forces may be attacked and in terms of permissible collateral damage, these laws aim to minimize the overall destruction caused by an armed conflict.

Definitions of War

Given war's unique status, a plausible definition of war should meet a number of basic criteria. It should be able to account for war's unique status, and distinguish war from other forms of political and nonpolitical violence. Arguably, it should also be consistent with everyday usage. However, it need not be *identical* with common usage given the frequent use of "war" to describe many different kinds of battles, such as the "war against drugs." Finally, the plausibility of a given definition must be assessed in light of the purpose for which the definition is created.

A definition of war can serve a number of purposes: It can be designed for use in a particular legal context to enable the ready identification of situations to which a specific body of laws apply; it can be intended to describe the conditions under which war is morally permissible; or it might be intended to help identify certain kinds of conflicts for the purposes of political or sociological analysis.

Taking these factors into account, we can distill the following rough taxonomy of definitions of war. The following categories are not intended to be exhaustive[3] or exclusive – a definition of war could include normative, political, and sociological elements.

Just War Definitions

Just war definitions identify the conditions under which waging war is morally permitted rather than the conditions that define war as such. This conception of war is part of the just war tradition associated with thinkers such as Augustine, who was concerned with whether waging war is consistent with Christian principles (Reichberg et al. 2006, 72) and Thomas Aquinas, who developed and elaborated many of the *jus ad bellum* criteria, including just cause, legitimate authority, and rightful intention (Reichberg et al. 2006, 176–177). Just war conceptions of war were further developed by thinkers including Francisco de Vitoria (2003) and, in the twentieth century, Michael Walzer (2000).

Juridical Definitions

Juridical definitions of war emerged in the seventeenth century in the context of the developing international law of war, and aim to identify the conditions under which the laws of war apply, rather than determining when war is just.[4] For example, Hugo Grotius in *The Rights of War and Peace* (1625) defines war simply as "the state of contending parties, considered as such," and argues that a definition of war should not include the criteria of a just war "because it is the Design of this Treatise [*The Rights of War and Peace*] to examine, whether any War be just, and what War may be so called. But we must distinguish that which is in Question, from that concerning which the Question is proposed" (Tuck 2005, 136).

A good example of a contemporary legal definition, and one that I will discuss later, is that proposed by the International Law Association (ILA) at The Hague in 2010. The ILA defines armed conflict as occurring when there is "the existence of organized armed groups" who are "engaged in fighting of some intensity" (ILA 2010, 2). The ILA's definition is intended to be consistent with the development of jurisprudence on the laws of armed conflict during the twentieth century, and to allow the identification of conflicts to which IHL would apply.

Political and Sociological Definitions

Broadly speaking, political definitions focus on the aims that characterize the use of war and sociological definitions describe a set of specific material facts about a conflict, such as the duration, number of casualties, and the nature of the belligerents. A classic example of a political definition is Carl von Clausewitz's definition of war as "an act of violence intended to compel our opponents to fulfill our will" (von Clausewitz 2008, 92).

An example of a sociological definition is the following definition proposed by Singer and Small (1972) and Deutsch and Senghaas (1971), who define war as any series of events that meets the following three criteria:

(1) Size: war results in at least 1000 battle deaths (not counting, therefore, the indirect victims through famine, lack of shelter, and disease)
(2) Preparation: war has been prepared in advance, and/or is being maintained, by large-scale social organizations through such means as the recruitment, training, and deployment of troops; the acquisition, storage, and distribution of arms and ammunition; the making of specific war plans and the like; and
(3) Legitimation: war is legitimized by an established governmental or quasi-governmental organization, so that large-scale killing is viewed not as a crime but as a duty.

This definition (and other sociological definitions) aims to allow identification of a particular *kind* of war for the purposes of answering specific questions about, for example, the duration of certain kinds of conflicts.

A NEW DEFINITION OF WAR

In this section, I defend the following definition of war:

A war exists when all the following conditions are met:

(1) There are two or more organized groups.
(2) These groups are engaged in intense hostilities.
(3) No party to the conflict and no third party has the authority and ability to effectively adjudicate between the opposing sides, punish them, and otherwise maintain effective control in the arena of the conflict.

