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Drones, settler colonialism and the law

By

Yaar Dagan

A PhD Thesis Submitted to the School of Law

In Fulfilment of the Requirements

For the Degree of Doctor of Philosophy

March 2023

Keele University

Declaration

I declare that the work contained in this dissertation is my own, with cited material explicitly referenced. I have not submitted this dissertation for any other personal qualification or degree within Keele University or any other institution.

Abstract

This dissertation explores two sets of questions. The first focuses on the development of military drones and the use of this technology for distinctly settler colonial purposes. The second focuses on the challenges posed by lethal drones to the legal and normative framework of warfare. In doing so, this dissertation deals not only with the challenges that drones pose to specific humanitarian regulations but, more fundamentally, with the destabilisation of key categories of warfare, including the concept of war itself.

This dissertation starts with the following premise: Settler colonialists are persecuted collectives who suffered from persecution, mainly in Europe, so they were looking for a one-way ticket out of their state of origin. However, their dreams of a new homeland were shattered when they realised that their destinations were already populated. Consequently, they committed horrible crimes, including genocide, ethnic cleansing and transfer. Unlike traditional colonialists, settlers have been primarily concerned with taking over indigenous land – and maintaining independent sovereignty over the acquired territory.

This dissertation seeks to show that a peculiar combination of settler colonialism, militarism, and technical ingenuity led Israeli engineers to develop drones and turn their country into the world's leading weapon exporter. With over two million people, Gaza has become a human laboratory where new, ever more destructive weapons are tested and sold worldwide for profit.

This dissertation also seeks to articulate the paradox that drones, initially endorsed as a 'safer' technology reducing risks to innocent civilians, have, in most cases, been fatally harmful to non-combatants. Moreover, they have destabilised the legal categories of warfare, ushering

in an era of perpetual and endless conflict on an unprecedented global scale, creating a permanent dread for millions of people, controlled, harassed, and suppressed by settler colonial and imperial powers.

Acknowledgements

This dissertation would not have been possible without the help and support of friends, colleagues, and family, who supported me throughout my academic journey. Without you, this dissertation could not have been written.

First, I would like to thank the Keele Doctoral academy, the Keele Law School, the Humanities Department, and the Keele Postgraduate Association, which supported me through various funding sources, including scholarships and fee waivers. I would have been stranded in the wilderness without their generosity, which was vital and of utmost importance.

Second, I would like to express my gratitude to my brilliant supervisors, Mario Prost and Awol Allo. Your patience has gone beyond my wildest expectations. Your inspiration and detailed feedback are behind every word of this dissertation and between the lines. You have shaped my idea of what an engaged legal scholar should be. Our conversations inspired me to follow in your footsteps and aspire for higher academic pursuits.

I would like to thank Orna Ben-Naftali, who served as the Dean of the Haim Striks School of Law during my undergraduate studies. I wish to express my sincere admiration to you, Orna. You provided me with research opportunities across the globe. You opened up your home and heart and offered me invaluable resources that pushed me to excel as a postgraduate

student. I am grateful for the invaluable feedback that I received from you regarding this study at its early stages. I would not have been able to complete this study without you.

Being part of a scholarly community at the School of Law has been both a privilege and a pleasure. The people I met, researchers, faculty, and colleagues, have shaped my understanding of what universities are and should be. Special mention goes to the following great minds I have encountered at the School of Law: Alison Brammer, Tsachi Keren-Paz, Sophia Hayat Taha, Felicity Adams, Haider Jinana, Ashley Murphy, Sarah Lane, Charlotte Purcell, Danielle Beech, Andrea Scott, Emma Allen, Stella Coyle, John Cotter, Mark Davys, Catherine Edwards, Fabienne Emmerich, Szilard Gaspar-Szilagyi, Hannah Gibbons-Jones, Jane Krishnadas, Forough Ramezankhah, Konstanze Von Papp, Sotirios Santatzoglou, Ezgi Taşcıoğlu, and Eliza Varney.

Beyond our Law School, being part of a community at Keele University has been a joy. The people I met, students, researchers, faculty, and colleagues, have shaped my understanding of what universities should ideally stand for. I treasure the memories of our time at the KPA Clubhouse, Keele Hall, and Chancellor's Building during conferences, dinners, workshops, and debates. Special mention goes to the following formidable personalities I have met at Keele: Jo Flynn, Steve Kilner, Fiona Polack, Goksel Misirli, Moran Mandelbaum, Anssi Moilanen, Lauri Anssi Moilanen, Currie Agyeman, Gabriella Gay, Martin Goodhead, Tasneem Rubayat Oeishee, Ahmed El Kady, Moriam Bahar, Fides D Thunder, Raveena Rancis, John Wotton, George Blake, Nezar El-Bayouk, Yamna Paradis, Monique Sang, Maria Singh, Tom Oakes, Toby Foster, Ahmed Arif, Lise Samow, James English, Aslı Kandemir, Xiang Iris Zheng, Dominic Osborne, Lucy Lenyon, Toby Foster, Colleen Bradshaw, Nathan Atherton, Thomas Le Vien, Chris Shipley and Rajmil Fischman.

Beyond Keele, I would like to pay homage to my many friends and colleagues who have supported me with their companionship and professional feedback among a broader international community of scholars and activists. They have all offered unique thoughts and feedback on my ideas, inspired me, or encouraged me, particularly Haim Bresheeth-Zabner, Ilan Pappé, Gabriel Polley, Salim Alam, Angela Glendenning, Maureen Wiskin, Elleanne Green, Adie Nistelrooy, Huda Ammori, Sila Boz, Patrick Harrison, Mohamed Kabha, Ahmad Bornat, Cristian Popescu, Basil Khoury, Yossi Wolfson, Ronnie Barkan, Rebecca Massey, Huda Ammori, Erez Aloni, Rotem Dan Mor, Yuval Merin, Yonatan Shapira, Emanuel Bronshtein, Barbara Esser, Rebecca Ramlow, Tapash Abu Shaim, Rashad Alhindi, Nigel Brown, and Mercedes Fonfria.

Special thanks to my family, including my mother, father, brothers, nephews, nieces, aunts, uncles, cousins, and my partner, who provided emotional support throughout my academic journey. I would not have been able to complete this project without you.

I want to say a few words about Guy Gillor, my cousin, who dedicated his PhD research to tracing the history of the Aboriginal Community Controlled Health Services movement in Australia. Guy inspired me to embark upon intellectual journeys overseas and travel to distant locations to learn from diverse cultures. Guy challenged me and pushed me to question my political prepositions and moral inclination. As an academic, Guy invited me to take part in academic conferences in remote locations, from East Asia to the North Pole, which allowed me to receive professional guidance from experienced scholars from across the globe. Thank you, Guy, for these fantastic opportunities that led me to write this PhD thesis today.

Special thanks to Fredi Gruber, who provided me with soothing support throughout my academic journey since 2007. If I can display an ounce of your moral consistency, then I will

have done well. Thank you for always pushing me forward with my dissertation, and for our heartfelt conversations that shaped my ideals.

Many thanks are due to Bob Brecher and Mark Devenney, the directors of the Centre for Applied Philosophy, Politics and Ethics (CAPPE), University of Brighton. CAPPE gave me my first opportunity to present my research at the 12th Annual Interdisciplinary Conference ‘Empire, Capital & Transnational Resistance’ (2017). My paper enjoyed invaluable feedback from local academics and activists, including Zeina El Maasri, Tom Hickey, Toby Lovat, Jacopo Condo, Robin Dunford, Ian Sinclair, Afxentis Afxentiou, Eve McCallum, Jasmine Ferrari, Megan Borrman, Liam Cook, Flick Griffin, Aidan Pettitt, Beatriz Arnal Calvo, Julia Hartviksen

Thanks to scholars, researchers and staff who were kind enough to provide me with unique and invaluable opportunities to share this study with them and to take part in highly-competitive symposiums, conferences, and workshops across the globe, including:

- Douglas Jack from the University of Strathclyde;
- Ben Murphy, Mark Bennett and Elliot Ramsey from the University of Liverpool;
- Gemma Meek from Manchester Metropolitan University;
- Silja Bára Ómarsdóttir, Eva Bjarnadóttir and Auður Örlygisdóttir from the University of Iceland;
- Adam Grydehøj from the University of Prince Edward Island;
- Ofra Klein and Julie Wetterslev from the European University Institute;
- Eric Clark from Lund University;

- Eleonora Roldán Mendívil from the University of Potsdam;
- Miroslav Tuma from Charles University in Prague;
- Veronika Bílková from the Institution of International Relations Center for International Law;
- Lois Yardy from Vitae Careers Research & Advisory Centre;
- Chris Flanagan and Jan Corcoran from the North Staffordshire Campaign Against Racism & Fascism;
- Ravi de Costa from York University in Canada;
- Nadia Edmond from University of Brighton;
- Aisling O’Sullivan, Stephanie Berry and Matthew Evans from the Sussex Centre for Human Rights Research, University of Sussex.

Among these friends, colleagues, and many more, I feel I have a spiritual family of like-minded people spreading across the globe.

Finally, I would like to use this opportunity to acknowledge two brave souls who are no longer with us: Jawaher Abu Rahmah and Bassem Abu Rahmah. Bassem was killed on 17 April 2009 at the age of 29 by a teargas canister during a demonstration in the village of Bil'in, at the heart of the West Bank. The Israeli human rights NGO B'Tselem showed three different videos that demonstrated that he was peaceful and did not endanger anyone. Despite undeniable documentation proving his innocence, the Israeli military had closed the inquiry into his death, stating that ‘there was a lack of evidence’. Israel’s High Court of Justice refused to

intervene. The following year, on 31 December 2010, his sister, Jawaher Abu Rahma, was killed at the age of 36 by a tear gas attack during another weekly protest in Bil'in. She was a bystander and was fatally injured by a canister thrown into her home.

I want to acknowledge their brave brother, my friend Ashraf, who was falsely accused of throwing stones and spent over a full year in jail. The notable journalist Amira Hass reported on this incident, writing:

'Abu Rahma remained behind with a group of journalists and photographers. Suddenly, two army jeeps pulled up. Those who had thrown stones fled in all directions. According to Dagan's statement: "When Ashraf and I saw the jeeps, we moved in their direction. Ashraf was carrying the flag he had throughout the entire demonstration. I was walking with my hands held up and shouted that the soldiers had entered the village illegally. When we approached the jeeps, a number of soldiers came out and to my amazement arrested Ashraf." Michaeli, who recorded the arrest on a video camera: "My very strong impression was that the soldiers arrested him because there was no other Palestinian around"'.

Ashraf had already been arrested at previous demonstrations. One time he was wounded by a soldier who fired at him after he was detained, tied up and blindfolded. Leonardo Korea was the name of the soldier who shot a bullet into his leg from less than a meter and a half, an incident that was documented on video on 7 July 2008 but did not lead to severe consequences for the soldiers involved.

This is just one of the countless traumatic events I have witnessed first-hand in Palestine that deserve to be acknowledged, as these were the primary motivation for embarking upon my PhD journey. I had to restrain myself from sharing more under the scope of this dissertation. This partial account of the lives of three siblings reflects the ongoing reality for millions of dehumanised Palestinians who live under a regime that denies their fundamental human rights and basic dignities.

Table of Content

Declaration	ii
Abstract	iii
Acknowledgements	iv
 CHAPTER I – INTRODUCTION	 1
1.1. Preface	1
1.2. Research Questions and Working Hypotheses	22
1.2.1. Drone Development in an Israeli Settler Colonial Context	24
1.2.2. The role of IHL	27
1.3. Methodology	29
1.4. Motivations Through Autoethnography – A Personal Account	32
1.4.1. From Beer Sheba to the Caribbean and Back Home	38
1.4.2. From Pongso no Tao to Gaza	43
1.5. Chapters Outline	52
Chapter II – Settler Colonialism and Third World Approaches to International Law	52
Chapter III – International Humanitarian Law	54
Chapter IV – Drone Theory	56
Chapter V – Discussion and Conclusion	58
 CHAPTER II – SETTLER COLONIALISM & THIRD WORLD APPROACHES TO INTERNATIONAL LAW	 60
2.1. Introduction	60
2.2. Third World Approached to International Law (TWAIL)	61
2.3. The Three Generations of TWAIL and Constructive Criticism	77
2.4. The Difference Between Colonialism and Settler Colonialism	83
2.5. A Settler Colonial Approach to International Law (SCAIL)	89
2.6. Settler Colonial Drone Design	101
2.7. Settler Colonialism, Technology, and Dehumanisation	106
2.8. Population, Transfer, Sovereignty and Consciousness	109
2.8.1. Population	109

2.8.2.	Transfer	116
2.8.3.	Sovereignty	119
2.8.4.	Consciousness, Disavowal, and Screen Memory	130
2.9.	Conclusions, Discussion and Decolonisation	139
CHAPTER III – INTERNATIONAL HUMANITARIAN LAW		148
3.1.	Introduction	148
3.2.	Introduction to International Humanitarian Law and the Canonical Narrative	150
3.3.	Critical Approaches to the Canonical Narrative	163
3.4.	TWAIL, Postcolonialism, IHL Compliance and Retaliation	169
3.5.	Principles and Regulations in the Technological Era	172
3.6.	Conclusions	178
CHAPTER IV – DRONE THEORY		181
4.1.	Introduction	181
4.2.	Israeli Militarism, The ‘Chosen People’, and Settler Colonialism	184
4.3.	How Drones Turned into a Technology of Occupation	205
4.4.	Israel as Drones and Arms Superpower	232
4.5.	The Perception of a ‘Humanitarian’ Drone, Accuracy and Distinction	243
4.6.	Punitive Manhunts, Merciless Algorithms and Recognition of Abnormalities	255
4.7.	Drones Without Borders and the Question of Sovereignty	262
4.8.	Anti-Terrorism, Short-Term Tactics, and the Myth of Invulnerability	265
4.9.	Sacrifice, Heroism, Kamikaze, and the Soldiers’ Oath.	268
4.10.	Moral and Psychological Injuries: PTSD, Anxiety, and Stress	274
4.11.	The Anatomy of Killing	278
4.11.1.	Demands of Authority	279
4.11.2.	Group Absolution	282
4.11.3.	Physical and Emotional Distance	286
4.11.4.	Target Attractiveness	288
4.11.5.	Aggressive Predispositions of Soldiers	290
4.12.	The Right to Kill, the Right to Live, Altruism, Mercy, and the Duty to Refuse	292

4.13.	Israeli Philosophy of Military Ethics: A Dangerous Mix Between <i>jus ad bellum</i> and <i>jus in bello</i>	296
4.14.	The Legal Framework: Warfare, Law Enforcement or Manhunt	304
4.15.	Protecting a Militarised Oppressor in a Neoliberal World	312
4.16.	Automated and Autonomous	318
4.17.	Conclusions	322
CHAPTER V – DISCUSSION & CONCLUSION		330
BIBLIOGRAPHY		340

CHAPTER I – INTRODUCTION

1.1. Preface

On 9 May 2021, I accidentally met a British bartender who served as a drone operator in Afghanistan. He agreed that his thoughts would be mentioned here. He explained that he used an Xbox gaming controller when operating drones in Afghanistan, primarily for intelligence and 'security'. He remembered that the constant presence and nagging noise of drones prying from the sky angered Afghan children, who often threw stones at them while asking for handouts, such as pens. In his view, drones are cheap, accurate and indispensable, and are therefore an ideal weapon for stopping 'terrorists' like Taliban operators who target civilians. He said that while US operators might be more aggressive, British operators will only use force when necessary and only after verifying the legitimacy of the 'target' with a wide range of professionals. However, he also admitted that mistakes were made, and civilian casualties were always possible. Nevertheless, in his view, drones minimise 'collateral damage' as they are much more precise than other weapons.

This former drone operator saw nothing wrong with drones. Nevertheless, not all drone operators agree. Brandon Bryant, one of four ex-US drone pilots who turned whistle-blowers after suffering acute psychological symptoms, looks at drones in a categorically different way: '...They tried to pass it off as surgical or sterile, and it really was not.... ...Drones are disgusting...'¹. Bryant talked to his superior about the killing of a child, but his supervisor said:

¹ Vice Asia, 'The Gamer Who Flew "Killer Drones" for the US Army' (*Vice*, 13 January 2011) <<https://www.youtube.com/watch?v=ngw9U6hBTos>> accessed 9 May 2021.

‘It’s a f**ing dog, just drop it.’² ‘...I felt like I lost a part of my soul...’³. His colleague, Michael Haas, described efforts to dehumanise the enemy and glorify the process of killing: ‘Ever step on ants and never give it another thought?... ...That’s what you are made to think of the targets – as just black blobs on a screen. You start to do these psychological gymnastics to make it easier to do what you have to do – they deserved it, they chose their side. You had to kill part of your conscience to keep doing your job every day – and ignore those voices telling you this wasn’t right’⁴.

This dissertation takes these witness testimonies seriously and asks questions about drone violence that operators such as Bryant and Haas – and others besides them – have described.

Israel's prominence as the world leader in the development and export of military drones is not accidental but owes much to the unique advantages this technology provides in surveilling, disciplining and subjugating the native Palestinian population to a settler colonial regime.

Military drones challenge not only specific humanitarian rules, such as the rules governing target selection, but also, more fundamentally, how drone violence cuts across and destabilises the legal categories of warfare, including the concept of war itself.

In 1936, the term Drone was coined by two US naval scientists based on a link between drones and mythical beasts⁵. This link is still preserved, as the names of common drones include

² Ibid.

³ Ibid.

⁴ Stephen Graham, *Vertical: The City from Satellites to Bunkers* (Verso 2016); Stephen Graham, ‘Drone: Robot Imperium’ (Longreads, 11 January 2017) <<https://longreads.tni.org/drone-robot-imperium>> accessed 20 August 2021.

⁵ Katherine Chandler, ‘Drone Flight and Failure: the United States’ Secret Trials, Experiments and Operations in Unmanning’ (PhD thesis, Berkeley 2014); MC Lakshminarasimhappa and TD

monstrous creatures such as Centaur, Predator, Reaper, Vulture, Raven, Wasp, Dragon Runner, Eagle Eye, Vampire Bat, SnakeBot, Big Dog, Polibot, RoboLobster, Polecat, Peregrine Killer and Marsupial⁶. These names create the impression that one is involved in a divine war. To evoke the illusion that heavenly powers, and perhaps even God himself, are on your side. Whenever drones are invoked, the first word that comes up is 'precision'. Drones, we are told, are 'precise', 'surgical', and 'antiseptic'. They can hit one person or one building with laser-sharp accuracy and with minimal, negligible collateral damage. They have another alleged advantage over conventional weapons: they are unmanned and operated by remote control from bunkers and bases located thousands of miles away from the battlefield. This means that no military units or equipment need to be dispatched to Iraq, Syria, Yemen or Afghanistan, dangerous locations where combat soldiers may be maimed, captured, or killed. Drones are not just allegedly safer and more practical but also a cheaper alternative to the massive deployment of men and arms. Lieutenant colonel James Dawkins of the US Air Force describes drones as a 'magic weapon'⁷. Or, to quote him more precisely, using his own convoluted military jargon: 'a very appealing option for politicians faced with use-of-force decisions due to reduced forward basing requirements and the possibility of zero friendly...casualties'⁸.

Kemparaju, 'A Scientometric Analysis of Drone Technology Publications (2019) Library Philosophy and Practice 1.

⁶ Joseba Zulaika, *Hellfire from Paradise Ranch: On the Front Lines of Drone Warfare* (University of California Press 2020) 8.

⁷ James C Dawkins, *Unmanned Combat Aerial Vehicles: Examining the Political, Moral, and Social Implications* (BiblioScholar 2012).

⁸ Ibid; Stephen Graham, *Cities Under Siege: The New Military Urbanism* (Verso 2010) 179.

With drones being described as a ‘magic weapon’, one is left wondering how it is possible that Israel, one of the world’s smallest countries, was the first to realise the potential of drones and to develop them rather than the United States (US), one of the biggest and most ‘advanced’ nations on earth. But during the 1970s, the US army abandoned its interest in drones, whereas Israeli engineers, who never lost faith in the possibilities of drone technology, persevered – and their efforts paid off. Israel became not just the first developer of drones but also the first country to sell them, incredulously to both the US and Russia⁹.

By 2013, Israel became the world's biggest exporter of drones, with sales of \$4.62 billion over a period of eight years¹⁰. The Israeli arms industry is now 30 times Israel's share of the world population, as lethal drones combine two of the country's largest industries: high-tech and military¹¹.

Israel’s ‘Heron’ drone¹², for instance, was sold to the US¹³, Canada, France¹⁴, Australia¹⁵ and Germany¹⁶, and was used in Lebanon, Iraq, Afghanistan, Africa, Mali, Asia, South America, and

⁹ Grégoire Chamayou, *Drone Theory* (Penguin 2015) 27.

¹⁰ Tia Goldenberg, ‘Israel Leads Global Drone Exports as Demand Grows’ (*The Times of Israel*, 6 June 2013) <<https://www.timesofisrael.com/israel-leads-global-drone-exports-as-demand-grows/>> accessed 19 May 2021; Or Heller, ‘Israel's First Export as UAV’ (*IsraelDefense*, 19 May 2013).

¹¹ Nimrod Halperin, ‘Peace Agreements? Israeli Arms Exports Soared 59% and Were 30 Times Larger in Relation to the Population’ (*Haaretz*, 16 March 2021).

<<https://www.themarket.com/wallstreet/.premium-1.9624885>> accessed 26 May 2021.

¹² Sayan Majumdar, ‘IAI's Heron-the Unmanned Sentinel’ (2014) 3 *Vayu Aerospace and Defence Review* 85; Victor Weissberg and Ami Schwarzberg, ‘Design and Service Experience of a High Endurance UAV’ (2nd AIAA “Unmanned Unlimited” Conference and Workshop & Exhibit, 15-18 September 2003) <<https://doi.org/10.2514/6.2003-6536>> accessed 26 May 2021.

¹³ Shashank Joshi and Aaron Stein, ‘Emerging drone nations’ (2013) 55(5) *Survival* 53.

¹⁴ Yaakov Katz and Amir Bohbot, *The Weapon Wizards: How Israel Became a High-tech Military Superpower* (St. Martin's Press 2017).

¹⁵ George Galdorisi, ‘Guarding Australia's Maritime Frontier: The Unmanned Imperative’ (2014) 40(5) *Asia-Pacific Defence Reporter* 58.

¹⁶ Christine Sixta Rinehart, ‘Sharing Security in an Era of International Cooperation: Unmanned Aerial Ve-ups have jumped on the wagon and joined hicles and the United States’ Air Force’ (2017) 33(1) *Defense & Security Analysis* 45.

Greece¹⁷. 'Since 1985, Israel has been the largest exporter of drones in the world, responsible for 60 percent of the global market, trailed by the US, whose market share is just 23.9 percent. The customers have been dozens of different countries, including the United States, Russia, South Korea, Australia, France, Germany and Brazil'¹⁸, say Katz and Bohbot.

Israel sold drones to China¹⁹ and developed dozens of drones²⁰, until drones accounted for 10% of Israel's 'defence' exports²¹, with Europe being the main destination, followed by the Asia-Pacific, South America, and North America. In 2013, more than 45 military drones were under Israeli development²². With lucrative sales, as of 2016, 40 Israeli start-ups have jumped on the wagon and joined the drone market²³.

Drones have dramatically changed the nature of modern warfare. It is no longer based on horizontal confrontation. Control can be accomplished vertically from above without direct

¹⁷ Giordano Bruno Antoniazzi Ronconi, Thaís Jessinski Batista, and Victor Merola, 'The Utilization of Unmanned Aerial Vehicles (UAV) for Military Action in Foreign Airspace' 2 UFRGSMUN UFRGS Model United Nations (2014) 137.

¹⁸ Katz and Bohbot (n 14) 70; George Arnett, 'The Numbers Behind the Worldwide Trade in Drones' (*The Guardian*, 16 March 2015).

¹⁹ Michael J Boyle, 'The Race for Drones' (2015) 59(1) *Orbis* 76; Daniel L Haulman, 'US Unmanned Aerial Vehicles in Combat, 1991-2003'. (*Maxwell AFB, Historical Research Agency*, 9 June 2003) <<https://www.afhra.af.mil/Portals/16/documents/Studies/AFD-070912-042.pdf>> accessed 24 May 2021.

²⁰ Rob O'Gorman and Chris Abbott, *Remote Control War: Unmanned Combat Air Vehicles in China, India, Iran, Israel, Russia and Turkey* (Open Briefing 2013); Ali H Musleh, 'Designing in Real-Time: An Introduction to Weapons Design in the Settler colonial Present of Palestine' (2018) 10(1) *Design and Culture* 33.

²¹ Frost and Sullivan, 'Israel is Top Global Exporter of Unmanned Aerial Systems with a Continued Positive Outlook Ahead' (*CISION*, 21 May 2013) <<https://www.prnewswire.com/news-releases/frost-sullivan-israel-is-top-global-exporter-of-unmanned-aerial-systems-with-a-continued-positive-outlook-ahead-208280351.html>> accessed 28 May 2021; Musleh (n 20).

²² O'Gorman and Abbott (n 20); Musleh (n 20).

²³ Yoav Leitersdorf, Ofer Schreiber, and Iren Reznik, 'The Drone Race is Off and Running, with Israel in the Lead' (*TechCrunch*, 9 September 2016) <<https://techcrunch.com/2016/09/09/the-drone-race-is-off-and-running-with-israel-in-the-lead/>> accessed 28 May 2021; Musleh (n 20).

contact. It is best illustrated by how drones are being used to control and subjugate the population in Gaza.

This type of development is alarming, as previous Israeli operations in Gaza have harmed Palestinian civilians, who were uninvolved in military activities. In November 2012, during operation 'Pillar of Defense', drones killed more Palestinians than any other aircraft²⁴. During operation 'Protective Edge' (2014), 2,219 Palestinians were killed by the IDF, including 547-556 children. 70% were civilians (1,545 out of 2,219). 32.2% of civilians killed (497 out of 1545) died from drones²⁵. Unsurprisingly, this technology has been described as a weapon that symbolises the end of unnecessary risks to Israeli and American combatants, while many of the drones' actions are already autonomous²⁶. But, Palestinians are, of course, not the only victims of lethal drones worldwide.

²⁴ Corporate Watch, 'Gaza: Life Beneath the Drones' (*Corporate Watch*, 28 May 2021) <<https://corporatewatch.org/product/gaza-life-beneath-the-drones/>> accessed 28 May 2021; Atef Abu Saif, *Sleeping in Gaza: Israeli Drone War on the Gaza Strip* (Rosa Luxemburg Stiftung 2014) <https://www.rosalux.de/fileadmin/rls_uploads/pdfs/sonst_publicationen/Sleepless-in-Gaza-by-Atef-Abu-Saif-RLS-Palestine.pdf> accessed 9 May 2021; Amira Hass, 'Clearing the Fog on Israeli Drone Use in Gaza' (*Haaretz*, 1 March 2014) <<https://www.haaretz.com/.premium-clearing-the-fog-on-israeli-drone-use-in-gaza-1.5327742>> accessed 9 May 2021.

²⁵ Al Mezan Center For Human Rights, 'Operation Protective Edge in Numbers' (*Mezan*, 2015) <<http://mezan.org/en/uploads/files/14598458701382.pdf>> accessed 28 May 2021; Defense for Children International Palestine, 'Operation Protective Edge: A War Waged on Gaza's Children' (*Defense for Children International Palestine*, 16 April 2015) <https://www.dci-palestine.org/operation_protective_edge_a_war_waged_on_gaza_s_children> accessed 28 May 2021; Musleh (n 20).

²⁶ Yoav Zeitoun, 'The Robots and Drones that Kill Terrorists: Documentation from the Smart Border in Gaza' (*Ynet*, 17 June 2021) <<https://www.ynet.co.il/news/article/Hkloms00oO>> accessed 19 June 2021.

Very little has been written about Israeli drone violence. More information has been revealed about the dangers of using drones by the US in its global 'War on Terror'. The US killed at least 1,400 innocent people in Pakistan alone, using drones as a post-9/11 punitive measure²⁷.

During his first year in office, Obama authorised drone strikes more times than Bush did in his eight years in the White House²⁸. Contrary to what one might have expected, it was Obama, who had run as an anti-war candidate in 2008²⁹, who was immediately taken by drones and the possibilities they offered to a nation entangled in fighting international terrorists³⁰. It was during his presidency that the use of drones increased dramatically³¹. It is estimated that Obama approved lethal drone strikes every 5.4 days³². As Commander in Chief who prided himself on his desire to be just, he coined the term 'targeted killings', which was also inspired by Israel³³. According to the White House, drones are a 'war waged proportionally'³⁴.

²⁷ Craig Whitlock and Greg Miller, 'US Building Secret Drone Bases in Africa, Arabian Peninsula, Officials Say' (*Washington Post*, 20 September 2011) <https://www.washingtonpost.com/world/national-security/us-building-secret-drone-bases-in-africa-arabian-peninsula-officials-say/2011/09/20/gIQAJ8rOjK_story.html> accessed 28 May 2021.

²⁸ Jessica Purkiss and Jack Serle, 'Obama's Covert Drone War in Numbers: Ten Times More Strikes Than Bush' (the Bureau of Investigative Journalism, 17 January 2021) <<https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush>> accessed 26 September 2021.

²⁹ Gerard Toal, "'In no other country on earth": the presidential campaign of Barack Obama' (2009) 14(2) *Geopolitics* 376.

³⁰ Daniel Byman, 'Why Drones Work: the Case for Washington's Weapon of Choice' (2013) 92 *Foreign Affairs* 32.

³¹ *Ibid.*

³² Alex Holder, Elizabeth Minor, and Michael Mair, 'Targeting Legality: The Armed Drone as a Socio-Technical and Socio-Legal System' (2018) 1 *Journal of the Oxford Centre for Socio-Legal Studies* 1; Alex Moorehead, Rahma Hussein and Waleed Alhariri, 'Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force' (2017) Columbia Law School Human Rights Clinic and Sana'a Centre for Strategic Studies 23 <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/out_of_the_shadows.pdf> accessed 25 September 2021.

³³ Jack McDonald, *Ethics, law and justifying targeted killings: The Obama administration at war* (Routledge 2016).

³⁴ The White House, Office of the Press Secretary, President Barack Obama, 'Remarks by the President at the National Defense University', (The White House, 23 May 2013)

According to Samuel Moyn, 'forms of cyberwarfare and the Special Forces that operated in the US has Special Forces in more than three-quarters of the countries on the planet in a recent year'³⁵. As Stephen Graham points out: 'drone-wars have, in effect, turned large parts of the world into free-fire zone... ..in breach of every tenet of international law'³⁶. Nevertheless, 'Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage', Obama argued³⁷.

Charlie Savage observed that 'Lawyerliness suffused the Obama administration'³⁸. Brilliant legal minds were brought in to provide Obama with elaborate rationalisations. Convincing Obama that he was acting within the boundaries of the rule of law, he became, according to Jeffrey Goldberg, 'the most successful terrorist-hunter in the history of the presidency, one who will hand to his successor a set of tools an accomplished assassin would envy'³⁹, sacrificing along the way America's commitments to a legal order and consecrating peace⁴⁰.

Obama's White House illustrates how easily international law can be manipulated to rationalise and justify military aggression and disregard of legal prohibitions against excessive harm to civilians. Warfare regulations, therefore, fail to protect millions of indigenous people,

<<http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>> accessed 25 September 2021.

³⁵ Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (Macmillan 2021).

³⁶ Graham, 'Drone: Robot Imperium' (n 4).

³⁷ Moyn, *Humane* (n 35).

³⁸ Charlie Savage, *Power Wars: The Relentless Rise of Presidential Authority and Secrecy* (Little, Brown and Company 2015).

³⁹ Jeffrey Goldberg, 'The Obama Doctrine: The U.S. president talks through his hardest decisions about America's role in the world' (The Atlantic, April 2016)

<<https://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>> accessed 25 September 2021).

⁴⁰ Samuel Moyn, 'How the US Created a World of Endless War' (The Guardian, 31 August 2021)

<<https://www.theguardian.com/us-news/2021/aug/31/how-the-us-created-a-world-of-endless-war>> accessed 25 September 2021.

who are subject to a new aerial-vertical imperialism made possible by a pervasive network of violent drones that offer global surveillance and domination.

In contrast to the US, where the President surrounds himself with legal experts who provide him with a protective judicial wall, the Israeli government does not even bother to disclose the rules and regulations that guide Israeli drone strikes. Trying to unearth information about Israeli drone strikes in Gaza and the Middle East is a Kafkaesque mission.

Mass surveillance facilitated by drones made millions of people in the Third World feel vulnerable and defenceless, in constant danger of being injured, maimed, or killed by rockets that could be fired at any moment without warning. Many, too many, especially children, suffer from deep psychological trauma that haunts them for many years⁴¹. Arguably, this amounts to collective punishment⁴², which generates rage and alienation, and fosters anti-American and anti-Western sentiments⁴³.

Samuel Moyn, Professor of Jurisprudence at Yale Law School, argues that the availability of 'precision' weapons, which presumably make war less brutal and more humane, has only 'shored up the military enterprise'⁴⁴ and ushered in a decade of 'forever wars'⁴⁵. America went off to fight and never came back.

⁴¹ Alex Edney-Browne, 'The Psychosocial Effects of Drone Violence: Social Isolation, Self-Objectification, and Depoliticization' (2019) 40(6) Political Psychology 1341.

⁴² Nadine Talaat, "'Licence to Kill": The United States' Illegal Drone Program and the Dark Legacy of Collective Punishment' (2017) Human Rights Thesis Seminar, Institute for the Study of Human Rights, Columbia University.

⁴³ Zahid Shahab Ahmed, Bert Jenkins, and Waseem Iftikhar, 'Perception of Foreign Drone Strikes by Citizens: The Context of US Drone Strikes in Pakistan' (2017) 24(2) South Asian Survey 135.

⁴⁴ Moyn, *Humane* (n 35).

⁴⁵ Ibid.

Investigative journalist Jeremy Scahill and his colleagues are equally critical of drone violence. They condemn the secretive process that allows the Commander in Chief to sentence individuals to death without the established checks and balances of arrest, trial and appeal, a process that 'affronts morality and the Constitution'⁴⁶. 'Precise'? 'Surgical'? 'clinical'?, Precisely the opposite, claim Scahill and other journalists. The list of concerned citizens includes former president Carter who, when he learned about the White House 'Kill List', published an article in which he blasted Obama for targeting suspected people, thus violating the right 'to be presumed innocent until proved guilty'⁴⁷. 'Our country', Carter said, 'can no longer speak with moral authority on these critical issues'⁴⁸.

Israeli-born journalist Eyal Press similarly calls the use of drones 'Dirty Work'⁴⁹. The case of al-Qaida leader Zawahiri can serve to illustrate this⁵⁰. 'The drones', as reported by the Guardian, 'came for Ayman Zawahiri on 13 January 2006, hovering over a village in Pakistan called Damadola'⁵¹. Ten months later, they came again. Several other attempts on his life were made, but he was still alive eight years later. Unfortunately, 128 people, 13 of them children, were not⁵². They just happened to be in the wrong place at the wrong time – and paid for it with their lives.

⁴⁶ Jeremy Scahill, *The Assassination Complex: Inside the Government's Secret Drone Warfare Program* (Simon and Schuster 2016); Kirkus, 'Convincing and damning but unlikely to influence U.S. leaders because the electorate largely approves of drone warfare' (Kirkus, 13 April 2016) <<https://www.kirkusreviews.com/book-reviews/jeremy-scahill/the-assassination-complex/>> accessed 25 September 2021.

⁴⁷ Jimmy Carter, 'A Cruel and Unusual Record' (The New York Times, 23 June 2021).

⁴⁸ Ibid.

⁴⁹ Eyal Press, *Dirty Work* (Macmillan, 2021).

⁵⁰ Sajjan M Gohel, 'Deciphering Ayman Al-Zawahiri and Al-Qaeda's strategic and ideological imperatives' (2017) 11(1) Perspectives on terrorism 54.

⁵¹ Spencer Ackerman, '41 Men Targeted but 1,147 People Killed: US Drone Strikes – the Facts on the Ground' (The Guardian, 24 November 2014) <<https://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147>> accessed 25 September 2021.

⁵² Ibid.

Analysis conducted by Reprieve NGO indicates that what Israel and the US call ‘target killing’ resulted in vastly more deaths of innocent civilians than of hunted militants, including journalists, politicians and peace activists⁵³. This is the process of ‘imperial combatant immunity’ that provides impunity to superpowers who preserve the lives of their own combatants while maintaining public support in militarised, imperial, and settler colonial societies. The risk is paradoxically placed on the civilians of the other side. This is a ‘new meta-legal principle’ that fails to protect non-combatants⁵⁴.

The numbers cited in connection with Zawahiri are just a fraction of the carnage perpetrated by missiles launched from hidden operational centres in Nevada and Florida. During the years 2010-2020, there have been at least 14,000 confirmed drone strikes by the US in Pakistan, Afghanistan, Yemen, and Somalia alone, resulting in 8,858-16,901 deaths, including 283-454 children⁵⁵. This proves beyond any doubt that the results of drone strikes are devastating to civilian populations, regardless of the rhetoric about precision targeting.

⁵³ Reprieve, ‘Stop Illegal and Lethal Drones’ (Reprieve, September 2021) <<https://reprieve.org/us/campaign/drones/>> accessed 25 September 2021.

⁵⁴ Mario Prost, ‘Shut the Fuck Up Suarez! Necroethics and Rights in a World of Shit’ in Olivier Corten, François Dubuisson, and Martyna Fałkowska-Clarys (eds) *Cinematic perspectives on international law* (Manchester University Press 2021).

⁵⁵ The Bureau of Investigative Journalism, ‘Drone Warfare’ (The Bureau of Investigative Journalism, 13 May 2021) <<https://www.thebureauinvestigates.com/projects/drone-war>> accessed 13 May 2021; The Bureau of Investigative Journalism, ‘Yemen: Reported US covert actions 2017’ (*The Bureau of Investigative Journalism*, 2018) <<https://www.thebureauinvestigates.com/drone-war/data/yemen-reported-us-covert-actions-2017>> accessed 28 May 2021; Hillel Ofek, ‘Tortured Logic of Obama’s Drone War’ (2010) 27 *The New Atlantis* 35, 38 <<https://www.thenewatlantis.com/publications/the-tortured-logic-of-obamas-drone-war>> accessed 13 May 2021; Marry Ellen O’Connell, ‘Unlawful Killing With Combat Drones, A Case Study of Pakistan, 2004-2009’ (2010), Notre Dame Law School Legal Studies Research Paper 09-43 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1501144> accessed 16 May 2021; Peter Singer, ‘Military Robots and the Laws of War’ (2009) 23 *The New Atlantis* 25, 42 59; Peter Singer, *Wired for War: The Robotics Revolution and Conflict in the 21st Century* (Penguin 2009) 56.

Drones have shifted the principle of immunity from civilians to imperial combatants. Critics of these remote-controlled killing machines maintain that the significant purpose of drones is not to save lives but to protect and preserve the long-term interests of superpowers⁵⁶. Nevertheless, drones destabilise the broader security and ultimately embolden US and Israeli 'enemies'⁵⁷, as demonstrated so forcefully in Afghanistan, a country that was the focal point of drone warfare.

In 2012, Obama tried to mitigate the damage caused by drones by publishing a Presidential Policy Guidance⁵⁸, stipulating that drone operators can launch 'Signature Strikes' only at 'armed military-aged males engaged in or associated with suspicious activities even if their identities were unknown'⁵⁹. Moyn described these guidelines as 'a spoonful of sugar intended to help the medicine of endless war go down'⁶⁰.

These comprehensive and vague rules of targeting and engagement paved the way for a missile attack on 12 December 2013 on a group of 'military age males' who were spotted in convoy in a remote and rural region of Yemen. It was retroactively established that they were returning to their village after having participated in a wedding ceremony where they prayed, danced, and fired rifles to mark the festive occasion⁶¹. Spokesmen for the US military could

⁵⁶ Ruth Blakeley, 'Drones, State Terrorism and International law' (2018) 11(2) Critical Studies on Terrorism 321; Marina Espinoza and Afxentis Afxentiou, 'Editors' Introduction: Drones and State Terrorism' (2018) 11(2) Critical Studies on Terrorism 295-300.

⁵⁷ William M Arkin, *Unmanned: Drones, Data, and the Illusion of Perfect Warfare* (Little 2015).

⁵⁸ Rita Siemion, 'Presidential Policy Guidance: Procedures for Approving Direct Action Against Terrorist Targets Located Outside the United States and Areas of Active Hostilities' (2017) 56(6) International Legal Materials 1209.

⁵⁹ James Rogers, 'Drone Warfare: The Death of Precision' (The Bulletin of the Atomic Scientists, 12 May 2017) <<https://thebulletin.org/2017/05/drone-warfare-the-death-of-precision/>> accessed 25 September 2021.

⁶⁰ Moyn, 'How the US Created a World of Endless War' (n 40).

⁶¹ Human Rights Watch, 'A Wedding That Became a Funeral: US Drone Attack on Marriage Procession in Yemen' (Human Rights Watch, 19 February 2014) <

not prove or confirm that any of the 12 charred bodies found on the roadside belonged to an Al-Qaida operative. Fifteen others, including the bride, were wounded⁶².

Even in the early stages of his campaign for the presidency, Trump had already threatened to 'take out [the] families' of terrorists. He declared that he would 'blow up the [oil] pumps... ...blow up the refineries... ...blow up every single inch, there would be nothing left'⁶³. Trump, says Moyn, continued Obama's policy, only more so⁶⁴. True to his word, during his first 74 days in office, Trump authorised 75 drone strikes⁶⁵, strikes that appear to be brutal and indiscriminate, resulting in many more civilian fatalities⁶⁶.

The massive expansion of drone warfare and production continues, as 'drones have become the mainstay of both U.S. military air power and of covert strikes by the CIA'⁶⁷. Between 2002, when the first strike by a US drone was carried out in Yemen, and 2010, 'the US inventory of drones increased forty-fold... ...they now constitute more than 40% of the U.S. military's entire fleet of aircraft'⁶⁸.

<https://www.hrw.org/report/2014/02/19/wedding-became-funeral/us-drone-attack-marriage-procession-yemen>> accessed 25 September 2021.

⁶² Ibid.

⁶³ Spencer Ackerman and Patrick Wintour, 'Obama Will Not Restrict Drone Strike 'Playbook' Before Trump Takes Office' (*The Guardian*, 15 November 2016)

<<https://www.theguardian.com/world/2016/nov/15/obama-administration-drone-strikes-donald-trump+&cd=1&hl=en&ct=clnk&gl=uk>> accessed 25 September 2021.

⁶⁴ Moyn, 'How the US Created a World of Endless War' (n 40).

⁶⁵ Steve Niva, 'Trump's Drone Surge' (2017) 283 Middle East Research and Information Project 1; Micah Zenko, 'The (Not-So) Peaceful Transition of Power: Trump's Drone Strikes Outpace Obama' (Council On Foreign Relations, 2 March 2017) <<https://www.cfr.org/blog/not-so-peaceful-transition-power-trumps-drone-strikes-outpace-obama>> accessed 25 September 2021.

⁶⁶ Rogers (n 59).

⁶⁷ Graham, 'Drone: Robot Imperium' (n 4).

⁶⁸ Ibid; Mark Neocleous, *War Power, Police Power* (Edinburgh University Press 2014) 153; Rob Blackhurst, 'The Air Force Men Who Fly Drones in Afghanistan by Remote Control' (Daily Telegraph, 24 September 2012) <<https://www.telegraph.co.uk/news/uknews/defence/9552547/The-air-force-men-who-fly-drones-in-Afghanistan-by-remote-control.html>> accessed 25 September 2021.

Despite the botched operations and the reckless loss of human lives, most US citizens consistently support drone strikes against extremists overseas, perhaps because the lives of US soldiers are spared, and this is deemed positively by the average US citizen. Less than half of those polled in a 2015 survey expressed concern or moral scruples about the 'Dirty Work'⁶⁹. The average American wishes to disengage himself from the havoc and death inflicted by drones and from the ethical dilemmas it raises. The public's wish to avert its eyes is combined with a lack of sufficient media coverage. Venturing into the dangerous battlefields of Yemen or Afghanistan and sending first-hand reports is not a top priority of mainstream media.

For the victims, it is not just the charred bodies of loved ones – children, parents, friends, or neighbours – that make life unbearable⁷⁰. It is also 'the deep psychological trauma of whole communities living with the persistent threat of instant and unknowable death and destruction from usually invisible vehicle'⁷¹. The constant buzzing of drones hovering persistently above one's head terrorizes the community. Forensic psychologists who conducted a study on the impact of drone strikes in Yemen reported that all interviewees suffered from abnormal psychological conditions: 'the majority (71%) were found to be suffering from "full blown" Post-Traumatic Stress Disorder (PTSD); 91% suffered from significant symptoms of PTSD. In addition, other severe abnormal psychological conditions

⁶⁹ Eyal Press (n 49).

⁷⁰ International Human Rights and Conflict Resolution Clinic at Stanford Law School And Global Justice Clinic at NYU School of Law, 'Living Under Drones: Death, Injury, And Trauma To Civilians From Us Drone Practices In Pakistan (2012) <<https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-LIVING-UNDER-DRONES.pdf>> accessed 25 September 2021.

⁷¹ Graham, 'Drone: Robot Imperium' (n 4).

were found, including anxiety, depression, dissociative experiences, panic reactions, hysterical-somatic reactions, exaggerated fear responses, and abnormal grief reactions'⁷².

Drones cause trauma to entire populations, as they might strike at any moment. Interviews with families, witnesses, and healthcare workers illustrated how drones terrorise defenceless populations and increase anxiety, trauma, PTSD, fear, mental breakdowns, and loss of appetite and sleep. Social practices have been disrupted, including children who stopped attending school and gatherings. Drones' impact on children is particularly worrying, as they were found to suffer from attachment disorders, phobias, lack of interest in activities and minimal to non-existent school attendance⁷³.

One of those children, a 13-year-old Pakistani student, named Zubair Rehman, said: 'Now I prefer cloudy days when the drones don't fly. When the sky brightens and becomes blue, the drones return and so does the fear. Children don't play so often now, and have stopped going to school. Education isn't possible as long as the drones circle overhead'⁷⁴.

The scope of drone violence and the deep psychological trauma it induces, affects the lives of millions who are uninvolved in clandestine military operations and amounts to collective punishment. Drones not only intrude into the private lives of citizens living in conflict areas

⁷² Parliamentary Group on Drones 'Psychological Terror? Lessons from Pakistan and Yemen on the Psychological Impact of Drones' (All Party Parliamentary Group on Drones, 5 March 2013) <<https://appgondrones.wordpress.com/appg-meetings/psychological-terror-lessons-from-pakistan-and-yemen-on-the-psychological-impact-of-drones-5-march-2013/>> accessed 25 September 2021.

⁷³ Christine Agius, 'Ordering Without Bordering: Drones, the Unbordering of Late Modern Warfare and Ontological Insecurity' (2017)20(3) *Postcolonial Studies* 370.

⁷⁴ Thomas Meaney, 'Like Ordering Pizza: Thomas Meaney on the War in Afghanistan' (London Review of Books, 9 September 2021) <<https://www.lrb.co.uk/the-paper/v43/n17/thomas-meaney/like-ordering-pizza>> accessed 3 October 2021.

but turn those lives into an Orwellian nightmare⁷⁵, where a 'Predator' or a 'Reaper', as their names indicate, could turn one into a charred body in seconds.

