

The Legal Challenges of Asymmetrical Warfare: Lessons from Afghanistan's Armed Conflict (2001-2021)

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Abstract

The widening gap in conventional military capabilities between State forces and non-state armed groups in contemporary armed conflicts has enabled a significant degree of asymmetrical warfare. As the weaker conflict parties increasingly resort to norm-bending strategies and tactics to exhaust and demoralise their stronger adversaries, the normative framework to regulate the conduct of hostilities under international humanitarian law comes under severe stress. Consequently, this Paper revisits the Afghan armed conflict during the involvement of international forces to investigate the resilience of relevant norms during the hostilities and draw valuable lessons for other ongoing armed conflicts. Leveraging a doctrinal research approach, this Paper, amongst other points, advocates that State forces adopt creative use of force authority that mitigates the challenge of distinguishing members of non-state armed groups from ordinary civilians in their targeting decisions. Furthermore, this Paper highlights the need for adequate fidelity to the texts of relevant legal norms when assessing the lawfulness or otherwise of conflict parties' contentious conduct.

Keywords: International humanitarian law, Asymmetrical warfare, Afghanistan

1. Introduction

On 31 August 2021, President Biden announced a formal end to direct international military operations in Afghanistan.¹ Although the President's description of the Afghanistan conflict as the 'forever war'² is hyperbolic, the United States was militarily involved in the War longer than it did in the two World Wars of the 20th Century and the Vietnamese conflict combined.³ The Afghanistan conflict arguably started as an international armed conflict (IAC) on 7 October 2001.⁴ On that day, the United States and its allies initiated military operations against the Islamic Emirate of Afghanistan, known colloquially as the Afghan Taliban, for harbouring members of the Al-Qaeda transnational terrorist organisation.⁵ At this time, the Afghan Taliban exercised at least de facto governmental authority over most of the territory of Afghanistan.⁶ However, with the collapse of the Afghan Taliban government in December 2001 and the establishment of a transitional power-sharing administration in June 2002 by an emergency Loya Jirga or grand national assembly, the conflict transformed into a non-international armed conflict (NIAC).⁷

¹ The United States, The White House, 2021.

² The United States, The White House, 2021.

³ Whitlock, 2021, p. XII (Forward).

⁴ Schmitt, 2009, pp. 307-308.

⁵ Council on Foreign Relations, 2021.

⁶ Geiss and Siegrist, 2011, p. 14.

⁷ Schmitt, 2009, pp. 307-308.

The human and material costs of the two-decades-old Afghanistan conflict have been significant. The 'Costs of War' programme of the Watson Institute for International and Public Affairs at Brown University estimates that the United States alone spent about 2.313 trillion US Dollars on the armed conflict.⁸ This estimate excludes future interest payments on public borrowings and the cost of veterans' care.⁹ Additionally, the 'Costs of War' programme estimates that about 176,000 deaths have directly resulted from the armed conflict in Afghanistan between October 2001 and August 2021.¹⁰ Non-combatants represent a significant proportion of these deaths. In addition, these casualty estimates do not include more likely deaths resulting from the collapse of social services¹¹ or mental health problems¹² arising from the armed conflict.

The above-cited estimates on the human and material costs of the decades-old hostilities in Afghanistan are even more remarkable considering the key actors in the armed conflict, particularly during its NIAC phase. On one side of the War was the nation with the most powerful armed forces and the most potent military Alliance globally: the United States and the North Atlantic Treaty Organization (NATO).¹³ After the conflict became a NIAC, these international forces supported the internationally recognised Government of Afghanistan.¹⁴ On the other side of the armed conflict were organised armed groups (OAGs).¹⁵ The prominent OAGs in the Afghan armed conflict during its NIAC phase were the Afghan Taliban,¹⁶ the Haqqani Network,¹⁷ and the Islamic State of Khorasan Province, known colloquially as the ISIS-K.¹⁸ Undoubtedly, the strategic missteps of successive Afghan governments and their powerful international backers would continue to be dissected by commentators for years.¹⁹ In addition, the respective roles of regional powers like Pakistan, Iran, Turkey, and Russia would understandably feature in any detailed post-mortem analysis of the Afghan conflict.²⁰

Notwithstanding, the decisive role played by asymmetrical warfare in bringing about the chaotic departure of the United States and NATO forces and the swift collapse of the Afghan government cannot be overemphasised. The preceding argument is because OAGs in the Afghan conflict extensively resorted to unconventional or asymmetric means and methods of warfare to counteract their State adversaries' overwhelming conventional military superiority.²¹ From a military perspective, such an asymmetric approach involves, for instance, the perfidious use of suicide and non-suicide-delivered improvised explosive devices, human shielding, deliberate targeting of civilians, etc.²² For most asymmetric parties in contemporary armed conflicts, like the Afghan Taliban, the end²³ justifies the means. A stark reminder of this fact was an event organised by the current Afghan Taliban government after the departure of international forces to honour the 'sacrifices' of its suicide bombers during the Afghan conflict.²⁴

⁸ Brown University, Watson Institute for International and Public Affairs, 2021a.

⁹ Brown University, Watson Institute for International and Public Affairs, 2021a.

¹⁰ Brown University, Watson Institute for International and Public Affairs, 2021a.

¹¹ Physicians for Social Responsibility, 2015, p. 69.

¹² Brown University, Watson Institute for International and Public Affairs, 2021b.

¹³ Bell and Illiyas, 2014, pp. 11-12.

¹⁴ Bell and Illiyas, 2014, pp. 3-4.

¹⁵ Bell and Illiyas, 2014, pp. 7-10.

¹⁶ Maizland, 2021.

¹⁷ Smith, 2021.

¹⁸ Wilson Center, 2021.

¹⁹ Whitlock, 2021.

²⁰ Bell and Illiyas, 2014, pp. 16-27.

²¹ Geiss and Siegrist, 2011, pp. 17-19.

²² Geiss, 2006, pp. 763-766.

²³ BBC, 2021a.

²⁴ Gibbons-Neff et al., 2021.

Furthermore, ISIS-K continues to utilise the same asymmetrical strategies to challenge the Afghan Taliban's capacity to govern nationally in a continuation of the Country's NIAC.²⁵

However, from the standpoint of international humanitarian law (IHL), these asymmetrical means and methods of warfare involve a deliberate and systematic distortion of the normative boundaries set for conflict parties.²⁶ This distortion, in turn, results in diminished protection for civilians and persons hors de combat. Therefore, it is unsurprising that the asymmetrical approach by the various OAGs in the Afghan conflict accounted for a significant proportion of civilian deaths and injuries.²⁷

As asymmetrical warfare is inherent to NIACs,²⁸ the Afghan scenario replicates most contemporary armed conflicts.²⁹ Thus, it has become necessary to evaluate the resilience of, and gaps in, the normative framework to regulate the conduct of hostilities involving asymmetrical parties through the prism of the Afghan armed conflict. As the relevant fundamental IHL norms discussed in this Paper have attained customary status,³⁰ delineating the rules for IACs from those for NIACs becomes a moot point unless the context requires differential treatment. However, it is appropriate first to explore the essence of asymmetrical warfare.

2. Conceptualising Asymmetrical Warfare

The idea of conflict parties seeking to exploit the weakness of their adversaries through unconventional means runs through the history of human warfare. Thus, a common asymmetrical thread arguably runs from the Battle of the Teutoburg Forest between the legionnaires of the Roman Empire and Germanic tribes in 9 AD³¹ through the Battle of Agincourt in 1415 between French armoured calvary and English archers³² to the Afghan armed conflict between powerful regular armed forces and OAGs in the 21st Century.³³

Unsurprisingly, attempts to conceptualise asymmetrical warfare's apparently 'impenetrable terrain'³⁴ also have a long history. For instance, Sun Tzu, the ancient Chinese military strategist, used the following analogy: 'now an army may be likened to water, for just as flowing water avoids the heights and hastens to the lowlands, so an army avoids strength and strikes weakness.'³⁵ In 2000, the Joint Warfare of the Armed Forces of the United States described asymmetric threats thus: 'a timeless and fundamental principle of the profession of arms [which avoids] the strengths and focus on the vulnerabilities.'³⁶ A year later, Metz and Johnson II conceptualised asymmetric warfare as 'acting, organising and thinking differently than opponents in order to maximise one's advantages [and] exploit an opponent's weaknesses.'³⁷

A necessary deduction from the above conceptualisations of asymmetrical warfare is that exploiting the vulnerabilities of a stronger adversary can manifest in infinite forms. For instance, concerning the terrorist attacks of 11 September 2001, Air Force General Richard Myers stated: 'You hate to admit it, but we

²⁵ Yawar et al., 2024.

²⁶ Geiss, 2006, pp. 760-763.

²⁷ United Nations Assistance Mission in Afghanistan (UNAMA), 2019, pp. 18-32.

²⁸ Von Heinegg, 2021, para. 17.

²⁹ Bellal, (ed.), 2019, pp. 32-35.

³⁰ Schmitt and Widmar, 2014, pp. 381-382.

³¹ Myles, 2019.

³² Editors of History.com, 2020.