In relation to the taxonomy of definitions described above, this definition fits most naturally in the category of sociological definitions. The definition is not normative or political, since it makes no reference to the aims of the parties involved or the conditions of a just war. Rather, it is intended to pick out the material facts that can explain and justify war's unique legal status. Thus, while it is not a legal definition, it is a definition that can serve the purposes of international law by identifying the characteristics of war that warrant the application of the laws of armed conflict.

Elements of the Definition

There Are Two or More Organized Groups

In their report, the ILA stated that the existence of "organized armed groups" is determined by, among other things, the presence of a command structure, "training, recruiting ability, communications, and logistical capacity" (ILA 2010, 2). I concur with this characterization of organized groups, with the exception that I think unarmed groups could be belligerents. As I shall argue in Section 3, I believe that a state of war can exist in which at least one party does not use military weapons or direct physical violence.

I agree with the ILA that the wearing of uniforms is not required for the status of "organized groups" to be met, since such a requirement is arbitrarily narrow and, after 1977, is no longer listed as a criterion of combatant status under the Geneva Conventions, replaced instead by "carrying arms openly" (1977 Additional Protocol (I) to the Geneva Conventions, Art. 44).[5] To give just one example, ISIS fighters do not wear any kind of conventional uniform, yet I would argue that the conflict against ISIS counts as a war under most plausible definitions of war, and that ISIS counts as an organized group in the relevant sense.

Intensity of Hostilities

Intensity is a concept that cannot be defined precisely. While the ILA does not define intensity, they reject definitions of intensity that include a specific number of casualties or that require a conflict to continue for a specific duration, stating that while "the requirement of intensity will normally have a temporal aspect . . . a lesser level of duration may satisfy the criterion if the intensity level is high" (ILA 2010, 30).

The ILA is correct to reject definitions of intensity that include a fixed number of casualties. In Singer and Small's (1972) definition, one criterion of war was "at least 1000 battle deaths" (van der Dennen 1980, 6). The problem with this condition (and with any definition that includes a set number of casualties) is that the line between war and lesser conflicts becomes arbitrary. Under Singer and Small's definition, a conflict that meets the criteria of preparation and legitimation, but that only causes 995 battle casualties would not count as a war. Yet it is difficult to see why an additional five casualties could explain or justify the significant change in status signaled by calling a conflict a war. It is important that a definition of war explain when and why a conflict becomes a war, but appealing to a fixed number of causalities is not a plausible way of marking that distinction.

For that reason, I propose that intensity should be measured by the level of disruption caused by a conflict to those living in the arena of conflict (combatants and civilians), including the impact on their physical safety; access to basic goods such as food, water, warmth, and shelter; and the functioning of basic civilian infrastructure. In essence, a conflict meets the criterion of intensity when it becomes so disruptive that the ability of civilians to meet their basic needs is seriously threatened, and the local authorities are unable to effectively control the conflict and protect civilians and civilian infrastructure from harm. However, the intensity requirement does not require that each party to a conflict experience the same degree of disruption. Thus, this criterion could be met in cases where neither party to a conflict experiences significant disruption, as when a conflict between two states takes place primarily outside the geographic boundaries of both states.

This means that intensity can't be measured simply by the numbers of people killed or wounded in a conflict, but requires looking more broadly at the impact

of a conflict on civilians' ability to meet their basic needs, as well as the impact on the functioning of basic civilian infrastructure such as the electricity and water supply. In addition, the intensity of a conflict will also depend on preexisting facts about the stability of the local government in the arena of conflict, the effectiveness of local law enforcement and emergency services, and the ability of local infrastructure and resources to withstand attacks. So a conflict in a weak state with few resources might meet the criterion of intensity far sooner than an equivalent conflict within a strong state with effective law enforcement and emergency services.

In relation to the concept of "hostilities," I argue that the concept of hostilities should incorporate ways of inflicting harm that do not involve the infliction of physical violence. This would allow my proposed definition to be applied to conflicts that do not use military force, and would capture how such conflicts could still cause sufficient disruption and destruction to justify the imposition of the legal framework of war. Thus, I define "hostilities" as the intentional infliction of substantial damage (which need not be limited to physical damage) to the lives and welfare of individuals (including their access to basic goods, as well as their physical and psychological health), and to the infrastructure, environment, and basic functioning of states and communities.