In discussions of drone warfare, not enough attention has been given to this kind of 'collateral damage', which affects entire populations trapped in zones watched over by unmanned surveillance and killing machines. In Gaza, Yemen and Afghanistan, men, women, and children have been deprived of their fundamental right to live their everyday lives without electronic eyes intruding into their living rooms and making them feel like caged animals.

The disparity between those who have the upper hand economically, militarily, and technologically – and also, perhaps symbolically – those on the ground, who are poor and helpless, has never been greater, more jarring and more dangerous for world stability. This disparity makes it easier for those on top to stare condescendingly at those below, grey figures on a screen that are perceived as inferior, weak, subjugated, and racialised.

The nature of the technology itself exacerbates this process. Asked how she operates her 'Spot-and-Strike' drone, an Israeli drone pilot assigned to track and kill Hamas combatants in Gaza said her job was comparable to a video game⁷⁶. It is like using 'a joystick of a Sony PlayStation', she said to a reporter from Haaretz newspaper⁷⁷.

She was not the first to compare her job to a video game. Transcripts of conversations between drone operators reveal that the anonymous and alien figures who appear on their

⁷⁵ Pablo Contreras, 'Orwellian Nightmares and Drone Policing in Chilean Municipalities: Legality, Surveillance and the Politics of Low Cost' (2021) 7 Latin American Law Review 61.

⁷⁶ Anshel Pfeffer, 'Lethal Joysticks' *Haaretz* (2 July 2010) <<http://www.haaretz.com/weekend/week-s-end/lethal-joysticks-1.299650>> accessed 13 May 2021.

⁷⁷ Ibid.

screen evoke no empathy and no human response⁷⁸. According to Eyal Press, this is the exact reaction drone experts and the military's top brass expected and aimed for⁷⁹. 'I think in the beginning', Press says, 'there was this sort of assumption that folks in those situations, because they're sitting at a desk and they're distant, that this is like playing a video game — what's the big deal? It would foster what one person called a "PlayStation mentality" to killing...'⁸⁰. They might go home and think little of it.

It is no wonder that the US is recruiting drone pilots from a population of teenagers who are gamers, as young as thirteen⁸¹. This was corroborated by The Guardian, which reported: '...with the support of Twitch, gamers with the US military are spending hours with children as young as 13, trying to convince them to enlist'. Bryant, who was mentioned earlier, was also one of those gamers who were recruited in such a fashion. Bryant corroborates Press's claim of a 'PlayStation mentality':

'We are just told to point, click and shoot. The military takes a person like me and puts them in a room where they teach them to kill with the press of a button. That really makes life cheap... ...The first time that I got introduced to the Predator drone was a montage video in a military theatre, playing the Metallica music. When it was over the sergeant came down and sat in front of us and said, our job is to kill

⁷⁸ Ibid.

⁷⁹ Eyal Press (n 49).

⁸⁰ Dave Davies, 'This Book Introduces You To The People Doing Your "Dirty Work"' (WPRL, 18 August 2021) <<https://www.gpb.org/news/2021/08/18/book-introduces-you-the-people-doing-your-dirty-work>> accessed 14 March 2022.

⁸¹ Jordan Uhl, 'The US Military Is Using Online Gaming to Recruit Teens' (The Nation, 15 July 2020) <<https://www.thenation.com/article/culture/military-recruitment-twitch/>> accessed 29 August 2021.

people and break things. I flew the predator drones basically all over the Middle East and Africa... ...the skills needed to be a gamer versus a drone operator are essentially the same. You need to be able to sit in a place, and stare at a screen, and move a control stick... ...there are military recruiters all over the world that go to gaming competitions, conventions, nerd conventions, they sit there, and they lie and cheat and steal and tell people that they are fighting for the goodness of the world, but they are really just recruiting people to be murderers... ...you are yelling at your teammates over a headset, coordination moves... ...it was basically me arguing with my flight commander and just telling me, Bryan, shut up and do your job. There were no feelings, there was no heartache or grieving, it was just toxic masculinity, I felt like I lost a part of my soul. And no one in the military that I know would grieve with me, they would cheer about it, and when I would tell them how I felt... ...they just degrade you. I know I had to get away... ...I was told that President Obama would call us himself and give us the order to directly to kill Anwar al-Awlaki. I had this moment of self-awareness and disconnect because I was fully aware that I had been made into the thing they wanted me to be, where I would sit there, and I would follow orders... ...they would tell us that he is evil and he betrayed us and he deserves to die, "remember 9/11"... ...I decided to become a whistle-blower on the program because there was so much misinformation out there. The US military gave the purpose of flying drones so that there would be less consequences of war and no boots

on the ground. They tried to pass it off as surgical or sterile, and it really was not... ...there was an accident where friendlies were killed in a drone strike and he totally threw the crew under the bus, he [President Obama] said it was the crew's fault, the crew's mistake, intelligence does not act like that... ...Drones are disgusting... ...We have no authority, we have no rights, we are just told to point, click and shoot.^{82'}

Bryant, who was unable to cope with this pressure-cooker atmosphere in the drone centre, with its oppressive power dynamics and the immoral nature of the job itself, is not an exception. The extraordinary rate of burnout among drone pilots is stunningly high: 'People are leaving the program so quickly that [the army] couldn't find enough people to do it'⁸³. During a visit to Creech Air Force base in Northern Las Vegas, which operates 900 drones, Eyal Press met with psychologists who admitted that many drone operators, required to carry out this stressful and morally difficult kind of 'work', walk around with extremely negative feelings and even suffer from PTSD⁸⁴.

The complexity of the job and the responsibility that comes with it are staggering. When a brief window of opportunity opens the pressure to – in the army's jargon – 'compress the kill chain' is enormous. But how do you distinguish between an army-age male engaged in what might be suspicious activity and between another totally non-violent 'army age' individual on his way to visit a sick relative or to shop for bread in a country located geographically thousands of miles away? A country about whose people, customs, norms, dress codes, and

⁸² Vice Asia (n 1).

⁸³ Eyal Press (n 49).

⁸⁴ Ibid.

terrain, you know practically nothing? Wrong and fatal decisions might be in the very nature of the beast.

Here is another sobering statistic: It would take a drone analyst eight years of his life just to watch, let alone absorb and interpret, all the data sent back to base by drones in one day⁸⁵. Being bombarded with unquantifiable and unmanageable amounts of raw data renders making sound decisions impossible under 'total information awareness', as noted by anthropologists⁸⁶.

What drone operators see on their screens with unavoidable frequency are images of graphic violence, homes destroyed, villages bombed, and bodies burned. They are forced to confront what the army tries to sanitise or, better yet, keep entirely out of sight: the bloody effects of real drone strikes. Surveys conducted by both the military and human rights groups confirm that drone pilots suffer from grief, sadness, and remorse⁸⁷. Psychiatrists described such symptoms as 'moral injury'⁸⁸, painful and disruptive emotions that overwhelm and torment soldiers who were ordered to participate in actions that go against their core values⁸⁹.

Press tells one such story, the story of Chris Aaron, who felt, after September 11, 'a streak of idealism' derived from his grandfather, who had served in World War II. Aaron, who wanted to help his country, ended up serving as a drone pilot. After a while, moral questions that corroded his dignity and self-esteem started to burden his conscience with growing

⁸⁵ Graham, 'Drone: Robot Imperium' (n 4).

⁸⁶ Gastón Gordillo, 'The All-Seeing God' (*Space and Politics*, 11 July 2013) <<http://spaceandpolitics.blogspot.com/2013/07/the-all-seeing-god.html>> accessed 3 October 2021.

⁸⁷ Lazarus Ejike Onuh, 'The Soul of the Drone Operator: The Place of the Cardinal Virtues in Drone Warfare' (2016). Theology Graduate Theses, the Faculty of the Department of Theology, Providence College.

⁸⁸ Jonathan Shay, 'Moral injury' (2014) 31(2) *Psychoanalytic psychology* 182.

⁸⁹ Christian Enemark, 'Drones, risk, and moral injury' (2019) 5(2) *Critical Military Studies* 150.

frequency. Press describes what happened next: 'Chris starts to have a physical breakdown... ..he starts to develop skin welts and feel sick. He can't get out of bed... ..he becomes depressed, lifeless'⁹⁰.

Drone pilots are not the primary victims, of course, but they, too, become depressed by the institutions they work for. One may only wonder how a drone pilot who had inadvertently killed a family of nine in Kabul (including seven children) during the bloody and chaotic evacuation of American citizens and military personnel in August 2021 must have felt. Here is what Glenn Greenwald wrote on this latest ugly and senseless killing: 'Having military leaders bomb a residential area and wipe out an entire family including children, then watch them & their media allies lie about it (we killed only ISIS planners, no civilian casualties) is the most fitting end to the war in Afghanistan'⁹¹.

The faulty premises of drone violence, the carnage, the countless human tragedies, and the moral injuries to servicemen will go on endlessly, pointlessly, in the foreseeable future. It will most likely happen out of sight, unacknowledged, denied, falsified, and censored by the powers that be⁹².

⁹⁰ Eyal Press (n 49).

⁹¹ Glenn Greenwald, 'Having Military Leaders' (*Twitter*, 30 August 2021) <<https://twitter.com/ggreenwald/status/1432305046499246085>> accessed 25 September 2021.

⁹² Anne-Marie Slaughter, 'Celebrating 20 Years of New America: New Ideas and New Voices to Renew America' (New America, 22 April 2019) <<https://www.newamerica.org/new-america/reports/celebrating-20-years-new-america/>> accessed 13 May 2021; South Asia Terrorism Portal 'Fatalities in Terrorist Violence' (2019) <<https://www.satp.org/datasheet-terrorist-attack/faultline>> accessed 13 May 2021; Farooq Yousaf, 'US drone campaign in Pakistan's Pashtun 'tribal' region: beginning of the end under President Trump?' (2020) 31(4) *Small Wars & Insurgencies* 751, 772.

1.2. Research Questions and Working Hypotheses

This dissertation explores two clusters of questions: (a) why drones were developed in an Israeli settler colonial context, and for which purposes; (b) What role did international law play in question (a) above, and more specifically, what was the role of IHL?”.

Unknown to many, Israel, one of the tiniest countries on the planet (and my home country), with less than 0.1% of the world's population, has become the world's pioneer in developing military drones and a world leader in exporting them across the planet. In the past decades, Israel sold military drones to dozens of countries, including the two superpowers – the US and Russia. This was arguably part of Israeli imperialism, as Israel tripled its size in 1967 by occupying the West Bank, Gaza, extensive parts of Egypt, parts of Syria, and a part of South Lebanon. These events have been serving, first and foremost, Israel's settler colonial aspirations. Israel has used drones to advance the country's settler colonial goals in Palestine – alongside any seemingly 'imperial' aspirations in the Middle East.

In the case of Israel, what might initially seem like drone development for traditional imperial goals, is actually for settler colonialism. Since Israel's war of 1967, settlements were quickly built in occupied Syria (the Golan Heights), Egypt (the Sinai Peninsula), West Bank, Gaza, East Jerusalem, and other areas. Israel's worldwide success as a drone superpower only came after the Second Intifada (2000-2005) – as drones were used against the civilian population in Gaza. It was Israel's use of drones over Palestinians that made Israel into a drone superpower. But even earlier attempts to use drones focused on Israel's settler colonial ambitions. The use of drones in Syria, for instance, has been used to maintain the settler colonisation of the occupied Golan Heights. Israeli drones were historically used in Egypt to protect settlements in

the Sinai Peninsula, an area that would not have been returned to Egypt if it was not for Egyptian resistance, the War of Attrition (1967-1970), and the war of Yom Kippur (1973).

The genealogy of IHL created two categories: combatants and non-combatants. Each category has its strengths and weaknesses: While combatants have a license to kill other combatants and attack military objectives (immunity), non-combatants are supposed to be protected through a wide range of principles, such as distinction, necessity, proportionality, and humane treatment.

Both the US and Israel had treated IHL cynically and selectively, adhering to it only when it advanced their interests. By defining their opponents alternately as 'suspects', 'unlawful combatants', and 'terrorists', they disqualified them from being protected under the IHL umbrella.

It took a while before the potential of unmanned aircraft developed by Israeli engineers caught the attention of military planners worldwide. But when it did, it changed the nature of modern warfare. Finally, one could control enemy territory and subjugate its inhabitants from a safe distance without setting foot on the ground. The nature of drones and how it was initially 'packaged' and perceived negated the fundamental principles that presumably protect civilians in armed conflicts. Drones were accurate and surgical, posed little danger to civilians, and, therefore, could supposedly meet proportionality requirements and 'minimal collateral damage'.

The reality on the ground told a different story a thousand times and more. However, IHL never adjusted to the drastically different circumstances of modern conflicts and the emergence of cutting-edge technologies that made American imperialism and Israel's settler

colonialism much easier. Today Gaza is controlled almost exclusively by drones, which survey and assassinate ‘suspects’ and ‘terrorists’, the majority of whom prove to be innocent civilians. But even as charred bodies of women and children accumulate in the Gaza Strip – with total impunity – Israel insists on calling the IDF ‘the most moral army in the world’. If it were not for drones, suppressing desperate poverty-stricken Gazans would have been impossible. Drones have become a vital weapon of terror and repression, perfectly suitable for Israel’s settler colonial project.

The fact that the threat of atomic bombs, chemical weapons and cluster munition has greatly diminished has given us the false impression that we will be in a safer and more humanistic world. But drones have ushered a new era of endless wars, dominated by the principle of ‘survival of the fittest’ – and no legal or political institution with enough clout to ensure that Darwinism, deeply rooted in human nature, gets out of hand.

Beauty, it was said, is in the eye of the beholder. But today, not just beauty but also life and death are in the eye of the beholder. And the beholder is, more often than not, a drone operator, who presses the button without inhibitions or fear of being summoned one day to court to face trial. So IHL is not only out of date. It is out of the grim picture altogether.

1.2.1. Drone Development in an Israeli Settler Colonial Context

Jill Stauffer, an Associate Professor of Peace, Justice and Human Rights, had posed a similar question in an attempt to find a link between settler colonialism and the use of lethal drones: ‘If citizens of land that was stolen from earlier inhabitants do not feel implicated in an ongoing injustice, how did that denial become possible, and what makes it able to continue in

widespread fashion?’⁹³. Stauffer’s answer was: ‘If we look at this problem, it may help us understand something about the question just raised, about the capacity of everyday citizens to ignore their government’s use of drones as an instrument of chronic terror’⁹⁴. Stauffer wrote about the US, but a similar mentality of denial might also exist in present-day Israel.

As mentioned earlier, ‘combatant immunity’ provides impunity to superpowers who preserve the lives of their own combatants. Drones are the ultimate weapon when it comes to protecting soldiers, and providing superpowers with the ability to kill anywhere, anyone, with minimal cost, with perceived ‘surgical accuracy’, and with international impunity. Additionally, drones are incorporated with advanced artificial intelligence that automatically recognises suspected individuals based on algorithms that find deviations from behavioural patterns. This software is automated, semi-autonomous, and is expected to become fully autonomous in the future. This weapon already dominates the skies of Gaza and will be used extensively in future conflicts, wars, occupations, imperial conquests, and settler colonial endeavours across the planet.

Attention was already paid in academia and the media to the US use of drones and its imperial ‘war on terror’. What this dissertation seeks to do is to complicate the understanding of drones as an imperial weapon. This is done by arguing that the Israeli-Palestinian case demonstrates that it is Israel’s status as a settler colonial state that was the key driving force of Israel’s drone industry, alongside its imperial ambitions. In other words, this dissertation displaces the focus from the US to Israel regarding drone violence. By doing so, it demonstrates, in the case of Israel, that drone technology can be better understood by

⁹³ Jill Stauffer, ‘Disrupting “All The Familiar Geometry”’: Drones, Settler Colonialism, and Nasser Hussain’s Difficult Questions’ (2021) 17(1) *Law, Culture and the Humanities* 111.

⁹⁴ *Ibid.*

accounting for Israel's settler colonial status. In Israel, drones were first and foremost developed as a settler colonial weapon, and subsequently, drones were also used for broader imperial ambitions. This dissertation does not pretend to add to the extensive literature on US imperialism and drone violence. Instead, it proclaims that drone violence and drone domination has been settler colonial in nature in the case of Israel, and subsequently, Israel used drones for imperial ambitions as well.

It is generally accepted that drones are an imperial weapon of choice. However, as well as serving imperial powers, there is something to be said about the nexus of drone technology, drone violence, and settler colonialism – as recently suggested by Stauffer⁹⁵. While extensive studies have been published on US drones and Imperial warfare, not much has been published on Israel's settler colonial status as the overwhelming reason for drone development. Considering the above, this dissertation recognises the possible connections and overlaps between imperialism and settler colonialism, not only in the Israeli context but also in the US.

This dissertation contributes to the existing literature on lethal drones by shedding light on this technology's intimate relationship with the settler colonial nature of the state of Israel, as drones have become one of the major weapons used to monitor and subordinate the people of Gaza, who live in a territory that has been considered by Ilan Pappé as 'the biggest prison on earth'⁹⁶ (perhaps besides North Korea).

The residents of Gaza, two million of them, are under surveillance. Many have been paralysed by fear of being killed by missiles launched from the sky. 'When you hear the drones, you feel

⁹⁵ Ibid.

⁹⁶ Ilan Pappé, *The Biggest Prison on Earth: A History of the Occupied Territories* (Simon & Schuster 2017).

naked and vulnerable’ said the deputy director of the Palestinian Centre for Human Rights, Hamdi Shaqura. ‘The buzz is the sound of death. There is no escape, nowhere is private’; ‘When you hear drones, you hear death’⁹⁷. In Gaza, as elsewhere, drones destroy the delicate fabric of indigenous communities for the benefit of external imperial or settler colonial occupiers. They infringe on the fundamental rights to life, dignity and peace of mind⁹⁸.

1.2.2. The role of IHL

This dissertation takes as its basic premise that IHL has, to date, been a poor instrument in limiting or controlling the global spread of drone violence. One of the leading research objectives will be to try and make sense of this failure, shedding light on the genealogy and structure of IHL. In this process, special attention will be paid to the role of IHL in shaping and managing the relationship between drone violence and settler colonialism. The core premise of this dissertation is that Israel did not become a drone superpower by accident, but because of its settler colonial nature, alongside its imperial aspirations. A key objective of this research is to not only shed light on the relationships between drone violence and settler colonialism but also to interrogate the role of IHL in shaping – and in turn, being shaped by – this relationship.

⁹⁷ Scott Wilson, ‘In Gaza, Lives Shaped by Drones’ (*The Washington Post*, 3 December 2011) <https://www.washingtonpost.com/world/national-security/in-gaza-lives-shaped-by-drones/2011/11/30/gIQAjaP6OO_story.html> accessed 26 September 2021; Jonathan Cook, ‘Gaza: Life and Death Under Israel’s Drones’ (*Aljazeera*, 23 November 2013) <<https://www.aljazeera.com/features/2013/11/28/gaza-life-and-death-under-israels-drones>> accessed 26 September 2021.

⁹⁸ Ilan Pappé, ‘Israel, a Settler Colonial State’ (*strugglevideomedia*, 15 March 2016) <<https://www.youtube.com/watch?v=A78S4v5YMpU&t=740s>> accessed 24 May 2021.

Despite the victims, the collateral damage, and the horrors reported by the media, why is IHL seemingly unable to tame drone violence? This study does not focus on the legality of drone strikes or on doctrinal questions, such as if drone warfare infringes IHL regulations. There is already well-developed literature on this legality, scrutinizing drones under IHL with a wide range of contradicting conclusions. This study starts with the premise that IHL has been largely incapable and ineffective in taming drone violence. This dissertation is interested in the following: why is that? It focuses on broader systemic questions, such as why IHL appears to be so marginal and certainly ineffective in taming drone violence. The hypothesis of this thesis suggests that this has something to do with the genealogy of IHL. Regardless of the legality of drones, it is crucial to question why IHL has been unable to tame drone violence, if not globally, then at least in the case of Israel.

This dissertation draws from Third World Approaches to International Law (TWAIL). TWAIL is used in this study to interrogate why IHL was incapable of taming drone violence, and drone violence is used in this study to interrogate TWAIL itself, as well as the extent to which TWAIL can explain settler colonial situations. There is, therefore, value in developing what I call a Settler Colonial Approach to International Law (SCAIL), as would be further elaborated.

IHL appears to have been so limited in its ability to tame or control drone violence in the case of Israel/Palestine. A central hypothesis in this regard is that contrary to the generally accepted view, an essential function of IHL historically has been not to humanise war or protect civilians but to delegitimise certain forms of revolutionary violence posing a threat to the existing political and economic order.

While considering its historical development, IHL is treated in this study as a poor instrument for governing drone violence, at least in the case of Israel. This dissertation inquires if the

current regulation of warfare was intended to serve First World interests, such as restoring political and economic order and protecting combatants from civilians who wished to take arms against the sovereign. Moreover, the codification of IHL might coincide with weapons that are more destructive than before. Today's victims of war and conflict are primarily civilians, many of whom are indigenous to the land. As states have developed more destructive weapons, cogent IHL principles and regulations are often ignored by the powers that be⁹⁹.

The hypothesis regarding IHL is therefore two-fold: (1) IHL has been ineffective in regulating drone warfare; (2) IHL enables or facilitates drone violence. As mentioned earlier, this two-fold hypothesis will be examined while focusing on the case of Israel. It suggests that IHL should have been used to restrain and prosecute acts of aggression and to motivate countries to follow specific rules and regulations. Nevertheless, in practice, perhaps it helps maintain and perpetuate imperial and settler colonial situations. This dissertation, therefore, analyses IHL as a system that is more advantageous to the Western countries that formulated it and played a pivotal role in the suppression and exploitation of the Third World.

1.3. Methodology

The primary methodological approach of this study is interdisciplinary or trans-disciplinary. It includes critical social analysis, discourse analysis, literature review as a methodology, and critical social science. This is done while focusing on a qualitative approach that is applied

⁹⁹ Kurt Mills, 'Neo-Humanitarianism: The role of International Humanitarian Norms and Organizations in Contemporary Conflict (2004) 11 Global Governance. 161, 164.

while analysing a wide range of publications, including academic journals, monograms, newspapers, testimonials, recorded lectures, and reports by NGOs.

When looking at the broad research question, it is fair to argue that this study fits better within the social science research field rather than a doctrinal legal study or positivist social science. This dissertation is a result of a critical inquiry process that ‘goes beyond surface illusions’ in an attempt to ‘uncover the real structures in the material world’¹⁰⁰.

According to Norman Fairclough, Critical discourse analysis (CDA) ‘contributes to critical social analysis a particular focus on discourse and on relations between discourse and other social elements’¹⁰¹. Furthermore, critical social analysis has been understood as a ‘normative and explanatory critique’¹⁰², a methodology that serves the research questions of this dissertation. This dissertation provides a ‘normative critique’ in that it does not simply describe existing violent realities in my birthplace but also evaluates these realities and assesses ‘the extent to which they match up to various values’¹⁰³. These values include universal humanist ideals that have been considered fundamental for a just society across a wide range of cultures¹⁰⁴. This methodological approach strives to explain realities by shedding light on structures, mechanisms and forces. These include colonialism, imperialism, globalisation, neo-liberalism, and capitalism, which often claim to respect and uphold human

¹⁰⁰ Samina Nazali, ‘A Short Introduction to Social Research’ (2007) 25(1/2) Pakistan Journal of American Studies 215.

¹⁰¹ Norman Fairclough, ‘Critical Discourse Analysis’ in James Paul Gee and Michael Handford (eds), *The Routledge Handbook of Discourse Analysis* (Routledge 2013).

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Martha C Nussbaum, ‘In Defense of Universal Values’ (1999) 36 Idaho L. Rev. 379.

rights. However, the reality on the ground might demonstrate that human rights discourse can also be served as lip service.

According to Fairclough, social realities are inherently reflexive. The way in which people see, represent, interpret, and conceptualise realities is an integral part of these realities. The objects of this dissertation can therefore be seen as simultaneously 'material and semiotic', or 'dialectical'¹⁰⁵. By integrating various disciplines, it might be possible to gain new insights on the nexus between settler colonialism, IHL, and the use of military drones. These disciplines include moral philosophy, history, psychology, sociology, and legal studies while recognising that some have been traditionally more concerned with material aspects of social realities than others.

Hannah Snyder suggests that a literature review can also serve as a research method¹⁰⁶. By collecting and synthesizing previous research critically (literature review as a methodology), this dissertation aims to advance knowledge and facilitate theoretical development. It integrates findings and perspectives from a wide range of theoretical and empirical findings across disciplines to address the research questions beyond the scope of a single study¹⁰⁷. Snyder has also described literature review as a methodology that can uncover areas in which more research is needed, 'which is a critical component of creating theoretical frameworks and building conceptual models'¹⁰⁸. The critical review in this dissertation hopefully provides

¹⁰⁵ Fairclough (n 101).

¹⁰⁶ Hannah Snyder, 'Literature Review as a Research Methodology: An Overview and Guidelines' (2019) 104 *Journal of business research* 333-339.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

an interdisciplinary critical overview of settler colonialism, IHL, and the use of military drones in Israel/Palestine and a synthesis of previous findings on a meta-level.

1.4. Motivations Through Autoethnography – A Personal Account

While autoethnography is not one of the principal methodologies of this study, this section aims to share personal motivations for conducting this study. It relies upon, and takes advantage of, the discipline and ideas of autoethnography, an approach to research that examines the world through one's own experience¹⁰⁹. Autoethnography 'does more than just tell [personal] stories. It provides reports that are scholarly and justifiable interpretations... ...[that] do not consist solely of the researcher's opinions but are also supported by other data that can confirm or triangulate those opinions. Methods of collecting data include participant observation, reflective writing, interviewing, and gathering documents and artifacts'¹¹⁰.

Every one of us reflects the ethnic, religious, cultural, social, technological, and political environment in which we live. We all carry our fears, scars, myths, disillusion, and memories of significant actions we took part in – and what lessons we have learned along the way. None of us is impartial. None of us is an empty vessel. Nevertheless, some of us might be better qualified to cope with, and make sense of, life's imperfections, arbitrariness, and cruelty.

¹⁰⁹ Sarah Stahlke Wall, 'Toward a Moderate Autoethnography' (2016) 15(1) International Journal of Qualitative Methods 1.

¹¹⁰ Margot Duncan, 'Autoethnography: Critical appreciation of an emerging Autoethnography: Critical appreciation of an emerging (2004) 3(4) International journal of qualitative methods 28.

For a researcher, one's personal experience and subjective viewpoint may offer a critical edge, a chance to reach a deeper layer of understanding and truth. Perhaps even to imagine new possibilities.

Many prominent scholars have already explored unconventional narrative methods as a part of academic writing under the Critical Legal Studies (CLS) movement¹¹¹, of which TWAIL is an offshoot¹¹², had inspired me to conduct this study through a critical lens. This includes the use of parables, anecdotes, and autobiographies. According to Caitlin Cahill, an Assistant Professor of Urban Geography and Politics at Pratt Institute, face-to-face encounters and participatory action provide an alternative for researchers interested in social justice¹¹³. Autoethnography, as I understand it, is part diary, part memory, part meditation, and part theorising and academic research.

CLS and TWAIL have taught me that academic research based on reason, fairness, and scrupulously documented and empirical observations, is essential. However, personal experience, sentiment, and sympathy may matter as much. While striving, for example, to understand the vertical, detached, and often condescending gaze of drone operators and the moral dilemmas some of them are facing, my direct and personal bonds with Palestinians on the ground, who are in a diametrically opposed and extremely vulnerable and inferior

¹¹¹ Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96(3) Harvard law review 561; Mark Tushnet, 'Critical Legal Studies: A Political History' (1990) 100 Yale Law Journal 1515; Roberto Mangabeira Unger, *The Critical Legal Studies Movement: Another Time, a Greater Task* (Verso Trade 2015).

¹¹² Antony Anghie and Bhupinder S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2 Chinese Journal of International Law 77.

¹¹³ Brett G Stoudt and others, 'Participatory Action Research as Youth Activism' in Jerusha Conner and Sonia M Rosen (eds), *Contemporary Youth Activism: Advancing Social Justice in the United States* (Praeger 2016) 327; Liesbet Van Zoonen 'The personal, the political and the popular: A woman's guide to celebrity politics' (2006) 9(3) European journal of cultural studies 287.

position, provide a broader and perhaps a more humane perspective. I try, in my writing, to take a critical and open-minded look at the painful and complex nature of the link between drone pilots and their 'targets' and show how it affects the trajectories and self-perceptions of each side.

I have witnessed the agony of Palestinians seeing lands on which they had been living for many generations being confiscated and torn apart. Such type of first-hand 'participatory action' is equally significant and instrumental in the process of addressing practical and legal issues. I aim to arrive at an understanding of the world based not just on rationality or objective epistemology, which might typically be the cornerstones of legal thought, but to trespass into and relive eventful moments, psychological scars, and painful memories that have piled up during years of political activism and will, hopefully, offer better insights and help me walk the extra academic mile. At the risk of sounding presumptuous, I intend to follow Immanuel Kant's motto formulated during the Age of Enlightenment: *Sapere Aude*, 'Have the courage to use your own understanding'¹¹⁴.

This dissertation has been motivated by my feelings as a researcher, a committed political activist, and a human rights lawyer, trying to document and give voice to Palestinian trauma, suffering, and predicament. One cannot turn a blind eye to how Israel deprives Palestine's indigenous people of their fundamental human rights, including the right to food, water, health, education, equality, freedom, movement, religion, family life, property, and dignity.

¹¹⁴ Lee Anne Peck, 'Sapere Aude! The Importance of a Moral Education in Kant's Doctrine of Virtue' (2007) 22(2-3) Journal of Mass Media Ethics 208.

Nightly raids, hundreds of checkpoints, blockades, bombs, segregation, and assassinations are part of their daily routine¹¹⁵.

My background, identity, outlook, and moral ideals, all led me to pursue this study. This decision is both 'evocative' and 'analytical', as it incorporates my personal stories and my accumulated academic and legal experience¹¹⁶

This type of autoethnography opens possibilities for qualitative research that maintains permeable boundaries and recognises human vulnerability, fears of illness and of death and the fact that we are never in complete control of our future¹¹⁷. It recognises one's subjectivity, limitations, imperfections, and the elusive nature of absolute truth.

Despite the discomfort of writing about oneself, it is essential to share my motivations in order to destabilise and redraw boundaries between 'professional' work and the private life of the researcher and to create an open space for dialogue with silenced 'others'. Even if it may require constant introspection and 'self-flagellation', autoethnography is a powerful tool that might help a researcher not to fall into the trap of fossilised formulas and open a window to new, fresh, perhaps even hard to fathom ideas; to things that the writer might ignore in

¹¹⁵ Saree Makdisi, *Palestine Inside Out: An Everyday Occupation* (WW Norton & Company 2010); Amira Hass, 'The Authorised Version' (2007) 36(3) *Index on Censorship* 26; Juliana Ochs, *Security and Suspicion: An Ethnography of Everyday Life in Israel* (University of Pennsylvania Press 2011); Yehouda Shenhav and Yael Berda, 'The Colonial Foundations of the State of Exception: Juxtaposing the Israeli Occupation of the Palestinian Territories with Colonial Bureaucratic History' in Givoni, Hanafi & Ophir (eds), *The Power of Inclusive Exclusion: Anatomy of Israeli Rule in the Occupied Palestinian Territories* (Zone Books, MIT Press 2009).

¹¹⁶ Carolyn S Ellis and Arthur P Bochner, 'Analysing analytical autoethnography: An autopsy' (2006) 35(4) *Journal of Contemporary Ethnography* 429; Leon Anderson, 'Analytical autoethnography' (2006) 35(4) *Journal of Contemporary Ethnography* 373; Sally Denshire, 'On auto-ethnography' (2014) 62(6) *Current Sociology* 831; Paul Atkinson, 'Rescuing Autoethnography' (2006) 35(4) *Journal of Contemporary Ethnography* 400; Sara Delamont, 'The Only Honest Thing: Autoethnography, Reflexivity and Small Crises in Fieldwork' (2009) 4(1) *Ethnography and Education* 51.

¹¹⁷ Laura Ellingson, 'Embodied Knowledge: Writing Researchers' Bodies into Qualitative Health Research' (2006) 16(2) *Qualitative Health Research* 298; Denshire (n 116).

himself and others, paving the way to questions of why they are ignored and what might need to be done about it¹¹⁸. I have reflected on my background throughout the process of formulating my dissertation by constantly questioning my own account and by taking a hard look at the certainties I hold on to as a dissenting Israeli who turned his back on mainstream Israeli dogmas.

My awakening started in 2002 when I joined a small group of Israeli activists from the 'Gush Shalom' NGO, who tried to stop the construction of the wall that separates not just Israelis from Palestinians, but also one Palestinian family from another. Sixteen years of age, I was, on that occasion, the youngest member who stood, along with others, on the barricades. At this young age, I realised that the Palestinians are struggling against a domineering and far superior power and are engaged in a David-against-Goliath battle to assert their rights. A little while on, I was dodging bullets in the village of Bil'in, which became the focal point of the struggle against the wall mentioned above. I was running wild, stumbling on rocky hills, inhaling teargas and being physically assaulted and handcuffed by Israeli border police. I am not overstating my case when I say that my Israeli colleagues and I served as human shields to protect our Palestinian comrades who, without our presence, would have been shot at with live ammunition. Unable to disperse the demonstrations, the army targeted, harassed, and arrested Israeli activists. To describe this as 'participatory action' is an understatement. The brutal acts perpetrated by the Israeli army that I have witnessed and experienced in the space of two intensive decades were harrowing, and still haunt me to this day.

¹¹⁸ Elizabeth Dauphinee, 'The Ethics of Autoethnography' (2010) 36(3) *Review of International Studies* 799; Denshire (n 116).

Having been pushed into an ambulance to catch my breath after trying to run away from a cloud of suffocating and eye-blinding tear gas has paradoxically opened my eyes to Israel's racist and oppressive nature. It dawned on me that Zionism was, more than anything else, a nationalist movement, which fetishizes the land, using God's presumed promise to lead Abraham into the 'Promised Land' as an excuse for denying my harshly beaten and teargassed Palestinian friends their fundamental human rights. The IDF (Israel Defense Forces) was not engaged in a defensive battle but was mobilized instead to protect and facilitate a scheme to seize every possible inch of what little had been left of my neighbours' historical homeland.

I believe that witnessing all this through my blurred and burning eyes may prove advantageous and will contribute to a more involved, focused, and academically oriented research into military drones, settler colonial theory and international law. The Middle East is an active volcano that never stops fuming. Therefore, my search for answers will inevitably be a 'work in progress' until the very end.

I enjoy the unique vantage point of someone standing at the crossroads of two worlds – the literal and the academic. As a political and human-rights activist, I have a bottom-up viewpoint of a person who 'earned his stripes', so to speak. On the other hand, as an academic, I am privileged to be part of a community of scholars operating in an ivory tower, with its elevated, disciplined, and rational atmosphere, where the same messy reality may elicit a more detached reaction.

This inevitably leads to a two-way conversation, to a dialogue between two sides of myself. Between the compulsion to seek justice and the more realistic and coolheaded awareness, instilled in me in academia, that issues are often more complicated and multifaceted, and defy simple solutions. I hope that the intellectual integration of these two, separate,

complementing, and cross-fertilising parts of my 'self', will gel and yield a fresh and thought-provoking dissertation. Israel and Palestine are, in my eyes, one and the same. The 'green line' that was set out in the 1949 Armistice Agreements has meant little on the ground because, in practical terms, Israel controls the entire territory between the Jordan River and the Mediterranean Sea. Most of Palestine since 1948 is controlled by Israel, overtaking the small part of it that was left for the Palestinians pre-1967 (West Bank and Gaza). Nevertheless, mainstream media often depict the Occupied West Bank and Gaza as 'Palestinian Territories' or 'Palestine' and refer to the land that was conquered in 1948 as 'Israel' or 'Israel-proper'.

After over one hundred years of settler colonialism led by the Zionist movement, many Palestinians see themselves as the only real natives of the land, even if the train left the station long ago. Most Israelis, as settler colonisers, will never return to the states of origin of their ancestors, much like most Americans, Australians, New Zealanders, and South Africans who will never return to Europe. At the same time, Palestinians certainly wish and expect the world to recognise their tragedy and the dire consequences of the Nakba that Israel perpetrated.

1.4.1. From Beer Sheba to the Caribbean and Back Home

I was born in a desert city ethnically cleansed by Israeli soldiers in 1948. There were 110,000 Palestinians in the area in 1948 and less than 200 Jewish combatants who occupied a few hastily erected sheds. 90% of the Palestinians were dispossessed and transferred to Jordan

and Gaza. About 5% live in 45 unrecognised villages¹¹⁹, some without electricity, water, or social services¹²⁰. In Beer Sheba, as elsewhere, Israel registered the land of the expelled Palestinians under the category of 'Absentee Property' and turned down all applications made by Palestinians who claimed to be its legal owners.

Two years of age, too young to be aware of this unsettling reality, I moved to Antigua in the Caribbean Islands, where I went to preschool with children of different creeds, ethnicity, and religion. I learned to respect 'others' for what they are, regardless of the prevailing stereotypes and prejudices. I perceived the world, subconsciously, as multi-coloured and multifaceted.

When I was six, we returned to Israel, and I spent most of my childhood in a northern district of Tel Aviv, another city built on top of ethnically cleansed Palestinian villages. We lived near Tel Aviv University, on land that was taken in 1948 from the Palestinians of the village Ash-Shaikh Muwannis¹²¹. It was just one out of over 600 Palestinian localities that Israel physically erased before and after 1948¹²².

After four serene years on a Caribbean Island, it was difficult for me to join an Israeli primary school and fit in. There were fights in the schoolyard and animosity towards newcomers.

¹¹⁹ Badil, '21st Century Ethnic cleansing in Beer Sheba' (*Badil*, 28 September 2011) <http://www.badil.org/phocadownload/Press_Releases/2010-2015/21st-century-ethnic-cleansing-in-Ber-Sheba.pdf> accessed 15 May 2021.

¹²⁰ Merav Arlozerov, '80,000 Residents That Noone Counts' (*The Marker*, 9 July 2018) <<https://www.themarker.com/allnews/1.6243954>> accessed 15 May 2021.

¹²¹ Nakba Online, 'Ash-Shaikh Muwannis' (*Nakba Online*, 15 May 2021) <<http://nakba-online.tripod.com/Ash-Sheikh-Muwannis.htm>> accessed 15 May 2021 ; Zochrot 'al-Shaykh Muwannis' (*Zochrot*, 15 May 2021) <<https://zochrot.org/en/village/49480>> accessed 15 May 2021; Shlomo Sand, *The Invention of the Land of Israel: From Holy Land to Homeland* (Verso 2012); Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge University Press 2004) 43.

¹²² Zochrot, 'The Nakba Map' (*Zochrot*, 2015) <<https://www.zochrot.org/en/article/54772>> accessed 15 May 2021.

Perhaps not on par with the fist fights of Porto Rican gangs in 'West Side Story', but still highly unpleasant. At one point, some of the class bullies threatened to teach me a lesson on my way home. Only a last-minute intervention by the principal, who got wind of their plans, saved me from being beaten up.

When matters of politics and nationalism came up, I often found myself in a minority of one. Indoctrinated by Zionist propaganda, my classmates felt that they had the moral ground to criticize me for my apparent lack of patriotism. Coming, as it did, with baggage of racism, narrow-mindedness, and discrimination, Israel was a country I was unable to love 'properly', to quote Gershom Scholem's letter to Hannah Arendt after the publication of 'Eichmann in Jerusalem'¹²³. My 'patriotism', as I saw it, expressed itself in opposition to injustice and oppression – and not by unconditional and sugar-coated love for a country.

When I was called on to serve in the military, I refused. Aged 17, I wrote a letter to the IDF in which I openly challenged the official dogma. In it, I expressed sympathy for Palestinians who tried to defend themselves and criticised Israeli checkpoints in the West Bank. Human rights attorneys advised me not to express such political opinions because the IDF treats most refuseniks as illegitimate political objectors. They rarely recognise a 'genuine conscientious objector' who is guided by pure 'pacifist motives'¹²⁴. I was eventually exempted from military service, after an arduous legal battle that involved countless hours of gruelling interrogations by a panel of grim-looking jurists, psychologists, and high military officers. I was one of only a

¹²³ Steven E Aschheim, 'Between New York and Jerusalem: Hannah Arendt and Gershom Scholem's Newly Published Correspondence' (2011) 4 Jewish Review of Books 5.

¹²⁴ 'Israel: The Treatment of Conscientious Objectors Called Up for Reserve Duty or Military Service' (Immigration and Refugee Board of Canada, 10 March 2010) <<https://www.refworld.org/docid/4e4260122.html>> accessed 14 May 2021.

handful of 'conscientious objectors' recognised by the IDF. Most of those who publicly refuse to enrol, serve time in military prisons¹²⁵.

Aged Eighteen, I spent the next three years in rundown Jerusalem neighbourhoods trying to motivate children to study and obtain a high school diploma. Later, I travelled across the West Bank, met with Palestinians, and listened to their stories, hopes and dreams. Hosted in their homes, I witnessed their daily hardships and brutal invasions of their privacy by Israeli border police, including late-night arrests and indiscriminate shootings of passers-by. It was hard to contend with the fact that many of those who perpetrated such acts of violence were my high-school colleagues.

For over ten years, I have been marching and demonstrating shoulder to shoulder with Palestinians in non-violent demonstrations against the Wall in the West Bank. Although Israelis are treated with 'silk gloves' compared to Palestinians, I have experienced the violence of Israeli soldiers and border police first-hand. I was shot at with bullets (coated by a thin layer of plastic) during non-violent demonstrations. I dodged bombs and was physically beaten up by soldiers. I spent 12 hours in jail, but my Palestinian friends were treated more harshly. If you are a Palestinian, the uncorroborated testimony of one soldier is enough to send you to jail for months or years. Israel's military court system, which tries Palestinians, has an astounding conviction rate of 99.74%¹²⁶.

¹²⁵ 'Conscience on Trail' (*War Resisters' International*, 1 January 2004) <<https://wri-irg.org/en/news/2004/israel0204-en.htm>> accessed 14 May 2021.

¹²⁶ Meredith McBride, 'Separate and Unequal: Inside Israel's Military Courts, Where the Only Defendants Are Palestinians' (*Haaretz*, 28 March 2017) <<https://www.haaretz.com/opinion/.premium-separate-and-unequal-a-look-inside-israel-s-military-courts-1.5453846>> accessed 15 May 2021; Chaim Levinson, 'Nearly 100% of All Military Court Cases in West Bank End in Conviction' (*Haaretz*, 29 November 2011) <<https://www.haaretz.com/1.5214377>> accessed 15 May 2021.

Emerging out of this fog of tear gas, I began to realise that the title 'Israel Defence Forces' is a euphemism, if not a complete travesty. It is not an army that preoccupies itself with Israel's security, but instead enables and imposes Israel's settler colonial project. Enraged by the injustice revealed to me on the hills of Bil'in, I took upon myself to petition – as a layman – on behalf of Palestinians arrested arbitrarily and without sufficient proof of wrongdoing. My efforts were mostly pitiful and ineffective. It was then that the idea of studying law began to allure me. Perhaps, as a certified and card-carrying lawyer, I could have much more clout and impact.

At my law school, I was treated, once again, as a 'rara avis'. I chose to specialise in human rights and was outnumbered 500 to one by students who focused on their career goals which circled around making quick money. But, to my surprise, I caught the attention of Professor Orna Ben-Naftali, Dean of the Law School, and she asked me to become her research assistant for a project on International Law, science fiction, and the potential of autonomous drones. That ground-breaking study, which eventually ended up in a publication¹²⁷, was undeniably the seed of this PhD thesis.

Nonetheless, I was always reminded by my peers that students who sympathise with Palestinian 'terrorists' are 'fifth columnists'. One law student nearly pulled his handgun at me during a break between lectures, so it was a great surprise when I was invited in 2012 to speak on behalf of my LLM graduating class during the open-air award ceremony. Standing alone on the stage under blinding spotlights, I said: 'I will be defending the poor and the oppressed'. A

¹²⁷ Orna Ben-Naftali and Zvi Triger, 'The Human Conditioning: International Law and Science Fiction' (2018) 14(1) Law, Culture and the Humanities 6.

tall man approached and hugged me in the darkness as I was getting down the steps. That was Professor Rabin, the new Dean of the Haim Striks School of Law.

1.4.2. From Pongso no Tao to Gaza

Despite the naïve hope that geo-political strategies, decolonisation, legal recognition, and preferential policies would empower indigenous people, their severe oppression is still widespread today. Robbie Richardson from Princeton University describes the pervasive racism that he himself has suffered from as a member of the Pabineau Mi'kmaq First Nation in New Brunswick, Canada, and the enduring legacy of settler colonialism. They observed: 'Life for Native people under settler colonialism continues to be one of "structured dispossession"'¹²⁸. Settler colonialism's psychological damage and material effects linger on.

Having moved to the Caribbean at the tender age of two, I was unaware, of course, of big words such as 'settler colonialism' or of any other sort of colonisation, for that matter. But having spent my formative years with blurred borders between me and the 'others', who had been brought to Antigua as slaves by the British Empire, must have had a positive and long-lasting impact on my psyche. It was only in my teens that I began to notice and realise the inhumane way in which the United States treated, and still does to a great extent, Native and African Americans, not unlike the inhumane manner in which Israel treats the Bedouins in the Negev (Naqeb) desert. Not to mention the 'structured dispossession' of hundreds of

¹²⁸ Robbie Richardson, 'Some Observations on "Decolonizing" the University' (*Los Angeles Review of Books*, 6 July 2021) <<https://lareviewofbooks.org/article/antiracism-in-the-contemporary-university/>> accessed 29 September 2021.

thousands of Palestinians, known as the Nakba – a blatant dispossession, suppression, and other discriminatory acts carried out against Palestinians – and are still going on today¹²⁹.

Indigenous populations worldwide have become peripheral and marginalised not only geographically but also in the social and economic sense. 'In Winnipeg and across North America', says Richardson in his essay, 'Native people experience some of the highest levels of poverty, incarceration, police violence, domestic abuse and other violent crime'¹³⁰.

Sadly, in many cases, the only pre-planned face-to-face contact between the general public and authentic indigenous people occurs in the framework of so-called 'indigenous tourism'¹³¹. Such indigenous tourism brochures do not tell you that some of those exotic sites are controlled by international corporations and are not the property of the friendly and colourful individuals featured in the promotional material. Other tribal lands were purchased by companies using natural resources for profit or turning islands into dumping sites for toxic waste.

¹²⁹ Nur Masalha, *The Palestine Nakba: Decolonising History, Narrating the Subaltern, Reclaiming Memory* (Zed Books 2012); Nurit Peled-Elhanan, *Palestine in Israeli School Books* (Bloomsbury 2013); Nurit Peled-Elhanan, 'Legitimation of Massacres in Israeli School History Books' (2010) 21(4) *Discourse & Society* 377; Uri Ram, 'Ways of Forgetting: Israel and the Obliterated Memory of the Palestinian Nakba' (2009) 22(3) *Journal of Historical Sociology* 366.

¹³⁰ Robbie Richardson (n 128).

¹³¹ Australian Government, Department of Resources, Energy and Tourism, 'Selling Indigenous Tourism Experiences to the Domestic Market' (2010, Australian Government) <<https://www.yumpu.com/en/document/view/27176343/selling-indigenous-tourism-experiences-to-the-domestic-market>> accessed 29 September 2021.