³³ BBC, 2021b.

³⁴ Geiss, 2006, p. 759.

³⁵ Sun Tzu, 1971, p. 101.

³⁶ The United States, Joint Chiefs of Staff, 2000, p. II-3.

³⁷ Metz and Johnson II, 2001, p. 5.

hadn't thought about this.³⁸ In many contemporary armed conflicts, stronger parties' fear of possible political and legal fallout from conducting operations that do not adhere to IHL's normative constraints is exploited as a 'weakness' by their militarily disadvantaged adversaries with no similar scruples about the law.³⁹

Furthermore, the advent of the internet and a 24-hour news cycle practically gives anyone the ability to broadcast instant and unfiltered information, and it has motivated contemporary conflict parties who are weak in conventional military capabilities to favour an asymmetrical strategy of exhaustion and demoralisation for instance, through indiscriminate terror attacks, above all else.⁴⁰ Hence, as ordinary Afghan civilians have since discovered,⁴¹ no normative lines are beyond being crossed by an asymmetrical conflict party to achieve Thorton's formula for strategic success: impact = shock x damage x visibility.⁴²

3. International Humanitarian Law during the Afghan Armed Conflict

In June 1859, Jean-Henri Dunant witnessed the humanitarian fallout of the Battle of Solferino.⁴³ Afterwards, Dunant asked a timeless question: '[i]s it not a matter of urgency, since unhappily we cannot always avoid wars, to press forward in a human and truly civilised spirit the attempt to prevent, or at least to alleviate, the horrors of war?'⁴⁴

In answer to Dunant's question, IHL has evolved since the 19th Century to constrain the conduct of hostilities and thereby 'conciliate the necessities of war with the laws of humanity.'⁴⁵ Three principles form the bedrock of this legal constraint: the principles of distinction and proportionality and attack precautions. Unfortunately, as in other contemporary armed conflicts, the Afghan War severely tested the resilience of these core IHL principles through asymmetrical warfare.

3.1. The Identity Challenge

During the Afghan War, the principle of distinction was anything but 'intransgressible'⁴⁶ by conflict parties. A few illustrations of this opening point will suffice. The Afghan Taliban's Layha or Code of Conduct advocates for its fighters to blend in with the local civilian population to enhance operability.⁴⁷ The Afghan Taliban's attitude towards the principle of distinction was reflective of the general practice amongst OAGs during the armed conflict. The refusal by these armed groups to distinguish themselves from civilians was also in tune with Mao Tse-Tung's prescription that insurgents use the civilian populace much in the same way a fish would use a water body for its survival.⁴⁸

Consequently, the targeting policies of the Afghan armed forces and their international allies constantly struggled between fighting the OAGs and keeping incidental civilian losses low.⁴⁹ For instance, this tricky balancing act manifested in the United States Rules of Engagement for its Operation Enduring Freedom (RoE-OEF) in Afghanistan. The RoE-OEF required troops in combat to engage an individual only where they are a 'likely and identifiable threat (LIT)'.⁵⁰ In contrast, opposing forces in symmetrical conflicts are often declared hostile before starting the military engagement. The advantage of this en-bloc declaration

³⁸ Corbin, 2003, p. 115.

³⁹ Arreguin-Toft, 2005, p. xi.

⁴⁰ Pfanner, 2005, p. 153; Thorton, 2007, pp. 12-13.

⁴¹ UNAMA, 2018.

⁴² Thornton, 2007, p. 10.

⁴³ Dunant, 1862, pp. 8-9.

⁴⁴ Dunant, 1862, p. 127.

⁴⁵ St Petersburg Declaration relating to Explosive Projectiles, 138 Consolidated Treaty Series 297, p. 69, 1868.

⁴⁶ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion), I.C.J. Reports, 1996, p. 226, para. 79.

⁴⁷ Munir, 2011, annex p. 119, para. 81.

⁴⁸ Mao Tse-Tung, 2017, pp. 92-93.

⁴⁹ Schmitt, 2009, pp. 313-317.

⁵⁰ The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 100.

is that targeting becomes status-based without the need to establish hostile intent or act before each engagement scenario.⁵¹

However, during the Afghan armed conflict, declaring the Afghan Taliban or any other participating OAGs as a hostile force would have been meaningless as it is not easy to distinguish members of 'amorphously defined'⁵² OAGs from ordinary civilians. The LIT standard is a middle-road approach between a blanket declaration of hostile status and self-defence under the law-enforcement paradigm.⁵³ Yet, determining the parameters for isolating and engaging likely and identifiable threats within any civilian population was a continuous practical challenge for the regular armed forces involved in the conflict.⁵⁴ As the mistaken targeting of an Afghan aid worker on 29 August 2021 showed, this identity challenge had dire consequences for ordinary Afghan civilians.⁵⁵

It is important to note that regular armed forces, particularly the special forces, were also guilty of not distinguishing themselves from ordinary Afghan civilians on some occasions.⁵⁶ Furthermore, the United States Army manual on counterinsurgency tactics advocates frequent contact with local civilian populations to earn support for military operations.⁵⁷ Similarly, provincial reconstruction teams (PRTs) blended troops with civilian humanitarian actors to help rebuild Afghan towns and villages after clearing OAGs from such places. However, this strategy meant that the PRTs operated in 'semi-permissive environments usually following open hostilities.'⁵⁸ The sum effect of these population-centric counterinsurgency policies was that civilians, including independent humanitarian aid workers,⁵⁹ faced a heightened risk of attacks from insurgents trying to dissuade Afghan civilians from cooperating with their State adversaries and not differentiating between governmental and non-governmental humanitarian actors.⁶⁰

Finally, regarding civilian objects, Afghan and international regular armed forces destroyed a significant number of civilian homes that the OAGs had booby-trapped⁶¹ against troops searching for insurgents. Unsurprisingly, the destruction of civilian homes, even though arguably done out of military necessity, did little to earn the support of affected local civilian populations.⁶² Additionally, Afghan security forces and their international partners targeted opium poppy farms and processing facilities to degrade a key source of funding for the insurgency in Afghanistan.⁶³ Yet, despite their best efforts, Afghanistan accounted for 85 per cent of the total global production of opium in 2020.⁶⁴ Furthermore, targeting opium poppy production infrastructure affected many Afghans whose livelihood depended on them,⁶⁵ resulting in backlash and increased support amongst the civilian population for the OAGs.⁶⁶

The principle of distinction under IHL has two dimensions. First, civilians who do not directly participate in hostilities are not lawful targets.⁶⁷ The second dimension of the principle of distinction is that civilian

⁵¹ The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 97.

⁵² The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 101.

⁵³ The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 102.

⁵⁴ Schmitt, 2009, pp. 315-317.

⁵⁵ Aikins, 2021; Horton, Lamothe, and Demirjian, 2021.

⁵⁶ The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 64-66.

⁵⁷ The United States, Headquarters Department of the Army, 2009, p. 3-20, para. 3-126.

⁵⁸ The United States, Centre for Army Lessons Learned, 2011, p. 1.

⁵⁹ Kelly and Rostrup, 2002.

⁶⁰ The European Union, European Asylum Support Office, Country of Origin Information Report, 2012.

⁶¹ Shah and Nordland, 2010.

⁶² Shah and Nordland, 2010.

⁶³ Glaze, 2007.

⁶⁴ United Nations Office on Drugs and Crime, 2021, p. 52.

⁶⁵ Landay, 2021.

⁶⁶ Clemens, 2021.

⁶⁷ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 48 and Art. 51; Additional Protocol II, 17513 UNTS 1125 (p.609), 1977, Art. 13; Henckaerts and Doswald-Beck, 2005, p. 3, rule 1.

objects which do not meet the definition of a military objective are not lawful targets.⁶⁸ Any violation of the principle of distinction is considered an international crime in both IACs and NIACs.⁶⁹ The negative formulation of a 'civilian' in IHL as an individual who is not a member of the armed forces or OAG implies an obligation on conflict actors to distinguish themselves.⁷⁰ Yet, the legal requirement for conflict actors to make themselves visible in IACs relates to enjoying combatant status only;⁷¹ it is not a constitutive element for armed forces membership.⁷²

Indeed, the United States Judge Advocate General has opined: [i]t is not a war crime for military personnel to wear civilian clothing...the intent to [commit perfidy], and not the wearing of civilian clothing, appears to be the gravamen of the prohibition.⁷³ However, although the Judge Advocate-General's argument may be on solid legal ground, the reality in armed conflicts like that in Afghanistan is that combatants wearing civilian clothes result in general erosion of the belief in the sanctity of the principle of distinction.⁷⁴

There exists no combatant status in NIACs. Yet, IHL does not bar targeting individuals based solely on their status in this species of armed conflict.⁷⁵ This identity challenge is easily resolvable as it concerns targeting members of regular armed forces because they customarily wear uniforms no matter the legal qualification of the hostilities they are involved in.⁷⁶ Conversely, targeting members of OAGs is problematic. For starters, state practice is ambiguous regarding their status as 'armed forces' in the same sense as State forces.⁷⁷ More importantly, although members of OAGs are lawful targets who do not enjoy the protection accorded civilians in IHL and are therefore targetable by their adversaries merely based on status,⁷⁸ the critical challenge is that most members of OAGs do not distinguish themselves from ordinary civilians in conflict theatres. To resolve this challenge, the ICRC suggested that only those members of an OAG 'whose continuous function is to take a direct part in hostilities'⁷⁹ are lawful targets. According to the ICRC, proof of constant combat function is deducible from the open carrying of arms or wearing distinctive emblems.⁸⁰

However, some legal scholars⁸¹ have criticised the ICRC formula because it creates an unworkable dichotomy in which armed forces members are targetable based on their status per se. At the same time, based on the ICRC's proposition, their adversaries in OAGs will only be targetable based on their function within their group's organisational structure. Moreover, linking the open carrying of arms to membership of OAGs is unrealistic in a conflict theatre like Afghanistan. Afghans' carrying assault weapons is a cultural trend that does not automatically connect with the membership of any OAGs.⁸² Interestingly, it is essential to note that State practice accords a degree of legal protection to members of distinct political wings of OAGs.⁸³ These members are lawful targets only when they engage in hostilities. Still, without an explicit legal requirement for visibility and with often amorphous organisational structures,⁸⁴

⁶⁸ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 52; Henckaerts and Doswald-Beck, 2005, p. 25, rule 7.