No Adjudicating Authority

> No party to the conflict and no other third party has the authority and ability to effectively adjudicate between the opposing sides, punish them, and otherwise maintain effective control in the arena of the conflict.

This criterion is necessary in order to distinguish war from other forms of inter- and intra-state violence. One problem with competing definitions such as the ILA's is a failure to clearly distinguish war from conflicts involving belligerents who fall under the legal jurisdiction of a third party that is able to enforce its authority. Fighting between two criminal gangs in a state, for example, should not be treated as a war if the state is able to maintain effective authority over its jurisdiction, since both groups are legally subject to the state even if neither group acknowledges that fact.

This criterion applies to both inter- and intra-state conflicts. The criterion may be most easily met in the case of international conflicts, given that as yet there is no organization that has effective authority over conflicting states, since effective authority does not just mean legal authority or jurisdiction. Arguably, the UN has at least some legal authority over member states, but it does not as yet have enforceable authority over them.

In cases of non-international armed conflicts such as civil wars, one party to a conflict may have political authority over the other, but if the conflict reaches a degree of intensity such that one party can no longer effectively *enforce* its authority over the other, then the third criterion would be met. However, we

may wonder when this point is reached. In my view, the third criterion would be met when one party's authority is so weakened that they lose effective control over a sufficient number of areas in their jurisdiction such that they are unable to protect civilians in those areas or enforce their political and legal authority.

The Aims of Belligerents

Even if one accepts the above defense of the elements of my definition, one might argue that my definition is inadequate because it makes no reference to the aims of belligerents. This omission may seem troubling, since it suggests that conflicts involving non-political groups such as criminal gangs and corporations could count as wars. I argue that this omission can be defended.

As it stands, my definition does not distinguish traditional war from certain extreme forms of criminal violence. For example, the ongoing conflict between Mexican drug cartels and the Mexican government is conducted by organized groups – drug cartels are highly structured, with chains of command and supply lines – and clearly meets the criterion of intense hostilities (there have been over 60,000 casualties in the last ten years (Bender 2014)). So it appears that this conflict meets my definition of war. Interestingly, while the ILA's definition does not include any reference to the aims of belligerents, the ILA states that, in relation to the Mexican conflict: "If the criminal gangs decided to *challenge civil authorities for the right to govern, as opposed to fighting to prevent the break-up of their criminal activities*, Mexico could become the scene of a non-international armed conflict" (ILA 2010, 28. Emphasis added). This suggests that the ILA doesn't consider the conflict in Mexico to be an armed conflict because the drug cartels are fighting to maintain control over their criminal activities, rather than seeking political power. While this view accords with many traditional understandings of war, I believe it is flawed.

Can a Criminal Organization Wage War?

If the conflict between the drug cartels and the Mexican government were characterized as a war, the drug cartels would have at least some of the legal privileges of belligerents. While they would not count as lawful belligerents unless they carried their arms openly, and belonged to an organization that was able to apply military discipline and abide by the laws of armed conflict (1977 Additional Protocol (I) to the Geneva Conventions, Art. 44), cartel soldiers would have the right to target Mexican government soldiers, attack military targets, and expose civilians to a degree of harm in the course of the armed conflict, proportionate to the importance of their military objectives. Likewise the Mexican government would have expanded powers permitting the use of force that endangers civilians to some degree. Such consequences are disturbing and seem, on the face of it, to offer strong reasons why this conflict and others like it should not be defined as wars.

But this is too quick. If a conflict meets the criteria of intensity, organization, and lack of effective authority, why shouldn't it be called a war? Since, as I have argued, the legal status of war is justified in part by practical and political considerations regarding how to mitigate the destruction caused by wars, perhaps it should not matter if one of the belligerents is a criminal organization.

There are two main objections to this view. First, while cartel foot soldiers would be legally accountable for violations of the laws of armed conflict and for their criminal activities, it is highly counterintuitive to suggest that criminals could be legally permitted to kill Government soldiers and endanger civilians in pursuit of a criminal aim. In addition, unlike ordinary combatants, members of drug cartels cannot plausibly be given any "benefit of the doubt" regarding the legality or morality of their cause. It is implausible to suppose that members of drug cartels don't realize that they are engaged in highly illegal activities.