It is no coincidence that Israel chose to dump its dangerous chemical waste in the Negev desert, which is the natural habitat of hundreds of thousands of Bedouins, who suffer from an alarmingly disproportionate number of chemical-waste-induced illnesses¹³².

Indian-born writer Lawrence Durrell mentions an affliction of the spirit unclassified by medical science – ‘Islomania’¹³³. It can be observed in people ‘who find islands somewhat irresistible’¹³⁴. It might have been a combination of early childhood nostalgia, anger against settler colonialism, and academic curiosity that drove me to fly to the island of Pongso no Tao (Island of Human Beings, also known as Orchid Island), located off the south-eastern coast of Taiwan. It is the untouched home of a tribe of 4,000 indigenous people who still enjoy relative freedom and preserve their ancient language, cultural heritage, and way of life.

An international academic expedition exploring the connections between Indigenous communities and their geographical spaces offered me an opportunity to meet the Tao tribe on equal grounds – and not as a pleasure-seeking tourist. I asked myself, how, in contrast to the Palestinians, were the Tao able to protect and preserve their territory and selfhood? What strategies have been used to avoid being trampled and erased by foreign regimes? It was an

¹³² Maor Kohn, Avinoam Meir, and Meidad Kissinger, ‘Spatial Constraints, Environmental Hazards and Bedouin in Israel: Towards Spatial Conceptualization of a Changing Indigenous Society’ (2020) 85.1 *GeoJournal* 1; Isabella Karakis, ‘Hospitalization due to Respiratory and Cardiovascular Diseases in Bedouin Population Residing in the Vicinity of Ramat-Hovav Industrial Park’ (*Robert H. Arnow Center for Bedouin Studies and Development, Ben-Gurion University of the Negev*, 2009) <https://www.researchgate.net/profile/Isabella-Karakis/publication/268033482_Hospitalization_due_to_respiratory_and_cardiovascular_diseases_in_Bedouin_population_residing_in_the_vicinity_of_Ramat-Hovav_industrial_park/links/55c3987c08aeb97567401887/Hospitalization-due-to-respiratory-and-cardiovascular-diseases-in-Bedouin-population-residing-in-the-vicinity-of-Ramat-Hovav-industrial-park.pdf> accessed 15 March 2022.

¹³³ Lawrence Durrell, *Reflections on a Marine Venus: a Companion to the Landscape of Rhodes* (Open Road Media 2012).

¹³⁴ Ibid.

opportunity to explore decolonising methodologies and to think harder about the benefits and disadvantages of being 'indigenous'.

In 2018, I undertook to travel 10,000 kilometres from the United Kingdom (UK) to one of the remotest spots on earth. During the Japanese occupation of Taiwan, Japan declared the island an 'ethnological research area' to ban settlement and tourism. These restrictions were respected by the 'Republic of China' when it reclaimed Taiwan, so the Tao could preserve their traditions. However, today economic and political pressures like tourism and globalisation are changing the face of the island and are threatening the traditional ways of the Tao. In contrast to the Palestinians, however, the Tao people enjoy relative freedoms.

Though I did not have to slay a Minotaur to reach Orchid Island, my journey was more of a hair-raising odyssey than easy sailing. Typhoon warnings issued a few days before my departure scared off some participants who cancelled their flights. The organisers informed us that the conference might not even take place at all, as boats on (and off) the island were constantly cancelling routes. Despite the risks, I refused to give up. We arrived on the Island after a turbulent boat ride in foul weather, but the eventful trip did not dent our enthusiasm. We found ourselves as far as one can possibly imagine from Waldorf Astoria, both geographically and in terms of personal comfort. We were lucky to have been invited to sleep in private homes, where children as young as 5 communicated through arts, games, and facial expressions. During the expedition, when the young Tao boys and girls performed their complex dance, they did not leave one dry eye in the crowd. We found ourselves not as observers but as welcomed guests in a rich and vibrant exchange of cultures and ideas.

Communication was possible thanks to a carefully arranged chain of translation from the Tao language to Taiwanese, Mandarin, and finally, English. However, as verbal communication

was impossible most of the time, we often found ourselves waving our arms and legs in peculiar ways to express pressing needs, such as how to find the nearest bathroom.

And yet, for indigenous peoples, life is always precarious, even if you live on an isolated and remote island. For example, in 1982, a nuclear waste storage facility was constructed on the island without the tribe's knowledge or consent¹³⁵. It took almost four decades of protests and courtroom battles against the Taiwanese government before it eventually paid the Tao people \$2.55 billion NTD (68 million pounds) as compensation in 2019¹³⁶.

I was glad for not succumbing to the temptation to merely theorise about indigenous peoples, who are at the core of my dissertation, and for taking the trouble to travel 10,000 kilometres to sit down and – hard as it might have been – talk to them about their hardships and plans. In Ivan Turgenev's novel, *Fathers and Sons*, a character voices: 'The drawing shows me at one glance what might be spread over ten pages in a book'¹³⁷. And so does a brief visit to an outpost such as Tao. A face-to-face encounter with flesh and blood people tells you more about the Third World's spilt blood and tortured flesh – and the humiliation and rage that ensued – than just learning and speculating about it on the basis of scholarly publications where the 'self' is kept at bay.

¹³⁵ Godfrey Baldacchino and Huei-Min Tsai, 'Contested Enclave Metageographies: The Offshore Islands of Taiwan' (2014) 40 *Political Geography* 13; Amy Eisenberg, 'Mihumisang-Tribal Voices of Formosa' (2021) 20(2) *Fourth World Journal* 102; Meaghan Weatherdon, 'The Tao People's Anti-Nuclear Movement: Indigenous Religion, Presbyterian Christianity, and Environmental Protest on Orchid Island, Taiwan' (2014) 9(2) *The International Journal of Environmental Sustainability* 103.

¹³⁶ Jake Chung, 'Lanyu's Tao to Receive NT\$2.55bn in Damages' (*Taipei Times*, 23 November 2019) <<https://www.taipeitimes.com/News/front/archives/2019/11/23/2003726329>> accessed 29 September 2021).

¹³⁷ Zubair W Baloch, Anne Marie McNicol, and Virginia A LiVolsi, 'Endocrine Pathology Images Telling the Story of Thousand Words' (2011) 22(3) *Endocrine pathology* 125.

It was only long after I returned to England, regretfully another island that once prided itself on dominating half of the world, that the larger and more touching meaning of my joyful encounter with the Tao dawned on me. It occurred when I read another article, written by Megan Peiser, who describes herself as a citizen of the Choctaw Nation of Oklahoma. 'I write these words', she says, 'sitting in the stolen homelands of the Anishinaabe people, in Waawiantinanong, currently called Detroit, Michigan'¹³⁸. Peiser portrays how she and her 'Corn sister' replant the Cherokee White Eagle seeds, used by their ancestral forefathers. My 'Corn sister', she says, 'helps me to decolonize myself, re-indigenize myself'¹³⁹. And then comes her concluding paragraph that touched me to the core: 'Embracing a world of abundance over scarcity, a slower world of more time – for joy, for rest, for grief, for food, for community – that is an Indigenous future. An Indigenous future is for everyone'¹⁴⁰.

In contrast, my home country cannot be any further away from being on a path towards an indigenous future for everyone. Growing up and living in Israel is often remindful of George Orwell's novel 1984. Only a handful of dissenting voices can be heard, and more often than not, they are cruelly vilified. Criticizing the IDF, especially in times of war or during violent military clashes, is a taboo, as I found out when Israeli commandos raided 'Mavi Marmara'¹⁴¹, another turbulent boat that was part of an international flotilla sailing towards the indigenous Palestinians who are isolated in Gaza, to protest Israel's illegal maritime blockade. The activists were non-violent and were on their way from Turkey with medical and humanitarian aid, which they hoped to deliver to Gaza. Instead, nine of them were killed during the

¹³⁸ Megan Peiser, 'An Indigenous Future Is for Everyone' (Los Angeles Review of Books, 6 July 2021) <<https://lareviewofbooks.org/article/antiracism-in-the-contemporary-university/>> accessed 29 September 2021.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Uri Avnery, 'The Black Flag of Illegality' (2009) 13(3/4) Counterpoise 13.

takeover¹⁴². An independent pathology expert, hired by the UN Human Rights Council inquiry, concluded that five of the nine who were killed had been fatally shot in the head at point-blank range. In some cases, the injuries indicated that the protestors had already been shot once and then shot again by a gun pointed directly toward their head¹⁴³. The incident attracted worldwide attention and has been described in news reports as a massacre.

The UN Security Council later issued a presidential statement condemning the massacre on the Mavi Marmara. It said Israel had no right to impose a maritime blockade on Gaza, which, along with other disproportionate measures taken by the army, denied the Gazans access to food, water, electricity, and health services. The law of individual self-defence (policing) and war crimes can be applied in this context in a way that demonstrates that Israel had no right to take over the Mavi Marmara at all¹⁴⁴. The International Committee of the Red Cross (ICRC) also denounced the closure of Gaza and the blockade, which considered these extreme measures as collective punishment against Palestinian civilians – a clear violation of IHL¹⁴⁵.

I was still a law student at the time. When I tried to condemn the raid¹⁴⁶, I was verbally and physically assaulted by my colleagues, who refused to give me a chance to express my own views. As mentioned earlier, a gun carried by one of the students was almost pointed at my own head. But the tragic death of nine peace activists described above is just the tip of the

¹⁴² Robert Booth, 'Gaza Flotilla Activists Were Shot in Head at Close Range' (*The Guardian*, 4 June 2010) <<https://www.theguardian.com/world/2010/jun/04/gaza-flotilla-activists-autopsy-results>> accessed 14 May 2021.

¹⁴³ Douglas Guilfoyle, 'The Mavi Marmara Incident and Blockade in Armed Conflict' (2011) 81(1) *The British Yearbook of International Law* 171.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*; International Committee of the Red Cross, 'Gaza closure: not another year!' (*ICRC*, 14 June 2010) <<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-1406104>> accessed 14 May 2021.

¹⁴⁶ Yaar Dagan Peretz, 'Israel: Racist State Lies, Kills to Survive' (*Green Left Weekly*, 5 June 2010) <<https://www.greenleft.org.au/content/israel-racist-state-lies-kills-survive>> accessed 14 May 2021.

iceberg. Acts of violence, nightly arrests, and pre-planned assassinations by death squads occur too often, and many are not even reported by the Israeli media. Quite often, the account offered by Israeli journalists represents the IDF's version of events only. Luckily, I was often there in the midst of the mayhem, and could see for myself how distorted the coverage of the IDF's *modus operandi* was.

Gaza is out of bounds for Israelis. Not so the West Bank. In this dissertation, I describe just a few examples out of hundreds of life-changing experiences that shaped my identity during years of weekly visits to the occupied village of Bil'in and other locations 'policed' by the IDF. These direct engagements with Israeli militarism, fuelled by Zionist ideology, mirror Israeli society, and shed light on my research question: how come such a tiny country like Israel ended up being the leader in manufacturing, testing, and exporting of one of the world's deadliest technologies? According to my dissertation, answers may lay with the 'Goldilocks' combination between Israel's settler colonial orientation and the extensive legal impunity that Israel receives from the International community.

After considering the advantages and disadvantages of autoethnography as a methodology, I would not have been able to conduct this study in a meaningful way without heavily relying on my own account throughout this dissertation. As an Israeli of Jewish descent, I enjoy a privileged status in my country. I have taken advantage of it to assist non-Jews in Israel through legal means. In Israel, I offered legal counsel, voluntarily, to asylum seekers and refugees from Eritrea, Sudan, Darfur, Libya, Nigeria, Burma (Myanmar), Côte d'Ivoire, Croatia, and Ethiopia.

When thinking about drone violence, I am constantly reminded of the many hours I spent in the corridors of Israel's Supreme Court, litigating on behalf of Palestinians, whose

fundamental rights had been trampled upon¹⁴⁷. Under Israeli laws, movement, employment, and other basic rights are denied to Palestinians and are considered 'privileges' that can be granted or denied according to a soldier's whim¹⁴⁸. Case after case was decided in favour of the government, the army, and Jewish-Israeli settlers. The fact that Israel's highest tribunal sides almost automatically with the state and cares so little about 'the damage caused, the lives ended, the dreams frustrated' of Palestinians was, in my eyes, a mockery of justice¹⁴⁹.

Later on, when I had a chance to take a deeper look into international law, in its many ramifications, I was distressed by its absolute failure to protect vulnerable people from state violence, terror, and atrocities. So far, not enough attempts have been made to hold countries like Israel and the US accountable for war crimes they had allegedly committed in Palestine, Afghanistan, Iraq and elsewhere. Except for a few Pro-forma denunciations made by the UN or the International Court of Justice (ICJ), and a recent investigation by the International Criminal Court (ICC)¹⁵⁰, little effort has been made by the International Community to stop imperial, colonial, and settler colonial forms of aggression. This realization has motivated me to turn every stone in the ongoing search for answers to the pressing research questions of this study.

¹⁴⁷ N.I. v Shin Bet and others 7262/14 Israel's Supreme Court of Justice (2014).

¹⁴⁸ Yael Berda, *Living Emergency* (Stanford University Press 2017) 50-53.

¹⁴⁹ Ayça Çubukçu, 'Opposing the Invasion of Afghanistan' (Los Angeles Review of Books, 11 September 2021) <<https://www.lareviewofbooks.org/article/when-the-towers-fell/>> accessed 26 September 2021.

¹⁵⁰ Tom Bateman, 'ICC Opens 'War Crimes' Investigation in West Bank and Gaza' (*BBC*, 3 March 2021) <<https://www.bbc.co.uk/news/world-middle-east-56249927>> accessed 15 May 2021.

1.5. Chapters Outline

Chapter II – Settler Colonialism and Third World Approaches to International Law

This dissertation suggests that international law is not only ‘unable’ to protect the victims of drone violence, but also actively perpetuates injustice. Looking at the historical development of international law, and how it served powerful nations and corporations, colonisation of the Third World might be an inseparable part of international law, as pointed out by TWAILers.

This chapter explores the importance of TWAIL. It demonstrates that powerful countries have formulated international law and that international law has primarily served their interests. These are not only colonial and imperial powers but also settler colonial ones, at the expense of Third World and indigenous peoples. This chapter also suggests that settler colonialism has not been investigated enough amongst the legal community, a paradigm that has been applied by non-legal scholars not only to Israel but also to the US, Canada, Australia, New Zealand, and South Africa (SA).

The relevant legal framework and the genealogy of international law are both questioned so as to whether mainstream international law perpetuates the oppression of third world and indigenous peoples alongside drone violence and other lethal technologies that changed the landscape of global politics.

In the context of modern warfare, lethal drone strikes look more like unilateral campaigns of violence with no reciprocity than traditional armed conflicts. Deadly campaigns introduced new military weapons that are used against defenceless Third World populations and indigenous peoples. Drones are one of these technologies, as they roam over entire communities.

The main goal of this chapter is to introduce the benefits of the settler colonial paradigm in the context of international law and its relevance to both historical and contemporary situations. It has already been argued by historians such as Patrick Wolfe, Lorenzo Veracini, and Ilan Pappé¹⁵¹, that settler colonialism significantly differs from colonialism, postcolonialism, and imperialism – conceptually – despite apparent overlaps. One argument made in this chapter is that Settler Colonial Approach to International Law (SCAIL), as I call it, may offer new insights into the role of international law in drone violence and other contemporary forms of oppression that are now an integral part of belligerence campaigns of Goliaths versus Davids.

SCAIL may offer a new and disturbing legal understanding of a historical and contemporary phenomenon of oppression and elimination of indigenous people by foreign settlers. Moreover, it may offer a new piece to the complex puzzle of current critical international law discourse, as international law engenders, enables, facilitates, and perpetuates this phenomenon. More particularly, this chapter demonstrates that since the late 19th century, IHL started to play its part in maintaining not only imperial violence, but also settler colonial conquests, as IHL legitimises imperial and settler colonial violence through concepts like proportionality, distinction, and precautions.

¹⁵¹ Lorenzo Veracini, 'The Imagined Geographies of Settler colonialism' in Tracey Banivanua Mar, *Making Settler colonial Space* (Palgrave Macmillan 2010) 179; Francesco Amoroso, Ilan Pappé and Sophie Richter-Devroe, 'Introduction: Knowledge, Power, and the "Settler colonial Turn" in Palestine Studies' (2019) 21(4) *International Journal of Postcolonial Studies* 451; David Lloyd and Patrick Wolfe, 'Settler colonial Logics and the Neoliberal Regime' (2016) 6(2) *Settler Colonial Studies* 109; Nadia Naser-Najjab, 'Palestinian Education and the 'Logic of Elimination'' (2020) 10(3) *Settler Colonial Studies* 311.

Chapter III – International Humanitarian Law

This chapter starts by setting out the framework of International Humanitarian Law (IHL) relevant to the regulation of drones, including a discussion on compliance, challenges, failures, and alternatives to IHL. The chapter relies on critical approaches to international law, including TWAIL scholars who emphasise the role of IHL in facilitating the survival of the fittest, wealthiest, and most powerful nations.

This chapter explores why and how IHL enables drone violence. More importantly, this chapter explores IHL's facilitative role and how IHL has been enabling powerful countries to use violence against the third world and indigenous people, including through lethal drones. For instance, this chapter demonstrates that despite the traditional canonical narrative¹⁵², IHL was developed to ensure soldiers' discipline¹⁵³ and prevent revolting actions from civilians against the sovereign¹⁵⁴. Additionally, IHL regulates the right to kill as reserved for lawful combatants¹⁵⁵. For instance, it has been argued by scholars like Frédéric Mégret and Luisa Vierucci that IHL is not inclusive¹⁵⁶, as it excludes certain groups and situations while favouring the interests of dominant powers¹⁵⁷. Additionally, historically, the founders of IHL distanced

¹⁵² Page Wilson (n 575) 567.

¹⁵³ James D Morrow, 'The Laws of War, Common Conjectures, and Legal Systems in International Politics' (2002) 31(1) *The Journal of Legal Studies* 41.

¹⁵⁴ Bernard Dipo Toyambi, 'Renewing Diplomatic Relations Between Rwanda and the Democratic Republic of Congo: the Road to Lasting Peace and Stability?' (LLM Thesis, University of The Western Cape 2011).

¹⁵⁵ Jonathan Crowe and Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Edward Elgar 2013).

¹⁵⁶ Luisa Vierucci, 'Prisoners of War or Protected Persons Qua Unlawful Combatants? The Judicial Safeguards to which Guantanamo Bay Detainees are Entitled' (2003) 1(2) *Journal of International Criminal Justice* 284.

¹⁵⁷ Frédéric Mégret, 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"' in Anne Orford (ed), *International Law and Its Others* (Cambridge University Press 2006).

themselves from Third World and indigenous peoples who were seen as ‘uncivilised savages’¹⁵⁸, as part of a colonial and settler colonial mindset¹⁵⁹.

This chapter, therefore, concentrates on alternative approaches and interpretations of the canonical history of IHL and the traditional regulation of warfare. IHL was chosen as the focus of this chapter, as it is the legal framework that governs *Jus in Bello*, how warfare should be conducted¹⁶⁰, but not *Jus ad Bellum*, the ‘right’ to go to war. This chapter equally assesses the adequacy of IHL in restraining contemporary drone violence while addressing the dehumanisation of Third World and indigenous peoples that find themselves as targets of drone strikes.

One of the main arguments in this chapter is that there is a discrepancy between the declared canonical goals of IHL and the belligerent practice of powerful states. One of these discrepancies is the gap between the extensive use of lethal drones against civilian populations, compared with the objective of making war more humane and reducing the suffering of civilians and *hors de combat*. This is so because IHL was created to serve powerful countries (including settler colonial ones) who enjoy nearly absolute might over their designated targets, more often than not, innocent civilians.

This chapter does not merely analyse anecdotal infringements of IHL under treaty law and international tribunals (doctrinal research). It suggests that IHL itself does not sufficiently address settler colonialism and drone violence. More than that – IHL has agendas that divert

¹⁵⁸ Ibid 2.

¹⁵⁹ Ibid.

¹⁶⁰ David Rodin, ‘The Moral Inequality of Soldiers: Why Jus in Bello Asymmetry is Half Right’ in David Rodin and Henry Shue (eds), *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford University Press 2008) 44.

from its' canonical narrative, such as serving the interests of powerful states, mostly European, and North American countries, who were not only worried about messy revolutions, but were also engaged with imperial, colonial, and settler colonial conquest.

Chapter IV – Drone Theory

This chapter discusses philosophical and legal arguments concerning drones, while considering not only the imperial nature, but also the settler colonial nature of Israel and the US. Additionally, it outlines the development and use of drones and inquiries on how and why a small country like Israel became the world's leading manufacturer, seller, and 'tester' of lethal drones, alongside other advanced military weaponry.

The chapter explores a wide range of ways in which drone violence removes human agency from the act of oppressing and killing, and how this removal serves not only imperial interests but also settler colonial ones, including in Israel and the US.

For instance, by selecting targets through algorithms and deviations from behavioural patterns, drones 'eliminate' suspicious civilians as the decision-making process is semi-automated. The chapter also mentions the significance of the video game setting that is set up for drone operators, as well as the dangers of excessive punitive and pre-emptive strikes, in the wrong hands. As drone violence often relies on big data, statistics and algorithms that look for deviations from behavioural patterns, bystanders might be targeted because of innocent changes of behaviour and become anonymous victims of 'Big Brother'. These characteristics of drones fit well into the settler colonial state of mind.

This chapter equally investigates the development of drones in Israel, while critically analysing the militaristic development of Israel as a settler colonial polity. One of the main arguments

in this chapter is that both imperial and settler colonial countries are often militarised societies, and drones are a tool for achieving not only imperial aspirations, but also settler colonial goals. For instance, Israel had developed drones alongside other military technologies to apply them in urban areas and control indigenous populations, including Palestinians in Gaza, most of whom were indigenous refugees from present-day Israel since 1948.

Additionally, the chapter also conducts some comparative analyses of interviews. Testimonials of soldiers are culled from media reports to demonstrate the theoretical arguments, relying on reports by NGOs.

This chapter also examines the experience of drone operators while trying to discuss their reality from their perspective, including feelings, thoughts, narratives, ideals, ideologies, and moral dilemmas. Due to difficulties in having first-hand interviews with soldiers or ex-soldiers, this study relies on interviews conducted exclusively by journalists and NGOs. This approach is ethnographic, as I write about people who publicly shared their experiences as drone operators¹⁶¹.

Finally, this chapter equally engages with the previous chapter on IHL, as drones fundamentally destabilise existing categories of IHL. It concludes that the use of drones is not actually warfare, but something else altogether – a manhunt (as suggested by Grégoire Chamayou), unilateral death dealings, or simply a form of unjustified violence.

¹⁶¹ Martyn Hammersley, 'Ethnography' (*The Blackwell Encyclopaedia of Sociology*, 26 October 2015) <<https://onlinelibrary.wiley.com/doi/10.1002/9781405165518.wbeose070.pub2>> accessed 13 May 2021.

Chapter V – Discussion and Conclusion

The last chapter concludes that drones had become a significant weapon in protecting and expanding Israel's settler colonial project. They eliminate any possibility of retribution from the 'targets' and can be seen as facilitators of a modern 'manhunt'. Traditional forms of international law have failed to address these issues, including the United Nations Security Council (UNSC) and the canon of IHL.

Alternative approaches such as TWAIL have been interested in exhibiting the distributive effects of existing legal structures and categories, but often neglected the settler colonial context, which is crucial to understanding the development of drones as the ultimate weapon of choice among imperial and settler colonial regimes from the second half of the 20th century and onward.

Empirical and ethical studies become more vital as the global overuse of drones begins to resemble the scene from the *Sorcerer's Apprentice*. We may find hope for decolonising settler colonial situations and reducing drone violence in bottom-up civil society movements that are actively engaged in an attempt to save innocent victims drowning in these unending waves of invisible killing machines.

Drones allow both Israel and the US to have the ability to survey and control entire populations, and eliminate anyone, anywhere, while cynically arguing that they follow the guidelines of IHL by turning their weapons against enemy combatants, proportionally, with minimal 'collateral damage'. Moreover, without drones, it would have been more difficult for Israel to maintain misappropriated Palestinian land and expand the state settler colonial endeavour because Israel would have had to risk more soldiers on the ground in order to act

more 'surgically'. In other words, drones have maximised Israel's ability to control Palestinians' lives, vis-à-vis the state's ability to argue that drone technology is so accurate and precise that it is the epitome of humanitarianism.

This chapter concludes that if it were not for drones, Israel would have missed out on a technology that perfectly serves its propaganda ('hasbara') interests and its practical need to oppress Palestinian resistance to settler colonial practices.

Finally, the last chapter asserts that the principles of IHL can easily be manipulated to support and sustain drone violence, as drone technology allegedly fits into the theories of humanitarianism compared to seemingly less precise and more destructive weapons. Nevertheless, such weapons are rarely used because they bluntly violate IHL, as they inherently cause unnecessary suffering, superfluous injury, or extensive collateral damage due to the way in which they were designed.

CHAPTER II – SETTLER COLONIALISM & THIRD WORLD APPROACHES TO INTERNATIONAL LAW

2.1. Introduction

This chapter explores the benefits and disadvantages of applying Third World Approaches to International Law (TWAIL) as a theoretical basis for understanding the devastating effects of drone violence on Third World and indigenous peoples. While acknowledging the advantages of TWAIL, this chapter advocates for applying an alternative and yet complementary approach, which I refer to as a Settler Colonial Approach to International Law (SCAIL). This approach relies on the work of scholars like Patrick Wolfe, Lorenzo Veracini, and Ilan Pappé, who insist, if I understand them correctly, that settler colonialism can, and should, be regarded as an independent field of study that substantially differs from colonial, imperial, and post-colonial studies.

One of the main arguments in this chapter is that drones serve the goals of settler colonial regimes, in a way that can be differentiated from colonial or imperial goals. Drones, alongside being a weapon of imperial or post-colonial violence¹⁶², are also used by settler colonial regimes, to maintain and sustain structures of oppression and subordination against the third world and indigenous people. Drones occupy, control and ‘defend’ lands that were taken from their rightful owners. This dispossession process could be better understood not only under

¹⁶² Chamayou, *Drone Theory* (n 9) 95.

imperial or colonial paradigms but also through the settler colonial prism, as mentioned earlier.

The goal of this chapter is to introduce TWAIL alongside a new idea, SCAIL, while exploring the similarities and differences between settler colonialism and traditional forms of colonialism. One of the main differences between the two is that settlers see themselves as a separate entity from the empire from which they came. They often felt oppressed and discriminated against in their state of origin, so indigenous lands have been used not just as a home, but as a homeland for a new nation. Settlers eliminate and dispossess the natives through a combination of military might, technological superiority, and dehumanisation.

To achieve their goals, settlers try to eliminate the natives, a logic which differs from colonialists who often exploit indigenous surplus labour or 'elevate' the natives under the 'civilizing mission'¹⁶³. While there are often overlaps between colonialism and settler colonialism, this dissertation strives to understand the terrifying Orwellian reality of drone violence through the sharp lenses of settler colonial concepts, as not enough attention has been given to this type of analysis amongst the international legal community.

2.2. Third World Approached to International Law (TWAIL)

Hugo Grotius laid the theoretical foundations for a new world order of imperialism and enlightenment as Europeans extended their sovereignty to the third world¹⁶⁴. When the ships

¹⁶³ Harald Fischer-Tiné and Michael Mann (eds), *Colonialism as Civilizing Mission: Cultural Ideology in British India* (Anthem Press 2004).

¹⁶⁴ Makau Mutua, 'What is TWAIL' (2000) 94 Proceedings of the ASIL Annual Meeting 31.

of the Dutch East Indian Company captured a Portuguese vessel with treasures worth half of England's wealth near the coast of Singapore in 1603, the Dutch had to defend their acts of piracy. Grotius defended the vessel's seizure and grounded the lawfulness of war, and the court ruled in favour of the Company. In 1609 he published 'The Free Sea', establishing the sea as an international territory for corporations to use. This justified creating a new trade monopoly and influenced The Rights of War and Peace (1625) regarding who is entitled to a legal personality and what is defined as property¹⁶⁵.

By the mid-18th century, Europe and Christianity became the centre of international law and provided a legal basis for justifying the civilizing mission, capitalism, and imperialism¹⁶⁶. Additionally, the notion of sovereignty itself was used to justify, manage, and legitimise not only colonialism – but also settler colonialism¹⁶⁷. To this day, international law regulates sales of goods, access to markets, government procurement and subsidies in a way designed to protect first world corporations, as third world markets are being exploited. This includes non-tariff barriers against third world exports¹⁶⁸, while agreements that wish to stabilise third world commodity exports are discouraged¹⁶⁹.

A TWAIL approach allows us to look at contemporary and historical events and interpret them to critically address international law's development. For example, letters of early colonisers like Columbus shed light on how Westerners claimed sovereignty over indigenous land:

¹⁶⁵ Antony Anghie, 'Decolonisation, Reparations, Cosmopolitanism' (*Akademie der Künste*, 26 January 2018) <<https://www.youtube.com/watch?v=EAzMfU2aWwc>> accessed 16 May 2021.

¹⁶⁶ Ntina Tzouvala, *Capitalism As Civilisation: A History of International Law* (Cambridge University Press 2020).

¹⁶⁷ Mutua, 'What is TWAIL' (n 164).

¹⁶⁸ Bela Balassa, 'Trade Between Developed And Developing Countries': The Decade Ahead' (1984) 3 OECD Economic Studies 7, 9.

¹⁶⁹ Bhupinder Singh Chimni, 'Third World Approaches to International Law, a Manifesto' (2006) 8 International Community Law Review 3, 10.

‘There I found very many islands, filled with innumerable people, and I have taken possession of them all for their Highnesses, done by proclamation and with the royal standard unfurled, and no opposition was offered to me [...] To the first island which I found I gave the name "San Salvador"... ...and so each received from me a new name¹⁷⁰’.

Columbus states that there was no opposition to his sovereign claims, contrary to historical evidence¹⁷¹. TWAILers understand sovereignty as the disempowerment of the native population, excluding them of their rights. International law justified such dispossession while claiming to liberate the indigenous population. International law was used to justify the civilizing mission of modernity as if colonisation was also for the well-being of the natives¹⁷². It was also used by settler colonialists to eliminate them.

TWAIL goes back to opposition discourses of decolonisation movements after the Second World War (WWII) and anti-colonial struggles¹⁷³. It can be dated back to the Bandung Afro-Asian Solidarity Conference of 1955, the ‘Non-Aligned Movement’ at the Belgrade Conference of 1961¹⁷⁴, and the Harvard TWAIL academic conference in 1997. The ‘Third World’ can be identified by various perceived characteristics, including poverty, corruption, violence,

¹⁷⁰Genius, ‘Letter to King Ferdinand’ (*Genius*, 16 May 2021) <<https://genius.com/Christopher-columbus-letter-to-king-ferdinand-annotated>> accessed 16 May 2021.

¹⁷¹ Anne Bond and Joshua Inwood, ‘White Privilege: Geographies of White Supremacy and Settler colonialism’ (2016) 40(6) *Progress in Human Geography* 715, 716.

¹⁷² Anghie, ‘Decolonisation, Reparations, Cosmopolitanism’ (n 165).

¹⁷³ Mutua, ‘What is TWAIL’ (n 164).

¹⁷⁴ Luis Eslava, Michael Fakhri, and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017); Larissa Ramina, ‘TWAIL – “Third World Approaches to International Law” and Human Rights’ (2018) 5(1) *Journal of Constitutional Research* 262.

‘backwardness’, and ‘lack of modernity’¹⁷⁵. Such definitions accommodate diverse yet common western associations with ‘third world people’. TWAILers challenge this understanding by thinking about the Third World as peoples who have experienced colonial violence, subjugation and exploitation.

TWAILers share a commitment to uncover, reform, and retrench features of international law that contribute to global injustice as part of a commitment to displace the West as the centre of international law in favour of the ‘other’ and the ‘rest’¹⁷⁶. TWAIL trains our lenses on the third world¹⁷⁷ and responds to colonial and post-colonial hegemonies of international law¹⁷⁸. They explore discrimination, bias, and asymmetries within and between ‘first’ and ‘third’ worlds.

International law might be seen by TWAILers, like Makau Mutua, as illegitimate¹⁷⁹ and predatory, as it sustains, legitimises, and reproduces subordination and plunder. The stability, universality and promise to the global order of international law do not make it equitable or just. It was an imperial expansion that needed subordination from non-Europeans and benefited from the universalisation of international law towards the conquest of ‘new words’.

¹⁷⁵ Balakrishnan Rajagopal, ‘Locating the Third World in Cultural Geography’ (1998) 15(2) Third World Legal Studies 1; Madhav Khosla, ‘The TWAIL Discourse: The Emergence of a New Phase’ (2007) 9 International Community Law Review 291.

¹⁷⁶ James Thuo Gathii, Henry J Richardson, and Karen Knop, ‘Introduction to Symposium on Theorizing TWAIL Activism’ (*Cambridge*, 2016) <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/4C487B7C75BDB8D0CF2C66021776F1E9/S2398772300002324a.pdf/introduction_to_symposium_on_theorizing_twail_activism.pdf> accessed 16 May 2021.

¹⁷⁷ Obiora Chinedu Okafor, ‘Newness, Imperialism, and International Legal Reform in Our Time: A Twail Perspective’ (2005) 43(1/2) Osgood Hall Law Journal 171, 191.

¹⁷⁸ Srinivas Burra, ‘TWAIL’s Others: A Caste Critique of TWAILers and their Field of Analysis’ (2016) 33(3) Windsor Yearbook of Access to Justice 111.

¹⁷⁹ Mutua, ‘What is TWAIL’ (n 164).

Additionally, TWAIL is proactive and reactive, seeking transformation while responding to international law as an imperial or colonial project¹⁸⁰.

Arguably, an important goal of TWAIL is to deconstruct international law as a medium for perpetuating a hierarchy of institutions and norms. A second goal is to seek the construction of alternative normative legal structures, and a third goal is to use scholarship, policy, and politics to eradicate underdevelopment conditions in the third world¹⁸¹.

Colonialism and neo-colonialism made Third World people vulnerable to power distributions argue Antony Anghie and Bhupinder S Chimni¹⁸². Governments that control Third World people might act against the interests of their subjects¹⁸³. This includes the Israeli Government, which generally acts against the interests of Palestinians, including Palestinian citizens of Israel. The Palestinian Authority, which represents at least some Palestinians, has limited powers and is often perceived by many Palestinians and international activists as a collaborator with Israeli oppression¹⁸⁴.

The experience of Third World peoples, in Palestine and elsewhere, should transform international law from being oppressive to facilitating justice, after decades of excluding non-Europeans from having sovereignty. Then, treaties ruled that sovereignty by conquest is legitimate when it comes to non-Europeans. TWAIL now aspires to create international law

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Antony Anghie and Bhupinder S Chimni, 'TWAIL and Individual Responsibility in Internal Conflicts' (2003) 2 Chinese Journal of International Law 77.

¹⁸³ Ibid.

¹⁸⁴ Alaa Tartir, 'The Palestinian Authority security forces: whose security?' (*Al Shabaka*, 16 May 2017) < <https://al-shabaka.org/briefs/palestinian-authority-security-forces-whose-security/> > accessed 15 May 2021.

that reflects the interests of people, not states, by creating an open, democratic, participatory, and inclusive system for individual accountability for atrocities¹⁸⁵.

Today, oppressive processes within the international community are more sophisticated and less noticeable than the endeavours of the 18th-19th centuries¹⁸⁶. This inspired some TWAILers to expand TWAIL to an even broader approach¹⁸⁷. Third world suffering has been displaced from international consciousness, says Obiora Chinedu Okafor, which sustains oppressive mechanisms like the drone-based 'war on terror'. This allows placing the experience of a single country in the foreground – The US – in the context of drone violence¹⁸⁸. At the same time, international law structures and hierarchies incentivise 'liberal democracies' to collaborate with these types of violence. One example of such a structure is the veto power of five permanent members in the UNSC, as will be elaborated on later¹⁸⁹.

Much like Okafor, Luis Eslava and Sundhya Pahuja indicate that TWAIL responds to politics, economy, and geopolitics that formed during colonial encounters. Binaries were created, such as Barbarians–Civilised, Infidels–Believers, Blacks–Whites, Primitive–Advanced, Backwards–Forward. These were legitimised through the spread of international law and the expansion of European rule¹⁹⁰. For example, the settler colonisation of Palestine relied on

¹⁸⁵ Ibid.

¹⁸⁶ Okafor, 'Newness, Imperialism, and International Legal Reform' (n 177) 171.

¹⁸⁷ Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10(4) International Community Law Review 371.

¹⁸⁸ Okafor, 'Newness, Imperialism, and International Legal Reform' (n 177).

¹⁸⁹ Graham Usher, 'Letter From the UN: After the US Veto on Settlements' (2011) 40(3) Journal of Palestine Studies 74; Saliba Sarsar, 'The Question of Palestine and United States Behavior at the United Nations' (2004) 17(3) International Journal of Politics, Culture, and Society 457; Michal Hatuel-Radoshitzky, 'Criticism of the UN Security Council Veto Mechanism: Ramifications for Israel' (2015) 765 INSS Insight <<https://www.inss.org.il/publication/criticism-of-the-un-security-council-veto-mechanism-ramifications-for-israel/>> accessed 16 May 2021.

¹⁹⁰ Luis Eslava and Sundhya Pahuja, 'Beyond the (post) Colonial: TWAIL and the Everyday Life of International Law' (2012) 45(2) Journal of Law and Politics in Africa, Asia and Latin America 195.

such binaries to prioritise one group over the other and justify taking over indigenous land. Settlers may treat the natives as barbarians¹⁹¹, infidels¹⁹², blacks¹⁹³, primitives¹⁹⁴, and backwards¹⁹⁵, an attitude that makes it easier for soldiers to oppress and kill indigenous people with drones and other means.

Such binaries benefit settler colonial countries through dualities like Developing–Developed, Periphery–Centre, Emerging–Advanced, and Poor–Rich. These binaries were constituted by the ‘conceptual apparatus’ of international law within a larger Eurocentric ethos of progress, modernity, humanity, and civilisation. This maintains the spirit of present-day international law, by making distinctions between public–economic, secular–religious, private–public. Nonetheless, concepts like self-determination, sovereignty, statehood, and nation-state are rooted in European experiences, stories, myths, and metaphors¹⁹⁶.

These European-led conceptualisations work against Third World and indigenous peoples. More particularly, they help countries like Israel be accepted within the international community as ‘developed’, ‘advanced’, and ‘rich’. Israel is generally perceived as a legitimate nation-state that offers self-determination for its citizens. Moreover, such Euro-centric

¹⁹¹ June Edmunds, ‘The ‘New’ Barbarians: Governmentality, Securitization and Islam in Western Europe’ (2012) 6(1) Contemporary Islam 67.

¹⁹² Shourideh C Molavi, *Stateless Citizenship: the Palestinian-Arab Citizens of Israel* (Brill, 2013).

¹⁹³ Justin Leroy, ‘Black History in Occupied Territory: On the Entanglements of Slavery and Settler colonialism’ (2016) 19(4) Theory & Event.

¹⁹⁴ Haim Gerber, ‘Zionism, Orientalism, and the Palestinians’ (2003) 33(1) Journal of Palestine Studies 23.

¹⁹⁵ Adnan Hashtan, ‘The Case of Mohammed Abu Khdeir: Homonationalism, Liberalism, and Imperial Knowledge-Production’ (*Pacific Undergraduate Research & Creative Conference*, April-May 2015) <<https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1156&context=purcc>> accessed 16 May 2021.

¹⁹⁶ Eslava and Pahuja, ‘Beyond the (post) Colonial’ (n 190).

concepts of international law ease the acceptance of settler colonial myths, such as the long-lasting existence of a Jewish nation in Palestine¹⁹⁷, and the Zionist claim over Palestinian land.

Therefore, scholars like Balakrishnan Rajagopal advocate counter-hegemonic approaches, which assert that human rights discourse should be rethought from a Third World perspective¹⁹⁸. By fetishizing institutions like UNSC¹⁹⁹, international law takes part in vetoing resolutions in favour of Third World and indigenous people. Sunera Thobani Similarly mentions that indigenous people are oppressed by international law. Looking at the occupation of Afghanistan, Thobani points out the racialisation of national security, focusing on 'terrorism' by Muslim 'others'. Anti-terrorism has been justified through western-civilisation-superiority, portraying Muslims as fanatics and murderous²⁰⁰. Institutions in Israel have used a similar discriminatory logic²⁰¹.

Nevertheless, stereotypes reaffirm western xenophobia and exclusionary populism²⁰². Muslims have been portrayed as 'barbaric' and 'misogynistic'. Non-western immigrants are often depicted as 'uncivilised', 'hyper-gendered patriarchs' and 'misogynists' – shifting

¹⁹⁷ Shlomo Sand, *The Invention of the Jewish People* (Verso 2020).

¹⁹⁸ Balakrishnan Rajagopal, 'Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy' (2006) 27(5) Third World Quarterly 767.

¹⁹⁹ Ibid.

²⁰⁰ Sunera Thobani, 'Reading TWAIL in the Canadian Context: Race, Gender and the National Formation' (2008) 10 International Community Law Review 421.

²⁰¹ Suheir Hammad, *Born Palestinian, Born Black* (UpSet Press 2010).

²⁰² Betz Hans-Georg, 'Xenophobia, Identity Politics and Exclusionary Populism in Western Europe' 39 Socialist Register (2003).

attention from secular forms of patriarchy²⁰³. In Israel, dominant cultural discourse often portrays Palestinians as a patriarchal society²⁰⁴, while ignoring Israeli forms of patriarchy²⁰⁵.

Achievements of secular-liberal feminism are often emphasised to contrast with the natives. One example is Alice Miller, an Israeli soldier who fought for her right to be a military pilot²⁰⁶, and now (some) female soldiers can fly F-16s as men do. Another example is 'Spot-and-Strike', a system exclusively operated by female-Israeli soldiers, who might feel superior over Palestinians when using 'advanced' 'modern' and 'western' technology to oppress them²⁰⁷. Palestinians remain 'traditional', and 'backwards', a process that resembles 'Pink-Washing' and 'Homo-nationalism' when it comes to LGBTQIA+ rights within the military²⁰⁸. The IDF even takes pride in providing some combatants with vegan boots and plant-based dinners²⁰⁹.

Third World countries might find themselves subordinate to First World countries through formal decolonisation processes²¹⁰, supposedly incorporated into 'the family of nations', after acquiring sovereignty. Such processes were conducted under First World terms and neo-

²⁰³ Thobani (n 200).

²⁰⁴ Hanna Herzog and Taghreed Yahia-Younis. 'Men's Bargaining With Patriarchy: The Case of Primaries Within Hamulas in Palestinian Arab Communities in Israel' (2007) 21.4 Gender & Society 579.

²⁰⁵ Leeat Granek and Ora Nakash, 'The Impact of Militarism, Patriarchy, and Culture on Israeli Women's Reproductive Health and Well-being' (2017) 24.6 International Journal of Behavioral Medicine 893.

²⁰⁶ Orna Sasson-Levy, 'Research on Gender and the Military in Israel: From a Gendered Organization to Inequality Regimes' (2011) 26(2) Israel Studies Review 73; Hanna Herzog, 'Homefront and Battlefield: The Status of Jewish and Palestinian Women in Israel' (1998) 3(1) Israel Studies 61.

²⁰⁷ Alexei Abrahams and others, 'Mostly Deterred: An Episodic Analysis of the Israel-Gaza Conflict' (SSRN, 7 October 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3465438> accessed 16 May 2021.

²⁰⁸ Moran M Mandelbaum, "'I'm a Proud Israeli": Homonationalism, Belonging and The Insecurity of the Jewish-Israeli Body National' (2018) 23(2) Psychoanalysis, Culture & Society 160.

²⁰⁹ Esther Alloun, 'Veganwashing Israel's Dirty Laundry? Animal Politics and Nationalism in Palestine-Israel' (2020) 41(1) Journal of Intercultural Studies 24.

²¹⁰ Luis Eslava and Sundhya Pahuja, 'The State and International Law: A Reading from the Global South' (2020) 11.1 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 118.

colonial aspirations²¹¹. The perceived liberation of countries like India and Algeria can be regarded as oppressive under international law. The Bandung Conference was a turning point in identifying these more subtle forms of oppression²¹², as political, legal, and economic structures of racial difference are an inextricable part of international law and the genealogy of nation-states²¹³.

According to Antony Anghie and Siba N'Zatioula Grovogui, this neo-colonial analysis shows how decolonisation led to the deployment of sovereignty for the benefit of the First World, reproducing political and economic domination through international law institutions²¹⁴. For instance, the mandate system applied over Palestine was a precursor to formal decolonisation as it designed deformations that ensured that post-colonial subordination remains²¹⁵. However, in many places, including Palestine and the US, the colonial powers were replaced by settler colonial polities instead of decolonisation, polities with a logic that fundamentally differs from traditional colonialism.

TWAILers focus on imperial and colonial powers²¹⁶, but not on settler colonial ones. TWAILers see the colonial experience as essential to the formation of international law doctrines and

²¹¹ Tendayi Achiume and Devon W Carbado, 'Critical Race Theory Meets TWAIL' (2021) UCLA Law Review, UCLA School of Law, Public Law Research Paper 21-05 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3773735> accessed 16 May 2021.

²¹² Antony Anghie, 'Bandung and the Origins of Third World Sovereignty' in Eslava, Fakhri and Nesiah (n 174); Achiume and Carbado (n 211).

²¹³ Luis Eslava, Michael Fakhri, and Vasuki Nesiah, 'The Spirit of Bandung' in Eslava, Fakhri and Nesiah (n 174); Achiume, and Carbado (n 211).

²¹⁴ Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007); Achiume, and Carbado (n 211).

²¹⁵ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27(5) Third World Quarterly 739; Achiume, and Carbado (n 211).

²¹⁶ Thomas Forster, 'International Humanitarian Law's Old Questions and New Perspectives: On What Law Has Got To Do With Armed Conflict' (2016) 98(3) International Review of the Red Cross 995, 1009; James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography' (2011) 3(1) Trade, Law and Development 30; Anghie, *Imperialism, Sovereignty and the Making of International Law* (n 214).

concepts. But settler colonialism might have also shaped sovereignty. When colonisers reproduced inherent inequalities between the Third and the First worlds, settler colonisers focus on eliminating the natives out of existence. The broader argument of TWAILers is that sovereignty is used as a flexible instrument to expand the civilizing mission. Angie suggests that human rights, governance, and economic liberalisation may counter the civilizing mission and the jurisprudence of the 19th century that is still a part of international law²¹⁷.

International law was essential to imperial expansion and the subordination of non-Europeans to conquest and domination²¹⁸. Nevertheless, international law was equally essential to settler colonisation of the Americas, Australia, New Zealand, SA, and Palestine. TWAILers do not give enough attention to exploring how international law served the logic of elimination of indigenous people – in favour of foreign settlers who paradoxically saw themselves as natives and sometimes even anti-colonial, with no intention to return to their state of origin (as evident in the American Revolution and the Zionist terrorism against the British before 1947).