⁶⁹ Rome Statute, 38544 UNTS 2187 (p.3), 1998, Art. 8(2)(b)(i), Art. 8(2)(b)(ii), Art. 8(2)(e)(i), Art. 8(2)(e)(iii) and Art. 8(2)(e)(xii).

⁷⁰ Sandoz et al., (eds.), 1987, paras. 1914-1917.

⁷¹ Third Geneva Convention, 972 UNTS 75 (p.135), 1949, Art. 4(A); Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 44.

⁷² Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 43.

⁷³ The United States, The United States Army Judge Advocate Centre for Law and Military Operations, 2004, p. 68.

⁷⁴ Sandoz et al., (eds.), 1987, para. 1921; Kelly and Rostrup, 2002.

⁷⁵ Schmitt and Widmar, 2014, p. 391.

⁷⁶ Henckaerts and Doswald-Beck, 2005, pp. 12 and 385.

⁷⁷ Henckaerts and Doswald-Beck, 2005, p. 19; Von Heinegg, 2021, para. 17.

⁷⁸ Geiss and Siegrist, 2011, pp. 22-23; Schmitt and Widmar, 2014, pp. 385-386; Von Heinegg, 2021, para. 17.

⁷⁹ Melzer, 2009, p. 27.

⁸⁰ Melzer, 2009, p. 35.

⁸¹ Watkin, 2010, pp. 683-686; Schmitt and Widmar, 2014, p. 387.

⁸² Geiss and Siegrist, 2011, p. 23.

⁸³ Schmitt and Widmar, 2014, p. 387.

⁸⁴ Melzer, 2009, pp. 32-33.

distinguishing members of OAGs from innocent civilians for targeting remains an ever-present challenge in any asymmetrical armed conflict such as witnessed in Afghanistan.

Unsurprisingly, some legal scholars⁸⁵ have suggested the universal application of the self-defence standard under the law-enforcement paradigm in all armed conflicts to resolve the identity challenge in asymmetrical warfare. However, there is scant support for this proposition in state practice,⁸⁶ mainly since IHL permits the use of lethal force in the first instance against lawful targets in any armed conflict.⁸⁷ Conversely, other scholars⁸⁸ have advocated for the retooling of the 'direct participation in hostilities' standard under IHL to apply as a use of force authority for State forces seeking to overcome the challenge of successfully targeting members of OAGs while sparing ordinary civilians. Under a 'direct participation' authority, opposing forces in a NIAC can legally attack an individual as soon as there is sufficient evidence that they are engaged in 'actions that are, by their nature and purpose, intended to cause actual harm to the enemy.'⁸⁹

Although the scope of acts coming within the meaning of 'direct participation in hostilities' is unsettled in State practice,⁹⁰ there is consensus that the qualifying acts include those occurring outside the battlefield but still capable of harming the enemy.⁹¹ Hence, it arguably makes operational sense in any conflict theatre that State forces would attack individuals responsible for supplying or assembling improvised explosive devices used against patrol convoys.⁹² To this Paper, the attraction of a use-of-force authority based on 'direct participation' is its flexibility. In other words, targeting decisions based on this standard need not be grounded on in the targeted individual's membership of an OAG as the declared hostile forces authority would require, nor would there be a need to establish the imminence of the threat of harm from the targeted individual as a self-defence authority for the use of force would demand.

Regarding civilian objects, the category of military objectives by use is quite relevant in asymmetrical warfare, where weak parties often use civilian structures as fire positions or bobby traps. Hence, once a conflict party uses a civilian structure for military action, it loses legal protection against attack.⁹³ However, the loss of protection only lasts as long as the utilisation of such civilian objects for military purposes.⁹⁴ Additionally, even though its use renders it a legitimate target, any attack on a civilian object converted into a military objective must be considered in the attacker's proportionality assessment.⁹⁵

Finally, the Afghan and international forces' targeting of the opium poppy production and processing infrastructure was in line with an expansive interpretation of 'military objective'. For instance, the United States asserts that military objectives include 'economic objects of the enemy that indirectly but effectively support and sustain the enemy's war-fighting capacity.'⁹⁶ As OAGs, like the Afghan Taliban, derived significant funds from opium production,⁹⁷ the United States could justify targeting opium poppy farms based on its broad interpretation of legitimate military objectives. Interestingly, the United States has

⁸⁵ Brooks, 2004, p. 757; Abresch, 2005, pp. 757-760.

⁸⁶ Geiss and Siegrist, 2011, pp. 24-25.

⁸⁷ Schmitt, 2010b, pp. 41-43;

⁸⁸ Schmitt, 2009, p. 317; Bagwell and Kovite, 2016, pp. 37-38.

⁸⁹ United States of America, General Counsel of the Department of Defense, DoD Directive 2311.01E, 2023, pp. 236-237, para. 5.8.3.

⁹⁰ Henckaerts and Doswald-Beck, 2005, Rule 6, pp. 22-23; Pomper, 2012, pp. 189-190; Bagwell and Kovite, 2016, pp. 27-28.

⁹¹ Bagwell and Kovite, 2016, p. 27; United States of America, General Counsel of the Department of Defense, DoD Directive 2311.01E, 2023, p. 237, para. 5.8.3 and pp. 239-240, para. 5.8.3.1.

⁹² Schmitt, 2009, p. 316; Bagwell and Kovite, 2016, pp. 4 and 18.

⁹³ Schmitt and Widmar, 2014, p. 393.

⁹⁴ Schmitt and Widmar, 2014, p. 394.

⁹⁵ Schmitt and Widmar, 2014, p. 393.

⁹⁶ The United States, Department of the Navy/Department of Homeland Security, 2007, p. 8-3, para. 8.2.5.

⁹⁷ Azami, 2021.

subsequently modified its stance on economic targets by introducing a 'causal link'⁹⁸ element between such objects and their degree of contribution to the enemy's military advantage. Yet, some legal scholars have expressed concern about including economic activities as military objectives because it is a potentially slippery slope.⁹⁹ Indeed, hospitals could be targeted based on the United States' position since these 'sustain' an armed forces' war-fighting capacity by maintaining troops' health. Hence, aside from targeting opium poppy farms in Afghanistan being a failure from strategic and tactical perspectives, it arguably has no basis in IHL.

3.2. The Proportionality Equation

Afghanistan is a landlocked country roughly the size of Texas.¹⁰⁰ It has a rugged mountainous terrain dotted by mostly rural settlements with inadequate road connections.¹⁰¹ The geography, coupled with the significant difficulty in distinguishing the members of OAGs from civilians on the ground, made the Afghan armed forces and their international supporters rely heavily on airpower during their involvement in the Afghan hostilities.¹⁰² However, the frequent resort to airstrikes, especially by the United States and NATO, was quite controversial from a humanitarian perspective throughout the armed conflict. For instance, in 2108, UNAMA stated that aerial operations accounted for most civilian harm attributable to pro-government forces.¹⁰³ In 2008, Human Rights Watch (HRW) published a report entitled 'Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan'. In the Report, HRW detailed specific instances in which airstrikes by international forces resulted in Afghan civilian deaths and injuries.¹⁰⁴

The HRW report is instructive for this Paper for two reasons. First, the instances of military engagements captured in the report typify the asymmetrical nature of the Afghan conflict. Secondly, HRW sought to overlay its interpretation of relevant IHL norms on the conduct of hostilities that led to the loss of civilian lives and civilian objects. Hence, the HRW report will form the backdrop for considering the challenge of the proportionality equation during the Afghan conflict.