The argument described above has some force. However, if the reason why cartel soldiers shouldn't have *any* of the legal rights granted to belligerents is because they are fighting for a clearly illegal cause, then this claim can't be limited only to soldiers fighting for criminal organizations. Soldiers fighting for Milosevic in the former Yugoslavia (Hartmann 2011), for example, could hardly be unaware that they were involved in a genocidal campaign.

In addition, some of the reasons traditionally given for excusing combatants fighting for an unjust cause (such as forcible conscription and exposure to propaganda) apply to cartel soldiers. For example, a number of drug cartels use child soldiers, many of whom are poor, uneducated, and are "enticed or manipulated" into working for the cartels (Beckhusen 2013).[6] If there is any force to the idea that the laws of war should apply equally to both sides regardless of the morality of their cause, then one cannot draw a non-arbitrary distinction between cartel soldiers and (say) combatants fighting for genocidal regimes. If the latter shouldn't be prosecuted for fighting, there are reasons for excusing the former as well.

The second reason for denying belligerent status to drug cartels is that the cartels' primary aim is to further their criminal enterprises. While drug cartels and other criminal organizations might aim to *influence* political decision-making (for example, by bribery) and may challenge state authority in some areas and even become *de facto* leaders in those areas, this is typically in pursuit of their criminal goals and not in pursuit of political power *per se*.

This argument relies on two problematic premises. First, this argument assumes that it is possible to draw a sufficiently clear distinction between political and criminal aims to enable the ready identification of the aims of groups involved in conflicts. While there are wars in which the aims of both parties are clearly political (however "political" is defined, which is itself an important question), there are many wars where the distinction is far from clear, such as in wars of conquest and wars of plunder.

Second, this argument assumes that political (but not criminal or non-political) aims play a central role in justifying war's unique status. It is true

that early just war theorists such as Aquinas and Augustine often distinguished war from private violence on the grounds that war was characterized by the pursuit of public welfare. For example, Aquinas argued that an individual could not declare war because it was not his duty "to summon together the people, which has to be done in wartime" (Reichberg et al. 2006, 177). However, the fact that political aims may play a role in *justifying* war does not mean political aims are essential to *defining* war, particularly since some political aims (such as genocidal campaigns and forcible occupation of a foreign country) are criminal according to international law, and arguably morally worse than the aims of some non-political groups who are involved in conflicts.

In addition, as I argued above, my definition is not a normative or political definition. Instead, it is intended to identify the conditions that must be present in order to justify the application of the laws of armed conflict. While the aims for which a war is fought are important for the purposes of sociological and normative analysis, they are not relevant to the question of whether a conflict should count as a war in the first place. Thus, my view echoes Grotius' claim that "We do not include Justice in the Definition of War" (Tuck 2005, 136). In Grotius' account, war is not defined as involving the pursuit of public or political aims. Rather, public wars are simply one "species" of the "genus" of war and the term can also be applied to other forms of conflict, such as that between private individuals (Tuck 2005, 136).

Furthermore, limiting the term "war" to conflicts fought for public rather than private aims arbitrarily restricts the use of the term. If two conflicts are identical in every respect (intensity, organization, and so forth) except that one is in pursuit of private aims and one is in pursuit of political aims, it strikes me as implausible to say that only one of these conflicts is a war even though the material facts in each case are identical.

UNARMED CONFLICTS

The chapters in this volume discuss many different forms of unarmed conflict. Several chapters discuss the use of non-kinetic or nonviolent tactics within the context of an existing war, such as kidnapping and extortion (Meisels, this volume). Here, I want to consider whether the use of unarmed force *by itself* could constitute a war as I have defined it. As we shall see, the possibility that unarmed force could amount to war raises hard questions about the scope and possibilities of "fighting back" against unarmed force, how to apply categories such as "combatant" and "civilian," and how to understand the distinction between civilian and military targets. If unarmed conflicts can count as wars, it may be the case that some of the central concepts in the laws of armed conflict would need to be reformulated to accommodate this possibility.