The conquest of European countries was made for political, economic, military, and cultural reasons²¹⁹. By the end of the 19th century, international law was universalised through conquests, subjugation, and assimilation of non-Europeans into a global governance regime that stemmed from European history, culture, and politics. The exploitation of the labour force and the natural resources of the third world certainly encouraged colonial expansion²²⁰. However, settler colonial polities had proven to be more resilient to traditional forms of

²¹⁷ Antony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law' (1999) 40(1) Harvard International Law Journal 1, 8.

²¹⁸ Mutua, 'What is TWAIL' (n 164).

²¹⁹ Anghie, 'Finding the Peripheries' (n 217) 2-3.

²²⁰ Mutua, 'What is TWAIL' (n 164) 34.

decolonisation, as non-Europeans were eliminated rather than subjugated or assimilated into a foreign legal system.

The concept of sovereignty was therefore shaped and instituted not only through colonialism and the civilizing mission²²¹, but also through settler colonial encounters. Jurists developed new norms and doctrines to define, identify, and categorise the ‘uncivilised’ – for colonial and settler colonial endeavours. ‘Conquest’ and ‘cession by treaty’ were defined to allow European colonisers and settler colonialists to take over new territories²²². International law denied the sovereignty of non-Europeans²²³. Settler colonialists, dreaming of ‘virgin lands of wilderness’, took the initiative and eliminated the natives. This was done with no legal consequences, as the natives were already perceived as barbaric and uncivilised savages who have no sovereignty rights.

Islamophobia has been equally scrutinised under TWAIL as well²²⁴. The taxonomy of being Muslim has been traced back to times when colonialists transferred entire populations across the globe²²⁵. The First World sought to construct identities that would separate and manage massive populations while fabricating narratives about indigenous peoples²²⁶. Edward Said explained how orientalism is a ‘Western-style for dominating, restructuring, and having

²²¹ Ibid 6.

²²² Anghie, ‘Finding the Peripheries’ (n 217) 4.

²²³ Ibid 5.

²²⁴ Cyra Akila Choudhury and Khaled A Beydoun (eds), *Islamophobia and the Law* (Cambridge University Press 2020); Cyra Akila Choudhury, ‘Reflections on the Christchurch Massacre: Incorporating a Critique of Islamophobia and TWAIL’ (2019) Florida International University Legal Studies Research Paper 19-16 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3447911> accessed 16 May 2021.

²²⁵ Choudhury, ‘Reflections on the Christchurch Massacre’ (n 224); Lisa Lowe, *The Intimacies of Four Continents* (Duke 2015); Ann Laura Stoler, *Duress: Imperial Durabilities in Our Times* (Duke 2016);

²²⁶ Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton 2002); Ayesha Jalal, *Self and Sovereignty: Individual and Community in South Asian Islam Since 1859* (Routledge, 2001).

authority over the Orient'²²⁷, so the current bigotry against Islam can be seen as rooted in both Orientalism and in the origins of international law.

Following Said's approach, TWAIL deconstructs the usages of international law to create and perpetuate racist and oppressive hierarchies of norms and institutions. It develops a different normative structure for international governance and tries to abolish under-development conditions in the Third World²²⁸.

TWAIL also offers an alternative way to educate law students that challenge the dominant perception²²⁹. As put by Chimni:

'....The language of the law has always played [...] a significant role in legitimizing dominant ideas for its discourse tends to be associated with rationality, neutrality, objectivity and justice. International law [...] represents a culture that constitutes the matrix in which global problems are approached, analysed and resolved [...] Academic institutions of the North, with their prestige and power, play a key role in it.'²³⁰

International law, like any legal system, is used for domination and obedience due to the legitimacy that the law enjoys. Law students globally engage with laws that serve the interests of dominant groups. Law schools are political, as they focus on limited tasks at hand while

²²⁷ Edward Said, *Orientalism* (Routledge 1978); Edward Said, *Covering Islam: How the Media and Experts Determine How We See the Rest of the World* (Vintage 2015); Choudhury, 'Reflections on the Christchurch Massacre' (n 224).

²²⁸ Mutua, 'What is TWAIL' (n 164).

²²⁹ University of Massachusetts Amherst, 'The Power of Legitimacy in Obedience to the Law: Introduction to Legal Studies' (*UMass Amherst*, 6 March 2007) <<https://www.umass.edu/legal/Hilbink/250/S07%20model2.pdf>> accessed 16 May 2021.

²³⁰ Chimni, 'Third World Approaches to International Law, a Manifesto' (n 169) 15.

neglecting the bigger picture. Law schools ideologically train within hierarchies of capitalism and corporate states. Law firms, bar associations, and society are ultimately organised in patterns of hierarchy and domination. Students generally believe that what they are told is true, so they fulfil the system's prospects²³¹. Prevailing perceptions of the law are usually accepted and embraced. Some students become part of the elite and often accept the prepositions underlying their education while falsely perceiving law as rational, neutral, objective and just.

Equally important, some TWAIL scholars claim that now we can find the third world everywhere. Problems of inequality, social dislocation and nationalism are universal²³², but a 'transnational-ruling-elite' created a governance system that works against such universal interests²³³. This is the modern continuation of the Treaty of Westphalia (1648)²³⁴ that began the creation of modern sovereign states, embodying a horizontal order where all European states are formally equal²³⁵.

The supremacy of the UNSC over the United Nations General Assembly (UNGA) ridicules the idea of 'sovereign equality'. International law still does not have a strong sovereign to legislate and enforce its norms. The UN and other mechanisms try to solve the problem by creating governance, but it is still not a centralised authority²³⁶. Instead, vertical systems of authority

²³¹ Duncan Kennedy, 'Legal Education And The Reproduction of Hierarchy' (1982) 32(4) Journal of Legal Education 591.

²³² Anghie, 'Decolonisation, Reparations, Cosmopolitanism' (n 165).

²³³ Chimni, 'Third World Approaches to International Law, a Manifesto' (n 169) 15.

²³⁴ Gerald Horne, *The Apocalypse of Settler colonialism: the Roots of Slavery, White Supremacy, and Capitalism in Seventeenth-Century North America and the Caribbean* (Monthly Review Press 2018) 14.

²³⁵ Antony Anghie, 'Ben Beinart Memorial Lecture' (*University of Cape Town South Africa*, 30 November 2017) <<https://www.youtube.com/watch?v=riLgiqJetTc>> accessed 16 May 2021.

²³⁶ Ibid.

sustain the hegemonic nature of international law. Even the power of the UNSC is limited: Five countries, who are permanent members, can easily stop any possible resolution that might find a country accountable for human rights abuses or help defend Third World people. Even small states, like Israel, can easily violate UNSC resolutions. One example is Resolution 242²³⁷ on withdrawing Israeli armed forces from the occupied territories²³⁸. States like Russia, US and Israel do not even bother consulting with the UN in advance of their military operations²³⁹.

Many colonialists took a moral high ground, seeing themselves as humanitarians. This perception resonates today when third world people are portrayed as incapable of self-governance. This perception legitimises interventions and generates conflict in the name of human rights²⁴⁰. Trade, slavery, and the beginning of capitalism drove and developed international law into its current form. Countries signed trade agreements on behalf of corporations. Expeditions to 'discover' the 'new world' were like 'start-ups' with private investors. Some succeeded, like the conquistadors, who became greedy and cruel rulers across Latin America²⁴¹. International law was created and shaped to serve the interests of these private colonial endeavours, as well as institutionalised imperialism, colonialists – and settler colonisers.

The history of colonisation and imperial expansion under the umbrella of international law led to present-day inequalities between Third World people and the West. Contemporary

²³⁷ Jamil Dakwar, 'People Without Borders for Borders without People: Land, Demography, and Peacemaking Under Security Council Resolution 242' (2007) 37(1) Journal of Palestine Studies 62.

²³⁸ UNSC Res 242 (22 November 1967) UN Doc S/RES/242.

²³⁹ Mutua, 'What is TWAIL' (n 164) 37.

²⁴⁰ Chimni, 'Third World Approaches to International Law, a Manifesto' (n 169) 14.

²⁴¹ Israeli Channel One 'Capitalism TV series, chapter 1, at 27:30' (Israeli Channel One, 11 April 2015) <<https://vimeo.com/124702355>> accessed 16 May 2021.

settler colonial formations are, in many ways, a result of the historical development of international law. To this day, international law barely recognises the disadvantages of states, groups, and individuals who were oppressed for centuries. Even if there is a principle of 'differential treatment', it seems to be at the margins. As a result, the Third World seems to have lost its ability to implement policies suited to its existential conditions²⁴².

The 'War or Terror' denounces certain people as being terrorists. Atrocities of some states against their own civilians are used as an excuse for western military intervention in the Third World. The declared goals of turning 'failed' states into democracies are very similar to the civilizing mission, as evident, for example, from drone violence in Afghanistan and Libya²⁴³.

According to Oxfam, as few as 42 people share the similar wealth to the world's 3.7 billion poorest²⁴⁴. TWAIL tries to address these inequalities by being counterhegemonic and anti-hierarchical. TWAILers recognise that despite the formal decolonisation processes that followed WWII, Third World countries are still economically, politically, and legally bonded to the West²⁴⁵. More importantly, TWAIL argues that whilst colonisation has formally ended – international law still has to be decolonised²⁴⁶. TWAILers do not have a single creed or dogma. Instead, they are joined together in a wide range of oppositions to an unjust legal and

²⁴² Chimni, 'Third World Approaches to International Law, a Manifesto' (n 169).

²⁴³ Anghie, 'Decolonisation, Reparations, Cosmopolitanism' (n 165).

²⁴⁴ Larry Elliott, 'Inequality Gap Widens as 42 People Hold Same Wealth as 3.7bn Poorest' (*The Guardian*, 11 January 2018) <<https://www.theguardian.com/inequality/2018/jan/22/inequality-gap-widens-as-42-people-hold-same-wealth-as-37bn-poorest>> accessed 16 May 2021.

²⁴⁵ Mutua, 'What is TWAIL' (n 164) 34.

²⁴⁶ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press 2011).

economic global reality²⁴⁷. They oppose the involvement of Western and Third World states in a world order that silences the voices of the marginalised and the powerless²⁴⁸.

2.3. The Three Generations of TWAIL and Constructive Criticism

Considering the above overview of TWAIL thought, this section explores the shortcomings of TWAIL and the benefits of applying SCAIL, especially in the Israeli-Palestinian context.

TWAIL literature had shown that international law was developed out of colonialism, but TWAIL does not engage enough with settler colonial experiences. There is something to be learned from exploring how settler colonialism had shaped international law – and vice-versa.

John Haskell, a senior lecturer at the University of Manchester Law School, said that TWAIL must be radicalised to challenge the inequality of global regulation and that it should stop operating by the same disciplinary logic that it tries to overcome. He argued that TWAIL functions within the discourse of European capitalism and therefore produces similar problems to what TWAILers try to challenge²⁴⁹. Indeed, TWAILers continue to invest, counterproductively, in the emancipatory promise of international law. In Haskell's view, the foregrounding of international law has a bloody character that is incapable of its emancipatory promise, so the ideals of international law are maintained as a standard of emancipation and justice even among TWAIL scholars. This can be regarded as *de facto*

²⁴⁷ Mutua, 'What is TWAIL' (n 164) 36.

²⁴⁸ Ibid 37.

²⁴⁹ John D Haskell, 'TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law' (2014) 27 Can. J. L. & Jurisprudence 383, 386; James Thon Gathii, 'IL and Eurocentricity' (1998) 9 European Journal of International Law 184.

pragmatism without the insight into how the structure and logic of international law ideals carry an impossibility to achieving their promise²⁵⁰.

TWAILers have recognised international law's colonial legacy and its emancipatory potential through international lawyers who work within institutions and courts, as well as the importance of grass-root-activism²⁵¹. Drawing attention to colonial legacy, some TWAIL scholars have adopted a post-colonial approach to formerly colonised territories²⁵². However, this approach has shortcomings, as it treats former colonial situations as formally resolved while neglecting the possibility of an unresolved settler colonial situation.

Settler colonialism offers a different theoretical framework and a paradigm shift from colonialism and postcolonialism, as it recognises the ongoing nature of settler colonialism, as well as the narratives and interests of settlers that fundamentally differ from the ones of colonial empires. The worldwide phenomenon of settler colonialism deserves, in my opinion, attention within TWAIL, to better understand the role of international law and international legal institutions²⁵³.

TWAIL can be criticised for continuing to invest in the emancipatory promise of international law. Comprehensive readjustment through political, social, and economic regimes might be more equitable in democratising international legal systems. This may begin with TWAIL's engagement in a collaborative spirit with subaltern Third World voices that are still excluded

²⁵⁰ John D Haskell, 'Political theology and International Law' (2018) 1.2 Brill Research Perspectives in International Legal Theory and Practice 1.

²⁵¹ Gathii, Richardson and Knop (n 176) 2.

²⁵² Ramina (n 174) 262.

²⁵³ Russell Smandych, 'Colonialism, Settler colonialism, and Law: Settler Revolutions and the Dispossession of Indigenous Peoples Through Law in the Long Nineteenth Century' (2013) 3.1 Settler colonial Studies.

by the imperial legacy of international law²⁵⁴. Some TWAILers are conservative and focus on implementation, deviations, and marginalisation of 'others', says Haskell. The drive to develop the law, human rights, self-determination or trade is part of the problem²⁵⁵.

The perception of 'truth' is within a cultural context of elite interest groups. Consequently, perhaps international law should move away from traditional doctrinal preoccupations with states and institutions and adopt a legal-ethnographic method that includes social movements and the everyday complexities of ordinary people²⁵⁶.

The same cultural turn does not mean that international law should reject universal aspirations. A balance can be found between universal and local claims around 'truths'. Quasi-transcendental normative commitments justify such approaches. The tension between the shared universal meaning of international law and the need to maintain awareness of the foundations of universalising claims creates another paradox²⁵⁷. For this reason, Haskell advocates for the recognition of new socio-political organizations like clans and tribes, incorporating alternative economic conceptions on distribution and use of communal property, and acknowledgement of innovative legal techniques that deal with unequal bargaining positions, which results in non-reciprocal terms of trade²⁵⁸.

TWAIL scholarship has also been criticised for excluding the concerns of marginalised groups and their experiences. For example, in South Asia, indigenous people were marginalised from

²⁵⁴ Haskell, 'TRAIL-ing TWAIL' (n 249).

²⁵⁵ Ibid 386.

²⁵⁶ Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law' (2011) 3(1) Trade, Law and Development 126.

²⁵⁷ Ibid.

²⁵⁸ John D Haskell, 'The Twail Paradox' (2014) 1 RGNUL Financial and Mercantile Law Review, Mississippi College School of Law Research Paper <<https://ssrn.com/abstract=2374768>Haskell> accessed 17 May 2021.

participating in knowledge production for centuries²⁵⁹. The lack of internal critique of international law scholarship within the Third World has something to do with this. Another explanation may be the mainstream liberal view of international law as 'neutral' and 'impartial'. Equally, the privileged background of international law scholars makes them immune to social phenomena like the caste system²⁶⁰. So, If TWAIL's agenda is the marginalisation of the Third World from international law scholarship and narratives, other issues that primarily concern the postcolonial Third World, such as caste discrimination or settler colonialism, are not yet to be aligned with this agenda²⁶¹.

Some of this criticism comes from within TWAIL, which led to a generation division. In 2003 Anghie and Chimni suggested a distinction between TWAIL generations that is based on the colonial legitimisation of oppression and subjugation of the Third World²⁶²:

1. TWAIL I combined scholars who thought about international law during the decolonisation processes. They believed that international law might transform the world in the interest of newly independent states, and they emphasised sovereign equality and non-intervention. The first generation focused on unjust economic structures and how to correct them, acknowledging that formal independence could not lead to genuine liberation²⁶³.

²⁵⁹ Burra (n 178).

²⁶⁰ Ibid 127-128.

²⁶¹ Ibid.

²⁶² Anghie and Chimni, 'TWAIL and Individual Responsibility' (n 182); George R B Galindo, 'Splitting TWAIL' (2016) 33 Windsor Yearbook of Access to Justice 37.

²⁶³ Ibid.

2. TWAIL II ascertains a critical outlook on the notion of post-colonial sovereignty, as a native view prevented addressing state violence at home²⁶⁴. TWAIL II weighs international law analysis on individuals, especially those suffering from deprivation. The second-generation ascribed importance to theoretical inquiry: The colonial encounter is regarded as the birth of international law, as it generally recognises universality as a fundamental concept of international law – achieved by colonialism.

While the first-generation used international law techniques with little criticism for emancipation, the second generation is more critical and less keen on accepting the so-called emancipatory potential of international law²⁶⁵. The second generation also emphasises the ‘civilizing mission’, which shaped the inter-relationships between the Third World and the West. It justified violent interventive measures and supported the prevalence of terms like good government, human rights, and development.

The second generation equally identified a discrepancy between Third World scholars and Western ones. The politics of production and reproduction of knowledge excludes the Third World, which makes it difficult for TWAILers (from all generations) to be a part of mainstream international law²⁶⁶. While TWAILers have mostly accepted this division²⁶⁷, some proposed a new generation that evolved after 9/11²⁶⁸.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Opeoluwa Adetoro Badaru, ‘Examining the Utility of TWAIL for International Human Rights Law’ (2008) 10 International Community Law Review 379; Vikrant Dayanand Shetty, ‘Why TWAIL Must not Fail: Origins and Applications of TWAIL’ (2012) 3 King’s Student Law Review 67; Balakrishnan Rajagopal, ‘International Law and its Discontents: Rethinking the Global South’ (2012) 106 Proceedings of the Annual Meeting of the American Society of International Law 176; Galindo (n 262).

²⁶⁸ Khosla (n 175); Galindo (n 262).

The third generation moved the focus back to states as a response to global security approaches of mainstream international law ('War on Terror')²⁶⁹.

But all generations do not give enough attention to settler colonialism. While scholars like Antony Anghie had dedicated space in their work to international law and the conquest of the Americas (a settler colonial context), their analysis could have benefited from looking deeper into the differences between settler colonialism and traditional forms of colonialism, a crucial distinction that has been elaborated by historians like Patrick Wolfe, Lorenzo Veracini, and Ilan Pappé²⁷⁰. Even though decolonisation failed in settler colonial societies, and despite settler colonialism scholarship that offers an alternative theoretical and practical framework that can be useful for the decolonisation of settler colonial situations. If TWAIL can be seen as a 'reaction against the colonial and imperial projects of international law'²⁷¹ then SCAIL should be a reaction against ongoing settler colonial projects of international law in the past, present, and future.

As there are arguments that there should be a collaboration between TWAIL and other critical legal studies²⁷², we can think similarly about SCAIL as an extension of TWAIL, with an agenda that will critically evaluate international law from a settler colonial point of view. While considering the shortcomings of TWAIL and the three generations, the following sub-sections delve into SCAIL as a proposed subset of TWAIL in the context of drone violence.

²⁶⁹ Ibid.

²⁷⁰ Veracini, 'The Imagined Geographies of Settler colonialism' (n 151); Pappé and Richter-Devroe (n 151); Lloyd and Wolfe (n 151).

²⁷¹ Sujith Xavier, 'Learning from Below: Theorising Global Governance through Ethnographies and Critical Reflections from the Global South' (2016) 33(3) Windsor Yearbook of Access to Justice 229.

²⁷² Burra (n 178) 127-128.

2.4. The Difference Between Colonialism and Settler Colonialism

Colonialism theories emphasise imperial expansion for mainly militaristic and economic goals. Colonialism involves the departure of the coloniser from his home country, often intending to return to the state of origin²⁷³. Rather than trying to merely control territory, resources, and labour, settler colonialists wish to eradicate or expel indigenous populations and take over their territory²⁷⁴. Settler colonialism focuses on the permanent occupation of land and the displacement of native populations from their homeland to create an ethnically distinct national community²⁷⁵. Veracini²⁷⁶, Wolf, Pappé, and others have pointed out the significant difference between colonialism and settler colonialism. The three main ones are:

- (1) Settler colonialists were not sent by an empire. They ‘dovetailed’ empires for their benefit and settled in the homeland of other peoples. They did so voluntarily because they were often not welcomed in the empires. They ran away due to collective or individual hardships, like religious persecution and poverty. Colonialists had a more organised relationship with their mother country. Most settler colonial projects have been successful in eliminating or displacing the native. On the other hand, SA Apartheid failed after facing internal resistance, eventually backed up by international boycotts, divestments and sanctions. Early Zionists were not sent by a single imperial power. They came from several countries and did not have a ‘mother country’ to rely

²⁷³ Bond and Inwood (n 171) 716.

²⁷⁴ Laura Pulido, ‘Geographies of Race and Ethnicity III: Settler colonialism and Non-native People of Color’ (2018) 42(2) *Progress in Human Geography* 309.

²⁷⁵ Bond and Inwood (n 171) 716.

²⁷⁶ Lorenzo Veracini, *The Settler colonial Present* (Palgrave Macmillan 2015) 13-31.

on. They initially got support from wealthy Jewish donors who wanted to help victims of antisemitism, mainly in Eastern Europe²⁷⁷.

(2) Colonialists were looking for raw materials and natural resources. Settler colonialists were looking for a home. What made their encounter with indigenous people so tragic was the fact that they were also looking for a national homeland, unwilling to integrate or assimilate with indigenous societies²⁷⁸. When settler colonialists realised that someone else was inhabiting their prospective empty homeland, a dramatic encounter resulted in inhumane actions like ethnic cleansing and transfer.

(3) Colonialists wanted to exploit the labour force of the native population. Settler colonialists wanted to remove and eliminate the natives as if they were another physical obstacle. Colonialists were interested in the surplus labour that would benefit the empire²⁷⁹. However, the settler colonialists had little interest in that labour and even emphasised the purity of settler-only labour as part of their national interests. For example, the Zionist national-socialist movement sanctified the idea of exclusively Hebrew-Jewish labour and 'the conquest of labour', with severe sanctions against settler communities that dared to employ Arabs²⁸⁰.

²⁷⁷ Haim Bresheeth-Zabner, *An Army Like No Other: How the Israel Defense Force Made a Nation* (Verso 2020) 23.

²⁷⁸ Nadim Rouhana, 'Homeland Nationalism and Guarding Dignity in a Settler Colonial Context: The Palestinian Citizens of Israel Reclaim their Homeland' (2015) 14(1) *borderlands* 1.

²⁷⁹ Ilan Pappé, 'Settler colonialism in Palestine' (2016) (*IndependenceLive*, 13 August 2006) <<https://www.youtube.com/watch?v=VB5y9mhv1BY>> accessed 17 May 2021.

²⁸⁰ Zachary Lockman, 'Land, labor and the Logic of Zionism: A critical Engagement with Gershon Shafir' (2012) 2(1) *Settler Colonial Studies* 9; Walaa AlGhussein, 'Mandated to Report: The Role of the Nationalist Press in Reporting Zionist Land Expropriation and Labor Conquest in Palestine During the 1930s' (MA thesis, City University of New York 2020).

Settler colonialism has a permanent and ongoing nature, as settlers are actively maintaining their self-proclaimed rights to conquer indigenous land in the present²⁸¹. It is described not as a particular moment in history, but as a structure that requires long-term maintenance, directed to eliminating indigenous people²⁸². Inhumane practices have been justified by impeccable legal arguments, fuelled by myths, prejudices and stereotypes. Possible surplus value from mixing native labour with colonisation was never the primary goal of settler colonial processes²⁸³.

Settler colonialism is a 'winner-takes-all project', with a dominant feature of replacement, not exploitation, though the two are not mutually exclusive. Dehumanisation allows the transformation of indigenous people into foreign occupiers, often turning them into refugees within their land, the opposite of Aboriginal²⁸⁴. The settlers, who are the exogenous group, seek to establish permanent residency while claiming exclusive sovereignty. Natives are replaced with invasive settlers with a distinguished identity, who carry their sovereignty. They create privileges based on binary settler-native distinction, in legal, social, and cultural structures²⁸⁵. This is true not only for Israel/Palestine, but also for the US, Canada, Australia, New Zealand, SA, Argentina, and Brazil²⁸⁶.

As would be elaborated later, Zionism is arguably a hyper-militarised settler colonial ideology that has been striving to create a homogenous Jewish state in Palestine. Palestinians,

²⁸¹ Circe Sturm, 'Reflections on the Anthropology of Sovereignty and Settler colonialism: Lessons from Native North America' (2017) 32.3 Cultural Anthropology 340, 342.

²⁸² Bond and Inwood (n 171) 716.

²⁸³ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave Macmillan 2010) 8.

²⁸⁴ Ibid 35.

²⁸⁵ Ibid; Caroline Elkins and Susan Pedersen (eds), *Settler colonialism in the Twentieth Century: Projects, Practices, Legacies* (Routledge 2005) 41.

²⁸⁶ Bond and Inwood (n 171) 716.

including Palestinian citizens of Israel, have not been accepted as equal citizens by the state.

The Zionist movement was mostly dominated by various forms of secularity, in its formative years. This includes myths that depict Palestine as empty: 'a land without a people for a people without land' or 'summer droughts, the desolation of generations, eternal swamps'²⁸⁷.

The quotes above have been a part of Israel's settler colonial mentality to this day. The Israeli government argues that Jews were persecuted abroad, hunted by antisemitism and that they are all migrants and refugees who suffered elsewhere and are now entitled to a claim over their historical land. They use labour and hardship to strengthen the feeling of entitlement, as if the settlers have wrestled the land to provide for their families. The ethnic cleansing also allows settlers from both sides of the 'Green Line' to feel as if the territories are new and empty, pretending that indigenous people have vanished, left voluntarily or never been there in the first place²⁸⁸. This dissertation later elaborates on how drone violence is a contemporary example of what a hyper-militarised-settler colonial society can achieve through means of oppression. One of these myths is that drones protect the Jewish State from terrorism, as depicted by Israeli politicians and mainstream media²⁸⁹.

It is worth paying attention to the 'white' settler colonial epistemology grounded in racialised western norms and knowledge systems of liberal individualism that legitimate privatisation²⁹⁰. Western modernity has been organised by the same logic, legitimising

²⁸⁷ Norman Finkelstein, *Image and Reality of the Israeli-Palestinian Conflict* (Verso 1995) 96.

²⁸⁸ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283).

²⁸⁹ Dan Arkin, 'Pentagon Chooses Israeli Drone for Special Forces' (*IsraelDefense*, 11 May 2021) <<https://www.israeldefense.co.il/en/node/49830>> accessed 17 May 2021; Dan Arkin, 'The Future Belongs to the Unmanned: the Solid Drone Helps to Clear the Target and the Environment of the Uninvolved' (*IsraelDefense*, 21 March 2021) <<https://www.israeldefense.co.il/node/48968>> accessed 17 May 2021.

²⁹⁰ Bond and Inwood (n 171) 721.

European colonisation and settler projects²⁹¹. Both colonialism and settler colonialism are reinforced by racism and perpetuates 'white racial domination', but the main goal of settler colonialists is different. Due to the racial structures and violent practices, there is a hegemony of whiteness in both colonial and settler colonial societies. The term 'white supremacy' can draw attention to the dehumanisation and brutality of exploitation and domination based on race specifically within settler colonial situations, institutions, practices, and processes²⁹².

For instance, there might be a 'blind spot' concerning the white racial supremacy produced through settler colonisation. Professors of geography Anne Bond and Joshua Inwood argue that previous analysis of race within imperial and colonial endeavours did not distinguish colonialism from settler colonialism, two theoretically and spatially distinct practices. Research on indigeneity, colonialism and neo-colonialism relied on Chakravorty Spivak, Edward Said, Homi Bhabha, and other scholars who theorise the colonial and post-colonial conditions after the colonial powers have left the territories that they previously occupied (decolonisation), with lack of attention to the unique situation of indigenous people who continue to live under an ongoing settler colonial project. Bond and Inwood argue that issues of territory, dispossession and race are different in settler colonial formations due to the ongoing nature of the project²⁹³.

More importantly, according to Bond and Inwood, whiteness is constituted through land, property, bodies, and labour, which animates structural inequalities long after the seizure of indigenous territory²⁹⁴. The US is an example of a settler colonial country in which whiteness

²⁹¹Ibid., 720.

²⁹²Ibid., 716.

²⁹³Ibid., 718.

²⁹⁴ Ibid 722.

still plays a role in inequality long after seizing most of the indigenous territory. Similarly, Israelis typically see Palestinians as 'black', while Jewish-Israelis are mostly considered white, regardless of skin complexion. Other 'black' groups besides the Palestinians have been systematically discriminated against and oppressed within Israel in different forms and degrees, including Ethiopian Jews, refugees and asylum seekers from Africa, and 'Sephardi' or 'Mizrahi' Jews (Jews who immigrated to Israel from North Africa, and their decedents)²⁹⁵.

Bond and Inwood also demonstrate this argument by showing how in the 1800s, indigenous inhabitants of present-day Kentucky were forcibly transferred to reservations in Oklahoma for the benefit of slave-based agriculture, ensuring white political, economic, and social domination, a consolidation that continues today²⁹⁶.

Likewise, the exploitation of Palestinian labour in the West Bank might be a by-product of Israel's settler colonial policy rather than a traditional colonial form of exploitation. Paradoxically, the Palestinians are even mobilised to build Jewish settlements in the West Bank and the separation wall that wreaks havoc on their lives²⁹⁷. Other Palestinians are employed in Israel-proper and are often paid less than their Israeli counterparts. They are not eligible for compensation when they fall to their deaths on high-rise construction sites.

For most Palestinians, getting a work permit in Israel is a 'Via Dolorosa'. One is subject to endless security checks, and those authorised to work in Israel-proper are often obliged to

²⁹⁵ Uri Dorchin, 'The History, Politics and Social Construction of "Blackness" in Israel' (2020) 20(2) Currents UCLA Y&S Nazarian Center for Israel Studies
<<https://www.international.ucla.edu/israel/currents/article/224386>> accessed 17 May 2021.

²⁹⁶ Bond and Inwood (n 171) 719.

²⁹⁷ Leila Farsakh, 'Palestinian Economic Development: Paradigm Shifts Since the First Intifada' (2016) 45(2) Journal of Palestine Studies 55; Shir Hever, 'Exploitation of Palestinian Labour in Contemporary Zionist Colonialism' (2012) 2(1) Settler Colonial Studies 124.

cooperate with the 'Shin Bet', Israel General Security Services, by providing incriminatory information about their countrymen²⁹⁸. It should be noted that strict criteria, including age, family status, and background, make getting a permit practically impossible for most Palestinians²⁹⁹.

Similar forms of exploitation were in place in SA during the Apartheid. Nevertheless, again, the purpose was not only to ensure cheap and controlled labour but also to perpetuate the principles of segregation and elimination³⁰⁰. Unpaid or underpaid labour of Indigenous people in Australia was also a part of the legal and administrative settler colonial state of mind³⁰¹. However, exploitation was secondary to the primary goal of eliminating the Aborigines.

2.5. A Settler Colonial Approach to International Law (SCAIL)

Imperial, colonial, and post-colonial approaches to international law have all been under scrutiny among legal scholars. However, as mentioned earlier, not enough attention has been given to settler colonialism. Current discourse among leading theorists of international law lacks a debate about how international law serves settler colonial goals and practices. While some theorists, including TWAILers, address colonialism, settler colonialism has not been sufficiently explored, despite the vast literature among non-legal scholars from social science and humanities on the topic.

²⁹⁸ Berda, *Living Emergency* (n 148).

²⁹⁹ Ibid.

³⁰⁰ Harold Wolpe, 'Capitalism and Cheap Labour-Power in South Africa: from Segregation to Apartheid' (1972) 1(4) *Economy and society* 425.

³⁰¹ Thalia Anthony, 'Indigenous Stolen Wages: Historical Exploitation and Contemporary Injustice' (2014) 118 *Precedent* 42.

Colonialism studies of the seventies often focused on colonial relationships within a particular polity³⁰². Postcolonialism of the eighties often emphasised the legacy of colonial regimes and how they inform representational strategies and relationships after the formal colonial subjection had ended. Today imperial and colonial formations often concentrate on the colonial rule of difference, as if colonialism is a set of phenomena that is characterised by the ability to keep fundamental inequality structures. Nevertheless, scholars who focus on settler colonialism have emphasised the settlers' resolve to eradicate the colonised subjectivities rather than reproduce subordination³⁰³.

'Settler colonialism is an inclusive, land-centred project that coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating Indigenous societies', says Patrick Wolfe³⁰⁴, a historian who has been repeatedly credited with establishing the field of settler colonialism, after making significant contributions to Indigenous studies, anthropology, and the historiography of race, colonialism, and imperialism.

Indeed, settler colonialism deals with the global phenomenon of settler-led projects that focus on territorial conquest, elimination of the indigenous people, indigenising foreign settlers and creating a new separate national and cultural identity independent of the country of origin, often a colonial-imperial force. Settler colonialism has been defined, theorised, and investigated as a unique form of dominance, with a distinct concern for dispossessing and displacing Indigenous peoples, favouring newcomers, and establishing a new political

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 8(4) *Journal of Genocide Research* 387, 393.

order³⁰⁵. Indigenous people are 'disappeared' in order to prevent them from claiming their land and sovereignty³⁰⁶. All settlers are inherently different from immigrants: while immigrants come to join a country, settlers come to build it as if it is empty³⁰⁷.

Settler colonialism is also an ongoing structure. It continues to define 'socio-spatial development'³⁰⁸. Large territories across the globe are a result of settler colonialism, such as large portions of the Americas, where tremendous wealth was accumulated by colonisers, at the expense of native populations³⁰⁹.

Colonialists, as mentioned earlier, often seek to exploit labour-power and natural resources by expanding their sovereignty to a foreign and 'uncivilized' land³¹⁰. Settler colonisers seek to replace, rather than subjugate, indigenous populations. This is accomplished through various forms of forced cultural, social, and political elimination or assimilation³¹¹, as evident from the examples of the US, Canada, Australia, New Zealand, SA, Argentina, Brazil, and Israel/Palestine³¹². It is not surprising that the US and Israel have been considered as

³⁰⁵ Laura Ishiguro, 'Histories of Settler colonialism: Considering New Currents' (2016) 109 BC Studies 5.

³⁰⁶ Sturm (n 281).

³⁰⁷ Pulido (n 274) 310.

³⁰⁸ Bond and Inwood (n 171) 721.

³⁰⁹ Adam J Barker, 'Already Occupied: Indigenous Peoples, Settler colonialism and the Occupy Movements in North America' (2012) 11(3-4) Social Movement Studies 327.

³¹⁰ Margaret Kohn and Kavita Reddy, 'Colonialism' in Edward N. Zalta (ed), *Stanford Encyclopedia of Philosophy* (The Scholarly Publishing and Academic Resources Coalition 2006); Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015); Anghie, 'The Evolution of International Law' (n 215); Robbie Shilliam (ed) *International Relations and Non-Western Thought: Imperialism, Colonialism and Investigations of Global Modernity* (Routledge 2010); A Dirk Moses (ed), *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern Resistance in World History*. (Berghahn Books 2008).

³¹¹ Sturm (n 281) 342.

³¹² Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnograph Event (Writing Past Imperialism)* (Bloomsbury 1999); Veracini, *Settler Colonialism: A Theoretical Overview* (n 283).

important sites for exploring settler colonialism as a unique form of domination³¹³, as well as African nations, Latin America, Taiwan, and Pakistan.

Settler colonialists present their endeavour in a 'virgin' land as a new beginning³¹⁴, travelling with pre-accumulated technical, social, and capital. Sometimes they see themselves as going back in time while moving forward through space, returning to a social order of modernity, a return to a land and own it back by dispossessing others³¹⁵.

Settler colonialists usually seek independence. They focus on separating themselves from external powers, usually acting on their own accord, not as agents of a far-away metropole³¹⁶. This can be done by crushing the previous identities that the settler colonialists had in the countries of origin, especially if they come from multiple places, forming a new reality where everyone must speak, read and communicate in Hebrew³¹⁷.

Languages and cultures were erased, in favour of a new identity, as part of a 'melting pot'³¹⁸. To achieve this distinct identity, settler colonialists often fight for their self-determination through a struggle for national liberation, like the American Revolution (1773)³¹⁹. The Zionist struggle against British establishments during the British mandate over Palestine was no different. Separation measures sometimes include violence inflicted against combatants and

³¹³ Walter L Hixson, *American Settler colonialism: A history* (Palgrave Macmillan 2013); Gershon Shafir, 'Settler Citizenship in the Jewish Colonization of Palestine' (2005) in Elkins and Pedersen (n 285) 41.

³¹⁴ Wolfe, *Settler Colonialism and the Transformation of Anthropology* (n 312).

³¹⁵ Veracini, 'Settler Colonialism' in *The Palgrave Encyclopedia* (n 332).

³¹⁶ Ibid.

³¹⁷ Israel Zangwill, *The Melting-Pot* (Broadview Press 2017); Bresheeth-Zabner, *An Army Like No Other* (n 277); Rachel Rojanski, *Yiddish in Israel: A History* (Indiana University Press 2020).

³¹⁸ Ephraim Ya'ar, 'Continuity and Change in Israeli Society: The Test of the Melting Pot' (2005) 10(2) *Israel Studies* 91.

³¹⁹ Benjamin L Carp, *Defiance of the Patriots: The Boston Tea Party and the Making of America* (Yale University Press, 2010).

non-combatants, including indigenous people, colonial subjects and even members of the settler colonial polity. Victims of pre-1948 Zionist terrorism included Brits, Palestinians, and Zionist-Jews³²⁰. This includes the bombing of the King David Hotel in July 1946³²¹.

Settler colonialists 'win' by stopping colonial forms of oppression and creating new ones. Through the logic of elimination and displacement, the natives are killed or transferred, reduced to an artificial minority³²². For instance, around 1948, Israel transferred most Palestinians from present-day Israel to the West Bank, Gaza, and other countries, while keeping a Palestinian minority as citizens of Israel under military rule that lasted until 1966³²³, creating a Jewish majority artificially in Israel-proper.

After occupying the West Bank and Gaza in 1967, Israel applied the same military rule over Palestinians in the newly acquired territories³²⁴, creating a façade of a Jewish majority by denying civil and political rights from most Palestinians under Israel's rule and by continuing to oppress and deport them³²⁵. These historical events should not be understood solely under a colonial-imperial analysis, as Israel's development, including the development of drones, especially after the second Intifada (2000-2005), has been influenced, first and foremost, by Israel's settler colonial nature.

³²⁰ Thomas Suárez, *State of Terror: How terrorism created modern Israel* (Skyscraper Publications 2016).

³²¹ Bruce Hoffman, 'The Bombing of The King David Hotel, July 1946' (2020) 31(3) *Small Wars & Insurgencies* 594.

³²² Wolfe, *Settler Colonialism and the Transformation of Anthropology* (n 312).

³²³ Marwan Darweish and Patricia Sellick, 'Everyday Resistance Among Palestinians Living in Israel 1948–1966' (2017) 10(3) *Journal of Political Power* 353.

³²⁴ Adam Roberts, 'Prolonged Military Occupation: the Israeli-Occupied Territories Since 1967' (1990) 84 *American Journal of International Law* 44.

³²⁵ Nur Masalha, *A Land Without a People: Israel, Transfer and the Palestinians 1949-96* (Faber and Faber 1997).

Settler colonialists assert domination through an ongoing operation of unequal relations while resisting traditional forms of decolonisation³²⁶. This is possible as the 'frontiers' allow political experimentation. South Australia, for instance, was settled by independent settlers, while New South Wales was initially settled by the British colonial empire, by people who had no intention to stay there indefinitely (they were traditional colonialists, not settler colonialists)³²⁷.

Like South Australian settlers, Zionists have been settling in indigenous lands, intending to stay. Some areas have been settled by institutions, while others by individuals. Israel officially founded, constructed, and protected Israeli settlements in Gaza and the West Bank. At the same time, some Israelis constructed settlements in the West Bank and Gaza as independent endeavours of individuals, later to become institutionalised under the settler colonial polity³²⁸. Since the second Intifada (2000-2005), drones have been gradually replacing the role of settlers, soldiers, tanks, and fighter jets, in controlling, surveying, and oppressing the Palestinians, as will be discussed later in Chapter IV (Drone Theory).

Moreover, settler colonisers often dream about other locations, as they are defined by 'tyranny of distance'³²⁹. For instance, Israelis see themselves as 'Westerns' who live in Europe rather than Asia, although Israel/Palestine is geographically in Asia. As a result, Israel

³²⁶ Duncan Bell, *Remaking the World: Essays on Liberalism and Empire* (Princeton University Press 2016).

³²⁷ Lorenzo Veracini, "'Settler colonialism": Career of a Concept' (2013) 41(2) *The Journal of Imperial and Commonwealth History* 313; E.J. Denley and A.J. Underwood, 'Experiments on Factors Influencing Settlement, Survival, and Growth of Two Species of Barnacles in New South Wales' (1979) 36(3) *Journal of Experimental Marine Biology and Ecology* 269.

³²⁸ Lee Cahaner and others, *Normalizing Occupation: The Politics of Everyday Life in the West Bank Settlements* (Indiana University Press 2017); Ariel Handel, 'Gated/Gating Community: the Settlement Complex in the West Bank' (2014) 39(4) *Transactions of the Institute of British Geographers* 504.

³²⁹ Blainey Geoffrey, *The Tyranny of Distance: How Distance Shaped Australia's History* (Macmillan 2001).

participates in European contests and not in Asian ones, from sports to singing competitions, while Israeli Universities receive more UN funding per capita than any European country³³⁰.

Settler colonial regimes committed atrocities without significant opposition from the international community throughout the 18th-19th centuries. Before the First World War (WWI), displacement and elimination were carried out through highly violent means. However, in the 20th century, during the age of information, newer settler colonial formations such as SA Apartheid could not afford to carry out similar practices as the settler colonialists of the 19th century due to globalisation and the growing influence of new media that shaped public opinion internationally. While undoubtedly genocidal practices took place during the 20th century, the colossal elimination that the Americans and Australians carried out would have been more challenging to perform if they had taken place in the 20th century.

One of the reasons that the Apartheid had been abolished in SA was the persistent media coverage of internal resistance. Afrikaners were unable to eliminate the natives without facing international scrutiny in a world of globalisation. Settler colonialists in Israel have learnt the lesson and became more sophisticated (and less visible) in their forms of oppression. Israel has been enforcing high-tech blockades, combined with oppressive bureaucracy to suppress Palestinians and deprive them of their land (preventing Palestinians from accessing water, food, health, employment, education, and leisure). Technological means of oppression now serve as silent killers, slowly replacing more noticeable forms of oppression, like tanks, snipers, warships, and helicopters.

³³⁰ Bresheeth-Zabner, *An Army Like No Other* (n 277).

Present-day methods of performing atrocious practices often combine visible and invisible methods of elimination and oppression. Weapons are depicted as 'sophisticated' and accurate, normalising violence among the international community and attracting less criticism than more noticeable forms of aggression. Sophisticated technologies might be more dangerous, due to how acceptable weapons that are perceived as 'surgical' are, and how widely they are used. New military technologies fit into settler colonial goals under the logic of elimination³³¹.

While relying on TWAIL, SCAIL can challenge the legitimacy, coherence, and sustainability of militarised settler colonial formations. While TWAIL includes a colonial, imperial and post-colonial analysis of international law, SCAIL emphasises legal implications of a distinct form of domination where exogenous settlers permanently displace or eliminate indigenous peoples³³².

Equally, SCAIL is concerned with land and space and how settlers create new socio-political bodies that replace others. A German jurist and a political theorist infamous for being a prominent member of the Nazi Party, Carl Schmitt, developed a theory of large spaces that reflects the inherent incompatibility between settler colonial and colonial forms. According to Veracini, Schmitt should have developed his theory with reference to US President James Monroe, the Founding Father who served as the 5th US president (1817-1825) in a speech to Congress: '...the American continents... ...are henceforth not to be considered as subjects for future colonization by any European powers'³³³. This logic continued to the 1960s, exempting

³³¹ Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (n 304).

³³² Lorenzo Veracini, 'Settler Colonialism' in Immanuel Ness and Zak Cope (eds), *The Palgrave Encyclopedia of Imperialism and Anti-Imperialism* (Palgrave Macmillan 2019).

³³³ Ibid.

the US from the definition of colonialism under UNGA Resolution 1541³³⁴. With the contemporary power of settler colonial formation, only in 2007 the UN acknowledged settler colonialism as a form of domination by formally appreciating the inherent rights of indigenous people³³⁵.

With a similar spirit as TWAIL scholars, there are now new approaches to decolonisation, including decolonisation of international law, while focusing on colonial, imperial and postcolonial analysis. The disadvantage of disregarding settler colonialism in the context of decolonisation is demonstrated by Veracini, who heuristically compared trying to decolonise a settler colonial regime with conventional decolonisation theories as trying to fight bacteria with anti-viral medicine.³³⁶ Treating settler colonialism as colonialism in decolonisation processes might address some of the symptoms, but will fail to address the root of the problem, as theories on decolonisation that ignore the unique characteristics of settler colonialism are unlikely to be effective in settler colonial situations.

Thinking about SCAIL will perhaps inspire new decolonising methodologies to international law that address the ongoing reality of settler colonialism worldwide, in the age of drones, and help to bring cruel settler colonial practices to an end. Drone violence is just one of such inhumane practices, even if it is not necessarily more inhumane than other violent weapons.

Dehumanisation, oppression, and subordination of indigenous people are a part of the colonial or imperial endeavour, without the presence of a settler colonial polity. However,

³³⁴ Ibid.

³³⁵ Lorenzo Veracini, 'Telling the End of the Settler Colonial Story' in Fiona Bateman and Lionel Pilkington, *Studies in Settler colonialism* (Palgrave Macmillan 2011) 204.

³³⁶ Lorenzo Veracini, 'Understanding Colonialism and Settler colonialism as Distinct Formations' (2014) 16.5 Interventions, *International Journal of Postcolonial Studies* 615.

colonial projects have gone through formal decolonisation processes and are now considered to be under post-colonial situations in mainstream academic discourse. Colonial powers have dehumanised the native population mainly to exploit their natural resources and labour surplus, say notable scholars who are experts on colonialism. Colonialism had formally ended as decolonising movements took part in the anti-colonial struggle. Inhumane acts have been done under colonial regimes, and postcolonial situations still reflect domestic and international inequalities.

Colonial regimes were generally unsustainable, while settler colonial ones have been more successful in the long-term oppression of anti-colonial movements. Settler colonialists managed to oppress most forms of native opposition through various strategies, including elimination, segregation, and assimilation. The struggle against the apartheid in SA is one of the exceptions where resistance to settler colonialism managed to decolonise the landscape – bringing SA to be one of the only post-settler colonial countries. The settler-decolonisation of SA was made possible thanks to the external support of states who boycotted, divested, and sanctioned the white supremacist government. The unique attributes of the logic of elimination can demonstrate the destructive nature of drone violence in the hands of settler colonial regimes.

Additionally, the implementation of Indigenous authority in corporate-Indigenous contracting depends on and duplicates the legal structure undergirding the settler colonial political economy³³⁷. Tyler McCreary suggests that the settlers' authority to govern the land is constituted through cultivating knowledge of colonial regimes, as well as authorising

³³⁷ Tyler McCreary, 'Historicizing the Encounter Between State, Corporate, and Indigenous Authorities on Gitxsan Lands' (2016) 33(3) Windsor Yearbook of Access to Justice 163, 165.

corporations to realise development aims and settlers' jurisdiction³³⁸. In Israel, corporations and the high-tech industry are intertwined with the military-industrial complex, a perfect combination for developing advanced drones to be tested on Palestinians and exported worldwide³³⁹.