According to HRW, '[i]n one district, a senior British commander asked US Special Operations Forces to leave his district due to mounting civilian casualties caused when the US repeatedly called in airstrikes to rescue **small numbers**¹⁰⁵ of special forces during firefights with insurgent forces.¹⁰⁶ In March 2007, the United States targeted a house in Nijrab District of Kapisa Province in an airstrike. The airstrike resulted in civilian deaths. In the section of its report regarding the circumstances of the airstrike, HRW commented that 'US forces knew civilians inhabited the house and that only two lightly armed fighters may have been present.'¹⁰⁷ According to HRW, the incident in Nijrab District' raises serious concerns that the airstrikes violated the [IHL] prohibition against disproportionate attacks.¹⁰⁸ Finally, HRW opined that civilian casualties in Afghanistan mainly occurred in the context of 'unplanned situations, normally when ground troops call in airstrikes as tactical support when under attack from insurgent forces.'¹⁰⁹

The points mentioned above in the HRW report highlight several issues pertinent to the principle of proportionality. The first issue is the legal approach to the incidental loss of civilian lives and objects

⁹⁸ O'Connor, 2016.

⁹⁹ Schmitt and Widmar, 2014, p. 394; Hathaway et al., 2016.

¹⁰⁰ Schmitt, 2009, p. 308.

¹⁰¹ Schmitt, 2009, p. 308.

¹⁰² Schmitt, 2009, p. 308.

¹⁰³ UNAMA, 2019, pp. 37-41.

¹⁰⁴ Human Rights Watch, 2008, pp. 15-24.

¹⁰⁵ Emphasis added.

¹⁰⁶ Human Rights Watch, 2008, p. 6.

¹⁰⁷ Human Rights Watch, 2008, p. 16.

¹⁰⁸ Human Rights Watch, 2008, p. 16.

¹⁰⁹ Human Rights Watch, 2008, p. 29.

during an attack. The second issue is the comparative value attached to any expected 'incidental loss of civilian life, injury to civilians or damage to civilian objects' and the 'concrete and direct military advantage anticipated' from an attack.¹¹⁰ Thirdly, the HRW report highlights the issue of force preservation as a legitimate consideration in a proportionality assessment for a planned attack. Finally, the post-hostilities assessment of an attacker's compliance with the proportionality principle is also implicit in the HRW report.

The obligation of an attacker under Additional Protocol I¹¹¹ to conduct a pre-attack proportionality assessment is arguably now part of customary IHL.¹¹² Additionally, the legal formulation of the proportionality principle reflects an understanding that incidental loss of civilian lives and civilian objects is a reality of warfare;¹¹³ hence, the opening text of Article 51(5)(b): 'an attack which may be expected to cause'. Similarly, the discovery of civilian casualties after an attack does not raise, per se, a presumption of a violation of the proportionality principle. Indeed, as Schmitt rightly pointed out, developing advanced ISR capabilities by countries like the United States has created the wrong impression that 'zero collateral damage attacks'¹¹⁴ ought to be the norm in contemporary armed conflicts. Hence, where there are incidental civilian deaths, injuries or damage to civilian objects, the crucial issue is whether these incidental losses are 'excessive' compared to the military advantage derived from the relevant attack.

Even though the comparison does not require 'strict mathematical comparison',¹¹⁵ it remains challenging to attach relative values to civilian lives/objects and military advantage. As the ICRC representative mentioned at the Diplomatic Conference for adopting Protocol I, these 'two values were not commensurate'.¹¹⁶ Nevertheless, applying the principle represents a bulwark against arbitrariness from planners and executors of an attack. Hence, one could approach the proportionality equation much like a court would weigh the interest of public safety or morals in curtailing certain individual freedoms and rights under human rights law.¹¹⁷

Regarding the first side of the proportionality equation, the expected collateral damage from an attack relates not only to its direct effects. An example of such immediate results of an attack includes the impact of fragmentation and blast waves at the attack site on civilians and civilian objects within the vicinity.¹¹⁸ Instead, incidental loss also extends to the indirect effects of an attack. An example of an indirect result of an attack would be the disruption of health services due to targeting an electrical grid as a military objective.¹¹⁹ However, foreseeability is the critical point regarding the incidental effects of an attack, whether direct or indirect.¹²⁰ In other words, in the circumstances prevailing at the time of the attack, whether a military commander could have foreseen the consequences of an attack, some of which could be temporally and geographically separate from the military objective. Knowledge of the expected incidental effects of an attack is derivable from various sources, including lessons learnt during previous military engagements or computer-generated simulations of the potential impacts of an attack.¹²¹ Finally, excluding other IHL-protected individuals, such as persons hors de combat and medical personnel, from

¹¹⁰ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 51(5)(b).

¹¹¹ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 51(5)(b), Art. 57(2)(a)(ii), Art. 57(2)(b) and Art. 57(3).

¹¹² Henckaerts and Doswald-Beck, 2005, p. 46, rule 14.

¹¹³ Schmitt and Widmar, 2014, p. 405.

¹¹⁴ Schmitt, 2009, p. 324.

¹¹⁵ Schmitt and Widmar, 2014, p. 405.

¹¹⁶ Switzerland, Federal Political Department, Official Records of the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts. Vol. XIV, CDDH/III/SR. 21, 1978, p. 182, para. 4.

¹¹⁷ International Law Association, Study Group on the Conduct of Hostilities in the 21st Century (ILA-SG), 2017, p. 368.

¹¹⁸ ILA-SG, 2017, p. 352.

¹¹⁹ Geiss and Siegrist, 2011, p. 31; ILA-SG, 2017, pp. 352-353.

¹²⁰ Schmitt and Widmar, 2014, p. 405.

¹²¹ ILA-SG, 2017, p. 354.

a pre-attack proportionality assessment would arguably be illogical. Discounting such individuals because of the explicit reference to 'civilians' in the proportionality formulations would essentially render the protections already afforded them under IHL a nullity in an attack.¹²²

Regarding the second side of the proportionality equation, two qualifiers attach to 'military advantage': concrete and direct. 'Concrete' relates to a 'tangible or measurable effect'.¹²³ Similarly, 'direct' connotes a 'chain of causation'.¹²⁴ Hence, the formulation of this side of the proportionality equation means that any military advantage anticipated from a planned attack cannot be merely abstract, hypothetical or, worse still, futuristic.¹²⁵ Concrete and direct military advantages from an attack include killing enemy commanders and troops/fighters, destroying military command and control centres, and targeting strategic routes. Similarly, the attacker can assess civilians directly participating in hostilities on the military advantage side of the equation.¹²⁶

Therefore, the advantage anticipated from a planned attack has to be primarily military. Nevertheless, several States-parties to Protocol I have asserted that 'military advantage anticipated' relates to 'an attack as a whole and not from parts thereof'.¹²⁷ However, any attempt to link an anticipated military advantage to the armed conflict as a whole would arguably introduce undesirable ambiguity into the proportionality equation.¹²⁸

A single word, 'excessive', connects the two sides of the proportionality equation. Arguably, it is also the most controversial component of the principle. As the HRW report suggests, the optics of a significant civilian casualty figure arising from an attack easily overshadow any legal justification for the attack in the public arena.¹²⁹ Yet, 'excessive' does not equate to 'extensive'.¹³⁰ Thus, the ICRC's assertion in its Commentary on Protocol I that 'incidental losses and damages should never be extensive'¹³¹ arguably has no basis in IHL. Moreover, there is no legal requirement for numerical comparisons of expected incidental losses and the anticipated military advantage.

Notwithstanding, the challenge remains to determine the 'excessive' threshold. This determination is carried out in the first place by military commanders tasked with planning and executing an attack. Although the value judgement of the relevant commander still plays a role,¹³² militaries have developed methodologies to help guide the development of collateral damage estimates as part of pre-attack planning.¹³³ It is important to note that the obligation to undertake proportionality assessment continues even after an attack is in the execution phase.¹³⁴ Hence, an attacker has to conduct fresh proportionality checks as the situation evolves on the ground. For instance, new intelligence could reveal the presence of more civilians at the military objective than was initially known to be there.

Post-attack analyses of an attack are also essential for correcting any observed defects in the targeting process. However, such evaluation necessarily has to be ex-ante, considering only the information available to the relevant commander at the time of the attack.¹³⁵ This ex-ante perspective is vital because

¹²² ILA-SG, 2017, p. 357-359.

¹²³ ILA-SG, 2017, p. 364.

¹²⁴ ILA-SG, 2017, p. 364.

¹²⁵ Geiss and Siegrist, 2011, p. 31; ILA-SG, 2017, pp. 363-365.

¹²⁶ Schmitt and Widmar, 2014, p. 388.

¹²⁷ Henckaerts and Doswald-Beck, 2005, p. 31; Geiss and Siegrist, 2011, pp. 30-31.

¹²⁸ ILA-SG, 2017, p. 364.

¹²⁹ Human Rights Watch, 2008, p. 6.

¹³⁰ Schmitt and Widmar, 2014, p. 405.

¹³¹ Sandoz et al., (eds.), 1987, para. 1980.

¹³² Geiss and Siegrist, 2011, pp. 32-34.

¹³³ Schmitt, 2009, p. 311; Geiss and Siegrist, 2011, p. 32.

¹³⁴ Schmitt and Widmar, 2014, pp. 405-406.