Lawfare

The term "lawfare" typically refers to the use or abuse of IHL by belligerents in order to (for example) hamper their opponent's military strategies, or undermine their opponent's perceived legitimacy by leveling accusations of war crimes against them (Blank, this volume; Dill, this volume; Dunlap 2010). Thus "the most common understanding of lawfare is not State A's use of law to get State B to do its bidding against B's will, but A's abuse of law to that end" (Dill, this volume, 3). However, the question of whether lawfare itself could be a form of war has not been seriously considered. It is difficult to see how even bad faith appeals to IHL could, in themselves, cause sufficient harm to ever count as a form of war.

That said, I think it is possible that the use of legal resources by one group against another could meet my definition of war. To illustrate this possibility, I will modify a real-life example, that of the actions of the Texaco oil company in Ecuador. The Texaco oil company was accused of causing massive environmental damage "leading to devastating impacts on plants and wildlife, human health, and local cultural practices" (Joseph 2012, 71) in Ecuador's Amazonian rainforests from 1967 to 1990. The indigenous people from that region have spent many years seeking compensation through US courts from Texaco and its merged successor company ChevronTexaco (now known as Chevron), and the company has been accused of using "new, recycled and even contradictory legal arguments ... to thwart its adversaries" (Joseph 2012, 70).

For the sake of argument (I am not claiming that this is in fact the case) let us suppose that Chevron did cause the degree of devastation to the environment, local culture, and health of the indigenous people that it has been accused of, and did so intentionally or at least in full knowledge of the destructive effects of its operations. Would Chevron's subsequent use of the legal system to avoid compensating the indigenous people and paying for environmental cleanup operations amount to a war against the indigenous people? This is a separate question from whether the original oil operation itself was as an act of war, an issue that I cannot explore in this chapter.[7] Rather, the question is whether Chevron's use of legal tactics to avoid environmental clean-up constitutes a form of war because of the foreseeable effects of such legal tactics on the continued risks posed to the indigenous people and their community by Chevron's failure to address the environmental damage.

I suggest that the answer might be "yes" *if* it can be shown that the legal obstacles used by Chevron continued and even worsened the environmental damage and health impacts of the original oil operations. If this is the case, then arguably the criterion of "intense hostilities" would be met, since Chevron's activities would amount to a serious and ongoing attack on the basic welfare and needs of the indigenous people. Chevron's actions constitute an attack

because the ongoing harm to the indigenous people would be the result of the environmental effects of the oil operations *and* Chevron's abuse of the law – an abuse that worsened and continued the original harm. This would thus be a case of "lawfare" because the abuse of the law is a central means by which serious harm is inflicted.

In addition, Chevron counts as an "organized group" as I have defined it, and if (as has been claimed) the Ecuadorian government was unable (and unwilling) to conduct effective cleanup operations (Joseph 2012, 72) there is no effective authority to "adjudicate between the opposing sides, punish them, and otherwise maintain effective control in the arena of the conflict." While the US court system has a degree of legal authority over the parties involved, the court system does not possess effective authority over the arena of combat – in this case, the affected area in Ecuador.

If this is correct, and Chevron is committing an act of war against the indigenous Ecuadorians, then who are the combatants, and what rights and privileges do they have? Would the indigenous Ecuadorians have the right to use lethal force against the leaders of Chevron and the lawyers involved in the case? Or even against the Ecuadorian government for its failure to protect them? If so, could they expose innocent civilians to risks in the use of such force?

My tentative answer is that, yes, the indigenous Ecuadorians would have the right to use lethal force against those most responsible for the destruction of their home. However, we first need to clarify what "most responsible" means in the context of an unarmed conflict.

Since Chevron is not a military organization, we can't use traditional methods of distinguishing combatants from noncombatants and military from non-military targets. There must be an alternative method of determining combatant status. While I cannot offer a detailed solution here, one possibility is to construe combatant status in unarmed conflicts in terms of an individual's normative relationship to the relevant harms rather than in terms of whether they wear a uniform or carry arms openly. This idea is similar to Michael Gross' idea of "participatory liability" (this volume, 397; 2015, 68–72), but differs in one important aspect. In Gross' view, a civilian may be subject to some form of defensive force depending on the degree of their "contribution to a war effort" (this volume, 397). Gross doesn't clarify whether this contribution is to be understood in causal terms (i.e. determined by whether and to what degree a civilian's actions make a causal difference to the war effort), but it is reasonable to interpret his account in this way. In my view, in contrast, an individual's relationship to the harms in question need not be causal in order to warrant ascriptions of responsibility, particularly given the notorious difficulty of establishing individual causal responsibility for harms that are the result of collective actions (Kutz 2000). Instead, the relationship between an individual and her actions can be explained in terms of the centrality of an individual's role to the achievement of the collective aims (Kutz 2000, 159). In this view,