While Wolfe regards settler colonialism as a project with the logic of elimination³⁴⁰, Ilan Pappé adds the logic of dehumanisation. Many settlers saw themselves as victims who were persecuted elsewhere. Some were poor and quickly became masters of someone else's homeland. To do to the natives what was done to them, they had to dehumanise the natives. Indeed, dehumanisation might be integral to any crime against humanity, including dispossession and ethnic cleansing³⁴¹. Moreover, there might be links between dehumanisation and drone violence, an issue to be explored in future studies.

Arguably, settler colonialists took part in the civilising mission, as settlers see themselves as more civilized, sophisticated, and technologically advanced than 'barbaric' natives who are 'backwards'. Although settlers use many narratives of modernity and progress to justify settler colonisation of indigenous land, they have never indeed been a whole part of the 'civilizing mission', as they have not sought to civilise 'savages' or 'barbarians'³⁴². On the contrary, they wished to eliminate them. While narratives of the 'civilising mission' justified

³³⁸ Ibid.

³³⁹ Musleh (n 20); Jonathan Cook, "'The lab': Israel Tests Weapons, Tactics on Captive Palestinian Population' (*Washington report on Middle East affairs*, September 2013) 16 <<https://www.wrmea.org/013-september/the-lab-israel-tests-weapons-tactics-on-captive-palestinian-population.html>> accessed 29 May 2021.

³⁴⁰ Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (n 304).

³⁴¹ Pappé, 'Settler Colonialism in Palestine' (n 279).

³⁴² Bruce Mazlish, *Civilization and its Contents* (Stanford University Press 2004).

the colonisation of America and other places, it was not the only narrative of settler colonisation.

SCAIL can therefore offer a unique reflection on drone violence, inspired by TWAIL literature. The goals, structures, identities, and outcomes of colonial projects are mostly led by empires, which is a fundamentally different experience than the settler colonial one. The use of advanced military technology by countries like Israel and the US can be seen inversely according to different paradigms. Drone violence can be understood differently within a post-colonial framework or a settler colonial one, as the primary purpose of the use of force is not the same in each project:

- (a) Settler colonialists generally use violence to ethnically cleanse the indigenous population, redeeming the land and creating new sovereignty with a distinct national-cultural-political identity, which is separated from the state of origin³⁴³;
- (b) Colonialists generally seek to expand the borders of the empire to exploit the workforce and natural resources of the natives, justifying their actions by the paternalistic idea of the civilizing mission, modernity, western culture, and enlightenment ideals, all for the so-called benefit of the native population³⁴⁴.

The narrative of the civilizing mission was more dominant in the colonial project than in the settler colonial ones, as settler colonialists were less interested in educating, elevating, or civilizing the dehumanised natives.

³⁴³ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283).

³⁴⁴ Fischer-Tiné and Mann (n 163).

Considering these thoughts, both the role and the effect of international law (including IHL) on drone violence might be different within a colonial or a settler colonial society, a significant difference that is addressed by scholars who write about settler colonialism – but seems to be absent from TWAIL scholarly and legal discourse.

2.6. Settler Colonial Drone Design

Drones play a pivotal role in organising and shaping the nature and progression of settler colonialism – and vice versa. It is, therefore, no coincidence that Israel became one of the world's most prominent designers and exporters of advanced military drones. This development has something to do with Israel's settler colonial nature. Until 1967, Israel depended mainly on foreign countries such as France for its supply of armaments. Following Charles de Gaulle's embargo on arms sales to Israel, now three times its former size, found itself with no one to turn to, to replenish its weapons inventory. Thus, a new phase of self-reliance began, which led to the development of Israel's massive arms industry. In the following years, Israel will develop its own tanks (Merkava) and jet planes (Lavie), and will start experimenting with drone technology, eventually placing Israel amongst the world's ten biggest exporters of weapons³⁴⁵.

Many of these weapons are a direct response to Israel's military needs and to the maintenance of its settler colonial polity, which has often served, and still does, as a 'laboratory for innovating cutting-edge, battle-proven weapons'³⁴⁶. In other words, the

³⁴⁵ Yoav Zltun, 'Israel one of World's Top 10 Arms Exporters, Defense Official Says' (Ynet, 6 January 2021) <<https://www.ynetnews.com/article/H1lc1T79d>> accessed 13 March 2022.

³⁴⁶ Musleh (n 20).

proliferation and expansion of its arms industry go hand in hand with the growing control of Palestinian land and people³⁴⁷.

Israeli settler colonial structures have been described by Eyal Weizman, a British-Israeli architect and a Professor of Spatial and Visual Cultures at Goldsmiths, University of London, as vertical and malleable:

‘The linear border, a cartographic imaginary inherited from the military and political spatiality of the nation state, has splintered into a multitude of temporary, transportable, deployable and removable border synonyms – separation walls, barriers, blockades, closures, road blocks, check points, sterile areas, special security zones, closed military areas and killing zones – that shrink and expand the territory at will. These borders are dynamic, constantly shifting, ebbing and flowing; they creep along, stealthily surrounding buildings, infrastructures, villages and roads. They may even erupt into one’s living room, bursting in through the house walls.’³⁴⁸.

Drones are the most suitable technology for achieving absolute domination in this horrifying ‘necropolitical’ reality. They are effective because they have been tried and tested in Gaza and the West Bank. This is a fact that is often trumpeted by Israel’s military establishment.

³⁴⁷ Ibid; Nissim Hania, ‘Transformations in the Israeli Defense Development and Production System, and the Contemporary Relevance’ (2016) 6 Dado Center for Interdisciplinary Military Studies 44.

³⁴⁸ Mark Godfrey, TJ Demos, Eyal Weizman And Ayesha Hameed, ‘Rights of Passage’ (*Tate*, 1 May 2010) <<https://www.tate.org.uk/tate-etc/issue-19-summer-2010/rights-passage>> accessed 13 March 2022; Eyal Weizman, *Legal Theory* (Anyone Corporation 2006) 58; Eyal Weizman, ‘The Art of War’ (*Frieze*, 6 May 2016) <<https://www.frieze.com/article/art-war>> accessed 27 May 2021.

Israel's Minister of Defense, Binyamin Ben Eliezer, has boasted that 'If Israel sells weapons they've been tested, tried out'³⁴⁹.

The 'domestically developed, matured and tested capabilities' of Israeli drones, for instance, is a matter of great pride and reflects, according to Israeli policymakers, the success of the Zionist experiment. All the more so because 'the specificities of Israel's permanent war laboratories are being translated into more universal experiments in violence exercised against increasingly uncertain "combatants."³⁵⁰ Aerial assassinations, which Israeli planners regard as 'Urban Area Domination', have been 'a doctrine that has considerable influence on the US military'³⁵¹.

The settler colonial polity is not just selling drones but is marketing them for settler colonisation as a standard for the 21st century. Israel promotes these weapons as the product of 'wizards' who provide 'new layer' to the 'tale' of how weak and ancient people like the Jewish People had 'returned to their homeland, established a state and, against all odds, not only survived but prospered'³⁵².

Israel's quick readjustment and recalibration of drone capabilities ensure a competitive advantage in the global weapons market. Israel 'has learned to turn endless war into a brand asset, pitching its uprooting, occupation and containment of the Palestinian people as a half-

³⁴⁹ Eitay Mack and Lia Tarachansky, 'Made In Israel: Exporting Occupation Technology' (The Real News Network, 2 June 2014) <<https://therealnews.com/eitaymack06022014>> accessed 13 March 2022.

³⁵⁰ Nick Denes, 'From Tanks to Wheelchairs: Unmanned Aerial Vehicles, Zionist Battlefield Experiments, and the Transparency of the Civilian' (2011) in Elia Zureik, David Lyon, and Yasmeen Abu-Laban (eds), *Surveillance and Control in Israel/Palestine: Population, Territory and Power*, 171; Musleh (n 20).

³⁵¹ Stephen Graham, 'Laboratories of War: United States-Israeli Collaboration in Urban War and Securitization' (2010), 17(1) *The Brown Journal of World Affairs* 35;

³⁵² Katz and Bohbot (n 14) 26; Musleh (n 20).

century head start in the “global war on terror”³⁵³, says Canadian author, social activist, and filmmaker, Naomi Klein³⁵⁴.

Israeli weapons are exported as ‘tailored operational solutions [that] ensure that you detect, locate and target terrorists, smugglers, illegal immigrants and other threats to public welfare’³⁵⁵. Weapons design is understood by Israel to reflect a post-exilic ‘fighting Jew’. Weapon designers and high-tech innovators were in the IDF, conducting military operations in Gaza and the West Bank. This includes engineers, entrepreneurs, and academics who design ‘pioneering, operationally-proven’ weapons³⁵⁶.

One of the central tenets of Zionism has been that a new, muscular Jew, has emerged, one who can take ‘a weapon in one hand and a tool in the other’³⁵⁷. This new Jew can conquer the land and build settlements on the frontier³⁵⁸. Contemporary Israeli Jews can hold a joystick in one hand and an iPhone in the other to make long-distance phone calls to prospective buyers overseas. This mystical new Jew can turn ‘swords into silicon chips’³⁵⁹. Today’s pioneers do not need to engage in hand-to-hand combat³⁶⁰. They use their hands instead to operate the most advanced drones on the globe to harass Palestinians who are anxious and sleepless in Gaza. After Israel withdrew from Gaza (2005), Gaza tuned into a

³⁵³ Naomi Klein, ‘Laboratory for a Fortressed World’ (*Naomiklein*, 2017)

<<http://www.naomiklein.org/articles/2007/06/laboratory-fortressed-world>> accessed 23 February 2022; Musleh (n 20).

³⁵⁴ Klein (n 353).

³⁵⁵ Musleh (n 20).

³⁵⁶ The Israel Ministry of Defense and SIBAT - International Defense Cooperation, ‘Israel Defense and Homeland Defense Directory 2015/2016’ (*Sibat*, 15 March 2022)

<<http://www.sibat.mod.gov.il/Industries/>> accessed 15 March 2022; Musleh (n 20).

³⁵⁷ Boaz Neumann, *Land and Desire in Early Zionism* (Brandeis University Press 2011).

³⁵⁸ Ibid.

³⁵⁹ Leila Stockmarr, ‘Turning “Swords into Silicon Chips”: The Israeli Homeland Security Industry and Making of Jewish Nationhood’ (PhD Thesis, Roskilde, RUC Roskilde University, 2015).

³⁶⁰ Katherine Natanel, *Sustaining Conflict: Apathy and Domination in Israel-Palestine* (University of California Press 2016); Musleh (n 20).

‘hermetically sealed high-tech enclosure’³⁶¹, a lab for Israel’s military-industrial-complex³⁶².

Israeli Academic, Avner Benzaken, explains this:

‘If I develop a product and want to test it in the field, I only have to go five or 10 kilometres from my base and I can look and see what is happening with the equipment... ..I get feedback, so it makes the development process faster and much more efficient’³⁶³. Gaza is the perfect place for a ‘remote-control occupation’³⁶⁴.

‘Violence cycles’ flare up in Gaza every 2-3 years. Israel gives these cycles operative metaphors like ‘cutting the grass’ or ‘mowing the lawn’, regular tasks with no end³⁶⁵. Such cycles serve as showcases for Israeli drones. Israeli officials clarified that the ‘defense industry is in a perpetual learning mode together with the IDF and the Defense Ministry’³⁶⁶. The vice-president of major campaigns for Elbit Systems wrote that: ‘no other country has Israel’s extensive hands-on experience in fighting terror, including the development of new systems,

³⁶¹ Helga Tawil-Souri, ‘Digital Occupation: Gaza’s High-Tech Enclosure’ (2012) 41(2) *Journal of Palestine Studies* 27; Musleh (n 20).

³⁶² Charles Levinson, ‘Israeli Robots Remake Battlefield’ (*The Wall Street Journal*, 13 January 2010) <<https://www.wsj.com/articles/SB126325146524725387>> accessed 26 July 2021; Musleh (n 20).

³⁶³ Markus Becker, ‘Factory and Lab: Israel’s War Business’ (*Spiegel* 2014) <http://www.spiegel.de/international/world/defense-industry-the-business-of-war-in-israel-a-988245.html> accessed 23 February 2022; Musleh (n 20).

³⁶⁴ Omar Jabary Salamanca. ‘Unplug and Play: Manufacturing Collapse in Gaza’ (2011) 4(1) *Human Geography* 22; Jean-Pierre Filiu, ‘The Twelve Wars on Gaza’ (2014) 44(1) *Journal of Palestine Studies* 52; Musleh (n 20).

³⁶⁵ Ethan Bronner, ‘As Battlefield Changes, Israel Takes Tougher Approach’ (*New York Times*, 17 November 2011) <<https://www.nytimes.com/2012/11/17/world/middleeast/israel-sticks-to-tough-approach-in-conflict-with-hamas.html>> accessed 14 March 2022.

³⁶⁶ Shuki Sadeh, ‘For Israeli Arms Makers, Gaza War Is a Cash Cow’ (*Haaretz*, 11 August 2014) <<https://www.haaretz.com/gaza-war-is-arms-industry-cash-cow-1.5258893>> accessed 14 March 2022; Musleh (n 20).

testing them in real-time and adapting and fine-tuning following feedback from performance in the field'³⁶⁷.

Military operations have been seen as an 'opportunity to cut red tape'³⁶⁸. These cycles allow drones to receive a 'stamp of approval'³⁶⁹, moving drone development to further refinement, modulating the speed of development, and generating 'new requirements in order to supply for the next battle' (according to the chief scientist of Elbit Systems)³⁷⁰.

2.7. Settler Colonialism, Technology, and Dehumanisation

Professor Wayne Yang, also known as La Paperson, considers settler colonialism as a set of technologies³⁷¹. As technologies develop, the relationships between settlers and natives mutate. Technology allows settlers to become landowners and killers without impunity. Natives are excluded from legal rights. Settlers' supremacy is constructed and maintained by technologies that keep the 'native' premodern, primitive, and 'before' laws and rights – in the name of technological progress³⁷².

Drones can be seen as a technology of land dispossession. They also play into settlers' desires to become natives. Machines of genocide, enslavement, land mining, and war run through the settler colonial apparatus. Specific settler colonial apparatuses differ – but technologies

³⁶⁷ Neve Gordon, 'Israel's Emergence as a Homeland Security Capital' in Elia Zureik, David Lyon, and Yasmeen Abu-Laban (eds), *Surveillance and Control in Israel/Palestine: Population, Territory and Power* (Routledge 2011) 153, 161.

³⁶⁸ Sadeh (n 366); Musleh (n 20).

³⁶⁹ Hania (n 347) 46; Musleh (n 20).

³⁷⁰ Denes (n 350) 181; Musleh (n 20).

³⁷¹ La Paperson, *A Third University is Possible* (University of Minnesota Press 1997).

³⁷² Ibid.

recirculate in them – pieces of desiring machines that assemble into new machines. A technological rather than identity–political analysis of the settler-native relation allows us to see the ‘how’ rather than ‘who’³⁷³.

Settler colonialists strive to create an artificial majority by ethnic cleansing, transfer, and genocide. These inhumane practices are easier to conduct with advanced military technologies, especially in the 21st century when less visible violence is preferable due to the advancement of the Information Age and globalisation. With the spread of information through various forms of media, ‘liberal democracies’, which pertain to following human rights practices and international law, prefer to use more sophisticated means of oppression through a technological and bureaucratic buffer.

Superior weapons have always left indigenous people and other oppressed groups with little ability to defend themselves, even if the oppressors were outnumbered. In 1492, there were about 50 million indigenous people in the Americas³⁷⁴. They were eliminated by settler colonialists who were outnumbered but held sophisticated military technologies and tactics. They also carried diseases that were deadly to the natives, like smallpox³⁷⁵, typhus, influenza, diphtheria, mumps, measles, and bubonic plague³⁷⁶. Sophisticated weapons played a crucial factor in European ability to settler colonise indigenous land, alongside the role of germs.

³⁷³ Ibid.

³⁷⁴ Alan Taylor, *The Settling of North America* (Penguin 2002) 40; Hugh Brogan, *The Penguin History of the United States* (Penguin 2001).

³⁷⁵ Paul Kelton, *Cherokee Medicine, Colonial Germs: An Indigenous Nation's Fight Against Smallpox, 1518–1824* (University of Oklahoma Press 2015).

³⁷⁶ Sade Kosoko-Lasaki, Cynthia Cook and Richard O'Brien (ed.), *Cultural Proficiency in Addressing Health Disparities: Historical Origin of Health Disparities in Native Americans* (Jones & Bartlett Learning 2009) 226.

A more contemporary example of this would be drone violence. Israel and the US both use military capabilities to oppress indigenous people. In the case of Israel, it is done to sustain Israel's control over Palestinian land. With lethal drones, it is easier to perpetuate a settler colonial situation. Drones allow surveillance and control over entire populations, and drone violence is applied with minimal cost. Palestinians have little means of defending themselves or retaliating this type of violence again.

In 2012, during operation 'Pillar of Defense' in Gaza, the IDF used aerial drones for 'surgical warfare'. In 2014, during operation 'Protective Edge', 2,219 Palestinians were killed³⁷⁷ (including 547 children) 30% of them by drone strikes³⁷⁸. The commander of Israel's Air Force drone training centre said that: 'drone operators can "make life and death decisions" while they "sit in a safe room and their personal level of danger is the same as of someone on the beach in Tel Aviv"'³⁷⁹. By 2015, most Israeli Air Force flights were conducted by drones³⁸⁰. Furthermore, Israel plans to increase the number of drone pilots to unman 2/3 of the air force³⁸¹, and even the entire air force (predicted by 2030)³⁸².

Dehumanisation has always been a part of different scenarios of the use of lethal force and inhumane practices. It has been essential in carrying out inhumane settler colonial policies, as well as generally for justifying drone violence. Dehumanisation is the psychological and sociological mechanism that allows societies as a collective and individuals to eliminate,

³⁷⁷ Al Mezan (n 25).

³⁷⁸ Defense for Children International (n 25).

³⁷⁹ Israel Defense Forces, 'Army of the Future: The IDF's Unmanned Vehicles' (*IDF Blog*, 2014) <https://www.idfblog.com/2012/02/28/army-future-idfs-unmanned-vehicles/> accessed 23 February 2022; Musleh (n 20).

³⁸⁰ Katz and Bohbot (n 14).

³⁸¹ Nada Berger, 'UAV Squadrons Look to the Future' (2015, *IAF*) <http://www.iaf.org.il/4421-45122-en/IAF.aspx> accessed 23 February 2022.

³⁸² Katz and Bohbot (n 14).

displace or dispose millions of indigenous people. If the victims of settler colonialism were seen as human beings entitled to fundamental humane consideration, drones would not have been used against them, or perhaps they would not have been developed or purchased in the first place.

Inhumane practices driven by settler colonial ideology would have been extremely difficult to perform without the logic of dehumanisation. Inhumane acts have been justified by dehumanisation in various contexts, including imperialism and traditional colonialism. Settler colonialism is similar, as dehumanisation justifies the elimination of innocent people.

2.8. Population, Transfer, Sovereignty and Consciousness

Inspired by a division set out by Veracini, four aspects of settler colonialism stand out: Population, transfer, sovereignty, and consciousness:

2.8.1. Population

Settler colonialists domesticate the economy of the population. They manage their domesticated territories, with as little imperial interference as possible³⁸³. Indigenous people and exogenous 'Others' are disappeared through extermination, massacres, expulsions, incarcerations, assimilation, restrictions, transference of responsibilities, and even a revolution³⁸⁴.

³⁸³ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 16.

³⁸⁴ Ibid 16-17.

In Australia, the logic of elimination worked in many ways besides extermination, including segregation and transfer. Australians even tried to erase the indigeneity of the Aborigines by assimilating them, denying their existence, and disavowing their sovereign claims³⁸⁵.

Similarly, Israeli PM Golda Meir famously insisted that 'there is no such thing that can be entitled the Palestinian people'³⁸⁶, 'there is no Palestinian people'³⁸⁷, 'A Palestinian entity is the invention of Jews with twisted minds'³⁸⁸. Israel particularly denies the existence of Palestinian citizens of Israel, referring to them as 'Israeli Arabs'³⁸⁹. According to Muhammad Zeidan, the general director of the Arab Association for Human Rights, for Jewish-Israelis, 'the message is that the Palestinian community in Israel is not legitimate, that it is an enemy... ..it tells them that they are outsiders and raises the whole issue of their relationship to the state'³⁹⁰.

Israel treats Palestinian citizens of Israel paradoxically: fundamentally different from Palestinians in Gaza and the West Bank, but still a dangerous 'Arab' enemy from within, regardless of the levels of their cooperation with the establishment. Israel equally denies Palestinian sovereignty from both sides of the 'Green Line'.

³⁸⁵ Claire McLisky, '(En)gendering Faith?: Love, Marriage and the Evangelical Mission on the Settler Colonial' in Frontier Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler colonialism: Politics, Identity and Culture* (Palgrave Macmillan 2011) 106.

³⁸⁶ Zohar Kampf, 'From "There are no Palestinian People" to "Sorry for Their Suffering": Israeli Discourse of Recognition of the Palestinians' (2012) 11(3) *Journal of Language and Politics* 427-447.

³⁸⁷ Benyamin Korn, 'Golda Meir Was No J-Streeter' (*Jewish News Syndicate*, 4 September 2015); Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

³⁸⁸ Amnon Kapeliuk, *Lo Mehdal (Not by Omission): The Politics Which Led to War* (Amikam 1975); Ian Black, 'Amnon Kapeliouk: Israeli Writer and Journalist who Opposed Occupation' (*The Guardian*, 13 August 2009) <<https://www.theguardian.com/media/2009/aug/13/obituary-amnon-kapeliouk>> accessed on 26 May 2021; Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

³⁸⁹ Avi Raz, 'The Stand Tall Generation: The Palestinian citizens of Israel Today.' *Israel Studies Forum*. Vol. 19. No. 2 (Berghahn Books 2004).

³⁹⁰ Dov Waxman, 'A Fangerous Divide: The Deterioration of Jewish-Palestinian Relations in Israel' (2012) 66(1) *The Middle East Journal* 11.

It is important to understand that settler colonialism reproduces human elimination by a variety of means, from straightforward homicide to territorial removal (transfer), confinement, imposition of property, miscegenation (Natives produce settler offspring), Native citizenship, child abduction, surveillance (reserves, prisons, boarding-schools), educational programmes and religious conversion. The Native child can be domesticated, individualised, reprogrammed, and bred White. The death of the natives can be social, and from that – the settler is born. The repression of the natives continues to shape the social institutions of the settler colonialists as an ongoing movement³⁹¹. This is one of the reasons that Wolfe characterises settler colonialism as a structure rather than an event³⁹².

What other weapon besides drones offers an ‘almost endless list of advantages’ which makes it perfect for eliminating and oppressing indigenous people in the 21st century³⁹³. Drones are small, light, and cheap, as they hover over entire populations for days and weeks, while their humming noise ‘blends into city traffic’³⁹⁴. ‘This makes them the perfect weapons to hunt and eliminate moving targets’³⁹⁵. But they are also perfect for eliminating the natives through less visible and more sophisticated means of oppression.

While the settler colonialists move to indigenous lands, a dialectic of ‘indigenous-exogenous’ is often instituted. Sometimes settlers imagine themselves as indigenous, through myths and

³⁹¹ Patrick Wolfe, ‘Race and the Trace of History: For Henry Reynolds’ in Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler colonialism: Politics, Identity and Culture* (Palgrave Macmillan 2011) 272-273.

³⁹² Ibid 273; Mia Fuller, ‘Preservation and Self-absorption: Italian Colonisation and the Walled City of Tripoli, Libya’ (2000) 5(4) *The Journal of North African Studies* 121.

³⁹³ Katz and Bohbot (n 14) 69.

³⁹⁴ Ibid.

³⁹⁵ Ibid.

legends, claiming historical rights. This was done by Zionists, as well as Italians who imagined themselves as indigenous to Libya³⁹⁶.

A 'righteous-degraded' dialectic is formed as well, as settlers see their actions as morally and legally just³⁹⁷. Such classifications are the fundamental structure of the population economy of settlers, but their economy is never truly separated from the economy of the natives. Instead, they shape, verify, and reproduce each other³⁹⁸.

Additionally, 'high-low' and 'advanced-backwards' dialectics emerge in this economy. Advanced military technology is crucial in settler's vertical control, figuratively and literally. Weighing 13 pounds, Israel's Skylark drone can fly at altitudes of 3,000 feet. It can be used in any 'operation' from 'random' patrols in Gaza and the West Bank to ground offensive operations in Lebanon and Syria³⁹⁹.

Settler colonial Idioms and metaphors also reflect this high-low dialectic. Settlers take land for 'higher use' using language like 'uplift', 'elevate', 'raise', 'improve', 'progress', and 'ascent'⁴⁰⁰. At the same time, narratives are connected to historical 'progress' as a justification for indigenous displacement. Any withdrawal from indigenous territories might be seen as a backward regression and as a dramatic demise of the original claim over indigenous land⁴⁰¹. This anti-regression mentality was demonstrated by some Jewish-Israeli settlers who refused to evacuate from Sinai (Egypt), Gaza, and West Bank outposts. When refusing to evacuate,

³⁹⁶ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 18.

³⁹⁷ Ibid.

³⁹⁸ Ibid 19.

³⁹⁹ Katz and Bohbot (n 14) 72.

⁴⁰⁰ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 19-22; Elkins and Pedersen (n 285).

⁴⁰¹ Fiona Bateman and Lionel Pilkington, 'Introduction' in Fiona Bateman and Lionel Pilkington (eds), *Studies in Settler colonialism: Politics, Identity and Culture* (Palgrave Macmillan 2011); Veracini, 'Telling the End of the Settler Colonial Story' (n 335) 208.

some settlers physically attack – and injure – Israeli soldiers and police⁴⁰². Many believe that God promised them these territories, a promise that overrides the state. It is not uncommon for Israeli settlers to see themselves as the rightful sovereigns of their territories in the West Bank and other areas – not the state⁴⁰³. More examples are Israel refusing to return occupied Golan Heights to Syria⁴⁰⁴, withdraw from the West Bank, or end the blockade over Gaza.

The settler colonial collective requires both permanent residency and sovereign entitlements, so whoever lacks either of these defining characteristics is categorised as an exogenous ‘Other’. Nevertheless, settler colonialism is a dynamic situation where various groups transit from one population sector to another⁴⁰⁵. This can be demonstrated by a wide range of internal disagreements within Jewish-Israeli society about the best way to assert control over the territory between the Jordan River and the Mediterranean Sea⁴⁰⁶.

Because settlers come from somewhere else and require permanent residency, their collective is both indigenous and exogenous⁴⁰⁷. This inherent ambiguity leads to indecisive emotional tactics, such as nationalism, with more than one place of origin. On the one hand, settlers develop diasporic identities by focusing on external ancestral ‘roots’. On the other hand, they keep mythical references to their indigenisation processes, investing in the new scenery. ‘Home’ simultaneously represents ‘new’ and ‘old’ landscapes. There is a

⁴⁰² Hagar Shezaf, ‘Israeli Security Forces Injured by Settlers in Evacuation of West Bank Outpost’ (*Haaretz*, 31 December 2021); Chris McGreal, ‘Israeli Troops Storm Synagogues’ (*The Guardian* 19 August 2005).

⁴⁰³ Idith Zertal and Akiva Eldar, *Lords of the Land: The War over Israel’s Settlements in the Occupied Territories, 1967–2007* (Nation Books 2009).

⁴⁰⁴ Marwa Daoudy, ‘A missed Chance for Peace: Israel and Syria’s Negotiations over the Golan Heights’ (2008) *Journal of International Affairs* 215.

⁴⁰⁵ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 20.

⁴⁰⁶ Eran Halperin, Neta Oren, and Daniel Bar-Tal, ‘Socio-psychological Barriers to Resolving the Israeli-Palestinian Conflict: An Analysis of Jewish Israeli Society’ (2010) *Barriers to peace in the Israeli-Palestinian conflict* 28.

⁴⁰⁷ *Ibid* 20-21.

fundamental contradiction between settlers' attempt to live a 'civilised' western lifestyle and their strive for indigenisation, independence, and separation from the rest of the world⁴⁰⁸.

The development of drones in Israel plays well into these contradictions. Drones are a 'new' sophisticated weapon. They represent progress, modernity, and the future. But they are used to defend an ancient biblical land that God allegedly promised to the Jewish People, as said in the 'old' testament. In practice, military drones keep Palestinians away from their land. They allow indigenising settlers – who perceived themselves as the rightful owners – to maintain their settler colonial forms of domination, oppression, and sovereignty.

Nationalist claims are equally mixed with indigeneity claims. Settlers rely on vigorous displays of staged authenticity, especially when their claims are examined or threatened. The national and cultural identities of settlers are constructed. For instance, SA Apartheid relied on expressions of exclusive white-Afrikaner nationalism, where white expressions of indigeneity repeated the claim that the land was mostly uninhabited when the Dutch arrived. They relied on a myth that SA was mostly empty and that few nomadic tribes lived along littoral zones. The narrative was that the Nguni people migrated to SA from Africa after white settlers arrived. White people in SA were insecure about their indigeneity, so they had to establish their nationalism, nativehood, and belonging. They decided that white Afrikaners were the closest to genuine authenticity because they were the ones who first moved in and established sovereignty. This was also powered by a 'divine call' to redeem the land of SA as if the Afrikaners were Israelites chosen by God for the task. This spiritual connection filled up

⁴⁰⁸ Ibid 21.

what the Afrikaners lacked. It is no coincidence that the white settlers called themselves ‘the people of Africa, of this earth’ (Afrikaner)⁴⁰⁹.

Much like the Afrikaners, Israelis occupied the majority of Palestine in 1948 by relying on their ‘spiritual connection to that land’⁴¹⁰. They insisted that God promised it to the Jews, and fabricated historical arguments that exaggerate episodic Jewish life in the region⁴¹¹.

Despite indigeneity efforts and divine promise, settler colonialists try to surpass their structures. This attempt is a part of an unachievable suppressed fantasy. Indigenisation and Europeanisation can never be complete, as settler colonial societies rely on the promise of society ‘to come’. Settlers approach, but never cross, the indigenous line, as well as the line of Western-European mimic. Dissimilarity is essential against both exogenous ‘others’ and natives, to maintain the settler colonial identity. If settlers become too European or too indigenous, how can they justify their distinct identity? There is a tension that would never be resolved between ‘difference’ and ‘sameness’, as settlers balance Europeanisation and indigenisation⁴¹².

For instance, Israeli culture tries to mimic European and North American cultures while culturally appropriating Arab culture through orientalism⁴¹³. Israeli music often incorporates ‘Arab’, Western, and so-called ‘Jewish’ elements. This includes a song from 2020, performed

⁴⁰⁹ Elleke Boehmer, ‘Where We Belong: South Africa as a Settler colony and the Calibration of African and Afrikaner Indigeneity’ in Fiona Bateman and Lionel Pilkington, *Studies in Settler colonialism: Politics, Identity and Culture* (Palgrave Macmillan 2011) 259.

⁴¹⁰ Andrew L Mendelson, Zoe Smith, ‘Vision of a New State: Israel as Mythologized by Robert Capa’ (2006) 7(2) *Journalism Studies* 187.

⁴¹¹ Sand, *The Invention of the Jewish People* (n 197).

⁴¹² Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 22-24.

⁴¹³ Dafna Hirsch, ‘“Hummus is Best When it is Fresh and Made by Arabs”: The Gourmetization of Hummus in Israel and the Return of the Repressed Arab’ (2011) 38(4) *American Ethnologist* 617-630.

in Arabic, English, Hebrew, and Amharic during Eurovision⁴¹⁴. By doing so, Israeli culture, which is relatively new, keeps redefining itself as being distinct from the 'gentiles' and the 'Arabs', adopting both 'Western' and 'Eastern' features.

But even if the exogenous 'Others' are not physically present, there is an 'absent' presence of them that helps settler colonialists shape their society, as they keep comparing themselves to other countries elsewhere⁴¹⁵. Jewish-Israelis will never truly be Western-European or indigenous, although they try to mimic western and indigenous cultures – despite appropriation attempts⁴¹⁶.

2.8.2. Transfer

James Christopher Belich, a notable New Zealand historian, sees the term 'settlers' as an ideology that changes emigration from fearful to hopeful. This ideology intersects with mass transfer⁴¹⁷, a significant shift of people, money, information, technology, goods, skills, and ideas, by using hardware like ships, trains, and buses⁴¹⁸.

Settler colonialism relies on fantasies of 'cleansing' the territory of indigenous people and exogenous 'others'⁴¹⁹. Exogenous 'others' often endorse the indigenisation of the settlers,

⁴¹⁴ Hannah Brown, 'Feker Libi, A Song in Four Languages, to Represent Israel at Eurovision' (*Jerusalem Post*, 4 March 2020).

⁴¹⁵ Ibid 23-24.

⁴¹⁶ Ronald Ranta, 'Re-Arabizing Israeli Food Culture' (2015) 18.4 *Food, Culture & Society* 611; Nur Masalha, 'Settler colonialism, Memoricide and Indigenous Toponymic Memory: The Appropriation of Palestinian Place Names by the Israeli State' (2015) 14.1 *Journal of Holy Land and Palestine Studies* 3.

⁴¹⁷ James Belich, 'Response: A Cultural History of Economics?' (2010) 53(1) *Victorian Studies* 116, 120.

⁴¹⁸ James Belich, *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783-1939* (Oxford University Press 2009) 116.

⁴¹⁹ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 33; Nur Masalha, *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought 1882-1948* (Washington D.C.

like western acceptance of Israeli narratives. Exogenous 'others' are more likely to integrate within a settler colonial society, relying on a mutual exogenous past and shared western narratives of displacement and emancipation⁴²⁰.

It is easier for Westerners to integrate into Israel, than many Palestinian citizens of Israel who grew up and lived in Israel their entire lives. For most Palestinians, integrating or even visiting Israel is impossible due to the strict travel restrictions in the West Bank, and the total blockade over Gaza⁴²¹.

In Australia, Aboriginal land has been transferred to settler colonial hands. The transfer continued despite some legislation for Aboriginal rights⁴²². This includes land rights reforms, the National Native Title Act, and the 2008 apology on the Stolen Generations of abducted children and their families. In addition, the 1967 Referendum was supposed to remove constitutional discrimination against Aborigines, but the armed intervention into indigenous communities continued⁴²³.

Institute of Palestine Studies 1992); Israel Shahak, *Jewish History, Jewish Religion: The Weight of Three Thousand Years* (Pluto Press 1994) 8, 128; Israel Shahak, *Jewish Fundamentalism in Israel* (Pluto Press 1999) 76.

⁴²⁰ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 34.

⁴²¹ Alison P Brown, 'The Immobile Mass: Movement Restrictions in the West Bank' (2004) 13.4 Social & Legal Studies 501; Lorenzo Veracini, 'The Other Shift: Settler colonialism, Israel, and the Occupation' (2013) 42(2) Journal of Palestine Studies 26; Rachel Busbridge, 'Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization' (2018) 35(1) Theory, Culture & Society 91; Lorenzo Veracini, 'Israel-Palestine Through a Settler Colonial Studies Lens' 21(4) Interventions (2019) 568; Sara Salazar Hughes, 'Unbounded Territoriality: Territorial Control, Settler colonialism, and Israel/Palestine' (2020) 10(2) Settler Colonial Studies 216.

⁴²² Robert Van Krieken, 'Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation' (2004) 75(2) Oceania 125; Thalia Anthony, 'They Were Treating Me Like a Dog: The Colonial Continuum of State Harms Against Indigenous Children in Detention in the Northern Territory, Australia' (2018) 7(2) State Crime Journal 251.

⁴²³ Wolfe, 'Race and the Trace of History' (n 391) 277; Bain Attwood, *The 1967 Referendum: Race, Power and the Australian Constitution* (Aboriginal Studies Press 2007).

One type of transfer is a violent militarily liquidation of Indigenous people (Necro-political). In Bosnia, a Muslim minority was murdered as a coercive campaign of terrorising the population to leave an area controlled by Republika Srpska. Serbian nationalists parted from Bosnia-Herzegovina, much like Zionists who carved Israel out of Palestine. Nationalists in Serbia destroyed the Croat and Bosniak communities. Only one-tenth of the non-Serb population managed to remain⁴²⁴.

In Palestine, there was a similar Zionist policy to destroy Palestinian society. Zionist leaders favoured a homogeneous Jewish society but still operated within some constraints of the pre-48 Partition. The 1948 war allowed Israel to extend its boundaries beyond the Partition Plan, assuring a Jewish majority in Israel-proper without expelling all Palestinians⁴²⁵. Later on, after Israel tripled its size in 1967 (especially since the second Intifada 2000-2005), drones became the ideal weapon for maintaining Israel's control over misappropriated Palestinian land, whether the land was taken in 1948 or 1967. Today drones execute such settler colonial policies of domination, control, and displacement.

Forcibly expelling Indigenous people, within or without their land, can be an ethnic transfer. The justification for this can be based on not registering indigenous presence and conceptual displacement. In the US, the removal of Native Americans was justified by their 'nomadic

⁴²⁴ David Harland, 'Never Again: International Intervention in Bosnia and Herzegovina' (UK Government Stabilisation Unit, July 2017) <<https://www.hdcentre.org/wp-content/uploads/2017/07/Never-again-International-intervention-in-Bosnia-and-Herzegovina.pdf>> accessed 14 March 2022.

⁴²⁵ Wolf, 'Race and The Trace of History' (n 391) 277.

nature'. This resembles Israel's and Australia's attitudes towards Bedouins and Aborigines. Both were perceived as an inconvenience that removal could solve⁴²⁶.

These types of transfers can steer the population's economy by removing indigenous people from the population system: legislation is used for dispossession, missionaries for integration, and administrative transfers.

2.8.3. Sovereignty

Considering the various forms of transfer that prevail in settler colonial projects, it is equally worth looking into the importance of sovereignty.

The presence of natives in settlers' homeland represents an obstacle to sovereignty⁴²⁷. The sovereign displacement and the foundation of a new sovereign polity are reflected by various methods that try to eliminate and displace indigenous populations⁴²⁸. Settler colonialists have self-constitutionalised ways to proclaim their sovereign control. They assert dominance through settlements, creating territorial homogenisation, and normalising settlers' power⁴²⁹. A settler colonial project is based on settlers' capability to carry sovereignty and permanently apply it to natives and 'others'⁴³⁰. Settler sovereignty can be dated back to the emergence of

⁴²⁶ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283); Edward Cavanagh and Lorenzo Veracini, 'Historical Document Afterword: On the Rights of the Settlers of Australia' (2011) 1(1) *Settler Colonial Studies* 197; Patrick Wolfe, 'After the Frontier: Separation and Absorption in US Indian Policy' 1(1) *Settler Colonial Studies* 18; Hughes, 'Unbounded Territoriality' (n 421).

⁴²⁷ Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (n 304) 399; Hughes, 'Unbounded Territoriality' (n 421).

⁴²⁸ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283); Hughes, 'Unbounded Territoriality' (n 421).

⁴²⁹ John G Reid and Thomas Peace, 'Colonies of Settlement and Settler colonialism in Northeastern North America, 1450–1850' in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook Of The History Of Settler colonialism* (Routledge 2017) 80.

⁴³⁰ Ibid.

the nation-state, however, Euro-American societies managed to assert explicit territorial control only after the mid-late 18th century⁴³¹.

Sovereignty can be defined in economic terms. The lack of farming by the natives is used to justify their displacement. Under a western idea of sovereignty, fulfilling economic duties, such as cultivation, is as crucial as land control. Whoever neglects these duties, forfeits sovereignty⁴³². Under the British mandate over Palestine, tenants would lose their rights if a 'Miri' property (land originally owned by the Ottoman crown) remained uncultivated for 3 years. Zionists exploited such laws to take over Palestinian land⁴³³.

Non-Western sovereignties have been flexible and mediated, subjected to the commercial interests of the West. Western powers have ensured that legal systems and technologies will sustain their superiority. The 'new rule of law' was justified under these commercial interests⁴³⁴.

Unlike traditional colonialists, settler colonialists wish to stay indefinitely as a politically, economically, and culturally independent society. This desire influences the nature of settlers' sovereignty. Traditional colonialists generally serve the state of origin and are ready to return home eventually. Even if many are happy to stay in a colonised territory, their connection to the colonised land is weaker when compared to settler colonisers, who do not have any home other than the misappropriated indigenous land, the new homeland for foreign settlers.

⁴³¹ Ibid 79.

⁴³² Antony Anghie, 'International Law and the Pre-History of Globalisation' 33 Singapore Law Review 3 (2015) 15.

⁴³³ Kenneth W Stein, *The Land Question in Palestine 1917-1939* (UNC Press Books 2017).

⁴³⁴ Anghie, 'International Law and the Pre-History of Globalisation' (n 432) 16.

Settler colonialists see themselves as creators of a new political order and execute the sovereignty that travels with them wherever they go. This claim is independent of any possible colonial metropole⁴³⁵. The citizenship of settler colonialists is conceivable only by a complete disavowal of the existence and autonomy of indigenous people⁴³⁶.

Zionists had seen Palestine as their homeland even before leaving Europe. This difference between 'home' and 'homeland' is crucial in the context of sovereignty. It sheds light on the difficulties of decolonising a settler colonial body politic. In SA, as part of the truth and reconciliation processes, most Afrikaners stayed despite the difficulties of facing their victims as former oppressors. Likewise, most Israelis are more likely to stay in a decolonised Israel/Palestine, as they see the territory as their homeland⁴³⁷.

Settler colonialists are initially 'exogenous-others' who seek sovereignty and title at the expense of indigenous people. Settlers create new conceptions of natives as if they are lesser beings who are unworthy of human consideration. Settlers form hierarchies that dehumanise indigenous people to justify displacement and transfer to assert sovereignty. Indigenous land is seen as *Terra Nullius*, nobody's land, free for taking⁴³⁸. New South Wales and Georgia in the 1820s-1830s demonstrates this idea of sovereignty as territorial jurisdiction that justifies the dispossession of natives⁴³⁹.

⁴³⁵ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 53.

⁴³⁶ Ibid 79.

⁴³⁷ Ewa Górka, 'Memory Activism: Methods of Creation of Alternative Collective Memory in Former Yugoslavia and Israel' (2016) 32 *Maska*; Reinhard Berbeck, Arwa Badran and Susan Pollock (eds) *Reclaiming the Past for the Future: Oral History, Craft, and Archaeology* (Ex Oriente 2018); Giulia Daniele, 'Mizrahi Jews and the Zionist Settler Colonial Context: Between Inclusion and Struggle' (2020) 10(4) *Settler Colonial Studies* -480.

⁴³⁸ Evelyn Nakano Glenn, 'Settler colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation' (2015) 1(1) *Sociology of Race and Ethnicity* 52, 58.

⁴³⁹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 79.

During the 1940s-1960s, US policies towards Native Americans focused on individual assimilation by breaking tribal ties and collective orientations. The US Congress passed a law in 1953 that terminated the tribal status of indigenous communities, which meant ending their legal standing as sovereign nations and losing the little federal support, services, and protections that they had, including healthcare. Numerous reservations were terminated for non-indigenous settlers. Members of tribes unilaterally became citizens, forced to pay taxes, and subordinated to federal and state law. In the next decade, the US terminated over 109 tribes and 2.5 million acres of trust land⁴⁴⁰.

The political power of settlers is at the centre, rather than the establishment of state institutions. The self-constituting capability of the settlers allows them to live together alongside other sovereignties, including colonial, imperial, national and postcolonial. This suzerain approach to sovereignty helps settlers develop beneficial relations with peripheries and colonising metropolises⁴⁴¹.

Settlers' sovereign claims are equally based on a particular lifestyle⁴⁴². This helps develop self-governing abilities and conditions for separation from metropolises⁴⁴³. In the late 19th century, the 'empire as a way of life' was a prevailing narrative in the US. The perceived 'US superiority' justified a civilising mission for security and 'world peace'. Both Roosevelt and Trump built their career by using peoples' fears of losing what made America 'great': Extolling the reformatory potential of adventures overseas and self-asserting the global map⁴⁴⁴.

⁴⁴⁰ Nakano Glenn (n 438) 57.

⁴⁴¹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 54.

⁴⁴² Ibid 56.

⁴⁴³ Ibid 58.

⁴⁴⁴ Matthew Crow, 'Atlantic North America to Late 19th Century' in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook of The History Of Settler colonialism* (Routledge 2017) 105.

Another example is the attempt to 'civilise' Kenya. The Maasai peoples were judged as impossible to civilise because they had a non-agricultural pastoral way of life. As a result, they could not integrate into the settler colonial economy. The Kikuyu, the Luo, and the Kamba peoples were more agricultural and were used as a labour force, while the Maasai were transferred to make room for settlers⁴⁴⁵.

Similarly, the Māori tribes in New Zealand were perceived as uncivilised and 'backward'. Suffering from diseases and poverty, Māori's decline in population and deterioration of living conditions was not attributed to settler colonial practices at the time⁴⁴⁶.

The Ainu in Japan were perceived as weak and primitive hunters and fishermen who had no understanding of private property. As a result, Japanese Educators and intellectuals believed that they could only survive through cultural assimilation, the final stage of a settler colonial project, a type of cultural genocide⁴⁴⁷.

Much like Canadians and Americans, Japanese policymakers argued that privatising Ainu territory would emancipate them from their 'backward' ways of production, ascending their culture from 'savages' to 'civilised' by modern agriculture. There was a belief that 'primitives' could not survive in a modern world. So the Hokkaidō Development Agency banned centuries-old traditions with deep cultural and religious meanings, like tattooing infants and piercing ears, and forced the Japanese language. Traditions were defined as something 'to be

⁴⁴⁵ Will Jackson, 'Settler colonialism in Kenya 1880–1963' in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook of The History Of Settler colonialism* (Routledge 2017) 234.

⁴⁴⁶ Felicity Barnes, 'Settler Colonialism in Twentieth-Century New Zealand in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook of The History Of Settler colonialism* (Routledge 2017) 444.

⁴⁴⁷ Katsuya Hiranom, 'The making of Japan's Hokkaidō' in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook of The History Of Settler colonialism* (Routledge 2017) 333

cleansed, for these ill customs inhibit their path to enlightenment and baffle their will to become enlightened people'⁴⁴⁸.

I witnessed the importance of such traditions and customs when I visited and was hosted by the indigenous Tao tribe in Orchid Island (Ponso no Tao) near Taiwan (2018). The Tao people could keep their traditions, as the Japanese government declared the island an ethnological research site, utterly off-limits to the public. Most Japanese scholars were motivated to visit the island to learn about the Japanese empire, rather than engage with the Tao people themselves on equal grounds. This led to complaints from the Tao, who felt that they are treated as research specimens, not as people⁴⁴⁹. Restriction continued during the Taiwanese rule over the island from 1945 onwards and was lifted only in 1967. The island also served as a penal colony for Taiwanese convicts (1958-1979). During the 1960s, the island suffered from ecological damage and deforestation that encouraged emigration to Taiwan. Alongside other protested policies, Taiwan established a nuclear waste dump (1977) and suspended Tao's plans to construct a national park⁴⁵⁰.

Additionally, settler colonialists have a pattern of non-state corporate action, as settler movements often work in corporate formations⁴⁵¹. Capitalism was historically in the service of settlements⁴⁵². Settler colonial corporations might not be primarily motivated by profit,

⁴⁴⁸ Ibid 335.

⁴⁴⁹ Weatherdon (n 135).

⁴⁵⁰ William Cannon Hunter, 'Understanding Resident Subjectivities Toward Tourism Using Q Method: Orchid Island, Taiwan' (2013) 21(2) *Journal of Sustainable Tourism* 331.