¹³⁵ Schmitt and Widmar, 2014, p. 405.

any allegation of non-compliance with the proportionality principle should, arguably, be about what a 'reasonable military commander'¹³⁶ would do with the same information available at the time of the attack and not with any information that emerged after the attack. Similarly, an attack that results in incidental civilian harm does not violate the proportionality principle merely because it failed to achieve the anticipated military advantage. The issue is the 'operation as planned, not that which eventuated.'¹³⁷ Concerning the HRW report, this requirement for ex-ante analyses is essential because most of the reported civilian casualties arose from time-sensitive targeting¹³⁸ when there is no opportunity for detailed pre-attack planning under a deliberate targeting¹³⁹ scenario.

Another point concerning the proportionality equation in the HRW report concerns the issue of force preservation. The report noted that most of the airstrikes that killed Afghan civilians occurred in military operations to extricate small numbers of special forces.¹⁴⁰ While there is a consensus that it is an essential military consideration,¹⁴¹ IHL experts have debated whether an attacker could consider force preservation a military advantage in a proportionality assessment. Some have opined that force preservation should always be a factor in the proportionality assessment of any attack.¹⁴² Yet, other experts argue that soldiers are already trained to accept heightened risk in warfare; hence, considering force protection as a military advantage is needless and could tilt the balance against civilian protection.¹⁴³

A middle-road approach to force preservation under the proportionality principle is most appropriate. Here, the vital point is any anticipated military advantage based on force preservation must be 'concrete and direct'.¹⁴⁴ The illustration provided by HRW in its report concerning the extrication of special forces arguably constitutes force preservation as a concrete and direct military advantage anticipated from the request for airstrikes. The numerical strength of the special forces is inconsequential to the proportionality assessment. Because of the called-in airstrikes, the special forces could extricate themselves safely from hostile fire.

Conversely, any consideration of force preservation in the choice of appropriate means or method of warfare could be problematic under a proportionality assessment. For instance, an attacker may have assessed that the option to use an airstrike to kill a top enemy commander would result in higher incidental civilian losses. However, deploying ground troops to target the enemy commander may put them at risk of an ambush but would likely result in lower incidental civilian casualties. The attack option of airstrikes cannot proceed based solely on an anticipated military advantage of avoiding the risk associated with a ground assault option. As the danger to troops in a ground assault scenario remains hypothetical, the attacker cannot consider force preservation as the 'concrete and direct military advantage anticipated' from choosing the airstrike option.¹⁴⁵ Notwithstanding, a choice from amongst different means or methods of warfare based on force preservation is arguably a legitimate military consideration in taking feasible precautions in attack.¹⁴⁶

¹³⁶ Geiss and Siegrist, 2011, pp. 32-34; ILA-SG, 2017, pp. 367-368.

¹³⁷ Schmitt, 2010a, p. 825.

¹³⁸ North Atlantic Treaty Organization (NATO), 2021, pp. 1-13 and annex pp. A1-A7.

¹³⁹ NATO, 2021, p. 1-12.

¹⁴⁰ Human Rights Watch, 2008, p. 30.

¹⁴¹ Geiss and Siegrist, 2011, p. 34; ILA-SG, 2017, p. 366.

¹⁴² Gisel, 2016, p. 26.

¹⁴³ Gisel, 2016, p. 26.

¹⁴⁴ Geiss and Siegrist, 2011, p. 35; ILA-SG, 2017, p. 367.

¹⁴⁵ Geiss and Siegrist, 2011, p. 35; ILA-SG, 2007, p. 367.

¹⁴⁶ Gisel, 2016, p. 25.

Finally, neither the expected incidental harm nor anticipated military advantage should have pre-determined value before undertaking a proportionality assessment.¹⁴⁷ The relevant considerations for each side of the equation depend on each scenario's circumstances. Hence, HRW arguably missed the above point by failing to develop this remark further: [t]aking additional tactical measures to reduce civilian deaths may at times put combatants at more significant risk-at least in the immediate situation.¹⁴⁸

3.3. Feasible Precautions

The HRW report mentioned above also holds instructive value for analysing the observance of precautions during an attack in the Afghan conflict. For instance, HRW asserted that evidence of civilian deaths from airstrikes suggests inadequate feasible precautions during prolonged battles, 'including using adequate forces to minimise harm, employing low-collateral damage bombs and positively identifying the location of combatants and civilians.'¹⁴⁹ This preceding conclusion of the HRW highlights some critical issues under the legal formulation of precautions in attack. These issues include target verification, choice of means and methods of War, and post-attack compliance assessment.

Military commanders are obligated to ensure that only military objectives remain targets of their operations.¹⁵⁰ However, verifying legitimate attack targets is subject to what is feasible.¹⁵¹ Similarly, the feasibility qualifier is also attached to the required precautions in selecting the 'means and methods of attack.'¹⁵² However, the insertion in the draft Additional Protocol I of the word 'ensure' was rejected by States in favour of 'feasible' at the Diplomatic Conference to adopt the Protocol.¹⁵³ Yet, Additional Protocol I does not define 'feasible' for operationalising the principle of distinction.¹⁵⁴

Furthermore, the ICRC's prescription that the interpretation of 'feasible' will be a matter of 'common sense and good faith'¹⁵⁵ is arguably not particularly helpful in operational terms. Conversely, IHL scholars cite¹⁵⁶ the relevant definition in the Amended Protocol on Prohibitions and Restrictions on the Use of Mines, Booby-Traps and Other Devices.¹⁵⁷ Article 3(10) of this Protocol defines feasible precautions as those 'which are practical or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.' Therefore, given the drafting history and the generally accepted meaning of 'feasible', the obligation to observe stipulated precautions in an attack or against the effects of an attack is context-specific.¹⁵⁸ Notwithstanding, the greater the risk to civilians from an attack, for instance, because of its urban setting, the more precautions an attacker would require.¹⁵⁹ Additionally, the responsibility to take 'constant care'¹⁶⁰ applies to the entire spectrum of military operations and is not limited only to attacks, as the legal formulation under Article 57(2) of Protocol I would suggest.¹⁶¹

Regarding precautionary measures to verify targets, a military commander must use all available means to ascertain the status of an attack objective. However, there is no legal requirement for using specific ISR

¹⁴⁷ Giess and Siegrist, 2011, p. 34.

¹⁴⁸ Human Rights Watch, 2008, p. 5.

¹⁴⁹ Human Rights Watch, 2008, p. 30.

¹⁵⁰ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(1); Henckaerts and Doswald-Beck, 2005, p. 51, rule 15.

¹⁵¹ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(2)(a)(i); Henckaerts and Doswald-Beck, 2005, Rule 16.p. 55.

¹⁵² Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(2)(a)(ii); Henckaerts and Doswald-Beck, 2005, Rule 17.p. 56.

¹⁵³ International Committee of the Red Cross, 1973, p. 64.

¹⁵⁴ Corn, 2012, pp. 2-4.

¹⁵⁵ Sandoz et al., (eds.), 1987, para. 2198.

¹⁵⁶ Giess and Siegrist, 2011, p. 37, fn. 116; ILA-SG, 2017, p. 374.

¹⁵⁷ 2048 UNTS p. 3, 1980 (as amended 3 May 1996).

¹⁵⁸ ILA-SG, 2017, p. 374.

¹⁵⁹ ILA-SG, 2017, p. 381.

¹⁶⁰ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(1).

¹⁶¹ Sandoz et al., (eds.), 1987, para. 2191; ILA-SG, 2017, pp. 379-380.

methods for target verification.¹⁶² Nonetheless, it is good to triangulate intelligence from various sources to form a coherent picture of a verified military objective.¹⁶³ Still, doubts could remain about the status of an intended target despite the best verification efforts of military commanders. According to the ICRC, an attacker must halt their operation 'even if there is only a slight doubt'¹⁶⁴ concerning target verification. However, the ICRC's 'slight doubt' standard is arguably unrealistic in today's asymmetrical armed conflicts, where the line between combatants and civilians is deliberately blurred. Indeed, as feasibility requires considering prevailing circumstances, the law 'allows for mistakes in the Clausewitzian fog of war'¹⁶⁵ regarding target verification. The critical point is the reasonability of any lingering doubt about the status of an attack objective at the time of targeting decisions. Indeed, the ICRC has subsequently modified its position on the target certainty standard by stressing that the relevant targeting decision should 'reflect the level of certainty that can reasonably be achieved in the circumstances.'¹⁶⁶

An attacker is also obligated to exercise constant care in their choice of means and methods of warfare to avoid or minimise incidental civilian harm.¹⁶⁷ However, an attack is not legally required to rely on specific weapons or tactics to achieve the anticipated military advantage. Arguably, the obligation flowing from Article 57(2)(a)(ii) of Additional Protocol I only requires 'those precautionary measures that are both technically possible and militarily feasible.'¹⁶⁸ Given the contents of the HRW report, this clarification is vital for a couple of reasons. First, an attacker's obligation to take constant care regarding his weapons choices is subject to the weapons in his arsenal. In other words, there is no legal requirement for precision weapons where none is available. Secondly, even where precision weaponry is reasonably available to an attacker, there is no obligation to use such weaponry in a particular attack if it would be more useful in another operation.¹⁶⁹

Moreover, designating a weapon as a 'precision weapon' does not automatically make it less lethal than the so-called 'dumb weapons'.¹⁷⁰ Similarly, an attacker need not sacrifice military advantage by choosing a less effective weapon or tactics,¹⁷¹ provided that IHL does not prohibit using any alternative means or methods that could deliver the anticipated military advantage.¹⁷² Furthermore, in choosing from a range of target options, force preservation is one of the legitimate considerations in assessing the feasibility of 'constant care' measures.¹⁷³

Notwithstanding the above, humanitarian considerations require military commanders to continually review their means and methods to ensure compliance with feasible precautions in attack.¹⁷⁴ Thus, harm to civilians could be avoided or reduced by conducting a pattern of life analysis around a military objective.¹⁷⁵ The essence of such a study is to determine the best time of the day to attack and avoid or minimise collateral damage in the process. Similarly, an 'effective advance warning'¹⁷⁶ to civilian populations likely affected by military operations represents a reasonable precautionary measure.