Chevron's senior management and the lawyers involved in the case would bear significant responsibility for the harm inflicted on the indigenous people, since their actions and their roles reveal a normative commitment to intentionally furthering ends that foreseeably cause continued harm, regardless of each person's individual causal contribution to that harm.

But while this account may allow the identification of combatants in unarmed wars, it is less clear how to identify the equivalent of legitimate institutional targets such as military headquarters. If Chevron's leaders are combatants, would this mean that the headquarters of Chevron are a legitimate target? Not necessarily. In a conventional war, military headquarters and base camps are legitimate targets at least partly because the main function of those institutions is to assist in prosecuting the war. But the headquarters of a corporation like Chevron are involved in many different operations and functions. The pursuit of the legal war against the indigenous people would be only one small aspect of their operations. So, while some of Chevron's leaders are arguably responsible for the harm inflicted on the indigenous people, the company *as an institution* is not geared toward that end. Thus, while I think a case can be made for the use of lethal force against individual members of the corporation on the grounds outlined above, it is far more difficult to make the case that Chevron headquarters would be a legitimate target.

This has implications for the issue of collateral damage. If I am right that, at least in this example, there is no clear equivalent to legitimate targets such as military headquarters, this suggests that there might be a much lower tolerance of collateral damage in the prosecution of unarmed wars. If we can identify responsible individuals (but not large-scale targets), then perhaps the most appropriate normative framework to adopt in these cases is that of targeted killings or assassinations. While both of these tactics are controversial (Finkelstein et al. 2012), they provide the best way of encompassing the possibility of unarmed conflicts and permitting the use of force against responsible parties without significantly endangering civilians.

Economic Sanctions

According to Joy Gordon (this volume), economic sanctions "typically involve the withdrawal of trade, although they may also include terminating foreign aid, blocking the use of currency, denying access to international financial institutions, and blocking access to humanitarian aid." Gordon notes that over the last century economic sanctions have been used for a range of political purposes, from being viewed initially as a "form of warfare, serving the military interests of the parties to a conflict" to being used "to express disapproval, or to exert influence or create pressure, by causing inconvenience or imposing additional costs on the economy of the target nation," as, for example, when the UN Security Council imposed economic sanctions against South Africa for apartheid (this volume, 58–59).

But because economic sanctions typically do not involve kinetic force and were framed by the League of Nations and the United Nations as "peaceful pressure" (Gordon, this volume, 63), "sanctions have eluded both the scrutiny and the criticism which would have been forthcoming if the same acts were seen as a form of warfare" (Gordon, this volume, 61). Yet the idea that just war principles can be applied to economic sanctions is not particularly controversial (Meisels 2011; Pierce 1996). In addition, if we accept the claim that wars need not involve the use of military force, as I argued in an earlier section, one of the reasons against applying a just war framework to economic sanctions falls away.

It is relatively easy to show that the use of economic sanctions could meet the criteria of war as I have defined it. This would be the case if sanctions are imposed by an organized group, cause severe foreseeable harm to the civilians, infrastructure, and environment of the state or community targeted by the sanctions, and there is no effective authority with jurisdiction over the parties involved. There is at least one real-life case where the use of economic sanctions plausibly meets these criteria: the use of economic sanctions against Iraq authorized by the UN Security Council, and implemented primarily by the United States (with support from the British) after the 1991 Gulf war. There is evidence that the sanctions caused severe suffering to the civilian population, and hindered the repair of essential civilian infrastructure. For example, the imposition of the sanctions has been linked to the deaths of 237,000 children under the age of five (Gordon 2014–2015, 2), and contributed to severe cholera and typhoid epidemics in 1994 by denying Iraq access to resources that would have enabled the rebuilding of sewage and water treatment plants that had been damaged in the first Gulf War (Gordon 2004; 2010).