⁴⁵¹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 60.

⁴⁵² Ibid 61.

but by the desire to build settlements, like the British SA Company that never gave dividends to its shareholders⁴⁵³.

In the early 19th century, private citizens were not allowed to purchase land from Native Americans. Only the US government had title to that land, so they eliminated indigenous occupancy under the 'Doctrine of Discovery'. That gave Europeans an exclusive right to eradicate native Americans' title. Zionists developed similar legal frameworks to dispossess Palestinian land⁴⁵⁴.

As they oppose external sovereignty, settlers often express self-governance in a covenant or a constitution. For example, the Watauga Association established a self-governing settler-body-politic past the Appalachian Mountains (1772). They formulated a covenant and outlined how settlers could self-regulate, organise, keep local control, resolve judicial disagreements, secure liberties and properties, organise the local militia and negotiate with Native Americans⁴⁵⁵. This asserted control and autonomy from exogenous 'others'⁴⁵⁶. Separation is the origin of the moment when settlers 'move out' and the outcome of implementing jurisdiction autonomously⁴⁵⁷.

Contradictions between hardship, struggles, battles, and commotions and the promise of happiness, family life, and peace, reflect an inside-outside binary. The political entity sees itself as gifted with an intrinsic law-making capability, originating from the ability to move

⁴⁵³ Ibid.

⁴⁵⁴ Eric Kades, 'History and Interpretation of the Great Case of Johnson v. M'Intosh' (2001) 19(1) Law and History Review 67.

⁴⁵⁵ Ibid 62-63.

⁴⁵⁶ Stepha Velednitsky, Sara NS Hughes, and Rhys Machold, 'Political Geographical Perspectives on Settler colonialism' (2020) 14(6) Geography Compass e12490.

⁴⁵⁷ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 63.

collectively through space and time. The body politic constantly denies subordination and re-affirms its jurisdiction and self-constitution⁴⁵⁸. Settler colonial sovereignties may accommodate colonial sovereignties and vice-versa, alongside corporate self-constituted formation and imperial structures⁴⁵⁹. Israeli drones are an example of a technology that was developed by corporations that are motivated not just by their will to profit their shareholders but also by their patriotism, as former military generals often lead such high-tech corporations.

Settlers can operate parallel to other sovereign claims. Empowered by the myth of 'American freedom', North Americans ignored the borders of colonial sovereignties⁴⁶⁰. They subverted prior sovereign orders, like in Texas, or established new orders, like the Utah Mormons. They all constructed a sovereign claim under consolidated sovereignties, like states-within-states in Latin America⁴⁶¹. Settler colonialists work as a function of enabling colonial regimes, like the Japanese in Korea⁴⁶² and Formosa⁴⁶³, Pied Noir in Algeria⁴⁶⁴, Italians in Libya⁴⁶⁵, and Portuguese in Mozambique and Angola⁴⁶⁶.

⁴⁵⁸ Ibid 64.

⁴⁵⁹ Ibid 66.

⁴⁶⁰ Ibid 67.

⁴⁶¹ Ibid 68-69.

⁴⁶² Jun Uchida, *Brokers of Empire: Japanese Settler colonialism in Korea, 1876–1945* (Harvard University Asia 2014).

⁴⁶³ Lin-chin Tsai, 'Mapping Formosa: Settler Colonial Cartography in Taiwan Cinema in the 1950s' in Shu-mei Shih and Lin-chin Tsai (eds), *Indigenous Knowledge in Taiwan and Beyond* (Springer 2021) 295.

⁴⁶⁴ Fiona Barclay, Charlotte Ann Chopin, and Martin Evans, 'Introduction: Settler colonialism and French Algeria' (2018) 8(2) *Settler Colonial Studies* 115.

⁴⁶⁵ Emanuele Ertola, "'Terra Promessa': Migration and Settler colonialism in Libya, 1911–1970' (2017) 7(3) *Settler Colonial Studies* 340.

⁴⁶⁶ Cláudia Castelo, 'Colonial Migration to Angola and Mozambique: Constraints and Illusions' in Eric Morier-Genoud and Michel Cohen, *Imperial Migrations Colonial Communities and Diaspora in the Portuguese World* (Palgrave Macmillan 2013) 107.

Sovereignty claims by settler colonialists are not centred on the state. The claims focus on the corporate ability of the community to legislate their laws through self-constituting competence, their capability to govern the population economy, and subordination to the metropole colonialists – but with a conditional kind of loyalty⁴⁶⁷.

Settler colonialists had to develop alternative forms of sovereignty that were linked to the territory. The legal apparatus of sovereignty in international law was created to deal with problems that came with the first attempts to manage a large community of European settlers who dwelled in imperial peripheries. The consolidation of imperial sovereignty can be seen as a reaction to settler sovereignty claims, but not the other way around. The settler colonial sovereignty contradicts the imperial and colonial one, but they are tied together in a dialectic interrelationship⁴⁶⁸. A resilient settler sovereign ability operates in tension or collaboration with the colonial one⁴⁶⁹.

Settler colonialism still provides metaphors we live by. This is evident in popular board games like ‘Settlers of Catan’, with over 40 million copies sold in 40 languages⁴⁷⁰. Settler colonialism allows us to look beyond the confrontations and think about the past and present beyond the zero-sum game of two ethnonational groups that are fighting for the same land.

Israel-Palestine should not be analysed as a ‘conflict’ between two national groups over sovereignty. A settler colonial approach allows us to think about the future of Israel/Palestine

⁴⁶⁷ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 72.

⁴⁶⁸ Ibid 72-73.

⁴⁶⁹ Ibid 73.

⁴⁷⁰ Catan Homepage, ‘About the Catan GMBH’ <<https://www.catan.com/about-us>> accessed 17 July 2022; Lorenzo Veracini, ‘Settlers of Catan’, 3(1) *Settler Colonial Studies* 131 (2013) 133.

and other territories, not as a zero-sum game of dividing the land, but as one place that cannot be divided. The land can inhabit everyone.

The settler colonial conquest remains forever incomplete, as the identity of indigenous collectives was shaped alongside settler colonialism itself, and by the denial of national rights, while settler colonialists erased their indigeneity by extending settler rights at their expense⁴⁷¹.

This can be exemplified by a settler colonial practice adopted by Israel's High Court of Justice (HCJ) which allows land requisition for future settlements at the expense of Palestinians:

'In terms of purely security-based considerations, there can be no doubt that the presence... ..of settlements – even 'civilian' ones – of the citizens of the administering power make a significant contribution to the security situation in that territory, and facilitates the army's performance of its task... ..terrorist elements operate more easily in territory occupied exclusively by a population that is indifferent or sympathetic to the enemy than in a territory in which there are also persons liable to monitor them and inform the authorities of any suspicious movement. With such people the terrorists will find no shelter, assistance and equipment...'⁴⁷².

⁴⁷¹ Lorenzo Veracini, 'What Can Settler Colonial Studies Offer to an Interpretation of the Conflict in Israel–Palestine?' (2015) 5(3) *Settler Colonial Studies* 268.

⁴⁷² Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation* (Verso Books 2012) 99-100; HCJ 606/78, Ayyub v. Minister of Defence, 33 PD (2) 113 (Beth El case) (1978) (Isr.); HCJ 258/79, Amira v. Minister of Defence, 34 PD (1) 90 (1979) (Isr.).

The HCJ's rhetoric above follows settler colonial interests, narratives, and practices while serving as a fig leaf for a perceived democracy and due process that eventually serves oppression⁴⁷³.

To assert its sovereignty between the Jordan River and the Mediterranean Sea, Israel utilises resources to benefit a particular ethnical-racial population – Jewish-Israelis – at the expense of Palestinians⁴⁷⁴. This practice infringes the International Convention on the Elimination of All Forms of Racial Discrimination⁴⁷⁵. In most cases, Israel's HCJ rejects petitions regarding expropriating Palestinian lands⁴⁷⁶. But the HCJ did order the state of Israel, on a rare occasion, to alter the route of a 1.7 km section of the wall near Bil'in village (2007)⁴⁷⁷. After Israel moved the wall 1,300 square meters, most Palestinian lands remained under Israel's control⁴⁷⁸. This violates IHL⁴⁷⁹, including prohibiting transferring population to 'occupied territory'⁴⁸⁰.

Settler colonial communities focus on 'law-making corporate capacity'⁴⁸¹. Imperial sovereignty reacts to assertions of settler sovereignty⁴⁸². Settlers had to limit their actions within the boundaries of the consolidation processes of national and imperial organisations.

⁴⁷³ Mia Lattanzi, 'Settler colonialism through the Court: Domestic Interpretations of International Law' (2020) 24 UCLA Journal of International Law and Foreign Affairs 201.

⁴⁷⁴ Orna Ben-Naftali, Aeyal M Gross and Keren Michaeli, 'Illegal Occupation: The Framing of the Occupied Palestinian Territory' (2005) 23 Berkley Journal of International Law 551, 26.

⁴⁷⁵ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 1.

⁴⁷⁶ Ben-Naftali, Michaeli and Gross (n 474) 27.

⁴⁷⁷ HCJ 8414/05 Ahmad 'Issa' Abdallah Yassin, head of the Bil'in Village Council v. Government of Israel.

⁴⁷⁸ Btselem, 'Separation Barrier moved, but some 1,300 dunams of Bil'in land remain on other side' (Btselem, 29 June 2011) <<https://www.btselem.org/topic-page/29611-1300>> accessed 5 June 2021.

⁴⁷⁹ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) 75 UNTS 287 (adopted 12 August 1949, entered into force 2 November 1950); Ben-Naftali, Michaeli and Gross (n 474) 27, 30-31.

⁴⁸⁰ Ibid, Articles 49(6), Article 54; Ben-Naftali, Michaeli and Gross (n 474) 29.

⁴⁸¹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 72.

⁴⁸² Ibid 72-73.

The sovereignty of the settlers is simultaneously localised and trans-colonial. This is demonstrated by the founding of white-settler societies across the colonial world during the 19th-20th centuries. Settler colonialists recurrently enact their sovereignty across the globe outside the boundaries of any consolidating states⁴⁸³.

2.8.4. **Consciousness, Disavowal, and Screen Memory**

By the 2nd-3rd centuries, the Roman Empire had already defined itself as a unified territory, including a 'frontier consciousness' which resembles the modern 'civilizing mission'. Romans defined inhabitants of other parts of the world as 'not worthy of their efforts'. The more other people were different, the stronger the reasoning for subordinating them. 'Barbarian' tribes were Romanised as the Empire transformed, and barbarian settlers had to adapt their kingdoms to Roman standards⁴⁸⁴.

Consciousness motivated the process of asserting independent sovereignty. This can be understood as a set of mental states distinct from colonial circumstances: 'settler colonial phenomena possess a mimetic character, and that a recurrent need to disavow produces a circumstance where the actual operation of settler colonial practices is concealed behind other occurrences'⁴⁸⁵.

Settler colonialism obscures conditions of its production⁴⁸⁶ through hegemonic narratives of exceptionalism and uniqueness that are asserted through culture, religion, history, and a wide

⁴⁸³ Ibid 74.

⁴⁸⁴ Mark W Graham, 'Settler colonialism from the Neo-Assyrians to the Romans' in Edward Cavanagh And Lorenzo Veracini (eds), *The Routledge Handbook of the History of Settler colonialism* (Routledge 2017) 21.

⁴⁸⁵ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 14.

⁴⁸⁶ Barker, 'Already Occupied' (n 309).

range of narratives. Settler colonial societies might see themselves as having good intentions, like creating a homeland for refugees. However, these intentions overshadow the eradication of indigenous societies⁴⁸⁷. Settler colonial societies can be understood through their relations with consciousness, labour, land, institutions, knowledge, and literature⁴⁸⁸.

Israel uses sterile language and euphemisms like 'security', 'terrorism' and 'operations' to mask the intention to eliminate and dispossess Palestinians. Drone technology, which is becoming more autonomous, distances Israelis from the messy reality on the ground, which many now call 'apartheid'. Settler colonial studies, and a possible SCAL, can therefore recognise West Bank settlements as a continuation of a project that started before 1967, and even before 1948. But the international community (an exogenous 'other') typically ignores the settler colonial reality within Israel-proper⁴⁸⁹.

Israel has denied for decades that the systematic mass killings of Palestinians took place around 1948. One 'Righteous in Sodom', Theodore Katz, submitted his master's thesis in 1998, containing recorded testimonies of Israeli soldiers and Palestinians about a massacre perpetrated against Palestinian Prisoners of War (POWs) in Tantura after the village

⁴⁸⁷ Gabriel Piterberg, *The Returns of Zionism: Myths, Politics and Scholarship in Israel* (Verso 2008); Hughes, 'Unbounded Territoriality' (n 421).

⁴⁸⁸ Ibid; Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel, *Indigenous (in) Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, vol. 4 (Harvard University Press 2012); Nur Masalha, *Expulsion of the Palestinians* (n 419); Mazen Masri, 'Colonial Imprints: Settler colonialism as a Fundamental Feature of Israeli Constitutional Law' (2017) 13(3) *International Journal of Law in Context* 388; Scott Lauria Morgensen, 'Queer Settler colonialism in Canada and Israel: Articulating Two-Spirit and Palestinian Queer Critiques' (2012) 2(2) *Settler Colonial Studies* 167; Shira Robinson, *Citizen Strangers: Palestinians and the Birth of Israel's Liberal Settler State* (Stanford University Press 2013); Nadim N Rouhana and Nimer Sultany, 'Redrawing the Boundaries of Citizenship: Israel's New Hegemony' (2003) 33(1) *Journal of Palestine Studies* 5; Gershon Shafir and Yoav Peled, *Being Israeli: The Dynamics of Multiple Citizenship*, vol. 16 (Cambridge University Press 2002); Nadera Shalhoub-Kevorkian, *Security Theology, Surveillance and the Politics of Fear* (Cambridge University Press 2015); Hughes, 'Unbounded Territoriality' (n 421).

⁴⁸⁹ Zertal and Eldar (n 403); Hughes, 'Unbounded Territoriality' (n 421).

surrender. An unjust libel suit filed against Katz by Israeli veterans forced him to retract his account – and his thesis. It was too little and too late when in January 2022, some veterans decided to come clean, re-confirming their original testimonies⁴⁹⁰. By doing so they joined a relatively small group of hundreds of Israeli ex-combatants who broke their silence about their atrocities⁴⁹¹. But a bond of secrecy remains the main norm around Israel's operations.

Occupatio Bellica is a principle based on a distinction between a provisional change of military occupation and sovereignty⁴⁹². The term belligerent occupation is commonly accepted to be a temporary 'transient state', to be resolved quickly through negotiations towards return or annexation⁴⁹³. In the conceptual framework of occupation, there is an implicit acceptance of temporariness. Nevertheless, occupation is provisional, so mainstream legal scholars speak of Israel's 'occupation' over 'territories' as 'temporary' and not a structural settler colonial situation with roots inherent in the original Zionist ideology itself⁴⁹⁴. SCAIL might draw attention within the international legal community to this realisation.

Israel controls 'the territories', and has been refusing to enter into negotiations to define its borders for years⁴⁹⁵. This understanding is still absent from mainstream legal scholarly. Time plays into Israel's hands. By not delineating its borders, it can expand its settler colonial project and build more settlements without international scrutiny – under IHL.

⁴⁹⁰ Adam Raz, 'here's a Mass Palestinian Grave at a Popular Israeli Beach, Veterans Confess' (*Haaretz*, 20 January 2022).

⁴⁹¹ Erica Weiss, 'Struggling with Complicity: Anti-Militarist Activism in Israel' (2019) 60(*S19*) *Current Anthropology* S173.

⁴⁹² Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (Telos Press Publishing 2006) 206; Hughes, 'Unbounded Territoriality' (n 421).

⁴⁹³ Weizman, *Hollow Land* (n 472) 97; Hughes, 'Unbounded Territoriality' (n 421).

⁴⁹⁴ Ariella Azoulay and Adi Ophir, *The One-State Condition: Occupation and Democracy in Israel/Palestine* (Stanford University Press 2012) 12; Hughes, 'Unbounded Territoriality' (n 421).

⁴⁹⁵ Gideon Biger, 'The Boundaries of Israel – Palestine Past, Present, and Future: A Critical Geographical View' (2008) 13(1) *Israel Studies* 91; Hughes, 'Unbounded Territoriality' (n 421).

A settler colonial 'frontier' can be defined as a territory still not formally inside the settler colonial polity. Because the West Bank is *de-facto* annexed – it is not really a 'frontier'. When most Israelis visit West Bank settlements, they do not consider themselves as if they have crossed any border. Most settlements are connected to Israel-proper through easily accessible highways⁴⁹⁶.

When the international community refers to West Bank or Gaza as 'occupied', These territories are depicted as external to Israel. This is not an accurate representation. Unlike the West Bank, East Jerusalem and the Golan Heights have been legally annexed. But for the typical Israeli, the legal subtleties don't seem to matter. Under mainstream international law, West Bank and Gaza are considered 'occupied territories' (outside of Israel), where for all practical reasons, they are one, an undivided entity⁴⁹⁷. An interest in SCAIL among legal experts might draw attention to the reality on the ground, paving the way to a more practical and insightful approach to the predicament of the Palestinian population.

Settler colonisers have often themselves carry a residue of trauma and pain. Some of them have been dispossessed, displaced, and humiliated in their states of origin. The tragedy is

that in many cases their wounds and painful history blind them to the suffering of others whom they wish to inherit.

Settlers deny their violence as a defensive mechanism – a 'collective screen memory'⁴⁹⁸. There is a contradiction between the fantasies that settlers had beforehand and the painful reality

⁴⁹⁶ David Delaney, *Territory: A Short Introduction* (Wiley-Blackwell 2008), 140; Hughes, 'Unbounded Territoriality' (n 421).

⁴⁹⁷ Ibid.

⁴⁹⁸ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 75-76; Garrett Stewart, 'Screen Memory in Waltz With Bashir' (2010) 63(3) Film Quarterly 58.

at the destination. This creates collective and individual mechanisms, like repression, denial, and disavowal⁴⁹⁹. Settler colonial collectives are traumatised, as the trauma haunts perpetrators and victims⁵⁰⁰. Repressed traumas stay latent and often resurface.

Screen memory is an imprecise reconstruction that hides what happened⁵⁰¹. It is a psychological process that prevails within settler colonial societies⁵⁰². Settler colonialists are obsessed with marking locations of preliminary exploration and nostalgic reconstructions of their past⁵⁰³. Ignoring histories that happened before the appearance of any 'first' settler is one vital feature of the settler colonial politics of memory⁵⁰⁴.

Settler societies also look for secure futures in their new homeland, as opposed to uncertain prospects in the place of origin. Settlers portray themselves as non-violent migrants who try to build a peaceful society. This can be reflected in a façade of a perpetual struggle for 'peace'⁵⁰⁵. Israel has been pretending to reach out for peace – blaming Palestinians and their leaders for peace talks failures. Palestinians have been portrayed as constantly rejecting US peace deals⁵⁰⁶, including Oslo, Wye River Negotiations, and Camp David. These are examples of how settler societies simultaneously reject and accept violence within their discourse⁵⁰⁷,

⁴⁹⁹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 76.

⁵⁰⁰ Ibid 76-77.

⁵⁰¹ Sigmund Freud, 'Screen memories' in Sigmund Freud *The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume III (1893-1899)* (James Strachey tr, Vintage 1962) 299-322.

⁵⁰² Adam J Barker, 'Deathscapes of Settler colonialism: The Necro-Settlement of Stoney Creek, Ontario, Canada' (2018) 108(4) *Annals of the American Association of Geographers* 1134.

⁵⁰³ Lorenzo Veracini, 'Historylessness: Australia as a settler colonial collective' (2007) 10(3) *Postcolonial Studies* 271; Lorenzo Veracini, 'Settler Collective, Founding Violence and Disavowal: The Settler Colonial Situation' (2008) 29(4) *Journal of Intercultural Studies* 363.

⁵⁰⁴ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 90-92.

⁵⁰⁵ Ibid 77.

⁵⁰⁶ Maia Hallward, 'Pursuing "Peace" in Israel/Palestine' (2011) 28(1) *Journal of Third World Studies* 185.

⁵⁰⁷ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 77.

as there is a gap between the rhetoric of peace and the violence they inflict on natives – including through sophisticated technology.

Similarly, the colonisation of Hawaii has been mostly denied in the consciousness of US history. US settler colonialists dispossessed the Hawaiian islanders, the Kanaka Maoli, in the 19th century. The US has used the sugar plantation to make enormous profits while forcing natives to work, crushing their autonomy⁵⁰⁸. Other campaigns across the US included Mindanao, where the Mohammedan Malay tribe was portrayed as criminal plunderer community. This misrepresentation was used to justify a bloodbath in 1913 at Bud Bagsak, where 300-400 natives were slaughtered. This massacre, like many others, did not register on settlers' consciousness⁵⁰⁹.

Settler colonialists disavow their 'original sin' to maintain a particular structure. It can be seen as a Freudian-egocentric creation of a motherland that is purer than the place of origin but still relies on metropolitan values. One example is the American revolutionists who fought as freeborn-Saxon-Englishmen⁵¹⁰. Israelis were no different, as they equally relied on western ideals and terminologies, like self-determination, that they brought with them from Europe before the establishment of the state.

Another way of disavowing violence is by portraying militarism as defensive. Some Israeli law professors insist that they are 'defensive' Zionists and that liberal Zionism can turn what others consider as Israeli aggression to legitimate 'self defense'. Another example is the circle of wagons in SA and the Trekboers' laager. For settlers, force is inevitable, like the William of

⁵⁰⁸ Hixson (n 313) 189.

⁵⁰⁹ Ibid 302.

⁵¹⁰ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 77-78.

Orange order celebrating the battle of the Boyne in Ireland⁵¹¹. The Red River battle of the American Civil War led to the ethnic cleansing of Texas – and was justified as self-defence. The US transferred the Comanche, Cheyenne, and Kiowa out of Palo Duro Canyon. They burned villages to the ground. Native Americans of Texas faced grim winter circumstances with no horses, lodges, clothing, robes, or food. The natives plunged from 35,000 (1835) to a few thousand (1875)⁵¹².

Settler colonialists cherish western political traditions. A nuclear family that settles in a permanent location is the fundamental building block for society. In Israel, this includes significant financial incentives for having as many children as possible. The cultural aspect of having so many children is anchored in historical narratives, alongside policies that encourage Israelis to balance work and family. Israel's birth rate is the highest among the OECD (over three children on average) and is also higher than birth rates in emerging economies⁵¹³.

Israeli culture includes sending the children of the nuclear family to 2-3 years of mandatory military service – and soldiers often visit home a few times a month⁵¹⁴. This type of family equally contrasts 'nomadic' and 'tribal' ways of life, and the unstable past of the settlers themselves, in the place of origin⁵¹⁵. Zionism generally sees Bedouins as nomadic, tribal, and

⁵¹¹ Ibid 78.

⁵¹² Hixson (n 313) 172

⁵¹³ Taub Center Staff, 'Why Are There So Many Children in Israel?' (*Taub Center for Social Policy Studies in Israel*, February 2019) <<https://www.taubcenter.org.il/en/research/why-are-there-so-many-children-in-israel/>> accessed 15 March 2022.

⁵¹⁴ Gal Levy and Orna Sasson-Levy, 'Militarized Socialization, Military Service, and Class Reproduction: The Experiences of Israeli Soldiers' (2008) 51(2) *Sociological Perspectives* 349; Yaron Girsh, 'Negotiating the Uniform: Youth Attitudes towards Military Service in Israel' (2019) 27(3) *Young* 304.

⁵¹⁵ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 78-79.

uncivilized⁵¹⁶. They also tend to see their past in the diaspora as shameful⁵¹⁷, although there were thriving Jewish communities in Africa, the Middle East, and Europe⁵¹⁸. Many Israelis still consider Jewish communities who prosper across the globe today as failures or even traitors – simply for not moving to Israel (even if they have no connections to Israel whatsoever).

Both indigenous people and exogenous ‘others’ are seen as ‘unsettled’. Projections of the so-called ‘nomadic’ are used as a defensive mechanism to mark various circles of exclusion to deny indigenous rights in the settler colonial polity. Israel’s Supreme Court officially declared displaced Bedouins as ‘wanderers’⁵¹⁹, similarly to Afrikaners who defined the Zulus as ‘newcomers’.

Settler colonialists suffer from permanent collective anxieties. They fear retribution from their usurped victims. This is manifested in the Israeli claim that their Arab neighbours wish to throw them into the sea⁵²⁰. Similar insecurity can be detected in Queensland (1860s), Algeria (1950s) and Rhodesia (1970s). In all these cases, foreign settlers felt that their existence was under threat, and that their survival was not yet guaranteed⁵²¹.

There is a settler need to disavow not only violence, but also the mere existence of indigenous people. Captain Cook assumed that Australia would mostly be uninhabited⁵²². Even 20th-

⁵¹⁶ Mansour Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance* (Columbia University Press 2017); Mansour Nasasra, ‘Bedouin Tribes in the Middle East and the Naqab’ in Mansour Nasasra and Other (eds) *The Naqab Bedouin and Colonialism* (Routledge 2019) 35.

⁵¹⁷ Ehud Luz, ‘The Shame of Exile and the Zionist Recovery of Jewish Dignity’ in Ehud Luz, *Wrestling With an Angel: Power, Morality, and Jewish Identity* (Yale University Press 2008) 42.

⁵¹⁸ Peter Mark and José da Silva Horta, *The Forgotten Diaspora: Jewish Communities in West Africa and the Making of the Atlantic World* (Cambridge University Press 2013).

⁵¹⁹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 78-79.

⁵²⁰ Moshe Shemesh, ‘Did Shuqayri Call for “Throwing the Jews into the Sea”?’ (2003) 8(2) *Israel Studies* 70.

⁵²¹ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 81.

⁵²² Captain James Cook, *The Journals of Captain Cook* (Penguin 2003).

century settlers shared a similar distorted perception of 'emptiness'. Fascist Italy's 'Empire' asserted in the 1930s that Africa was uninhabited⁵²³. Similarly, notable Israeli poets, novelists and journalists have described the lands that were occupied in 1948 and 1967 without Palestinian presence. The ideology of settler colonialists is based on a perception of 'vacant' and the idea of 'a land without people for a people without a land'⁵²⁴ or the myth of a 'virgin' wilderness⁵²⁵. Settler colonialists enjoy what they see as a 'blank sheet', dismissing indigenous presence while seeing a settler society 'to come' with towns, administration, and constitution⁵²⁶.

One way of disavowal is through legal means. In the US, new land laws gave a veneer of legal justification while keeping the natives' powerlessness. Dispossession was justified as progress under the law that reflected God's will. Law was also used as constant evidence of western superiority, a reminder that the plight of the natives was inevitable⁵²⁷.

A final example of domination through national consciousness is the celebrations of the European invasion of Australia. Torres Strait Islanders and Aboriginals have campaigned to change the date because 26 January ('Invasion Day' or 'Survival Day') represents genocide for them⁵²⁸.

⁵²³ Federico Caprotti, 'Destructive Creation: Fascist Urban Planning, Architecture and New Towns in the Pontine Marshes' (2007) 33(3) *Journal of Historical Geography* 651.

⁵²⁴ Diana Muir, 'A Land Without a People for a People without a Land' (2008) 15(2) *Middle East Quarterly* 55.

⁵²⁵ William Cronon, 'The Trouble with Wilderness: Or, Getting Back to the Wrong Nature' (1996) 1(1) *Environmental History* 7.

⁵²⁶ Veracini, *Settler colonialism: A Theoretical Overview* (n 283) 82-83.

⁵²⁷ Hixson (n 313) 196.

⁵²⁸ Sarah Maddison, 'Settler Australia in the Twentieth Century' in Edward Cavanagh and Lorenzo Veracini (eds), *The Routledge Handbook of the History of Settler colonialism* (Routledge 2017) 427; Pip Hinman, 'Invasion Day: Tens of Thousands Say: 'No pride in genocide'' 1124 *Green Left Weekly* (2017) <<https://www.greenleft.org.au/content/invasion-day-tens-thousands-say->

2.9. Conclusions, Discussion and Decolonisation

Culture, religion, history, politics, and technology have fostered feelings of superiority and prejudice that facilitate and encourage discrimination and oppression of Third World populations and indigenous people. Deeply rooted myths of racial supremacy encouraged turning 'others' into sub-humans that can be marginalised, expelled, dispossessed, and, if need be, dispensed with. The advanced technology of an unmanned aircraft hovering above one's head, is, in itself, proof of its operator's sophistication and superiority vis-à-vis the 'primitives' huddled meekly on the ground. With such a frame of mind, it is easy and natural to view one's anonymous targets as enemies of Western civilisation and not to raise an eyebrow when you are handed 'baseball cards', a euphemism for 'kill lists'⁵²⁹.

Keeping this in mind, the premise of this chapter was that not enough attention had been given in academia to how drone technology assists settler colonial regimes by maintaining and expanding their ability to take over indigenous land, with impunity, through less visible means of oppression.

We have seen in this chapter that the anti-colonial sentiment within TWAIL scholarship had tried to place Third World people at the centre of legal discourse. But so far, TWAIL did not give enough attention to the settler colonial paradigm. The fundamental differences between colonialism and settler colonialism have been explored in this chapter, and those differences

%E2%80%98no-pride-genocide%E2%80%99> accessed 20 May 2021; Tom Calma, 'Australia Survival Day' (2015) 86(1) AQ-Australian Quarterly 10.

⁵²⁹ Joseba Zulaika, *Hellfire from Paradise Ranch: On the Front Lines of Drone Warfare* (University of California Press 2020).

should affect how we understand drone violence and our understanding of the genealogy of international law⁵³⁰.

With an optimistic, perhaps naïve, note, settler colonialism can, and should – come to an end. But traditional decolonisation methodologies are unlikely to be effective in settler colonial situations.

TWAIL is invaluable when exploring the historical development of international law and current power relations between states, corporations and individuals, and classes. Nevertheless, TWAIL scholarship falls short when it comes to observations and interpretations of settler colonial paradigms. While TWAIL focuses on how colonialism, imperialism, and postcolonialism shape international law, SCAIL might look at how settler colonialism shaped international law at the expense of indigenous people. It might provide legal scholars with an opportunity to think about decolonisation methodologies that are more appropriate to settler colonial situations when compared to traditional colonialism. We have seen that legal scholars tend to look at settlers mostly under imperialism-colonialism-postcolonialism discourse while not giving enough attention to a settler colonial analysis. This includes elimination, displacement, and ethnic cleansing of indigenous populations in North and South America, Australia, New Zealand, SA, and Israel/Palestine⁵³¹.

Decolonisation can be described as a shift of states and societies from external rule to independent sovereignty⁵³². Many countries have made legal or constitutional amendments on rights during the 1980s-1990s, including Bolivia, Brazil, Colombia, Ecuador, Nicaragua,

⁵³⁰ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 112-113.

⁵³¹ Bond and Inwood (n 171) 716.

⁵³² Lorenzo Veracini, 'Settler Colonialism and Decolonisation' (2007) 6(2) *Borderlands* 3.

Panama, Peru, Venezuela, the Philippines, Japan, Norway, Denmark, and Russia⁵³³. This list should include SA and even the Laws on the Ethnic Minority Autonomous Regions in China⁵³⁴. However, traditional theories of decolonisation often focus on external elements: the independence process of the colonised polity and or the main goal to achieve autonomous self-rule, as decolonisation is generally understood as a process in which colonial power is converted to a self-governing territorial successor. But settler colonial situations do not fit into this understanding. A settler colonial regime is already the self-governing territorial successor of the colonial one⁵³⁵. For example, Israel has been the self-governing successor of the British mandate since 1948, and the US has been the successor of the British Empire post-1783⁵³⁶.

Decolonisation of settler colonial societies may benefit from focusing on indigenous de-territorialisation that was accompanied by an ongoing denial of the self-governing capabilities of the native people. This issue did not receive enough attention under TWAIL. Such decolonisation would require sovereignty to be negotiated within a polity rather than between polities⁵³⁷. Three general experiences of decolonisation can be observed⁵³⁸:

(1) Evacuation – Rather than living in equal co-existence with the natives, settlers leave.

In some places, like Gaza, Algeria, Libya, Kenya, Angola, Mozambique, Zimbabwe and Namibia, the evacuation of settlers was not a part of a genuine attempt to establish a

⁵³³ Ibid.

⁵³⁴ Haiting Zhang, 'The Laws On the Ethnic Minority Autonomous Regions in China: Legal Norms and Practices' (2011) 9 The Loyola University Chicago International Law Review 249.

⁵³⁵ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 105.

⁵³⁶ John Richard Alden and Robert Middlekauff, *The American Revolution, 1763-1783* (Harper & Row 1962).

⁵³⁷ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 105.

⁵³⁸ Lorenzo Veracini, 'Settler Colonialism and Decolonisation' (n 532) 5.

decolonised relationship. On the contrary, the departure reflected exclusivist ideas and a false perception of a zero-sum game in which either natives or settlers disappear⁵³⁹. The total blockade over Gaza today reflects the fact that partial evacuation might worsen indigenous people's lives⁵⁴⁰.

(2) Reconciliation – SA reflects a post-settler institutionalised attempt to reform a settler colonial polity's political and legal structures. Such attempts encountered opposition and were overturned or halted in some places⁵⁴¹. Corporate-Indigenous agreements can reinvent political, economic, and legal orders. Such partnerships ensured some benefits for Indigenous populations while the colonial political economy continued. Settler colonial regimes developed new means of subjugating natives to settlers' interests⁵⁴². Palestinian citizens of Israel who run and vote for the Israeli parliament are still discriminated against and oppressed, while Palestinians who live in the West Bank and Gaza cannot vote or run for Israeli elections at all. The PA that supposedly represents Palestinians, has symbolic powers⁵⁴³, and is considered by many as a body that collaborates with Israel.

(3) Denial or Rejection of Reformation – Settlers often keep a continuous strategic disavowal of the colonisation act and the settler colonial nature of the body politic. To maintain this invisibility, settlers might focus on an anti-colonial struggle leading to independence and emphasise the experience of subaltern immigration of people who

⁵³⁹ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 106-107.

⁵⁴⁰ Haggay Etke and Assaf Zimring, 'When Trade Stops: Lessons from the Gaza Blockade 2007–2010' (2015) 95(1) *Journal of International Economics* 16.

⁵⁴¹ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 107.

⁵⁴² McCreary (n 337) 195-196.

⁵⁴³ Michelle Pace and Somdeep Sen, *The Palestinian Authority in the West Bank: The Theatrics of Woeful Statecraft* (Routledge 2018).

are external to the hegemonic power structure. They hide as if they were a postcolonial-subaltern migrant society⁵⁴⁴. Indeed, the dominant Israeli narrative focuses on the Zionist struggle against the British Mandate during the formative years before the UN Partition Plan (1947), as well as the War of Independence (1948) that took place against foreign Arab countries. Paradoxically, despite calling the land 'Palestina' in Hebrew before 1948, the existence of indigenous Palestinians in Palestine has been denied, as demonstrated by Golda Meir's statements quoted above, insisting that there is no such thing as 'Palestinian people'⁵⁴⁵.

Considering the inability of traditional decolonisation processes to decolonise settler colonialism, perhaps the best end to settler colonialism is the end of ethnic and racial superiority of the colonisers and achieving equal civil and legal rights. The demise of SA apartheid was the first time in the history of Africa that a settler minority renounced its exclusive legal and civil control without a complete defeat⁵⁴⁶. Nevertheless, it has been easier for western countries to highlight traditions of settler-indigenous partnerships than radically reforming settler colonial politics by challenging power structures and narratives⁵⁴⁷.

We have seen that the sovereignty of indigenous people is fundamentally incompatible with the sovereignty of settlers. The settler colonial institutions that overpower colonialism, reinforce oppression⁵⁴⁸. Even well-intentioned reconciliation processes or integration of indigenous authority within the settler governance contributes in the long run to the

⁵⁴⁴ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 107-108.

⁵⁴⁵ Korn, (n 387); Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

⁵⁴⁶ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 107-108.

⁵⁴⁷ Ibid 112.

⁵⁴⁸ Ibid 108-109.

elimination of indigenous sovereignty and reproduces settler colonial policies⁵⁴⁹, as demonstrated by the symbolic power of the Palestinian Authority and the relatively negligible influence of Palestinian politicians who are citizens of Israel on Israeli politics⁵⁵⁰.

Some scholars like McCrery argue that radical reform is needed in settler colonial polities and that decolonisation processes must challenge political-economic structures and strive to protect Indigenous autonomy in an emancipatory way. Indigenous people should be able to determine their future independently⁵⁵¹. As Pasternak also argued in Canada, decolonisation of law requires repudiation and recognition, as well as identifying and respecting Indigenous jurisdiction. Pasternak rejects the reality of governmental power and challenges the claim of Canadian law as an exclusive legal order. She suggests embodying Indigenous culture, language, and politics as part of a decolonisation process of Canadian law. Pasternak challenges racist narratives like the doctrine of discovery that are still present in Canadian law, narratives that assert European legal order⁵⁵².

Traditional decolonisation processes were developed, for instance, in Algeria, to serve colonial and imperial interests. Shepard argues that decolonisation was invented as part of a French response to the Algerian Revolution and led to a certainty that decolonisation is a stage forward in the march of history. Shepard sees decolonisation as a Hegelian 'linear history with a capital H', which allowed France to forget that Algeria had been a part of France

⁵⁴⁹ Ibid 109.

⁵⁵⁰ Amal Jamal, 'Nationalizing States and the Constitution of 'Hollow Citizenship': Israel and Its Palestinian Citizens' (2007) 6(4) *Ethnopolitics* 471.

⁵⁵¹ McCrery (n 337) 195-196.

⁵⁵² Shiri Pasternak, 'Jurisdiction and Settler Colonialism: Where Do Laws Meet?' (2014) 29(2) *Canadian Journal of Law and Society* 145, 147.

since the 1830s. As a result, decolonisation allowed France to evade the more significant implications of a violent past⁵⁵³.

According to Shepard, there is a prevailing modernist belief that the independence of a colonised territory is unavoidable. Under colonialism in Algeria and elsewhere, decolonisation has been consistent with the narrative of progress, nationalism, self-determination, liberty, equality, and fraternity⁵⁵⁴. Based on these values that started with the French Revolution, elites from France saw Algerian independence as natural progress under the logic of history⁵⁵⁵.

Decolonisation was 'invented' while disavowing the settler colonial experience, which led to further displacement. Settlers were transferred back to France, while Algerians still suffered from administrative transfer and the loss of their French citizenship in favour of a postcolonial Algerian one⁵⁵⁶. Some scholars referenced Algeria in the settler colonial context while recognising that the settler transition in Algeria was partial, as well as the heterogeneous origins of the population and the exodus of settlers when Algeria gained independence. And yet, the denouement of French Algeria had a structure of settler colonial domination that was eventually disrupted by Algerian nationalism accompanied by a departure of the Europeans⁵⁵⁷. Moreover, the logic of elimination contributed to the ambivalence of the

⁵⁵³ Todd Shepard, *The invention of Decolonization: The Algerian War and the Remaking of France* (Cornell University Press 2006) 2; Herman L Bennett, 'the Subject in the Plot: National Boundaries and the 'History' of the Atlantic' (2000) 43(1) *African Studies Review* 101; Ann McClintock, 'The Angle of Progress: Pitfalls of the Term 'Post Colonialism'' (1990) 31-32 *Social Text* 84.

⁵⁵⁴ Todd Shepard (n 553) 6.

⁵⁵⁵ *Ibid* 7.

⁵⁵⁶ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 113.

⁵⁵⁷ Barclay, Ann Chopin, and Evans (n 464) 116.

settlers, as this ideology came to place in the political and demographic realities of French Algeria⁵⁵⁸.

Traditional forms of decolonisation do not focus on successful nation-building processes and economic development of the Third World. TWAIL scholars have generally expressed sobering denunciation of traditional decolonisation while emphasising the failure of post-colonial states and applying other neo-colonialist approaches. And still, getting out of the colonies could be represented as a 'forward' movement, while withdrawing from the colonial practice of indigenous dispossession and oppression can be perceived as a 'backwards' movement signalling the demise of the original settler claims and their legitimacies⁵⁵⁹. The black-white progressive-sobering binary could not sustain indigenous attempts to attain equality and sovereignty in settler colonial situations.

Finally, perhaps scholactivism can be a part of decolonising settler colonialism and international law. Farid suggests that Third World Scholactivists with first world partners can still confront the politics of knowledge to claim a voice for the global south, as we can benefit from reconsidering the idea of sovereignty and the nation-state. We can also benefit from mapping emancipatory strategies and democratising regulations.⁵⁶⁰ Farid similarly argued that laws must be contextual and counter-hegemonic to be emancipatory. She opposes elite-favouring laws and advocates for subaltern voices in global agendas of governance, philanthropy, and policymaking, as well as in the academy through scholasticism. Farid advocates for collaborative commitments within the academia that would overcome the

⁵⁵⁸ Ibid 127.

⁵⁵⁹ Veracini, *Settler Colonialism: A Theoretical Overview* (n 283) 113.

⁵⁶⁰ Cynthia Farid, 'Legal Scholactivists in the Third World: Between Ambition, Altruism and Access' 33(3) Windsor Yearbook of Access to Justice 57, 85.

binaries of North-South by focusing on how people deal with the law in everyday life. Finally, Farid argues that scholars should consider Third World intellectual history in their publications⁵⁶¹.

Arguably, it is possible to apply Farid's approach to settler colonial scholarship and suggests that legal scholars should read and reference indigenous and settler colonial scholars through SCAIL. The differences between colonialism and settler colonialism matter from an international legal analysis point of view. Settler colonialism, therefore, poses a wide array of challenges to TWAIL as a methodological or theoretical framework, challenges that have not been addressed yet by TWAIL scholars. This includes a deeper analysis of the unique legal structures of settler societies, which often see themselves as a distinct sovereign nation rather than an extension of an empire elsewhere. The new homeland of the settlers cannot be replaced, and traditional decolonisation methods do not work in settler societies because returning to the state of origin is no longer a viable option for the settlers.

The next chapter continues this discussion by exploring the (in)adequacy of IHL as follows: (a) powerful countries (such as settler colonial states) can easily violate IHL while avoiding any severe sanctions; (b) the content of IHL regulations themselves serve potent nations, as well as corporations because the regulations themselves benefit them; (c) Regardless of the content, IHL if enforced selectively, and implemented primarily against weaker states.

⁵⁶¹ Ibid 86.

CHAPTER III – INTERNATIONAL HUMANITARIAN LAW

3.1. Introduction

This chapter questions IHL's role in sustaining settler colonialism and drone violence⁵⁶². It starts by introducing the history and genealogy of IHL. The canonical narrative regards IHL as a European humanitarian development of modernity that was created to protect civilians, victims of war and *hors de combat*. The chapter then addresses critical approaches that scrutinise IHL's canonical narrative.

This chapter does not focus on the ability to enforce IHL or the suitability of specific IHL rules or doctrines in restraining drone violence. Instead, it questions the very nature of IHL as an instrument that serves settler colonial endeavours and their use of drones, and IHL's ability to fulfil its canonical goals and narratives – when it comes to settler colonial formations – like the state of Israel.

The authority of IHL can be used to dispossess indigenous people and take their sovereignty within a 'zone of discovery'. As Frédéric Mégret argued, European law in the late 19th century played a role in devising IHL norms. Such norms enhanced settler colonial expansion through political and legal narratives resulting from the absence of responsibility toward indigenous people. Those narratives were based on a presumed inability of indigenous people to distinguish combatants from non-combatants or respect reciprocity⁵⁶³. Consequently, non-

⁵⁶² Fourth Geneva Convention (n 478); Hague Conventions of 1899 (adopted 29 July 1899, entered into force 4 September 1900); Hague Convention of 1907 (adopted 18 October 1907, entered into force 26 January 1910); Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

⁵⁶³ Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157).

Westerners were treated as rights-bearing subjects and as sovereign equals during the war only by adopting the model of the Westphalian independent state and western institutions like a standing army and national security state with discipline, hierarchy, and a separate military class of experts⁵⁶⁴.

Critical scholars are addressed while focusing on the argument that IHL serves the interests of multinational corporations and powerful states – at the expense of Third World and indigenous peoples.

It ends with normative arguments. First, settler colonial formations are incompatible with IHL's declarative humanitarian rationale. Second, the very nature of IHL is inadequate to address drone violence, at least in settler colonial situations like Israel/Palestine. This argument is based on four central ideas:

- (a) IHL was historically developed to serve the goals and interests of powerful nations, some of them were involved with settler colonial projects that IHL helped sustain;
- (b) The mere existence of IHL provides an overwhelming advantage for specific countries in warfare, law enforcement, 'manhunt', unilateral death dealings, occupation, land misappropriation, and oppression of indigenous peoples;
- (c) Even if IHL regulations presume to protect civilians and *hors de combat*, the content of the regulations encourages warmongering acts against non-state actors;
- (d) Regardless of the content of IHL, regulations cannot be effectively enforced against the powers that be. They can more easily be enforced against relatively weak

⁵⁶⁴ Aziz Rana, 'Settler Wars and the National Security State' (2014) 4(2) Settler Colonial Studies, 171.

countries or non-state actors. For instance, the veto power of five permanent members of the UNSC reflects the inability of the international community to restrain Russia, the US, China, the UK, France – and their allies.

Finally, if drone violence is not warfare but something different altogether (unilateral death dealings), then the real issue is not that drone violence is ‘incompatible’ with IHL. Instead, the issue is that this violence challenges the boundary of IHL and may escape its reach altogether. This technology, therefore, questions the ability of IHL to protect civilians from powerful states in situations that do not fit into ‘warfare’, ‘law enforcement’ and the traditional cannon.

3.2. Introduction to International Humanitarian Law and the Canonical Narrative

‘...the state of men without civil society (which state we may properly call the state of nature) is nothing else but a mere war of all against all; and in that war all men have equal right unto all things.’⁵⁶⁵ / Thomas Hobbes.

‘...I believe that the right of war authorizes us to ravage the country and that we must do it, either by destroying harvests during the harvest season, or year-round by making those rapid incursions called razzias, whose purpose is to seize men or herds... ...I have often heard men in France whom I respect, but with whom I do not agree, find it wrong that

⁵⁶⁵ Thomas Hobbes, *De Cive* (Paris 1642) 148.

we burn harvests, that we empty silos, and finally that we seize unarmed men, women, and children. These, in my view, are unfortunate necessities, but ones to which any people that wants to wage war on the Arabs is obliged to submit. And, if I must speak my mind, these acts do not revolt me more than, or even as much as, many others that the law of war clearly authorizes and that have occurred in all the wars of Europe. How is it more odious to burn harvests and take women and children prisoner than to bombard the inoffensive population of a besieged village or to seize the merchant vessels belonging to the subjects of an enemy power? The one is, in my view, much more harsh and less justifiable than the other.’⁵⁶⁶. / Alexis de Tocqueville.

Unlike Hobbes, Tocqueville acknowledges the presence of *jus ad bellum* and *jus in bello* while interpreting IHL as highly instrumental. The classical Hobbesian view of war, as if war and law are two different spheres, is often reflected in the writings of poets, historians, writers, politicians, and jurists. Law has been traditionally perceived as if it takes place in an arena of social contracts. In contrast, war has been perceived as taking place at a time and space where law ‘runs out’, a result of (poor) international relations, without any common adjudicator. While Grotius argued that war begins ‘where the Methods of Justice cease’⁵⁶⁷, he suggested that law still exists in the state of war. Two centuries after Grotius, a US senator, expressed a similar idea, stating that ‘Law in that which is lawless!’ and that ‘Order in disorder!’⁵⁶⁸.