¹⁶² Schmitt and Widmar, 2014, p. 401.

¹⁶³ ILA-SG, 2017, pp. 382-383.

¹⁶⁴ Sandoz et al., (eds.), 1987, para. 2195.

¹⁶⁵ Schmitt and Widmar, 2014, p. 401.

¹⁶⁶ Melzer, 2009, p. 76.

¹⁶⁷ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(2)(a)(ii); Henckaerts and Doswald-Beck, 2005, rule 17, p. 56.

¹⁶⁸ Schmitt (ed.), 2013, p. 165, cited in ILA-SG, 2017, p. 375.

¹⁶⁹ ILA-SG, 2017, p. 378 and pp. 383-384.

¹⁷⁰ ILA-SG, 2017, p. 384.

¹⁷¹ Schmitt and Widmar, 2014, p. 402.

¹⁷² Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 51(4)(a), Art. 51(4)(b), Art. 51(4)(c), and Art. 51(5)(a); Henckaerts and Doswald-Beck, 2005, Rules 11-13, pp. 37-45.

¹⁷³ ILA-SG, 2017, p. 378.

¹⁷⁴ Schmitt and Widmar, 2014, pp. 402-403.

¹⁷⁵ Geiss and Siegrist, 2011, p. 36.

¹⁷⁶ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 57(2)(c); Henckaerts and Doswald-Beck, 2005, Rule 20, p. 62.

However, what constitutes an 'effective warning' is context-specific.¹⁷⁷ Arguably, a duty to create a corridor through which civilians can escape from the military objective is a corollary to the obligation to warn them.¹⁷⁸ However, further to issuing an effective warning, where feasible,¹⁷⁹ the attacker has no responsibility to guide the affected civilian population to avoid the effects of a military operation; that is the defender's duty.¹⁸⁰

4. Conclusion

Dunant's fear of War without humanity remains pertinent, considering the widespread reliance on asymmetrical warfare in contemporary armed conflicts to counteract unequal conventional capabilities. The chief concern is that the nebulous nature of asymmetrical warfare presents a significant challenge from an IHL standpoint. Any branch of law requires predictability in its subjects' conduct, reflecting satisfactory compliance. However, an asymmetrical conflict party is anything but predictable in terms of deployable means and methods of warfare in service of a strategic objective. Hence, asymmetrical warfare is inherently disruptive to the normative framework designed to constrain the conduct of conflict parties for the benefit of combatants and civilians alike.

Asymmetrical parties in the Afghan armed conflict did much to bring pre-existing debates over the precise contours and resilience of the legal constraints on hostilities into sharp relief. The civilian population in Afghanistan suffered disproportionately from indiscriminate attacks and from being used as human shields. Yet, the Afghan armed conflict or any other contemporary conflict theatre is not an existential threat to IHL's capacity to regulate warfare. Instead, especially for the sake of these affected civilians, the international community needs to restate the imperatives of conflict parties complying with their IHL obligations while pursuing their legitimate military aims. International criminal law accountability should play an essential role in that regard. At the same time, humanitarian actors need to make level-headed and nuanced assessments of contentious combat operations to give effect to IHL's balancing of military necessities and humanitarian considerations. Finally, better integrating legal expertise into military operations could assist regular armed forces in better dealing with the complexities of hostilities against asymmetrical adversaries.

5. References

1. Abresch, W. (2005), 'A Human Rights Law of Internal Armed Conflict: the European Court of Human Rights in Chechnya', in: *The European Journal of International Law*, Volume 16, Number 4, 2005, pp. 741-767 [PDF] (Available at: <https://academic.oup.com/ejil/article/16/4/741/381064> [Accessed on 27 November 2021])
2. Aikins, M. (2021), 'Times Investigation: In US drone strike, Evidence suggests no ISIS Bomb', in: *The New York Times* online [internet article] Updated 3 November 2021 (Available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html> [Accessed on 29 November 2021])
3. Arreguin-Toft, I. (2005), *How the Weak win Wars: a theory of asymmetric conflict*. Cambridge Studies in International Relations: 99 (Cambridge: Cambridge University Press)

¹⁷⁷ Sandoz et al., (eds.), 1987, paras. 2224-2225; ILA-SG, 2017, p. 385.

¹⁷⁸ ILA-SG, 2017, p. 385.

¹⁷⁹ Sandoz et al., (eds.), 1987, para. 2223; ILA-SG, 2017, pp. 386-388.

¹⁸⁰ Additional Protocol I, 17512 UNTS 1125 (p.3), 1977, Art. 58; Henckaerts and Doswald-Beck, 2005, Rule 22, p. 68; Schmitt, 2010a, p. 828.

4. Azami, D. (2021), 'Afghanistan: How do the Taliban make Money', in: BBC World Service and Reality Check online [internet article] (Available at: <https://www.bbc.com/news/world-46554097> [Accessed on 3 December 2021])
5. Bagwell, R. and Kovite, M. (2016), 'It is not Self-Defence: Direct participation in Hostilities Authority at the Tactical Level', in: Military Law Review, Volume 224, Issue 1, 2016, pp. 1-47 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2984267 [Accessed on 18 April 2022])
6. BBC (2021a), 'Afghanistan: Who's who in the Taliban leadership', in: BBC News online [internet article] 7 September 2021 (Available at: <https://www.bbc.com/news/world-asia-58235639> [Accessed on 13 November 2021]).
7. BBC (2021b), 'Afghanistan profile: Timeline', in: BBC News online [internet article], 9 September 2019 (Available at: <https://www.bbc.com/news/world-south-asia-12024253> [Accessed 12 November 2021]).
8. Bell, A. and Illiyas, B. (2014), A Network in Transition: Actors, Interests, and Alliances in the Afghanistan Conflict as of early 2014. Peace Research Institute Frankfurt Working Paper No. 20 (Frankfurt: Peace Research Institute) [PDF] (Available at: https://www.files.ethz.ch/isn/184719/PRIF_WP_20.pdf [Accessed on 12 November 2021]).
9. Bellal, A. (ed.) (2019), The War Report: Armed Conflicts in 2018. (Geneva: The Geneva Academy of International Humanitarian Law and Human Rights) [PDF] (Available at: <https://www.geneva-academy.ch/joomla-tools-files/docman-files/The%20War%20Report%202018.pdf> [Accessed on 24 October 2021])
10. Brooks, R. E. (2004), War Everywhere: Rights, National Security Law, and the Law Of Armed Conflict in the Age Of Terror, Georgetown Public Law and Legal Theory Research Paper No. 12-175 [PDF] (Available at: <https://scholarship.law.georgetown.edu/facpub/1125/> [Accessed on 27 November 2021]).
11. Brown University, Watson Institute for International and Public Affairs (2021a), 'US Costs to Date for the War in Afghanistan in \$ Billions FY2001 – FY2022', in: The Costs of War Programme [internet article] (Available at: <https://watson.brown.edu/costsofwar/figures/2021/human-and-budgetary-costs-date-us-war-afghanistan-2001-2022> [Accessed on 10 November 2021]).
12. Brown University, Watson Institute for International and Public Affairs (2021b), 'Afghan Civilians', in: The Costs of War Programme [internet article] (Available at: <https://watson.brown.edu/costsofwar/costs/human/civilians/afghan> [Accessed on 14 November 2021]).
13. Clemens, J. (2021), 'An Unforced Error: How the US Attempts to Suppress the Opium Trade Strengthened the Taliban', in: Modern War Institute online [internet article] 30 August 2021 (Available at: <https://mwi.usma.edu/an-unforced-error-how-us-attempts-to-suppress-the-opium-trade-strengthened-the-taliban/> [Accessed on 3 December 2021]).
14. Corbin, M. (2003), Honing the Sword: Strategy and Forces after 9/11 (Washington, DC: Center for Defense Information) [e-book] (Available at: <https://play.google.com/books/reader?id=nowpAQAAIAAJ&pg=GBS.PP2&printsec=frontcover> [Accessed on 10 November 2021])
15. Corn, G.S. (2012), 'Targeting, Command Judgement, and Proposed Quantum Of Information Component: A Fourth Amendment Lesson in Contextual Reasonableness', in: Brooklyn Law Review, Volume 77, Number 2, 2012, pp. 1-62 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762894 [Accessed on 14 November 2023])
16. Council of Foreign Relations (2021), 'The US War in Afghanistan', in: Council of Foreign Relations Timeline. [internet article] (Available at: <https://www.cfr.org/timeline/us-war-afghanistan> [Accessed on 20 October 2021])
17. Declaration Renouncing the Use in Time of War of Explosive Projectiles under 400 Grammes Weight (St Petersburg Declaration), signed on 11 December 1868, 138 CTS 297, p. 69 (St Petersburg)