If these claims are accurate, then it is clear that the use of sanctions in this case fits my definition of war. This does not mean that the use of sanctions against Iraq was therefore wrong, but it does mean that Iraq would have been justified in viewing themselves as belligerents in a war with the United States[8] during the time the sanctions were imposed, and that Iraq had a right to fight back against the sanctions.

As with the lawfare example, however, clearly identifying the legitimate targets against which Iraq could use defensive force is difficult and a full discussion of this question is beyond the scope of this chapter. The sanctions were authorized by the UN Security Council, and were carried out with the assistance of thousands of individuals and organizations, many of whom would not count as legitimate targets in a conventional war. However, the method of assigning responsibility that I discussed earlier can offer a useful first step in thinking about this case. The policy makers and officials most responsible for formulating and executing the policy bear significant responsibility for the harm caused by the sanctions, so a case can be made for considering them legitimate targets. In addition, other individuals who played an integral role in enforcing the sanctions (for example, inspectors whose role involved ensuring that

sanctioned goods were not permitted to enter Iraq) may also be legitimate targets depending on how central their role is to the enforcement of the sanctions. Other possible legitimate targets could include buildings (not necessarily in Iraq itself) such as warehouses that were used to store goods banned by the sanctions. In those cases, if those structures played a central role in the enforcement of the sanctions, they would count as legitimate targets also.

Cyber Warfare

In his contribution to this volume, George Lucas outlines the history of cyber-attacks, from early pranks and "cyber vandalism" (Lucas this volume, 86) to sophisticated attacks involving "vigilantes" targeting government and commercial service sites as a form of political protest, or in order to expose perceived wrong-doing (Lucas this volume, 87). None of these attacks would, in my view, constitute war. As with economic sanctions, cyber-attacks meet my definition of war only if an organized group orchestrates such attacks and inflicts intense hostilities in a context in which there is no third party authority able to enforce its jurisdiction. As yet, no cyber-attacks fit this description.

However, this may change. As Lucas notes, "many states are resorting to massive cyber attacks" instead of using more traditional channels (such as diplomacy or trade negotiations) to "pursue political objectives against other states" (Lucas this volume, 88). Examples of such supposedly state-sponsored attacks include the attack on Sony Pictures (attributed to North Korea), and the attack on US financial institutions by an organization calling itself "Cyber Fighters of Izz ad-Din al-Qassam," a group linked to Iran (Lucas this volume, 89). If cases like these are in fact state-sponsored cyber-attacks orchestrated by organized groups, this raises the possibility that such attacks could increase in frequency and intensity. However, while cyber-attacks such as those described above could be launched by organized groups in a context where there is no effective third-party authority, could such attacks cause sufficient harm to meet the criterion of intense hostilities?

Lucas notes that cyber-attacks rarely if ever cause physical damage to people and property. Instead, "the [cyber] conflict results in loss of information, loss of access to information processing, and an inability to carry out essential activities (such as banking, mining, medical care, trade, and commerce) that rely largely upon information processing". Thus, although there has been no "cyber Armageddon" involving massive disruptions of essential services, the cyber-attacks that have occurred are "quite destructive and malevolent ... capable of causing massive social upheaval, or bringing about a 'death by 1,000 cuts' through pilfering of industrial or state secrets, or by interference with trade, commerce, finance, medical care, and transportation" (Lucas this volume, 91–92).

Given that cyber-attacks could seriously interfere with essential services such as medical care and transportation, it is possible that cyber-attacks could inflict intense hostilities, even if little physical damage is done. Since I define hostilities to include acts that inflict "substantial and ongoing damage to the lives and welfare of individuals, and the infrastructure, environment, and basic functioning of states and communities," cyber-attacks that seriously affect medical, transportation, and financial systems could cause this level of damage to the welfare of civilians and the functioning of the state. In such cases, the "combatants" would not be soldiers but the computer experts responsible for carrying out the attacks, and those in charge of authorizing and coordinating the attacks. However, because of the likelihood that cyber-combatants might be operating from primarily civilian locales, as with the lawfare case, I would argue that defensive force would have to be limited to attacks on individuals as much as possible. Of course, if cyber-attacks were launched from military installations, then such installations could be considered legitimate targets.