⁵⁶⁶ Alexis de Tocqueville, *Writings on Empire and Slavery* (Jennifer Pitts ed, Johns Hopkins University Press, 2001) 70, 71.

⁵⁶⁷ John Fabian Witt, ‘AHR Exchange: Law and War in American History’, 115(3) *American Historical Review* 768; Hugo Grotius, *The Rights of War and Peace* (Richard Tuck ed, Liberty Fund 2005).

⁵⁶⁸ Fabian Witt, ‘AHR Exchange’ (n 567) 768.

Today there is a wide consensus among legal scholars that the two seemingly separate spaces are close and intertwined⁵⁶⁹, as evident by the mere existence of customary international law⁵⁷⁰ and the number of countries that are part of international treaties like the Geneva Conventions and its additional protocols⁵⁷¹.

The ability of the law to manage the human condition, particularly within violent circumstances of armed conflicts, has always posed a universal challenge. War brought horror, misery, and harm to millions. Generations were mutilated and traumatized by carnage, dispossession, cruelty, and loss. Families were separated and dispersed, and their livelihoods tore down, taking away prospects, hopes and dreams⁵⁷². This description is a contemporary reality for those at risk, especially since many states use lethal force against non-state actors in situations that might look more like a manhunt or 'death dealings' rather than warfare or law enforcement.

IHL comprises rules establishing the minimum standard of humanity that must be respected in armed conflicts⁵⁷³. IHL is now commonly used to represent the entire Law of Armed Conflict, including international and non-international conflicts⁵⁷⁴. While recognising the

⁵⁶⁹ Ibid.

⁵⁷⁰ Theodor Meron, 'The Geneva Conventions as Customary Law' (1987) 81(2) The American Journal of International Law 348.

⁵⁷¹ Jean-Marie Henckaerts, 'Bringing the Commentaries on the Geneva Conventions and Their Additional Protocols into the Twenty-First Century' (2012) 94 International Review of the Red Cross 1551.

⁵⁷² Nils Melzer and Etienne Kuster, 'International Humanitarian Law A Comprehensive Introduction' (ICRC 2019) 12 <<https://library.icrc.org/library/docs/DOC/icrc-4231-002-2019.pdf>> accessed 20 May 2021.

⁵⁷³ Ibid 9.

⁵⁷⁴ Theodor Meron, 'The Humanization of Humanitarian Law' (2000) 94(2) The American Journal of International Law 239.

argument that IHL differs from the Law of Armed Conflict and the Law of War⁵⁷⁵, this chapter uses the term IHL in a broad sense.

IHL's canonical narrative traditionally idealised a set of humanitarian rules that protect civilians and try to prevent unnecessary suffering during conflicts⁵⁷⁶. However, some scholars challenged this narrative by arguing that IHL is a twentieth-century invention of the ICRC that was developed for other purposes⁵⁷⁷, like ensuring soldiers' discipline within a chain of command⁵⁷⁸, making soldiers act according to the interest of the state, and preventing revolting actions against the sovereign⁵⁷⁹. This undermines the declarative objectives of IHL while promoting less visible agendas.

According to the canonical narrative, a primary goal of IHL is protecting categories of humans, like civilians and *hors de combat*, in international and non-international armed conflicts between states or between states and non-state actors. IHL regulates the right to kill and the right to be killed, as reserved for lawful combatants – while still limiting certain practices that violate IHL principles like necessity, proportionality, and distinction. This includes prohibiting cruel or inhumane weapons⁵⁸⁰.

IHL is considered 'just' and 'right' under the canonical narrative. It is generally perceived as an instrument that protects non-combatants and combatants (to an extent). This approach has been criticized as naïve, as IHL is not all-inclusive. Under the 'war on terror' and the 'bush

⁵⁷⁵ Page Wilson, 'The Myth of International Humanitarian Law' (2017) 93(3) International Affairs 563.

⁵⁷⁶ Eyal Benvenisti and Doreen Lustig, 'Monopolizing War: Codifying the Laws of War to Reassert Government Authority, 1856-1874' (2020) 31 European Journal of International Law 127.

⁵⁷⁷ Page Wilson (n 575) 567.

⁵⁷⁸ Morrow (n 153).

⁵⁷⁹ Dipo Toyambi (n 154).

⁵⁸⁰ Crowe and Weston-Scheuber (n 155).

doctrine', prisoners at Guantánamo were excluded from POW status. While some inmates were considered 'terrorists', this exclusion is controversial. It unilaterally violates IHL, even though the issue here is the interpretation of the POW category by the US, not IHL itself⁵⁸¹. IHL reflects complex inter-relationships with atrocities and excludes certain groups and situations while favouring the interests of dominant countries⁵⁸². TWAIL scholars pointed this out.

IHL has ambiguities that legitimise exclusions of 'others'. It has a status for everyone, including combatant versus non-combatant (or civilian) and fighting versus surrendering. When one of these statuses is recognised, the status is denied from someone else, an 'other'. This excludes specific figures like so-called 'unlawful combatants', leaving them with little protection under IHL⁵⁸³. IHL, therefore, tends to rewrite its history and seeks to suppress the colonial and settler colonial foundations of the discipline⁵⁸⁴. 'Others' existed during constitutional debates of IHL⁵⁸⁵. 'Others' were a foundational element of IHL. IHL founders used terminology that tried to distance themselves from the Third World and from indigenous people that were seen as 'dark', 'uncivilised', 'barbarian' and 'savage'⁵⁸⁶. Such terms were for the participants of debate over IHL in the 19th-20th centuries and were used interchangeably as part of a colonial and settler colonial mindset⁵⁸⁷.

⁵⁸¹ Luisa Vierucci (n 156).

⁵⁸² Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157).

⁵⁸³ Ibid.

⁵⁸⁴ Ibid; Anghie, 'Finding the Peripheries' (n 217) 8; Anghie, *Imperialism, Sovereignty and the Making of International Law* (n 214).

⁵⁸⁵ Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 1-2.

⁵⁸⁶ Ibid 2.

⁵⁸⁷ Ibid.

During the 19th century, few advocated for applying the protection of the Law of War to non-Europeans. They made it slightly harder to explicitly argue that the Law of War does not apply beyond Europe. International instruments mostly avoided the question of non-Europeans. One explanation for excluding non-Europeans from this protection has been the western belief that non-Europeans are unable to reciprocate compliance⁵⁸⁸.

According to Tanisha Fazal and Brooke Greene, Europeans assumed that non-Europeans were less likely to comply, showing lower compliance levels during wars. The Law of War was developed in Europe under European understandings of sovereignty and legitimate means of force. European states had a universal ability to project violence, at least in their own lands. European states knew that other European states accepted the reciprocal principles of the law of war. However, Europeans were uncertain whether Third World people shared this knowledge and belief, so non-European warfare had evolved in a different context. Indigenous peoples had fought differently from Europeans through 'guerrilla tactics', and they were not expected to reciprocate compliance with an unfamiliar law. Thus, Europeans did not see themselves as bound to restrictions when it comes to 'savages'⁵⁸⁹.

Considering the above, Frédéric Mégret suggests understanding the non-applicability of the Law of War on non-Europeans as a function of structural ambiguities that created legal prejudice as part of a colonial mindset. This continues earlier approaches that war rules do not apply to non-Christians⁵⁹⁰. The British military manual of 1914 exemplifies this. It noted

⁵⁸⁸ Tanisha M Fazal and Brooke C Greene, 'A Particular Difference: European Identity and Civilian Targeting' (2015) 45(4) British Journal of Political Science 851.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ronald C Finucane, *Soldiers of the Faith: Crusaders and Moslems at War* (Phoenix 2005); Francisco de Vitoria, 'On the Land of War' in Anthony Pagden and Jeremy Lawrence (eds), *Victoria: Political Writings* (Cambridge University Press 1991) 293.

that international law applies only to warfare between 'civilized nations' but not in wars with 'uncivilized states and tribes'⁵⁹¹.

Different tactics and strategies were used against the 'uncivilised'. Different types of ammunition, like dum-dum, were rejected by the UK Cabinet due to reasons of impracticality: 'we must make and keep a stock of both kinds of ammunition, with the intention (which we can keep to ourselves) of using the expanding bullet when we have to deal with savages'⁵⁹².

This reflects a double standard of liberals who praise the self-determination of Europeans while rejecting similar principles when it comes to non-Europeans who can be conquered and subjected⁵⁹³. As a result, in the late 19th century and early 20th century, the application of humanitarian principles was a voluntary measure of charity rather than a legal compulsion⁵⁹⁴.

This attitude towards 'savages' is found in an American author's 1920 depiction of indigenous people: '...Against uncivilised people who do not know international law and do not observe it, and would take advantage of one who did... ...it should be [a] clear understanding that this is a different kind of war, this which is waged by native tribes, than that which might be waged between advanced nations of western culture'⁵⁹⁵.

⁵⁹¹ Elbridge Colby, 'How to Fight Savage Tribes' (1927) 21(1) American Journal of International Law 279; James Edward Edmonds and Lassa Francis Lawrence Oppenheim, *Land Warfare: An Exposition of the Laws and Usage of War on Land, for the Guidance of Officers of His Majesty's Army* (HMSO 1914); Elizabeth Chadwick, 'It's War, Jim, But Not As We Know It: A "Reality-Check" for International Laws of War?' (2003) 39(3) Crime, law and Social Change 233.

⁵⁹² Edward M Spiers, 'The Use of the Dum Dum Bullet in Colonial Warfare' (1975) 4(1) The Journal of Imperial and Commonwealth History 3, 7; Kim A Wagner, 'Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency' (2018) 85 History Workshop Journal 217.

⁵⁹³ Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon Press Oxford 1996) 62; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 281.

⁵⁹⁴ Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 282.

⁵⁹⁵ Ibid 283; Colby, 'Savage Tribes', p. 287.

The uncivilised-civilised distinction was one of the main justifications for not applying the Law of War on non-Europeans during colonial endeavours, says Mégret. So-called 'civilised' states waged war, took part in international treaties and promoted the Law of War. 'Civilised nations' were the benchmark in contrast with 'uncivilised' Asia and Africa⁵⁹⁶.

According to Elbridge Colby, a Captain in the US army in the 1920s, 'savages' failed to distinguish between combatants and non-combatants. He describes savages as using a 'primitive method of applying armed force'⁵⁹⁷. When distinction vanishes, the law vanishes as well, so more brutal methods can be used against savages and tribes, according to Colby⁵⁹⁸.

A prevailing perception of colonialists and settler colonialists was that 'savages' wage war differently than 'civilised' nations. 'Savages' are portrayed as more murderous, lawless and cruel: '...when natives go to war, they do not observe the individual decencies of civilized regular soldiers'⁵⁹⁹, says Colby. American settler colonialists shared this sentiment when justifying ethnic cleansing and the transfer of native Americans. 'Savages' intelligence was also questioned, as they were perceived as unable to grasp sophisticated international law rationales: 'if civilized nations do not put their prisoners to death... ..it is because intelligence plays a large part in their methods... ..and has taught them more effective ways of using force than the crude expression of instinct'⁶⁰⁰.

⁵⁹⁶ Colby, 'How to Fight Savage Tribes' (n 591) 280; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 286-287.

⁵⁹⁷ Colby, 'How to Fight Savage Tribes' (n 591) 281; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 291.

⁵⁹⁸ Colby, 'How to Fight Savage Tribes' (n 591) 283, 279; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 291.

⁵⁹⁹ Colby, 'How to Fight Savage Tribes' (n 591) 248; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 292.

⁶⁰⁰ Carl von Clausewitz, *On War* (Princeton University Press 1989); LC Green, 'Nuclear Weapons and the Law of Armed Conflict' (2020) 17(1) *Denver Journal of International Law & Policy* 1.

Colby claimed that only civilised nations understand international law⁶⁰¹, as ‘savages’ cannot wage a ‘civilised war’. Similarly, IHL failed to protect indigenous people who were perceived as ‘uncivilised’. Third World countries have ratified the Geneva Conventions to obtain some protections, but IHL fails to protect them, even if it benefits some governments in certain circumstances⁶⁰².

It might seem that reciprocity has ceased being a requirement under IHL. However, when looking at the rhetoric of the ‘war on terror’ and the ‘Bush doctrine’, the canonical narrative still reflects the lexicon of early 20th-century imperial, colonial and settler colonial international law. The US refuses to grant individuals the cogent status that they deserve under IHL⁶⁰³. Moreover, while considering US’s position on ‘illegal’ or ‘unlawful’ combatants⁶⁰⁴, IHL does not shed its past, as it still excludes individuals on the grounds that share similarities with Colby’s exclusion of ‘savages’⁶⁰⁵.

For instance, the fact that Israeli soldiers often use the term ‘terrorists’ to describe Palestinian civilians makes it more difficult for them to respect IHL. This practice takes away Palestinians’ protected status under IHL. ‘Terrorists’ are neither civilians nor legitimate combatants. So-called ‘unlawful’ combatants have no protections and turn all Palestinians into targets⁶⁰⁶.

Alongside IHL, inhumane acts are being committed against indigenous people who are oppressed, impoverished, marginalised, and dispossessed. It is, therefore, vital to engage

⁶⁰¹ Colby, ‘How to Fight Savage Tribes’ (n 591); Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 294.

⁶⁰² Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 301.

⁶⁰³ Ibid.

⁶⁰⁴ Sibylle Scheipers, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford University Press 2015); Ingrid Detter, ‘The Law of War and Illegal Combatants’ (2006) 75 *George Washington Law Review* 1049.

⁶⁰⁵ Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 303.

⁶⁰⁶ Philip Odudu and Joshua Allison (n 1237).

critically with the goals of IHL to explore hidden agendas of the canonical narrative of humanitarianism and to reach a more complex understanding of drone violence applied by settler colonial regimes under the IHL umbrella.

According to the ICRC, IHL is applied to armed conflict (including occupations) from the first act of hostilities for the entire duration of the conflict⁶⁰⁷. It is designed to limit the suffering caused by war, as well as specific means of warfare⁶⁰⁸. Indeed, IHL protects civilians and *hors de combat*, as well as ones who surrendered, prisoners and detainees⁶⁰⁹.

The canonical narrative often depicts groups and states as voluntarily agreeing to constrain warfare with certain limitations due to religious, ethical, political, or pragmatic ideals⁶¹⁰. Restrain is generally perceived as a fundamental universal principle of IHL, an approach that promotes the humanisation of war, emphasising that soldiers, military officers, civilians, and insurgents, are all human⁶¹¹. It reflects a modernistic outlook in that IHL will continue to provide reasonable protection to people affected by conflicts⁶¹².

⁶⁰⁷ John Hutchinson, *Champions of Charity: War and the Rise of the Red Cross* (Routledge 2018); Nicholas O Berry, *War and the Red Cross: The Unspoken Mission* (Springer 2016).

⁶⁰⁸ Daniel Palmieri, 'How Warfare Has Evolved a Humanitarian Organization's Perception: The Case of the ICRC, 1863-1960' (2015) 97 *International Review of the Red Cross* 985; Henri Meyrowitz, 'The Principle of Superfluous Injury or Unnecessary Suffering: From the Declaration of St. Petersburg of 1868 to Additional Protocol 1 of 1977' (1994) 34(299) *International Review of the Red Cross* 98; Burrus M Carnahan, 'Unnecessary Suffering, the Red Cross and Tactical Laser Weapons' (1995) 18 *Loyola of Los Angeles International and Comparative Law Journal* 705;

⁶⁰⁹ Dieter Fleck (ed), *The Handbook of International Humanitarian Law* (Oxford University Press 2021); Mohammad Saidul Islam, 'The Historical Evolution of International Humanitarian Law (IHL) from Earliest Societies to Modern Age' (2018) 9 *Beijing Law Review* 294.

⁶¹⁰ Emily Crawford and Alison Pet, *International humanitarian law* (Cambridge University Press 2015) 2.

⁶¹¹ Dan Saxon (ed), *Introduction: International Humanitarian Law and the Changing Technology of War* (Martinus Nijhoff 2013) 2;

⁶¹² Melzerand and Kuster (n 572) 9.

A standard description of the canonical narrative starts by referring to universal constraints that existed before the codification of IHL, like the Code of Hammurabi (1750 BC), the Chinese Wèi Liáozi (403–221 BC), the Hindu Mahabharata (200BC–200), the orders of Islam’s first caliph, Abu Bakr (632), and chivalry (1170–1220)⁶¹³. Next, the narrative depicts Henry Dunant and his experience in the aftermath of the battle of Solferino (1859), one of the bloodiest battles of the 19th century⁶¹⁴. Dunant and his colleagues are seen as the founders of the ICRC and the First Geneva Convention of 1864⁶¹⁵.

The narrative rarely mentions that Dunant was a coloniser, like many other politicians and military men of his time. Jacques Pous mentioned Dunant’s ambiguous and obscure relationship with colonialism⁶¹⁶. Dunant participated in business projects in Algeria while exploiting the country’s natural resources. He had a project for the International Universal Society for the Renovation of the Orient, and he described it as a new crusade for civilization⁶¹⁷. He took part in establishing commercial *comptoirs* in Constantinople, and built a harbour in Jaffa, Palestine, and a railway to Jerusalem. When shocked by the horrors of Solferino, Dunant was reportedly on an attempt to meet Napoleon the Third to receive concessions in Algeria⁶¹⁸.

⁶¹³ Page Wilson (n 575); Leslie C Green, *The Contemporary Law of Armed Conflict* (Juris 2008).

⁶¹⁴ Henry Dunant, *Un Souvenir de Solferino* (ICRC 1862)
<<https://www.icrc.org/fre/assets/files/publications/icrc-001-0361.pdf>> accessed 20 May 2021.

⁶¹⁵ Daniel Thurer, ‘Dunant’s Pyramid: Thoughts on the “Humanitarian Space”’ (2007) 89(865) *International Review of the Red Cross* 47, 49-51; Eyal Benvenisti and Amichai Cohen, ‘War is Governance: Explaining the Logic of War From a Principal-Agent Perspective (2014) 112(8) *Michigan Law Review* 1363.

⁶¹⁶ Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 6; Jacques Pous, *Henry Dunant l’Algérien ou le Mirage Colonial* (Genève, 1979) 13.

⁶¹⁷ Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 6; Henry Dunant, *Projet de Société Internationale Pour la Rénovation de l’Orient* (Paris 1866) 8.

⁶¹⁸ Mégret, ‘From “Savages” to “Unlawful Combatants”’ (n 157) 6.

Arguably, Dunant and his followers were developing exclusion mechanisms that would benefit colonialism by depriving non-European sovereignty. This kind of deprivation endures and persists today – despite official decolonisation processes. Based on the work of Edward Said and Gayatri Chakravorty Spivak⁶¹⁹, Anghie suggests, in this radical context, to rethink the accounts of colonialism and decolonisation⁶²⁰.

Instead of admitting the colonial and settler colonial history of IHL, the canon often focuses on 19th-century democratisation processes, nationalism, and humanitarianism. Such processes triggered negotiations on treaties and the codification of IHL, for instance, by prohibiting specific weapons and combat methods.

The canonical narrative does not pay enough attention to the fact that military men who took part in conferences like Hague (1899, 1907) had a colonial background, similar to Dunant. The men responsible for the early development of IHL took part in the civilising mission, colonial, imperial conquest, and Euro-adventurism⁶²¹. The *états de service* of a British military delegate to the Hague Conventions took part in Anglo-Egyptian expeditions to Sudan (1884–1885) and worked in India for Viceroy (1888-1894)⁶²². This led to applying IHL only to Europeans while not applying the same standard in the Third World. The principles of IHL that protect civilians and *hors de combat*, were equally denied from indigenous people. Their oppression was paradoxically justified by their inability to reciprocate, as if laws of war rely on the ability of

⁶¹⁹ Said, *Orientalism* (n 227); Edward Said, *Culture and Imperialism*, (Knopf 1993); Gayatri Chakravorty Spivak, 'A Critique of Post-Colonial Reason' (MA, Harvard University Press 1999) as referenced by Anghie, 'The Evolution of International Law' (n 215).

⁶²⁰ Anghie, 'The Evolution of International Law' (n 215).

⁶²¹ Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 7.

⁶²² *Ibid* 7.

the colonised to follow the Law of War. This approach resonates with the 'Bush doctrine' that denies, as mentioned above, IHL rights of 'unlawful combatants'⁶²³.

IHL development was also influenced by public opinion and the mass recruitment of youngsters into 'the People's Army'. In addition, media reports from the battlefield attracted public attention and pushed the emergence of civil society. The emerging civil society pressured governments to sit at the negotiating table in Geneva, Saint Petersburg, and Brussels and produce a code that would protect civilians and reduce the suffering of combatants⁶²⁴. Considering these events, conventional approaches to the history of IHL focus on a long-term continuum of codes that reduces the suffering of combatants and civilians, place victims at the centre of attention, and reflect an approach that civilians should be protected⁶²⁵.

Advancements in military technology have increased the already clear dominance of the First World over the Third, including non-state actors⁶²⁶. 9/11 has been used to justify permissive and restrictive interpretations of IHL to achieve imperial and settler colonial objectives, undermining the object and purpose of IHL⁶²⁷. The 'war on terror' became a pretext for renewing a world order centred on domination⁶²⁸. Drone violence and other sophisticated

⁶²³ Sibylle Scheipers (n 604); Robert J Delahunty and John Yoo, 'The Bush Doctrine: Can Preventive War be Justified' (2009) 32 *Harvard Journal of Law and Public Policy* 843.

⁶²⁴ Theodor Meron, 'The Humanization of Humanitarian Law' (n 574); Benvenisti and Lustig, 'Monopolizing War' (n 576).

⁶²⁵ Amanda Alexander, 'A Short History of International Law' (2015) 26(1) *The European Journal of International Law* 109; Benvenisti and Lustig, 'Monopolizing War' (n 576) 2.

⁶²⁶ Melzerand and Kuster (n 572).

⁶²⁷ *Ibid.*

⁶²⁸ Makau Mutua, 'Terrorism and Human Rights-Power, Culture, and Subordination' (Paper Presented to the International Meeting on Global Trends and Human Rights-Before and After September 11, Geneva, January 2002) (2002) 8 *Buff. H.R.L. Rev.* 1 at 1, as quoted by Okafor, 'Newness, Imperialism, and International Legal Reform' (n 177) 171.

weapons have challenged IHL, including the scope of the battlefield, the legal framework, accountability, and ethical questions⁶²⁹.

The Geneva Conventions are generally perceived as the most widely ratified treaties, reflecting the universal authority of humanitarian principles. A powerful narrative shaped the prevailing understanding of the nature and purpose of IHL⁶³⁰, as if 'moral ideals' and 'humanitarian principles' are at the core. This includes the distinction between civilians and combatants, and the prevention of unnecessary suffering to civilians and *hors de combat*⁶³¹. IHL is still widely seen as reflecting humane concepts through a system of norms, such as helping the wounded in battle, protecting life and health, and ensuring dignity. This narrative has also been reflected in judgments of international tribunals⁶³².

3.3. Critical Approaches to the Canonical Narrative

As mentioned above, IHL has been shaped by power relations⁶³³. It was neither developed nor designed with a focus on limiting inhumane acts. Arguably, protecting civilians and reducing suffering were never the main goals of countries when promoting IHL. Financial and political elites have shaped IHL rather than humanitarianism. Strategic considerations played a role in codification. This includes fear of proliferation, the need for specific weapons, and

⁶²⁹ Melzerand and Kuster (n 572) 10.

⁶³⁰ Amanda Alexander, 'A Short History of International Law' (n 625) 109.

⁶³¹ Thurer (n 615); Benvenisti and Cohen, 'War is Governance' (n 615).

⁶³² Ibid, pp. 56-57; IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998.

⁶³³ Forster (n 216) 1009.

difficulties maintaining effective defence⁶³⁴. Terms like ‘civilian’ and ‘combatant’ had been serving specific strategic goals of states⁶³⁵.

IHL was formed in an imperial reality⁶³⁶, as countries created laws to protect their combatants. They established hierarchies of acceptable harm, like proportionality and distinction, to benefit their own soldiers. ‘Savage-civilised’, ‘occupiers-occupied’, and ‘international-internal’ conflict are examples of these binaries⁶³⁷.

The Hague Conferences reflect the extension of humanitarian protections for combatants at sea. The 1929 conference formulated more rules to protect POWs through the Third Geneva Convention⁶³⁸. However, it took a whole century after the formal creation of IHL, for the international community to give attention to civilians, as part of the Fourth Geneva Convention and the two Additional Protocols (1974–1977). Nevertheless, even these merely cover the enemy’s civilians and those of occupied territories. Arguably, their focus was on preventing enemy actions but not on minimising the dangers of military operations⁶³⁹.

The Fourth Geneva Convention focused on humanely treating enemy civilians or captured combatants through ‘safety zones’ and protecting hospitals. It did not really focus on avoiding harm to civilians. Instead, it focuses on specific categories by looking at the location of

⁶³⁴ Theodor Meron, ‘The Humanization of Humanitarian Law’ (n 574).

⁶³⁵ Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Cornell University Press 2011) 196; Forster (n 216) 1010.

⁶³⁶ Benvenisti and Lustig, ‘Monopolizing War’ (n 576); Helen M Kinsella and Giovanni Mantilla, ‘Contestation Before Compliance: History, Politics, and Power in International Humanitarian Law’ (2020) 64(3) *International Studies Quarterly* 649.

⁶³⁷ Kinsella and Mantilla (n 636).

⁶³⁸ Neville Wylie and Lindsey Cameron, ‘The Impact of World War I on the Law Governing the Treatment of Prisoners of War and the Making of a Humanitarian Subject’ (2018) 29(4) *European Journal of International Law* 1327; Kinsella and Mantilla (n 636).

⁶³⁹ Oscar M Uhler and others, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War: Commentary* (ICRC 1958); Kinsella and Mantilla (n 636).

civilians, restricting their movement rather than protecting them by prohibiting the conduct of warfare *per se*⁶⁴⁰.

The protection of civilians under IHL depends on the type of armed conflict. The way a conflict was traditionally defined reflects European interests, as specific types of warfare fell inside IHL according to the 'law of (European) statehood'⁶⁴¹. The difference between international and non-international armed conflicts was evident before Common Article 3⁶⁴². British and French manoeuvring led to differences in the scope of the limitations under the article, as the two countries tried to posture as humanitarians during negotiations while trying to protect their colonial projects⁶⁴³. Internal conflicts are, in many instances, outside the scope of IHL, because Article 3 is ambiguous on the matter (see the second AP, APII)⁶⁴⁴.

These imprecisions legitimatise violence and contestations of the meanings and applications of IHL. States protect their combatants and carry out military operations accompanied by drone violence while limiting protections to some victims of some types of wars. National liberation, self-determination and decolonisation started to gain the status of international conflict only under the first Additional Protocol (API), keeping out inter-state categories like colonial and civil wars that the Correlates of War project suggested⁶⁴⁵.

⁶⁴⁰ Kinsella and Mantilla (n 636) 651.

⁶⁴¹ Martti Koskeniemi, 'Histories of International Law: Dealing with Eurocentrism' (2011) 19 *Rechtsgeschichte* 77.

⁶⁴² Manimuthu Gandhi, 'Common Article 3 of Geneva Conventions, 1949 in the Era of International Criminal Tribunals' (2001) 11 *ISIL Year Book of International Humanitarian and Refugee Law* 207.

⁶⁴³ Giovanni Mantilla, 'Forum Isolation: Social Opprobrium and the Origins of the International Law of Internal Conflict' (2018) 72(2) *International Organization* 317; Kinsella and Mantilla (n 636) 651.

⁶⁴⁴ Sylvain Vité, 'Typology of Armed Conflicts in International Humanitarian Law' (2009) 91(873) *International Review of the Red Cross* 69; Kinsella and Mantilla (n 636) 651.

⁶⁴⁵ Meredith Reid Sarkees, 'The COW Typology of War: Defining and Categorizing Wars' (*The Correlates of War Project*, 2010) <<https://correlatesofwar.org/data-sets/COW-war/the-cow-typology-of-war-defining-and-categorizing-wars>>, accessed 20 May 2021; Kinsella and Mantilla (n 636) 651.

The Correlates of War project suggested expanding the typology of war, including:

1. Inter-state wars;
2. Extra-state wars (colonial conflict with the colony and imperial state versus non-state),
3. Intra-state wars, including (a) civil wars (for central control or local issues), (b) regional internal wars and (c) inter-communal wars;
4. Non-state wars, including in nonstate territory and across state borders⁶⁴⁶.

However, these suggestions had never been adopted, as they stand in contrast to the interest of powerful states.

Eyal Benvenisti, Amichai Cohen and Doreen Lustig similarly argue that the principle of distinction had never been intended to protect civilians. It was designed to prevent irregular fighters from participating in warfare⁶⁴⁷. They say that IHL had two primary objectives: (1) Enhancing nationalism by recognising the nation-state as the ultimate political unit and as the only domestic authority; (2) Establishing a broader civilizing mission by political and economic elites⁶⁴⁸. If so, IHL was never a humanitarian-democratic-peaceful endeavour, as the canon portrays.

⁶⁴⁶ Meredith Reid (n 645).

⁶⁴⁷ Benvenisti and Cohen, 'War is Governance' (n 615) 1398-1399.

⁶⁴⁸ Benvenisti and Lustig, 'Monopolizing War' (n 576) 46-47.

Similarly, Amanda Alexander argues that the concept of ‘civilian’ appeared only in WWI⁶⁴⁹, when city centres were under aerial bombardment. Then, the suffering of children and women, published in the mass media, demonstrated the vulnerability of civilians and private citizens for the first time. But even after this shift in public perception, civilians were granted only minimal protections under IHL⁶⁵⁰.

Things changed for the better only in 1970, when the First Additional Protocol was introduced. In the 1990s, principles such as proportionality⁶⁵¹, preventing starvation and preventing area bombardment were generally adopted and became binding under customary international law⁶⁵². This shows that IHL is a result of different actors who pushed for various agendas until lawyers and NGOs declared the Additional Protocols to be authoritative. Nevertheless, many provisions remain vague and contested, the result of unsatisfactory compromises between the superpowers and civil organisations⁶⁵³.

IHL still serves, perhaps more than anything, the need for soldiers’ discipline. IHL is used to solve vertical hierarchical governance challenges rather than horizontal issues between states and armies⁶⁵⁴. Moreover, IHL improves the ability of powerful states to build massive armies, as it reduces the costs of controlling them and makes engaging in an armed conflict less

⁶⁴⁹ Amanda Alexander, ‘The Genesis of the Civilian’ (2007) 20 *Leiden Journal of International Law* (2007) 359; Amanda Alexander, ‘The “Good War”: Preparations for a War Against Civilians’ (2019) 15(1) *Law, Culture and the Humanities* 227, 229.

⁶⁵⁰ Amanda Alexander, ‘A Short History of International Law’ (n 625); Amanda Alexander, ‘The “Good War”’ (n 649) 229.

⁶⁵¹ David Kretzmer, ‘The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum’ (2013) 24(1) *European Journal of International Law* 235.

⁶⁵² Amanda Alexander, ‘A Short History of International Law’ (n 625); Amanda Alexander, ‘The “Good War”’ (n 649) 229.

⁶⁵³ Amanda Alexander, ‘A Short History of International Law’ (n 625).

⁶⁵⁴ *Ibid* 1367-1368.

risky⁶⁵⁵. Considering the above, IHL is out of date and out of tune with the shifting forms of war.

A similar argument was brought up in the context of the IHL's laws of occupation, viewed as a pact between state elites, providing guarantees of political continuity and depicting the decision to resort to violence as less profound⁶⁵⁶.

Powerful states wish to deter weaker parties who try to balance their disadvantage by acting against *hors de combat*. For instance, Iraq threatened to mistreat civilians and POWs during the first Gulf War, as a weaker party that tried to compensate for their disadvantage⁶⁵⁷. When looking beyond the inter-state realist approach, we can see the role of domestic politics and economies in shaping IHL⁶⁵⁸.

Benvenisti and Lustig share this perspective. They focus on the political, economic, and codification processes that shaped IHL. They show that European governments suppressed civil society endeavours to maintain their political and economic power, promoting an agenda that contradicts their stated intentions and drafting laws to protect combatants from civilians⁶⁵⁹.

IHL is not only a means to preclude foreign civilian fighters⁶⁶⁰, but also a way to suppress revolutionaries and 'enemies from within' who oppose the status quo, such as socialists,

⁶⁵⁵ Ibid 1415.

⁶⁵⁶ Eyal Benvenisti, *The International Law of Occupation* (Oxford University Press 2012) 71.

⁶⁵⁷ Chris AF Jochnick and Roger Normand, 'The Legitimation of Violence: A Critical History of the Laws of War' (1994) 35 *Harvard International Law Journal* 49, 52-53.

⁶⁵⁸ Benvenisti and Lustig, 'Monopolizing War' (n 576) 2-3.

⁶⁵⁹ Ibid 3.

⁶⁶⁰ Ryan Goodman, 'The Detention of Civilians in Armed Conflict' (2009) 103(1) *American Journal of International Law* 48.

anarchists, pacifists, and feminists, who might take arms against the sovereign⁶⁶¹. There was a ‘nations in arms’ phenomenon and civil society mobilisation after the Crimean War, which challenged European public order and prompted governmental reliance on IHL to stop revolutionaries and nationalists⁶⁶².

The Franco-Prussian War (1870–1871)⁶⁶³, and the rise of the Paris Commune (1871)⁶⁶⁴ both encouraged governments to codify the Law of War. Civil society shaped the Franco-Prussian War and revealed the risks of warfare-democratisation. The Brussels Declaration (1874), the first broad modern statement of the Law of War, was an imperial attempt to inhibit forces that threatened imperialism and proclaim dominance and control during times of war and peace⁶⁶⁵.

3.4. TWAIL, Postcolonialism, IHL Compliance and Retaliation

TWAIL and SCAIL can be used to scrutinise IHL in the context of drone violence. TWAIL can be used to address how IHL was designed for the benefit of colonial and imperial powers. SCAIL can be used to analyse how IHL serves settler colonial projects, the occupation of indigenous land and ethnic cleansing.

The SCAIL approach might be beneficial as settler colonial projects are ongoing to this day. Arguing that the humanitarian project of IHL is used to take inhumane actions might seem

⁶⁶¹ Benvenisti and Lustig, ‘Monopolizing War’ (n 576) 4.

⁶⁶² Ibid.

⁶⁶³ Michael Howard, *The Franco-Prussian War: The German Invasion of France 1870–1871* (Routledge 2005).

⁶⁶⁴ Robert Tombs, *The Paris Commune 1871* (Routledge 2014).

⁶⁶⁵ Benvenisti and Lustig, ‘Monopolizing War’ (n 576) 4.

counter-intuitive, as the canonical narrative towards IHL is the dominant one, suggesting that some rules are better than none and that IHL manages to restrain the powerful states from acting inhumanely due to their so-called commitment to comply, for legal, moral, political, diplomatic, and financial reasons, as well as other incentives.

TWAIL and postcolonial scholars have re-evaluated the dominance of European countries in the discourse of IHL and criticised the exclusions of Third World countries from IHL⁶⁶⁶. This exclusion has limited the use of IHL in conflicts that include non-Europeans, like colonial wars⁶⁶⁷. Postcolonial researchers have shown interest in the contributions of non-Europeans to IHL⁶⁶⁸ and the influence of IHL on postcolonial states⁶⁶⁹. Also, they challenge international law compliance with colonial legacy in light of formal decolonisation processes⁶⁷⁰. IHL can also be seen as a footnote to colonial businesses, as mentioned above, regarding the colonial enterprises of the founders of IHL⁶⁷¹.

Reciprocity requires that each state maintains a military authority that ensures both IHL compliance and that retaliation can be made if there is an IHL violation by an aggressive state⁶⁷². Therefore, IHL compliance depends on the ability of the potential victim state to have a substantial capacity to retaliate against the aggressor. If the aggressor believes that the

⁶⁶⁶ Kinsella, *The Image Before the Weapon* (n 635) 107; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 17; Forster (n 216) 1009.

⁶⁶⁷ Kinsella, *The Image Before the Weapon* (n 635) 11; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 15; Forster (n 216) 1009.

⁶⁶⁸ Corri Zoli, 'Islamic Contributions to International Humanitarian Law: Recalibrating TWAIL Approaches for Existing Contributions and Legacies' (2015) 109 *American Journal of International Law* 271.

⁶⁶⁹ Kinsella, *The Image Before the Weapon* (n 635) 11; Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 15; Forster (n 216) 1009.

⁶⁷⁰ Forster (n 216) 1009.

⁶⁷¹ Mégret, 'From "Savages" to "Unlawful Combatants"' (n 157) 6.

⁶⁷² AO Sykes and Eric Posner, *Economic Foundations of International Law* (Harvard University Press 2013) 190–195, 194.

victim state cannot retaliate, any threat of retaliation against an attack will not discourage the attack⁶⁷³.

The realist 'retaliatory' approach towards IHL is intuitively appealing. Historical events like WWI trench warfare and the treatment of POWs during WWI and WWII support game theory scenarios such as tit-for-tat. However, realist explanations have been criticised, as reciprocity requires that both sides have complete information on each other's plans and capabilities to follow IHL indefinitely. This condition rarely exists in practice⁶⁷⁴. Mistakes are often interpreted as IHL violations, leading to unneeded retaliation. When facing a powerful army, each battle may be your last. The losing side often does not obey IHL when compliance guarantees defeat and the winning side is also unlikely to worry about reprisals for possible IHL violations. Possible cooperation in such a 'prisoner's dilemma' is nearly impossible⁶⁷⁵.

Under this 'game theory' analysis of retaliation, there is little incentive for influential settler colonial countries like Israel and the US to respect IHL while applying lethal force, including drones, as currently, the downside or the penalty seems minimal from their perspective. When looking at a possible matrix of decisions on whether to comply or not to comply with IHL, when using a weapon like a drone that keeps the operator protected and as long as the international community poses little sanctions, if any, on powerful countries who operate lethal drones, the incentive to use them grows, under the pretence of security. In other words, only if countries like Israel and the US had a higher price to pay either locally or in terms of

⁶⁷³ Ibid 180.

⁶⁷⁴ Benvenisti and Cohen, 'War is Governance' (n 615) 1366.

⁶⁷⁵ Ibid.

sanctions from the international community would these countries consider minimizing their use of lethal force against defenceless victims.

3.5. Principles and Regulations in the Technological Era

IHL tries to protect *hors de combat*, as there are strict obligations towards combatants who are no longer taking part in the hostilities and to civilians that are held by a party to an armed conflict. This includes a prohibition on inflicting violence, threats, abuse, or torture⁶⁷⁶. According to the canonical narrative, the purpose of IHL is seemingly to protect victims of armed conflicts and regulate hostilities through rules and standards to balance military necessity and humanitarian considerations⁶⁷⁷. However, as will be elaborated later, the very nature of IHL prevents it from being a useful tool for scrutinising the use of military drones, despite the existence of IHL principles. This includes five main principles that, according to the canon, are fundamental for balancing military necessity and humanitarian considerations:

- a) Necessity – Under Article 52 of the first Additional Protocol, a combatant may use military force only to fulfil legitimate military objectives and overpower the enemy. A drone strike, like any other armed attack, can only be carried out if the attack is directed toward

⁶⁷⁶ Melzerand and Kuster (n 572) 16; Jean-Marie Henckaerts, *Customary international humanitarian law* (Cambridge University Press 2005); Cordula Droegel, 'In Truth the Leitmotiv: The Prohibition of Torture and Other Forms of Ill-Treatment in International Humanitarian Law' (2007) 89 *International Review of the Red Cross* 515.

⁶⁷⁷ Melzerand and Kuster (n 572) 16; Michael N Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' in Michael N Schmitt, *Essays on Law and War at the Fault Lines* (TMC Asser Press 2011) 89; Nobuo Hayashi, 'Requirements of Military Necessity in International Humanitarian Law and International Criminal Law' (2010) 28 *Boston University International Law Journal* 39.

military objectives while avoiding civilians and civil objects⁶⁷⁸. A civilian object is any object that is not part of a military objective⁶⁷⁹.

- b) Distinction – Commands belligerents to distinguish between combatants and civilians and only target combatants while avoiding targeting civilians and civilian facilities. Common Article 3 provides a framework for a minimal standard of distinction. The first and second Additional Protocols supplement the details⁶⁸⁰. The UN had mentioned that countries that conduct or authorise ‘targeted killing’, including with drones, may be prosecuted for war crimes if the killing violated IHL in this context⁶⁸¹.
- c) Proportionality – a military objective may be attacked only if the foreseeable harm to the civilian population and property does not exceed the expected military advantage. An armed attack such as a drone strike can only be carried out while calculating the reasonable risks imposed on civilian objectives and only if such risks do not outweigh the achievement of the military objective⁶⁸². Such calculations of the reasonable risks versus

⁶⁷⁸ Kristina Benson, ‘Kill ‘Em and Sort It Out Later’: Signature Drone Strikes and International Humanitarian Law’ (2014) 27 Pacific McGeorge Global Business & Development Law Journal 17, 48; John Bonino, ‘Transparency into Darkness: How the United States Use of Double-Tap Drone Strikes Violates IHL Principles of Distinction and Proportionality’ (Law School Student Scholarship, Seton Hall University 2021) 1125.

⁶⁷⁹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge University Press 2009); Bonino (n 678).

⁶⁸⁰ Henckaerts and Doswald-Beck (n 679); Bonino (n 678).

⁶⁸¹ Samuel Alexander, ‘Double-Tap Warfare: Should President Obama Be Investigated for War Crimes?’ (2017) 69 Florida Law Review 261, 293; Bonino (n 678).

⁶⁸² Hilly Moodrick-Even Khen, ‘Reaffirming the Distinction Between Combatants and Civilians: The Cases of the Israeli Army’s “Hannibal Directive” and the United States’ Drone Airstrikes Against ISIS’ (2016) 33 Arizona Journal of International and Comparative Law 765, 767; Bonino (n 678).

the military objectives should be conducted in a way that meets the principle of proportionality⁶⁸³.

- d) Preventing Unnecessary Harm and Suffering – To avoid unnecessary suffering for civilians and combatants, certain types of weapons and combat methods are forbidden, including ones that inherently cause unnecessary injury or unnecessary suffering, as well as ones that are intended to cause or are expected to cause, extensive, long-term, and severe damage to the natural environment. The will to prevent unnecessary suffering that is not required to achieve a legitimate military objective⁶⁸⁴. Such weapons include cluster bombs⁶⁸⁵, nuclear weapons⁶⁸⁶, and expanding bullets⁶⁸⁷.
- e) Precautions – The lawful obligation of combatants to take precautions can be found under Article 57 of the First Additional Protocol⁶⁸⁸. Constant caution must be exercised to minimise harm to civilians and civilian property. To prevent or minimise ‘collateral damage’ to the civilian population, all feasible precautions must be considered while the decision-makers choose the means and the method of an attack. Whoever plans or decides on an attack must do everything in his power to guarantee that the target is indeed a military objective and to avoid attacking any non-military target. An example of

⁶⁸³ Michael A Conforti, ‘Unharmonious Coexistence: How America's Military Obsession Has Demonstrated the Incompatibility of Weaponized Drones and Sovereignty’ 43 Rutgers Computer & Technology Law Journal 246, 265 (2017); Bonino (n 678).

⁶⁸⁴ Melzerand and Kuster (n 572) 16; Horace B Robertson Jr, ‘The Principle of the Military Objective in the Law of Armed Conflict’ (1997) 8 United States Air Force Academy Journal of Legal Studies 35.

⁶⁸⁵ Thomas Michael McDonnell, ‘Cluster Bombs Over Kosovo: A Violation of International Law’ (2002) 44 Arizona Law Review 31.

⁶⁸⁶ Louise Doswald-Beck, ‘International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons’ (1997) 37(316) International Review of the Red Cross 35-55.

⁶⁸⁷ Robin Coupland and Dominique Loye, ‘The 1899 Hague Declaration Concerning Expanding Bullets. A Treaty Effective For More Than 100 Years Faces Complex Contemporary Issues’ (2003) 85 International Review of the Red Cross 135.

⁶⁸⁸ Additional Protocol I to the Geneva Conventions of 12 August 1949 (n 608).

what is considered to be a feasible precaution can be found in Article 3(10) of the second Additional Protocol Annexed to the Convention on Certain Conventional Weapons⁶⁸⁹.

This approach reflects an attempt to balance military necessity and protecting civilians⁶⁹⁰.

Despite the existence of conventions that address new weapons like incendiary and blinding lasers, these principles might not be suitable for handling challenges that arise from new military technologies⁶⁹¹. It has also been argued that customary international law could help to deal with technological challenges because it might be able to develop faster than treaties, and because it is arguably already necessary when states that use the new technology do not ratify the treaty, like the US that did not ratify the first Additional Protocol and therefore do not see itself as obligated to follow it⁶⁹².

Another way to try and balance military necessity and humanitarian considerations is the idea of 'Limitation', which is limiting the means and methods of warfare⁶⁹³. For instance, the 1995 Protocol IV to the Convention on Certain Conventional Weapons prohibits laser weapons that are designed to cause permanent blindness⁶⁹⁴.

⁶⁸⁹ Francis Grimal and Michael J Pollard, 'The Duty to Take Precautions in Hostilities, and the Disobeying of Orders: Should Robots Refuse?' (2021) 44.3 Fordham International Law Journal 671; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (adopted 10 October 1980, entered into force 2 December 1983) 19 ILM 1523 (Protocol) art 3.

⁶⁹⁰ Michael N Schmitt & Eric W Widmar, "'On Target": Precision and Balance in the Contemporary Law of Targeting' (2014) 7 Journal of National Security Law & Policy 379, 400-404; Francis and Pollard (n 689).

⁶⁹¹ Robert Heinsch, 'Customary International Law and New Military Technologies' in Dan Saxon (ed), *Introduction: International Humanitarian Law and the Changing Technology of War* (Martinus Nijhoff 2013) 18.

⁶⁹² Ibid 19.

⁶⁹³ Melzerand and Kuster (n 572) 16; Kathleen Lawand, 'Reviewing the Legality of New Weapons, Means and Methods of Warfare' (2006) 88 International Review of the Red Cross 925.

⁶⁹⁴ Neil Davison, 'New Weapons: Legal and Policy Issues Associated with Weapons Described as 'Non-Lethal' in Dan Saxon (ed), *Introduction: International Humanitarian Law and the Changing Technology of War* (Martinus Nijhoff 2013) 309.

There are specific norms for the situation of occupation. For instance, according to article 43 of the Hague Convention of 1907⁶⁹⁵, an occupying power must take all measures to restore civil life in the occupied territories and ensure public order. Also, the occupation should be temporary and held by the occupier to benefit the occupied people⁶⁹⁶.

Scholars and practitioners have traditionally applied the conventions above to the situation in Palestine, as the West Bank and Gaza are considered by the international community to be “occupied territories”. Some UN resolutions might acknowledge, to some degree, the ethnic cleansing of Palestine in 1948. For instance, UN Resolution 194 defined principles for returning Palestine refugees to their homes in present-day Israel⁶⁹⁷. However, the dominant approach in international law seems to offer little protections to Palestinians, for instance, by overlooking the main means of oppression and the settler colonial situation that created what many now consider as ‘apartheid’. Although in March 2021 an Investigation had finally started at the ICC for Israeli and Palestinian war crimes⁶⁹⁸, traditional approaches to international law still treat the land that Israel occupied in 1948 as legitimate territories of the state of Israel, while not giving enough attention to the fact that Israel and the Zionist movement ethnically cleansed these territories.