18. Dunant, H. (1862), A Memory of Solferino [English Version by the American Red Cross (1959)] (Geneva: International Committee of the Red Cross) [PDF] (Available at: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0361.pdf> [Accessed on 13 November 2021])
19. Editors of History.com (2020), 'Battle of Agincourt', in: History online [internet article], Updated 23 October 2021 (Available at: <https://www.history.com/this-day-in-history/battle-of-agincourt> [Accessed on 15 November 2021]).
20. Geiss, R. (2006), 'Asymmetric Conflict Structures', in: International Review of the Red Cross, Volume 88, Number 864, December 2006, pp. 757-777 [PDF] (Available at: <https://international-review.icrc.org/articles/asymmetric-conflict-structures> [Accessed on 23 October 2021])
21. Geiss, R. and Siegrist, M. (2011), 'Has the Armed Conflict in Afghanistan affected the Rules on the Conduct of Hostilities?', in: International Review of the Red Cross, Volume 93, Number 881, March 2011, pp. 11-46. [PDF] (Available at: <https://international-review.icrc.org/sites/default/files/irc-881-geiss-siegrist.pdf> [Accessed on 21 October 2021])
22. Geneva Convention Relative To The Treatment Of Prisoners of War, 12 August 1949, 972 UNTS 75 (p. 135), Vol-75-I-972-English.pdf (Geneva).
23. Gibbons-Neff, T./Hassan, S./Khapalwak, R. (2021), Taliban Honour Suicide Bombers' Sacrifices' in Bid to Rewrite History', in: The New York Times online [internet article] Updated 3 November 2021 (Available at: <https://nyti.ms/30L5Eiw> [Accessed on 23 October 2021]).
24. Gisel, L. (2016), The Principle of Proportionality in the Rules Governing the Conduct of Hostilities under International Humanitarian Law, Report of the International Expert Meeting held from 22-23 June 2016 in Quebec, Canada. [PDF] (Available at: https://www.icrc.org/en/download/file/79184/4358_002_expert_meeting_report_web_1.pdf [Accessed on 27 November 2021]).
25. Glaze, J. A. (2007), Opium and Afghanistan: Reassessing US Counternarcotics Strategy (Pennsylvania: Strategic Studies Institute, US Army War College) [PDF] (Available at: https://www.files.ethz.ch/isn/46869/1007_OpiumAfghan.pdf [Accessed on 3 December 2021])
26. International Law Association, Study Group on the Conduct of Hostilities in the 21st Century (2017), 'The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st-Century Warfare', in: International Law Studies, Volume 93, Number 322 (2017), (Newport: Stockton Centre for the Study of International Law), [PDF] (Available at: <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1709&context=ils> [Accessed on 23 November 2021])
27. Hathaway, O. A./ Lederman, M./ Schmitt, M. N. (2016), 'Two Lingering Concerns about the forthcoming Law Of War Manual Amendments', in: Just Security online [internet article], 30 November 2016 (Available at: <https://www.justsecurity.org/35025/lingering-concerns-forthcoming-law-war-manual-amendments/> [Accessed on 18 February 2023])
28. Henckaerts, J./Doswald-Beck, L. (2005), Customary International Humanitarian Law. Volume I: Rules. (Cambridge and Geneva: Cambridge University Press/ICRC) [PDF] (Available at: <https://www.refworld.org/docid/5305e3de4.html> [Accessed on 26 October 2021]).
29. Horton, A./Lamothe, D./Demirjian, K. (2021), 'Botched Drone Strike that Killed 10 Civilians In Kabul was not a Result of Criminal Negligence, Pentagon says', in: The Washington Post online [internet article] Updated 3 November 2021 (Available at: <https://www.washingtonpost.com/national-security/2021/11/03/kabul-drone-strike-inspector-general-report/> [Accessed on 29 November 2021])
30. Human Rights Watch (2008), 'Troops in contact': airstrikes and civilian deaths in Afghanistan (New York: Human Rights Watch) September 2008 [PDF] (Available at:

- https://www.hrw.org/sites/default/files/reports/afghanistan0908web_0.pdf [Accessed on 4 December 2021])
31. International Committee of the Red Cross (1973), Commentary on Draft Additional Protocols to the Geneva Conventions of 12 August 1949. (Geneva: ICRC) October 1973. [PDF] (Available at: https://www.loc.gov/rr/frd/Military_Law/pdf/RC-Draft-additional-protocols.pdf [Accessed on 2 December 2021])
 32. Kelly, M. and Rostup, M. (2002), 'Identify Yourselves', in: The Guardian online [internet article] 1 February 2002 (Available at: <https://www.theguardian.com/world/2002/feb/01/afghanistan.comment> [Accessed on 27 November 2021]).
 33. Landay, J. (2021), 'Profits and Poppy: Afghanistan's Illegal Drug Trade a Boon for Taliban', in: Reuters online [internet article] Updated 16 August 2021 (Available at: <https://www.reuters.com/world/asia-pacific/profits-poppy-afghanistans-illegal-drug-trade-boon-taliban-2021-08-16/> [Accessed on 3 December 2021])
 34. Maizland, L. (2021), 'The Taliban in Afghanistan', in: Council of Foreign Relations Backgrounder. [internet article] Updated 15 September 2021 (Available at: <https://www.cfr.org/backgrounder/taliban-afghanistan> [Accessed on 12 November 2021])
 35. Mao Tse-Tung (2017), On guerrilla warfare. [Translated from Chinese by Griffith, S. B.], (Eastford: Martino Fine Books).
 36. Melzer, N. (2009), Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law. (Geneva: International Committee of the Red Cross) [PDF] (Available at: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf> [Accessed on 9 October 2021])
 37. Metz, S. and Johnson II, D. V. (2001), Asymmetry And US Military Strategy: Definition, Background and Strategic Concepts. (Pennsylvania: Strategic Studies Institute) [PDF] (Available at: https://www.files.ethz.ch/isn/104646/Assymetry_US_Military_Strategy.pdf [Accessed on 16 November 2021]).
 38. Munir, M. (2011), 'The Layha for the Mujahideen: An Analysis of the Code Of Conduct for the Taliban Fighters Under Islamic Law', Annex to the main article, in: International Review of the Red Cross, Volume 93, Number 881, March 2011, pp. 103-120 [PDF] (Available at: <https://www.icrc.org/en/doc/assets/files/review/2011/irrc-881-munir-annex.pdf> [Accessed on 4 November 2021]).
 39. Myles, H. (2019), 'Battle of the Teutoburg Forest', in: Encyclopedia Britannica online [internet article], Updated 22 August 2019, (Available at: <https://www.britannica.com/event/Battle-of-the-Teutoburg-Forest> [Accessed on 15 November 2021])
 40. North Atlantic Treaty Organization (2021), Allied joint doctrine for joint targeting, Edition B, version 1, November 2021, AJP-3.9 [PDF] (Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033306/AJP-3.9_EDB_V1_E.pdf [Accessed on 4 December 2021])
 41. O'Connor, J. M. (2016), 'Applying the Law of Targeting to the Modern Battlefield', in: Speech Delivered by the United States Department of Defense General Counsel Jennifer O'Connor at New York University School of Law, New York, 28 November 2016 [internet material] (Available at: <https://www.justsecurity.org/34977/applying-law-targeting-modern-battlefield%e2%80%8e-full-speech-dod-general-counsel-jennifer-oconnor/> [Accessed on 18 February 2023])
 42. Pfanner, T. (2005), 'Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action', in: International Review of the Red Cross, Volume 87, Number 857, March 2005, pp. 149-174 [PDF] (Available at: https://international-review.icrc.org/sites/default/files/irrc_857_8.pdf [Accessed on 19 November 2021])