While the above examples refer to state-sponsored attacks, it is possible that non-state groups could also wage war through cyber-attacks, if such groups did not fall under the jurisdiction of an effective authority. However, it is much less likely (although not impossible) that an individual could wage war in this manner. This is not because an individual couldn't cause extreme harm through cyber-attacks, but because in most cases there would be an effective authority with jurisdiction over that individual, and thus the breakdown of effective authority that is characteristic of war would not be present.

CONCLUSION

In this chapter, I have argued in favor of a definition of war that I believe captures the nature of war and accounts for war's distinct legal and normative status. Given that one of the important roles played by the law of armed conflict is to minimize the destruction caused by war, my definition would restrict use of the term "war" to conflicts that exist in a context in which authority has broken down, and where the welfare of all those affected is seriously threatened.

In applying my definition to three examples of unarmed conflicts, I have shown that it is possible that the use of non-kinetic methods could, in rare cases, meet the criteria of war. Through expanding the idea of "hostilities" to include ways of harming that do not rely on physical violence, and through exploring how categories such as combatant and civilian might apply in unarmed conflicts, my definition allows a better understanding of the legal and normative implications of the use of unarmed force.

NOTES

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1. This is in stark contrast to law enforcement operations. Police officers are strictly prohibited from causing harm to innocent people in their pursuit of criminals, and criminals have no legal right to fight back against law enforcement.

2. Article 118, Convention III relative to the Treatment of Prisoners of War (Geneva Conventin III, 1949).
3. See van der Dennen (1980) and Eagleton (1932–1933) for detailed surveys of definitions of war.
4. I thank Valerie Morkevičius for pointing out this helpful distinction.
5. The 1977 Additional Protocol (I), Art. 44 replaced Geneva Convention III, Art. 4. The United States, however, has refused to ratify Protocol I. I thank an anonymous reviewer at Cambridge University Press for directing my attention to this fact.
6. Thus a reason in favor of giving cartels belligerent status is that doing so might protect vulnerable cartel soldiers from prosecution. I thank Valerie Morkevičius for this suggestion.
7. However, given my conception of "hostilities," it is plausible that the infliction of extreme environmental damage could fit my definition of war if the other conditions were met.
8. And perhaps Britain, although "the United States clearly held the leadership position" (Gordon 2010, 32) in relation to central decisions regarding the sanctions.

2

Coercion, Manipulation, and Harm: Civilian Immunity and Soft War

Valerie Morkevičius

For canonical just war thinkers, war was a scourge. War destroyed lives and communities, and warped the souls of its participants. But war was not humankind's only affliction, and some of these other injustices – especially the breakdown of civil order – were deemed much worse. When, on the balance of things, the use of coercive force could lead ameliorate injustice, thinkers within the historical just war tradition permitted the recourse to war as a corrective measure. But they were no idealists. They did not believe war could be eliminated. Instead, canonical just war thinkers shared with realists a profoundly pessimistic view of the human condition and moral progress (Gilpin 1981; Syse 2007). They did hope, nevertheless, to define limits on when coercive force could be used (what we now call *ad bellum* principles), as well as some limits on how such force could be used (what are now termed *in bello* principles).

I, too, doubt that war can be outlawed or completely tamed. War is a fact of life in an international system lacking both an effective mechanism for resolving inter-state conflicts and an efficient means for reining in rogue states (Augustine 1984; Hobbes 1996; Morgenthau 1946). Faced with war's inevitability, my primary concern is how its most pernicious effects on noncombatants can be reduced. For this reason, in the case of soft war, I am willing to permit nonlethal coercion of civilians, by targeting their property, *if the alternative is the use of lethal tactics*. While civilians' lives and bodies should never be attacked directly and intentionally, nonlethal attacks may be permissible within a tradition that has historically not treated coercion as *mala in se*.

In what follows, I develop an argument in favor of permitting limited, nonlethal attacks on civilian property. To do so, I adopt a canonical just war framework, following in the footsteps of Augustine and Aquinas, to think through some tough moral questions that soft war tactics pose for civilian immunity. I believe that the moral nature of war is essentially unchanged across time – and that if we tell ourselves that war today is more civilized and restrained than it was at some time in the past, it is only