43. Physicians for Social Responsibility (2015), *Body Count: Casualty Figures after 10 Years on the 'War On Terror.'* First international edition, March 2015 [Translated from German by Ali Fathollah-Nejad] (Washington, D.C., Berlin, Ottawa: Physicians for Social Responsibility) [PDF] (Available at: https://www.ippnw.de/commonFiles/pdfs/Frieden/Body_Count_first_international_edition_2015_final.pdf [Accessed on 10 November 2021])
44. Pomper, S. (2012), *Toward a Limited Consensus on the Loss of Civilian Immunity in Non-International Armed Conflict: Making Progress through Practice*, in: Watkin, K. and Norris, A.J. (eds.) (2012), *Non-international armed conflict in the Twenty-First Century*, International Law Studies, Stockton Center for International Law, The United States Naval War College, Volume 88 (2012), pp. 181-193 [PDF] (Available at: <https://digital-commons.usnwc.edu/ils/vol88/iss1/> [Accessed on 4 April 2023])
45. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Additional Protocol I), 8 June 1977, 17512 UNTS 1125 (p. 3), Vol-1125-I-17512-English.pdf (Geneva).
46. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Additional Protocol II), 8 June 1977, 17513 UNTS 1125 (p. 609), Vol-1125-I-17513-English.pdf (Geneva).
47. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) (As amended on 3 May 1996), 10 October 1980, 2048 UNTS p. 3 (Geneva)
48. Rome Statute of the International Criminal Court, 38544 UNTS 2187 (p. 3.), adopted 17 July 1998. Vol-2187-I-38544-English.pdf (Rome)
49. Sandoz, Y./Swinarski, C./Zimmermann, B. (eds.) (1987), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949.* (Geneva: Martinus Nijhoff Publishers and ICRC) [internet format] (Available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument> [Accessed on 7 December 2020])
50. Schmitt, M.N. (2009), *'Targeting And International Humanitarian Law in Afghanistan'*, in: Schmitt, M.N. (ed.) (2009), *The War in Afghanistan: a legal analysis.* The United States Naval War College, International Law Studies, Volume 85, 2009, pp. 307-339 [PDF] (Available at: <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1126&context=ils> [Accessed on 20 October 2021])
51. Schmitt, M.N. (2010a), *'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance'*, in: *Virginia Journal of International Law*, Volume 50, Number 4, 2010, pp. 769-893 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600241 [Accessed on 25 November 2021])
52. Schmitt, M.N. (2010b), *'The Interpretive Guidance on the Notion Of Direct Participation In Hostilities: A Critical Analysis'*, in: *Harvard National Security Journal*, Volume 1, May 2010, pp. 5-44 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600243 [Accessed on 19 October 2022])
53. Schmitt, M.N./Widmar, E.W. (2014), *'On Target: Precision and Balance in the Contemporary Law of Targeting'*, in: *Journal of National Security Law and Policy*, Volume 7, 2014, pp. 379-409 [PDF] (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439345 [Accessed on 30 November 2021]).
54. Shah, T. and Nordland, R. (2010), *'NATO is Razing Booby-Trapped Afghan Homes'*, in: *The New York Times online* [internet article] 16 November 2010 (Available at: <https://www.nytimes.com/2010/11/17/world/asia/17afghan.html> [Accessed on 27 November 2021]).

55. Smith, J. M. (2021), 'The Haqqani Network: The New Kingmakers in Kabul', in: War on the Rocks [internet article] 12 November 2021 (Available at: <https://warontherocks.com/2021/11/the-haqqani-network-afghanistans-new-power-players/> [Accessed on 13 November 2021]).
56. Sun Tzu (1971), *The Art of War*. [Translated from Classical Chinese by Griffith, S. B.], (Oxford: Oxford University Press). Thomson, R. (2007), *Asymmetric Warfare: threat and response in the twenty-first Century* (Cambridge: Polity Press)
57. Switzerland, Federal Political Department (1978), *Official Records of the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts, Vol. XIV: Summary Records of Committee III* (Berne: Swiss Federal Political Department) CDDH/III/SR. 21, 20 February 1974 - 10 June 1977, Geneva [PDF] (Available at: https://www.loc.gov/n/frd/Military_Law/pdf/RC-records_Vol-14.pdf [Accessed on 3 December 2021])
58. The European Union, European Asylum Support Office, Country of Origin Information Report (2012), 'Afghanistan: insurgent strategies- intimidation and targeted violence against Afghans (Luxembourg: Asylum Support Office) [PDF] (Available at: https://www.ecoi.net/en/file/local/1314553/90_1354794367_easo-2012-12-afghanistan-insurgents.pdf [Accessed on 1 December 2021]).
59. *The Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice, Advisory Opinion. Delivered on 8 July 1996. I.C.J. Reports 1996, p. 226 [PDF] (Available at: <https://www.icj-cij.org/en/case/95> [Accessed on 1 December 2021])
60. The United States of America, Center for Army Lessons Learned (2011), *Afghanistan: provincial reconstruction team- observations, insights, and lessons. Number 11-16, February 2011* (Fort Leavenworth: Center for Army Lessons Learned) [PDF] (Available at: <https://usacac.army.mil/sites/default/files/publications/11-16.pdf> [Accessed on 27 November 2021]).
61. The United States of America, Department of the Navy/Department of Homeland Security (2007), *The Commander's Handbook on the law of naval operations. NWP-14M, July 2007* [PDF] (Available at: [https://www.marines.mil/Portals/1/Publications/MCTP%2011-10B%20\(%20Formerly%20MCWP%205-12.1\).pdf?ver=2017-07-11-151548-683](https://www.marines.mil/Portals/1/Publications/MCTP%2011-10B%20(%20Formerly%20MCWP%205-12.1).pdf?ver=2017-07-11-151548-683) [Accessed on 3 December 2021])
62. The United States of America, Headquarters Department of the Army (2009), *Tactics in counterinsurgency, Field Manual 3-24.2, April 2009* (Washington, DC: Headquarters Department of the Army) [PDF] (Available at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/fm3_24x2.pdf [Accessed on 27 November 2021])
63. The United States of America, Joint Chiefs of Staff (2000), *Joint warfare of the armed forces of the United States. Joint Publication 1, 14 November 2000* (Washington, DC: The United States Joint Chiefs of Staff) [PDF] (Available at: <https://www.bits.de/NRANEU/others/jp-doctrine/jp1%2800%29.pdf> [Accessed on 16 November 2021])
64. The United States of America, The United States Army Judge Advocate General's Center for Law and Military Operations (2004), *Legal lessons learned from Afghanistan and Iraq. Volume I, Major Combat Operations (11 September 2001 to 1 May 2003)* (Charlottesville: Center for Law and Military Operations) 1 August 2004 [PDF] (Available at: <https://fas.org/irp/doddir/army/clamo-v1.pdf> [Accessed on 27 November 2021])
65. The United States of America, The White House (2021), 'Remarks by President Biden on the end of the War in Afghanistan', in: Briefing Room, Speeches and Remarks. 31 August 2021 (Available at: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/> [Accessed on 20 October 2021])
66. The United States of America, General Counsel of the Department of Defense (2023), *Law of War Manual, DoD Directive 2311.01E, Update as of July 2023* (Washington D.C.: General Counsel of the Department of Defense) [PDF] (Available at:

<https://media.defense.gov/2023/Jul/31/2003271432-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF> [Accessed on 21 September 2023])

67. United Nations Assistance Mission in Afghanistan (2018), Afghanistan: a special report on harm to civilians from improvised explosive devices (Kabul: United Nations Assistance Mission in Afghanistan) October 2018 [PDF] (Available at: <https://unama.unmissions.org/protection-of-civilians-reports> [Accessed on 27 October 2021])
68. United Nations Assistance Mission in Afghanistan (2019), Afghanistan: protection of civilians in armed conflict, Annual Report 2018 (Kabul: United Nations Assistance Mission in Afghanistan/Office of the United Nations High Commissioner for Human Rights) February 2019 [PDF] (Available at: <https://unama.unmissions.org/protection-of-civilians-reports> [Accessed on 14 November 2021]).
69. United Nations Office on Drugs and Crime (2021), World Drug Report: global overview -drug demand and supply (Vienna: United Nations Office on Drugs and Crime) [PDF] (Available at https://www.unodc.org/unodc/en/data-and-analysis/wdr-2021_booklet-2.html [Accessed on 3 December 2021]).
70. Von Heinegg, W.H. (2021), 'Asymmetric Warfare', in: Max Planck Encyclopedia of Public International Law (Oxford: Oxford University Press) [Article last updated: March 2021] (Available at: <https://opil.ouplaw.com> [Accessed on 24 October 2021])
71. Watkin, K. (2010), 'Opportunity Lost: Organised Armed Groups and the ICRC's Direct Participation In Hostilities' Interpretive Guidance' in: New York University Journal of International Law and Politics, Volume 42, Number 3, Spring 2010, pp. 641-696. [PDF] (Available at: <https://www.nyuilp.org/print-edition/volumes-50-41/> [Accessed on 9 November 2021])
72. Whitlock, C. (2021), The Afghanistan Papers: A Secret History of the War. (New York: Simon & Schuster)
73. Wilson Center (2021), 'Explainer: ISIS-Khorasan in Afghanistan', in: The Islamists Project, Wilson Centre, 27 August 2021 [internet article] (Available at: <https://www.wilsoncenter.org/article/explainer-isis-khorasan-afghanistan> [Accessed on 13 November 2021])
74. Yawar, M. Y., Ali, M. and Rajesh, Y. P. (2024), 'How ISIS-K Leader forged one of Islamic State's most fearsome Groups', in: Reuters [internet article], 26 March 2024 (Available at: <https://www.reuters.com/world/leader-isis-group-linked-moscow-attack-has-global-ambitions-2024-03-25/> [Accessed on 23 July 2024])