⁶⁹⁵ Solomon Ukhuegbe and Alero Fenemigho, ‘Article 43 of the Hague Regulations of 1907 Revisited: The Past and the Future of Belligerent Occupation in International Law’ (2015) 16(1) University of Benin Law Journal 266.

⁶⁹⁶ Melzerand and Kuster (n 572) 16; Shane Darcy and John Reynolds, ‘An Enduring Occupation: The Status of the Gaza Strip From the Perspective of International Humanitarian Law’ (2010) 15(2) Journal of Conflict & Security Law 211.

⁶⁹⁷ Adnan Abdelrazek, ‘Israeli Violation of UN Resolution 194 (III) and Others Pertaining to Palestinian Refugee Property’ (2008) 15(16) Palestine-Israel Journal of Politics, Economics, and Culture 47.

⁶⁹⁸ International Criminal Court, ‘Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine’ (ICC, 3 March 2021) <<https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>> accessed 23 May 2021.

Even though there is no single body of international enforcement, the typical canon seems to suggest that IHL can:

- (a) Prevent violations in advance by deterrence based on assimilating the rules within domestic law, international humanitarian diplomacy, and public pressure⁶⁹⁹.
- (b) Enforce State responsibility through other means such as international courts; Diplomatic, economic, and military sanctions by the UNSC; Retributive action; Administrative domestic petitions and civil tort claims to domestic tribunals⁷⁰⁰.
- (c) Personal criminal liability: Criminal law within domestic states; Universal Jurisdiction (such as Nuremberg trials); International criminal tribunals such as the ICC and the International Criminal Tribunal for the former Yugoslavia (ICTY)⁷⁰¹.

The application of IHL can be seen as an attempt to achieve an equitable balance between humanitarian goals and necessities of war⁷⁰², however, this canonical approach, even if there was a body of enforcement, does not offer enough protection to Palestinians who have been subjected to oppression, ethnic cleansing, and transfer during times where the Geneva Conventions and the Additional Protocols already existed. The international community is

⁶⁹⁹ Jeremy Sarkin, 'The Historical Origins, Convergence and Interrelationship of International Human Rights Law, International Humanitarian Law, International Criminal Law And Public International Law And Their Application Since The Nineteenth Century' (2007) 1 Human Rights & International Legal Discourse 125; Kathryn Sikkink and Hun Joon Kim, 'The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations' (2013) 9 Annual Review Of Law And Social Science 269.

⁷⁰⁰ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press 2015); Marlene Wind (ed), *International Courts and Domestic Politics* (Cambridge University Press 2018);

⁷⁰¹ Michael Orkin, legal advisor ICRC, lecture June 2015 in Tel Aviv; Valentina Azarova, 'The Trickle-down Effects of Normative Power: The Role of International Courts in Advancing Palestine's Actual Independence' (2014) 17(1) The Palestine Yearbook of International Law 83.

⁷⁰² Saxon (n 694); Gary D Solis, *The Law Of Armed Conflict: International Humanitarian Law in War* (Cambridge University Press 2016).

interested in being perceived as ‘civilised’ and ‘enlightened’, while overlooking the inhumane treatment of Palestinians, who have been suffering from settler colonial practices.

Arguably, IHL had failed both because the regulations themselves are not strong enough to protect the people who need this protection the most, and also because even in cases where the regulations, in theory, can protect the rights of people who are oppressed, there is little enforcement and little sanctions against countries who violate IHL. This includes settler colonial countries that operate lethal drones to sustain their control over misappropriated indigenous land. However, we have seen that one of the main problems of IHL might be the very nature of IHL, rather than its regulations not being strong enough or is it lack of proper enforcement.

3.6. Conclusions

TWAIL focuses on less-noble interests that shaped international law, as TWAILers drew attention to how international law has been serving the First World. In contrast to the IHL canon, IHL was developed to serve colonial, settler colonial, and imperial powers. IHL was intended to serve First World interests such as restoring political and economic order and protecting combatants from civilians who wished to take arms against the sovereign⁷⁰³.

The codification of IHL in the 19th-20th centuries coincides with weapons that are more destructive than before⁷⁰⁴. As conflicts are now often between states and non-state entities,

⁷⁰³ Benvenisti and Lustig, ‘Monopolizing War’ (n 576).

⁷⁰⁴ John Fabian Witt, ‘The Dismal History of the Laws of War’ (2011) 1 UC Irvine Law Review 895, 897; Paul W Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (University of Chicago Press 1999).

and in areas of poverty, remote from the First World, today's victims are mostly civilians. As states have developed more destructive weapons, including weapons of mass destruction, IHL serves the political interests of countries that cause unnecessary suffering. When states are involved in humanitarian actions, they are often simultaneously involved with inhumane actions. Humanitarian interventions are often initiated for political interests, although there is no obligation to initiate such campaigns under IHL. At the same time, cogent IHL principles and regulations are ignored by the same countries⁷⁰⁵. For example, powerful European states provide food and medicine to disaster-stricken areas while simultaneously preventing civilians of their 'enemy' from obtaining similar resources⁷⁰⁶. Israel's Medical Corps deployed humanitarian delegation field hospitals in disaster zones, including Nepal (2015), the Philippines (2013), and Haiti (2010)⁷⁰⁷, while depriving Palestinians of their basic rights⁷⁰⁸.

The next chapter explores drone violence while looking at SCAIL and IHL. It analyses the role that drone violence plays in keeping the current power relations between the First and the Third World, as advanced military technology is just one of many methods in which powerful countries keep their combatants protected while shifting the risk to 'enemy' civilians. It makes it nearly impossible to effectively resist settler colonial forces. Advanced lethal technology that keeps soldiers completely protected is deadly to indigenous people – under the umbrella of IHL. Designed to benefit powerful countries from its early days, IHL still facilitates

⁷⁰⁵ Mills (n 99) 164.

⁷⁰⁶ Ibid; Eric A Nachmias and Belgrad Nitza, *The Politics of International Humanitarian Aid Operations* (Greenwood 1997).

⁷⁰⁷ Yuval Glick and others, 'Extending a Helping Hand: A Comparison of Israel Defense Forces Medical Corps Humanitarian Aid Field Hospitals' (2016) 18(10) *The Israel Medical Association Journal* 581.

⁷⁰⁸ Erika Weinthal and Jeannie Sowers, 'Targeting Infrastructure and Livelihoods in the West Bank and Gaza' (2019) 95(2) *International Affairs* 319.

oppression. The price of this reality is eventually paid by Third World peoples, whether they resist with limited means, or are brutally forced into compliance.

CHAPTER IV – DRONE THEORY

4.1. Introduction

This chapter explores the history and theory of drone violence, focusing on their development in Israel⁷⁰⁹, while considering settler colonialism, IHL, and the region's history. It asks how a small country like Israel became a drone superpower and questions the role of settler colonialism and IHL in the process.

Technology has a complex effect on humanity. It is interlinked with a wide range of narratives that shaped the human condition. The powers of elite forces shaped weapons alongside bottom-up civil society campaigns, including investigative efforts of journalists, environmentalists, engineers, and activists⁷¹⁰. Technology can be constructive, as it holds the potential to liberate humanity; however, the long-term effects of technology have always been speculative⁷¹¹.

For centuries soldiers have been increasingly distancing themselves from violence through technological means. This includes both physical and emotional disengagement from the

⁷⁰⁹ Medea Benjamin, *Drone Warfare: Killing by Remote Control* (Verso 2013); Dave Webb, Loring Wirbel, and Bill Sulzman, 'From Space, No One Can Watch You Die' (2010) 22(1) *Peace Review* 31; Boyle (n 19).

⁷¹⁰ Donald A MacKenzie, Judy Wajcman and Anthony Giddens, *The Social Shaping of Technology* (Open University Press 1999).

⁷¹¹ Ibid; Donna Haraway, 'A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century' in Donna Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature* (Routledge 1991) 149.

target⁷¹². There has been a normative swing in IHL discourse – from the imperative of sparing civilians to that of protecting soldiers. This shift can be exemplified by NATO’s decision to fly bombers at 15,000 feet over Kosovo, compromising accuracy to protect pilots. The ‘global war on terror’ reversed the traditional distribution of vulnerability in which soldiers are at risk and civilians are protected. A new meta-legal principle of ‘Imperial combatant immunity’ provides impunity to countries that preserve the lives of their combatants at the expense of enemy civilians⁷¹³.

This normative swing probably would have happened without drone-induced disinhibition. However, drones possess some unique characteristics, practical, conceptual, and philosophical, that make them an ideal weapon for applying unilateral violence under the umbrella of IHL and this new type of immunity.

Drones share many similarities with other long-range weapons. However, they also have some distinct features. Drones are considered to be cheap, sustainable, accurate, surgical, and durable⁷¹⁴. More importantly, as an automatic extension of humans, drones fly for days and weeks, and shoot multiple times without being reloaded⁷¹⁵.

A drone is a sophisticated projection of violence, an agent with cutting-edge capabilities, including an ongoing presence. Combined with a videogame setting for young operators, and big data algorithms, this technology removes barriers and inhibitions that are associated with

⁷¹² Joseph L Campo, ‘From A Distance: The Psychology of Killing with Remotely Piloted Aircraft’ (*Air University Maxwell Air Force Base United States*, 1 January 2015) <<https://apps.dtic.mil/docs/citations/AD1031892>> accessed 2 June 2021.

⁷¹³ Prost (n 54).

⁷¹⁴ Chamayou, *Drone Theory* (n 9) 26-27.

⁷¹⁵ Ibid.

how soldiers traditionally experience using lethal force. These capabilities have also brought a critical perception of drones as a 'cowardly' extension of western soldiers.

Drone pilots have reported that their job is like playing 'PlayStation'⁷¹⁶ and that the experience intentionally resembles a video game to make it easy for young soldiers to pull the trigger⁷¹⁷. Former drone operators who turned whistle-blowers reported that this type of setting makes killing 'too easy, too tempting, too much like simulated combat, like the computer game Civilization.'⁷¹⁸.

To understand drones' present and future, we can benefit from looking at the past that brought them into existence. Drones were designed during the second half of the 20th century for a wide range of military goals. In Israel, militarism pushed their development alongside cultural and historical narratives, myths of supremacy over the Palestinians, and a need to operate in urban territories rather than traditional battlefields.

We have seen in previous chapters that Israel is one of many settler colonial entities. In Israel, the end of taking over indigenous land has been used to justify brutal means, including drone violence against Palestinians since the Second Intifada (2000-2005). In the case of Israel, a key motivation for allocating resources toward the development of military drones lies in a desire to take over and maintain the lands that were taken from the Palestinians⁷¹⁹. Invasions into

⁷¹⁶ Joseph Pugliese, 'How Drones are Gamifying War in America's Casino Capital' (*USApp*, 15 September 2015) <<http://eprints.lse.ac.uk/84744/1/usappblog-2017-09-15-how-drones-are-gamifying-war-in-americas-casino.pdf>> accessed 2 June 2021.

⁷¹⁷ Anna Mulrine, 'Unmanned Drone Attacks and Shape-Shifting Robots: War's Remote-Control Future' (*The Christian Science Monitor*, 22 October 2011) <<https://www.csmonitor.com/USA/Military/2011/1022/Unmanned-drone-attacks-and-shape-shifting-robots-War-s-remote-control-future>> accessed 2 June 2021.

⁷¹⁸ *Ibid.*

⁷¹⁹ Laura Jordan Jaffee, 'Disrupting Global Disability Frameworks: Settler Colonialism and the Geopolitics of Disability in Palestine/Israel' (2016) 31(1) *Disability & Society* 116.

neighbouring countries have always been of secondary importance when compared to sustaining and expanding its settler colonial project in Palestine. Immune to political, legal, and moral restraints, Israel became a high-tech nation leading in the manufacturing and distributing of military drones throughout the 21st century.

Considering this realisation, this chapter examines drone violence within the context of Zionism, settler colonialism and SCAIL. It takes a closer look at the historical development of drones while widening the perspective on thinking critically about the role of IHL and settler colonialism in turning Israel into a drone superpower.

4.2. Israeli Militarism, The 'Chosen People', and Settler Colonialism

When looking at the contemporary use of military drones, it is evident that they are used predominantly by countries that are expanding their influence and control of external territories (imperialism). Even as these words are being written, Russia is reportedly using drone technology against soldiers and civilians in Ukraine⁷²⁰. Iran has developed these drones, another country with global aspirations. Unlike the US or Russia, Israel has been developing and using drone technology since the late 1960s, first and foremost in order to protect its settler colonial polity between the Jordan River and the Mediterranean Sea, rather than imperial ambitions in the Middle East. At first, Israel used drones to battle neighbouring

⁷²⁰ Ahmed Daifullah al-Garni, 'Drones in The Ukrainian War: Will They Be An Effective Weapon In Future Wars?' (Rasanah, International Institute for Iranian Studies, 30 August 2022) <<https://rasanah-iiis.org/english/wp-content/uploads/sites/2/2022/08/Drones-in-the-Ukrainian-War-Will-They-Be-an-Effective-Weapon-in-Future-Wars.pdf>> accessed 27 November 2022.

enemies who threatened its polity, and after the First Intifada (2000-2005) Israel started to use drones directly against Palestinians.

‘Israel’, so goes an old joke, ‘is not a state with an army but an army with a state’⁷²¹. Having grown up in Israel, which David Ben-Gurion wished to turn into a modern-day Sparta, I know that the deep-rooted veneration and deification of the army, still prevalent among much of Israel’s Jewish population, is nothing to laugh about. In his book ‘An Army Like No Other’, Bresheeth-Zabner describes Israel as ‘the most militarized nation on earth’⁷²².

And it is.

In what nation, other than North Korea, perhaps, are you told repeatedly, and with an almost messianic fervour, that your ultimate and most sacred duty is to enrol in the army? In what other nation are you ensured that you will be fighting for your people under divine sponsorship and will partake in nothing less than a new and metaphysical march into Canaan? In what other nation are you asked to climb a steep and isolated desert fortress and then swear that you are ready to sacrifice your life in its defence?⁷²³

But this is exactly what Jewish-Israeli youngsters have been exposed to during the early stages of the State of Israel and still are, to a great extent, even to this day. Pagan and outdated as it might appear, the tradition of climbing to the top of Masada and making an unequivocal commitment to fight for the Jewish State until you shed your last drop of blood continues⁷²⁴.

⁷²¹ Apostolis Fotiadis, “‘Occupiers Cannot also Be Liberal’: An Interview With Ilan Pappé’ (The Electronic Intifada, 21 June 2008) <<https://electronicintifada.net/content/occupiers-cannot-also-be-liberal-interview-ilan-pappe/7575>> accessed 27 September 2021.

⁷²² Bresheeth-Zabner, *An Army Like No Other* (n 277).

⁷²³ Yael Zerubavel, ‘The Multivocality of a National Myth: Memory and Counter-Memories of Masada’ (1995) 1(3) *Israel Affairs* 110.

⁷²⁴ Barry Schwartz, Yael Zerubavel, and Bernice M. Barnett, ‘The Recovery of Masada: A Study in Collective Memory’ (1986) 27(2) *Sociological Quarterly* 147.

Having been handed their guns against the rising sun, the soldiers are encouraged to draw inspiration from the story of the Jews who committed suicide in Masada in 70 A.D., preferring exalted death to an ignominious surrender to the Roman legions who encircled them⁷²⁵.

Extensive military indoctrination begins to envelop you early on and continues relentlessly until the army becomes your – and the entire nation's – centre of gravity. Israeli Jews may serve in the army, first as regular soldiers and then as reservists, until the age of fifty, and beyond⁷²⁶. No wonder some of them have described themselves, jokingly, as 'reservists on vacation'⁷²⁷. In old age, many of the conscripts may look back on their time in the army as the most prideful and rewarding period of their lives. It is hard not to feel intoxicated when you know that – with the biggest military budget per capita in the world⁷²⁸ – the IDF is one of the most powerful and advanced armies on earth.

Militarism, and the spilling of blood, confirms Amnon Raz-Rakotzkin, remain 'the basic, definitional characteristic of collective identity' in Israel⁷²⁹.

⁷²⁵ Nachman Ben-Yehuda, *Masada Myth: Collective Memory and Mythmaking in Israel* (University of Wisconsin Press 1996).

⁷²⁶ Arie Perliger, 'The Changing Nature of the Israeli Reserve Forces: Present Crises and Future Challenges' (2011) 37(2) *Armed Forces & Society* 216.

⁷²⁷ Carolina Landsmann, 'Israeli Anti-occupation Group Refuses to Be the Army's 'Useful Idiot' (Haaretz, 11 February 2017) <<https://www.haaretz.com/israel-news/.premium.MAGAZINE-israeli-anti-occupation-group-refuses-to-be-the-army-s-useful-idiot-1.5431572>> accessed 27 September 2021.

⁷²⁸ Stockholm International Peace Research Institute (SIPRI), 'Military Expenditure by Country, in Constant' (SIPRI, 2021) <<https://sipri.org/sites/default/files/Data%20for%20all%20countries%20from%201988%E2%80%932020%20in%20constant%20%282019%29%20USD%20%28pdf%29.pdf>> accessed 27 September 2021.

⁷²⁹ Amnon Raz-Krakotzkin, 'Exile Within Sovereignty: A Critique of the 'Negation of Exile' in Israeli Culture' (1993) 4 *Theoria Uviolet* 32, Translated from Hebrew by Haim Bresheeth-Zabner, as referenced in Bresheeth-Zabner, *An Army Like No Other* (n 277) 277.

How early on, you may ask, are Israelis getting ready to make the arduous climb to Masada and swear allegiance to the State of Israel?

An advertisement for Lis Maternity Hospital, part of Ichilov Medical Centre in Tel Aviv⁷³⁰, had recently featured a foetus wearing an IDF beret. The caption: 'Recipient of the Presidential Award for Excellence (in Israel's army) 2038'. We encounter another foetus, ensconced in a woman's womb, in yet another, more recent poster, published as part of an anti-abortion campaign. 'Every aborted child', it proclaims, 'is a soldier that had not been born'. As if the only reason for bringing children to the world is to supply new recruits to the IDF⁷³¹.

The ethos that children are born primarily to serve in the Israeli army, to live by their sword and, if necessary, to die on it in the service of their beloved homeland, goes back to 1920 – and to a tiny Jewish-Israeli settlement in northern Palestine, called Tel Hai. Local Palestinian villagers overtook this small enclave, and six of its defenders were killed⁷³².

'During its 400-year Ottoman era', says historian Ussama Makdisi, 'Palestine was inhabited by its own people, Muslim Arabs predominantly but also with significant Christian Arab, Armenian, and Arab and Eastern Jewish populations'⁷³³. During the early decades of the 20th century, the native Arabs of Palestine were the vast majority of the population⁷³⁴.

⁷³⁰ Brendan Cole, 'Israeli Hospital Ad Showing Fetus as Soldier Accused Of Militarizing the Unborn' (*Newsweek*, 24 May 2018) <<https://www.newsweek.com/israeli-hospital-ad-showing-foetus-soldier-accused-militarizing-unborn-942471>> accessed 15 May 2021.

⁷³¹ Ran Bar-Zik, 'Did You Freak Out from the Post About Abortions and Soldiers? Our Condolences, They Played You Like Messi Plays Football' (*Haaretz*, 25 August 2021) <<https://www.haaretz.co.il/captain/net/.premium-1.10149943>> accessed 28 August 2021.

⁷³² Yael Zerubavel, 'The Politics of Interpretation: Tel Hai in Israel's Collective Memory' (1991) 16(1-2) *AJS Review* 133.

⁷³³ Ussama Makdisi, 'Coexistences in the Holy Land' (*Los Angeles Review of Books*, 28 May 2021) <<https://lareviewofbooks.org/article/coexistences-in-the-holy-land/>> accessed 27 September 2021.

⁷³⁴ Ilan Pappé, *A History of Modern Palestine: One Land, Two Peoples* (Cambridge University Press 2004).

Not so, according to a famous and utterly false slogan formed by the Zionist movement to entice European Jews to immigrate to Palestine: 'Land without a people for a people without a land'⁷³⁵. In 1918 – two years before the battle of Tel Hai – Zionist leader Haim Weitzman offered a more realistic assessment: 'the brutal numbers operate against us'⁷³⁶, he lamented. Ben-Gurion, his rival for leadership of the Zionist movement, was equally concerned. According to historians, including Benny Morris, Ben-Gurion wanted 'as few Arabs as possible' in Palestine and supported compulsory transfer as early as 1938 (though not in public). Ben-Gurion's logic, says Morris, was clear: 'Without some sort of massive displacement of Arabs from the area of the Jewish-state-to-be, there could be no viable "Jewish State"'⁷³⁷.

Convinced that control of Palestine would be determined not through diplomacy, as Weitzman proposed, but by a violent and bloody confrontation, Ben-Gurion gave orders to start training clandestine paramilitary units, known as the Palmach, who were the forerunners of the IDF⁷³⁸. Not only were guns necessary, but also a unifying myth that would motivate native-born Jews (Sabras) to join the Palmach and push out the Palestinians, no matter the price. The battle of Tel Hai, where 20 men and women established a stronghold in a remote and dangerous region and then refused to be evacuated, despite being outnumbered by armed and angry local Bedouins, ticked all the boxes⁷³⁹.

⁷³⁵ Muir (n 524).

⁷³⁶ Edward Said, 'The Idea of Palestine in the West' (1978) 70 MERIP Reports 3.

⁷³⁷ Morris, *The Birth of the Palestinian Refugee Problem Revisited* (n 121) 43.

⁷³⁸ Uri Ben-Eliezer, "'In Uniform'/'Without a Uniform': Militarism as an Ideology in the Decade Preceding Statehood' (1988) 9(2) Studies in Zionism 173.

⁷³⁹ Zerubavel, 'The Politics of Interpretation' (n 732).

On his deathbed, one of those fighters, Yosef Trumpeldor, presumably said: 'It's good to die for our country'⁷⁴⁰. Trumpeldor has been presented to Israeli children ever since as a martyr, a Jewish patriot whose worthy and beautiful death for the homeland was a glorious moment of salvation⁷⁴¹.

Soon after the battle, Berl Katzenelson, a leading ideologue of the Zionist movement, wrote a famous eulogy for the fallen soldiers of Tel Hai. He described them as 'men of toil and peace who walked behind the ploughshare and risked their lives for the usurped lands of the People of Israel'⁷⁴².

Idith Zertal points out that the Zionist movement appropriated the Arab attack on the settlers of Tel Hai in order to create a martyrology as an essential element in Israel's nation-forming process. 'living for the homeland... ...became the new leitmotif principle in which blood and land were joined'⁷⁴³. Trumpeldor's heroic sacrifice became 'an instrument for mobilization and preservation of a martial, conquering society'⁷⁴⁴.

According to Oz Almog, the myth of Tel Hai encoded another symbolic element of great importance to Zionism. 'By the very act of fighting', says Almog, 'the Tel Chai martyrs became

⁷⁴⁰ Jonathan Krasner, "'New Jews' in an Old-New Land: Images in American Jewish Textbooks Prior to 1948' (2003) 69(2) *Journal of Jewish Education* 7.

⁷⁴¹ Yael Zerubavel, 'Chapter VI – The Historic, the Legendary, and the Incredible: Invented Tradition and Collective Memory in Israel' (2018) in John R Gillis (ed), *Commemorations* (Princeton University Press 2018) 105.

⁷⁴² Idith Zertal, *Israel's Holocaust and the Politics of Nationhood* (Cambridge University Press 2010) 21.

⁷⁴³ Judith Frishman, 'On Sacrifices, Victims, and Perpetrators: Israel's New Historians, Critical Artists, and Zionist Historiography' in Alberdina Houtman et al (eds), *The Actuality of Sacrifice: Past and Present* (Brill 2015) 403; Idith Zertal, *The Nation and Death: History, Memory and Politics* (Hebrew, Dvir 2002).

⁷⁴⁴ Zertal, *Israel's Holocaust and the Politics of Nationhood* (n 742) 19.

a symbol of what distinguished Zionism from the Diaspora Jewish tradition of bowing one's head before the Gentile'⁷⁴⁵.

A sculpture in the shape of a roaring lion was erected in Tel Hai and Trumpeldor's tomb became the site of pilgrimage for Israel's youth movements⁷⁴⁶. Tel Hai Day is still marked each year on the eleventh day of the Hebrew month of Adar. The story of Tel Hai was transformed in Zionist rhetoric into a historic turning point after two thousand years of pliant and shameful Jewish life in the Diaspora. Trumpeldor's death heralded a new era of Jewish redemption achieved through militarism and absolute reliance on force. 'Only through armed struggle', says Yosefa Loshitzki, 'can lost Jewish pride be regained and diasporic humiliation revenged'⁷⁴⁷.

Zionism's deep rejection of Diasporic Jewish history ('Shlilat Ha-Gola')⁷⁴⁸, marked by spinelessness and passivity, was a central theme in Ben-Gurion's revamped version of the past, in which he skipped two millennia of Jewish life outside the Land of Israel and portrayed native-born Israelis as direct descendants of Biblical heroes⁷⁴⁹, such as Joshua, who ruthlessly conquered Canaan⁷⁵⁰, David who bravely defeated Goliath⁷⁵¹, and Bar-Kochba, who rebelled

⁷⁴⁵ Oz Almog, *The Sabra: The Creation of the New Jew* (University of California Press 2000) 38.

⁷⁴⁶ Batsheva Pomerantz, 'Remembering the "Roaring Lion" on Tel Hai Day' (*The Jerusalem Post*, 7 March 2020) <<https://www.jpost.com/Opinion/Remembering-the-Roaring-Lion-on-Tel-Hai-Day-620126>> accessed 27 September 2021.

⁷⁴⁷ Yosefa Loshitzky, *Identity Politics on the Israeli Screen* (University of Texas Press 2001) 12.

⁷⁴⁸ Eliezer Schweid, 'The Rejection of the Diaspora in Zionist Thought: Two Approaches' (1984) 5(1) *Studies in Zionism* 43.

⁷⁴⁹ Anita Shapira, 'The Bible and Israeli Identity' (2004) 28(1) *Association for Jewish Studies Review* 11; Alan Levenson, 'David Ben-Gurion, the Bible, and the Case for Jewish Studies and Israel Studies' in Carsten Schapkow and Klaus Hodl (eds), *Jewish Studies and Israel Studies the Twenty-First Century: Intersections and Prospects* (Rowman & Littlefield 2019) 15.

⁷⁵⁰ Rachel Havrelock, 'The Joshua Generation: Conquest and the Promised Land' (2013) 1(3) *Critical research on religion* 308.

⁷⁵¹ Susan Niditch, 'Epic and History in the Hebrew Bible: Definitions, "Ethnic Genres", and the Challenges of Cultural Identity in the Biblical Book of Judges' in Kurt Raaflaub and David Konstan (eds), *Epic and History* (Wiley 2009) 86, 88.

against the far superior Roman Empire⁷⁵². Along with Trumpedor, and later on, the Jews who fought against the Nazis in the Warsaw uprising⁷⁵³, they were to serve as our role models.

Never Again! Was the motto. Never again will Jews walk like sheep to the slaughter, as they did during Hitler's era⁷⁵⁴.

According to Ben-Gurion, native-born Israelis, also known as 'Sabras', represented a new Jew – fearless, virile and handsome. In his public speeches, he described the Sabras, willing to take up arms and fiercely defend themselves, as the apotheosis of Zionism. The Sabra, was 'a new Jew-Soldier who would wipe the slate clean, through tilling the land and through military prowess'⁷⁵⁵.

Not everybody, however, went along with Ben-Gurion's nationalist fanaticism and his animosity towards Palestine's indigenous Arab population. A group of German Jewish emigres, headed by notable figures like philosopher Martin Buber and Professor of Jewish mysticism Gershom Sholem, whom Nobel Laureate Albert Einstein supported, tried to steer history in a different, less belligerent direction. In the late 1920s, they formed Brit Shalom (Covenant of Peace), a group whose members supported the establishment of a binational political entity⁷⁵⁶, where both Jews and Arabs could enjoy 'national and cultural autonomy in

⁷⁵² Myron J Aronoff, 'Establishing Authority: the Memorialization of Jabotinsky and the Burial of the Bar-Kochba Bones in Israel Under the Likud' in Myron Joel Aronoff (ed), *The Frailty of Authority* (Transaction Publishers 1986) 105.

⁷⁵³ Moshe Arens, 'The Development of the Narrative of the Warsaw Ghetto Uprising' (2008) 14(1) Israel Affairs 6.

⁷⁵⁴ Yechiel Klar, Noa Schori-Eyal, and Yonat Klar, 'The "Never Again" State of Israel: The Emergence of the Holocaust as a Core Feature of Israeli Identity and Its Four Incongruent Voices' (2013) 69(1) Journal of Social Issues 125.

⁷⁵⁵ Bresheeth-Zabner, *An Army Like No Other* (n 277) 14.

⁷⁵⁶ Zohar Maor, 'Moderation From Right to Left: The Hidden Roots of Brit Shalom' (2013) 19(2) Jewish Social Studies: History, Culture, Society 79; Shalom Ratsabi, *Between Zionism and Judaism: The Radical Circle in Brith Shalom, 1925-1933* (Brill 2002).

a supranational frame'⁷⁵⁷. The idea that there could be a way to meet both sides' national aspirations never won wide popularity. Brit Shalom dissolved itself in 1933⁷⁵⁸, allowing Ben-Gurion to mobilize passions of hatred and ultra-nationalism in the service of his utopian version of Zionism. While Brit Shalom members saw themselves as representing the 'true' spirit of Zionism, The Zionist establishment led by Ben-Gurion condemned them and defined themselves in opposition to Brit Shalom⁷⁵⁹.

To instil in Israeli youngsters even more of a sense of confidence, patriotism, and self-worth in preparation for the war that he believed was inevitable, Ben-Gurion revived another old concept: 'The Chosen People' (Deuteronomy 7:6)⁷⁶⁰. They were told they were God's favourites. As such, their mission was to return from their forced exile and take possession of the Land of Canaan, a land promised to their ancient patriarch Abraham⁷⁶¹. A deep-seated sense of entitlement, uprightness and superiority has been part of the Israeli mentality from the inception of Zionism onwards. This sense feeds and legitimises the condescending attitude towards the land's indigenous people, the Palestinians, who are regarded as weak and vastly inferior and as 'usurpers' of a territory that belongs exclusively to the Jewish people by a divine decree, writ in the Bible. This sense of supremacy made it possible – and natural – for Israeli soldiers to expel most of the Palestinians from their homeland during the war of

⁷⁵⁷ Adam Le Bor, 'The Lost World of the Yekkes: The Golden Age of Jerusalem's Rehavia District' (*TLS*, 9 July 2021) <<https://www.the-tls.co.uk/articles/german-jerusalem-thomas-sparr-review-adam-lebor/>> accessed 28 September 2021.

⁷⁵⁸ Shalom Ratsabi (n 756).

⁷⁵⁹ Amnon Raz-Krakotzkin, 'Jewish Peoplehood, "Jewish Politics", and Political Responsibility: Arendt on Zionism and Partitions' (2011) 38(1) *College Literature* 57, 59.

⁷⁶⁰ Anita Shapira, 'Ben-Gurion and the Bible: The Forging of an Historical Narrative?' (1997) 33(4) *Middle Eastern Studies* 645, 659.

⁷⁶¹ *Ibid* 658-659, 669.

1948 and continues to resonate and enable atrocities and war crimes that have been committed ever since.

The narrative that Jews are the 'Chosen People' and the sole legitimate proprietors of the Land of Israel continues to be drilled into the minds of Israelis from a very young age as part of a settler colonial mentality. Brainwashing takes place in all frameworks of formal and informal education. Nurit Peled-Elhanan, who studied the role of Israeli textbooks in establishing collective memory, concluded that all material learned in Israeli schools aims primarily 'to inculcate the collective memory created by Zionism', be it in mandatory bible studies, history, literature, geography, civics, and even science, mathematics, and grammar⁷⁶². The official narrative is also incorporated into nursery rhymes, poetry, plays, religious rites and annual state memorials.

As a citizen of Israel, you are never entirely free of what Bresheeth-Zabner calls the all-powerful 'stifling collectivities of Zionism'⁷⁶³. They envelop you when you listen to speeches by politicians, watch TV news broadcasts, or celebrate Jewish holidays with your family in the privacy of your home. The message is amplified each year during the Passover ceremony when Jews traditionally thank God for giving them preference over all other nations⁷⁶⁴. It is not unusual for one of the participants in the Seder to stand up and bless Israeli soldiers and the IDF. And vice versa, soldiers also wish Jewish-Israeli households a happy Passover through the YouTube channel of the IDF spokesman⁷⁶⁵. When IDF soldiers were asked what Passover

⁷⁶² Peled-Elhanan, *Palestine in Israeli School Books* (n 129); Peled-Elhanan, 'Legitimation of Massacres in Israeli School History Books' (n 129).

⁷⁶³ Bresheeth-Zabner, *An Army Like No Other* (n 277) 4.

⁷⁶⁴ Avner Ben-Amos, Ilana Bet-El, and Moshe Tlamim, 'Holocaust Day and Memorial Day in Israeli schools: Ceremonies, Education and History' (1999) 4(1) *Israel Studies* 258.

⁷⁶⁵ Israel Defense Forces, 'Happy Passover from IDF Soldiers' (YouTube, 5 April 2012) <<https://www.youtube.com/watch?v=TrcdJ7LJzbQ>> accessed 28 September 2021.

means for them, they emphasised that 'because of our work, you can sleep easy and enjoy the holiday in safety... ...we want you to be able to look at the sea and know that everything is quiet, the sea is open and safe'⁷⁶⁶. The soldiers also said Passover means: 'the freedom of Hebrews, the Hebrew man, and the freedom of Israel'⁷⁶⁷. The message is loud and clear. You are here to serve your country. Not yourself.

And what better way to serve your country than by volunteering to enrol in one of its elite combat units? Or become a drone pilot? Since the early days of the state, Israeli boys are urged to become commando fighters, paratroopers, or air force pilots. Slogans such as 'Follow me to the Paratroopers', and 'The Finest to the Airforce'⁷⁶⁸, were posted on billboards across Israel in the fifties and the sixties. Those who undergo gruelling endurance tests and make it to those exclusive units walk with their heads held high, trying to call your attention to their prestigious insignias representing virility and patriotism. To this day, Israeli newspapers publish, in summer months, lists of high schools with the highest numbers of graduates who chose to serve in IDF's elite units, as well as the names of dozens of high schools that pride themselves on having a perfect IDF recruitment rate of 100%, among their graduates of that year⁷⁶⁹.

The worship and adulation of fighters and generals reached unprecedented proportions after Israel's victories in the Sinai Campaign in 1956 and the Six-Day War in 1967. The superiority of the Israeli army was described in metaphysical terms. Once again, as in pronouncements

⁷⁶⁶ Ibid.

⁷⁶⁷ Ibid.

⁷⁶⁸ Almog, *The Sabra* (n 745) 106.

⁷⁶⁹ Yoav Zeitun, 'Who is Leading the Way in IDF Recruitment? Ranking of Cities and High Schools' (Hebrew, Ynet, 19 November 2015) <<https://www.ynet.co.il/articles/0,7340,L-4728294,00.html>> accessed 28 September 2021.

made after the 1948 War (also known as the War of Independence), God himself was dragged into the battlefield, where he watched over the soldiers and led them into their holy wars against shifty and wicked infidels. A highly popular song, written after Israel's offensive against Egypt (carried out in collusion with Britain and France) in 1956, described the conquest of Mt. Sinai as an act of divine will: 'It is no legend, my friend, and no passing dream, [We are] facing Mt. Sinai, the bush, the burning bush'⁷⁷⁰.

Israeli generals, despite many military failures and setbacks that were to follow, still enjoy immense clout and prestige and are the first in line for almost every important public job. They are presidents of major academic institutions, industrial conglomerates, health insurance companies and countless other lucrative, influential, and well-paying positions. More importantly, they are natural candidates to head all of Israel's numerous political parties (see the latest attempt of former Chief of Staff Benny Gantz to oust Benjamin Netanyahu)⁷⁷¹. As Israel's Prime Minister, Naftali Bennett misses no opportunity to remind the public that he served as an officer in 'Sayeret Matkal' (General Staff Reconnaissance Unit), one of Israel's most coveted commando units⁷⁷².

Bresheeth-Zabner reflects on his experience of growing up in Ben-Gurion's Sparta⁷⁷³. Although his account mirrors the atmosphere in the 1960s-1970s, not much, as pointed out earlier, has changed in terms of Israel's dominant narratives and mentality. A son of two Nazi

⁷⁷⁰ Almog, *The Sabra* (n 745) 135.

⁷⁷¹ Yoram Peri, 'The Widening Military-Political Gap in Israel: Former Chiefs of Staff Fight for Principles of Statism' (SWP, 2 January 2020) <https://www.ssoar.info/ssoar/bitstream/handle/document/67285/ssoar-2020-peri-The_widening_military-political_gap_in.pdf> accessed 28 September 2021.

⁷⁷² TOI, 'Bennett's Former Commander Says He Can No Longer Call Him "Naftul"' (Times of Israel, 14 June 2021) <<https://www.timesofisrael.com/bennetts-former-commander-says-he-can-no-longer-call-him-naftul/>> accessed 28 September 2021.

⁷⁷³ Bresheeth-Zabner, *An Army Like No Other* (n 277) 19, 53, 106, 162.

concentration camp survivors, Bresheeth-Zabner was born stateless in Rome. His parents failed to secure passage anywhere but Palestine. His father was a draft resistor, perhaps one of the first conscientious objectors, but after being warned that he might spend years in jail, he agreed to serve as a medic. This broken man, who barely survived a death march, was later sent to the horrifying battle of Latrun (1948) where nearly 2,000 Israeli soldiers, many of them Holocaust survivors, were killed⁷⁷⁴.

Bresheeth-Zabner grew up in Jaffa (Yaffa), a town that was ethnically cleansed by an ultra-militant Zionist militia⁷⁷⁵. The town was populated by Holocaust survivors who settled down in flats that were former homes of Palestinian families who were forcibly driven out⁷⁷⁶. Incidentally, my grandfather, who immigrated to Palestine during the 1930s and served as a police officer for the British Mandate, was also offered one of those 'deserted' houses in Jaffa in 1948, but he refused, arguing that they are the property of Arab families that might wish to return.

Unlike the early settlers who came to Palestine as enthusiastic Zionists, Bresheeth-Zabner's parents, like many other Holocaust survivors, were no 'willing colonialists'. Many were enchanted by the Zionist project and only accepted its ideology and rationale in retrospect. When Bresheeth-Zabner was drafted in 1964, his parents took great pride in Israel's military might and regarded it as a symbol of Jewish survival and rebirth. He was disinclined to join the military, but despite his pacifism, he says he lacked the courage to follow the famous draft resisters of the time, who spent years in prison for defying the official dogma. He tried

⁷⁷⁴ Ibid 1-4, 164.

⁷⁷⁵ Ibid 19-20.

⁷⁷⁶ Loshitzky, *Identity Politics* (n 747) 50; Bresheeth-Zabner, *An Army Like No Other* (n 277).

unsuccessfully to avoid officer training and served as a second lieutenant during the war of 1967. To his great relief, he did not participate in any actual fighting⁷⁷⁷.

Israel was the only country in the world willing to shelter Bresheet-Zabner's parents, victims of Nazi madness and brutality, who found themselves homeless refugees stranded in Europe after the war. The Holocaust would later become Israel's semi-official religion and another tool in Israel's endless arsenal of justifications for its intransigence and why it needed to encroach into the territory of neighbouring Arab countries to safeguard its survival. At one time or another, Israel controlled – and still does – chunks of Egypt, Syria, and Lebanon. The Palestinians living in Gaza and the West Bank are also presented as a threat to Israel's existence and, therefore, must be kept under strict control.

It is not its need for security that motivates Israel's suppression of the Palestinians. By carefully examining Israel's wars, presented to the world as acts of self-defence, an underpinning settler colonial pattern emerges. Since 1973, Israel has no longer been fighting against states but against armed militias such as Fatah, Hezbollah, and Hamas, sworn foes of Israel, but not military entities that posed an existential threat to Israel. Even more evident, is the fact that Israel has turned the large and powerful IDF into 'a policing and punitive occupational army, a role it had fulfilled for seventy years'⁷⁷⁸.

Nevertheless, successive Israeli governments, and the public, have seen themselves as facing an existential threat and used this threat to justify the oppression of indigenous Palestinians. The perceived threat has been both from neighbouring Arab countries and the Palestinians

⁷⁷⁷ Bresheet-Zabner, *An Army Like No Other* (n 277) 3.

⁷⁷⁸ Ibid 30.

themselves. They were both referred to collectively and indiscriminately as ‘the Arabs’ by Israeli politicians, generals, and public opinion leaders⁷⁷⁹.

IDF’s major function today is to protect and enforce Israel’s insatiable appetite and drive to expand its geographical territory. To put it more bluntly, the Israeli army had been mobilised to carry out what Israeli sociologist Baruch Kimmerling had called Palestinian ‘politicide’, the ‘gradual but systematic attempt to cause their annihilation as an independent political and social entity’⁷⁸⁰.

In 1958, an Israeli primary school student named Naomi Stern expressed her feelings during the yearly memorial siren played at ‘Yom HaZikaron’, the national Remembrance Day for soldiers: ‘A siren was heard. I stood still. And before my eyes, various figures who got us our independence. I imagined tanks, soldiers, rifles, and submachine guns, in the hands of Hebrew soldiers, who defended our homeland and fought with wonderful heroism.’⁷⁸¹. Sadly, it is considered normal for primary school children to proudly imagine tanks and machine guns in a hyper militarised state.

According to Maoz Azaryahu, the director of the Herzl Institute for the Study of Zionism at Haifa University, memorial sirens reflect the constant state of emergency and the possibility

⁷⁷⁹ Dan Rabinowitz and Khawla Abu-Baker, *Coffins On Our Shoulders: The Experience of the Palestinian Citizens of Israel* (University of California Press 2005).

⁷⁸⁰ Lawrence Joffe, ‘Baruch Kimmerling: Controversial critic of Israel’s Origins and Its Role in the Middle East’ (The Guardian 26 June 2007) <<https://www.theguardian.com/news/2007/jun/26/guardianobituaries.israel>> accessed 28 September 2021.

⁷⁸¹ Elon Gilad, ‘Why Do Israelis Observe a Moment of Silence to the Sound of Sirens on Holocaust Remembrance Day?’ (*Haaretz*, 12 April 2015) <<https://www.haaretz.com/jewish/.premium-sirens-on-holocaust-remembrance-day-why-1.5350114>> accessed 25 May 2021; Anat Korol-Gordon, ‘Why Do We Remember the Fallen With the Help of an Alarm Siren?’ (13 April 2021) <<https://www.kan.org.il/item/?itemid=103829>> accessed 25 May 2021.

that the memorial sirens might be actual war sirens⁷⁸². Shofar sirens also appear to announce the Shabbat, 'Rosh Hashanah' and other occasions. This exemplifies how religion and militarism are fused and feed each other in Israeli⁷⁸³.

Israel takes special pride and trumpets the fact that it was the biblical Jews who promoted the idea of universal peace. It was one of their very own, Prophet Isaiah, who said: 'God shall judge between the nations, and shall decide for many peoples; and they shall beat their swords into ploughshares, and spears into pruning hooks; nation shall not lift up sword against nation; neither shall they learn war anymore' (Isaiah 2:4). And yet, many Israeli youngsters continue to learn war with great enthusiasm, and to spill their blood on the alter of their ultra-militarised state. A state that in 2009 was the world's single largest producer and exporter of military drones⁷⁸⁴, and is today among the ten biggest exporters of weapons in the world⁷⁸⁵, selling its military equipment to over 130 countries across the globe, from Eswatini (Swaziland) to the Islands of Seychelles⁷⁸⁶. Israelis have also become, as former brigadier General Gadi Shamni boasted, 'world champions of occupation', bringing it 'to an art form'⁷⁸⁷.

Israeli anti-militarism NGO 'New Profile' reflects well how militarism is a part of all aspects of civil society in Israel. For instance, a washing machine commercial used the expression

⁷⁸² Maoz Azaryahu, *State Cults: Celebrating Independence and Commemorating the Fallen in Israel, 1948–1956* (Ben Gurion University Press 1995).

⁷⁸³ Korol-Gordon (n 781).

⁷⁸⁴ The Stockholm International Peace Research Institute (SIPRI, March 2022) <<https://www.sipri.org/databases/armstransfers>> accessed 13 March 2022.

⁷⁸⁵ Yoav Zitun (n 345).

⁷⁸⁶ Ibid.

⁷⁸⁷ Lahav Harkov, "Retired General Calling Israel 'World Champion of Occupation' Sparks Outrage" (*The Jerusalem Post*, 1 September 2016) <<https://www.jpost.com/israel-news/retired-general-calling-israel-world-champion-of-occupation-sparks-outrage-466617>> accessed 13 March 2022.

‘operation laundry’. In addition, Israeli children casually dress up like soldiers for holidays, supermarket advertisements endorse soldiers, young children play with military sniper rifles as a school activity, and brides pose with tanks⁷⁸⁸.

Israel uses appealing, patriotic names that distort the brutal nature of its ‘operations’. The 1982 war that killed some 22,000 Syrians and Lebanese was named ‘Peace in Galilee’⁷⁸⁹. In 2009, a nursery rhyme was chosen for the attack on Gaza: ‘Cast Lead’⁷⁹⁰. Around 1/3 of the names have a biblical source, and another 1/3 reference nature. The deadliest Israeli weapons are also named after biblical and lyrical figures⁷⁹¹. The biblical myths depicted earlier are highly familiar to Israeli children and integral to Israeli identity, even among secular Jews⁷⁹². Children study these myths from preschool and throughout primary and secondary education. The names of the operations resonate with the public and ease the acceptance of brutalities. Even the fact that Israel refers to wars as ‘operations’, which is the same word for ‘reductions’ or ‘sale’, demotes them and normalises them to hide their horror⁷⁹³. Most cultural production, including music, theatre, film, media and literature, have been part of this, with national identity constructed from a Spartan sacrifice. War is the greatest certainty in Israel, and wars, especially during the summer, are the norm⁷⁹⁴.

⁷⁸⁸ Ruth L Hiller, ‘Militarized Parenthood in Israel’ (*New Profile*, 2012)

<<http://newprofile.org/english>> accessed 25 May 2021.

⁷⁸⁹ Bresheeth-Zabner, *An Army Like No Other* (n 277) 29.

⁷⁹⁰ Yosefa Loshitzky, ‘Israel’s Blonde Bombshells and Real Bombs in Gaza’ (*Electronic Intifada*, 5 January 2009) <<https://electronicintifada.net/content/israels-blonde-bombshells-and-real-bombs-gaza/7923>> accessed 26 May 2021; Dalia Gavriely-Nuri, *The Normalization of War in Israel Discourse, 1967– 2008* (Lexington 2012) 42-43; Bresheeth-Zabner, *An Army Like No Other* (n 277) 29-30.

⁷⁹¹ Gavriely-Nuri (n 790) 37-38; Bresheeth-Zabner, *An Army Like No Other* (n 277) 30.

⁷⁹² Shapira, ‘The Bible and Israeli Identity’ (n 749) 11.

⁷⁹³ Gavriely-Nuri (n 790) 44; Bresheeth-Zabner, *An Army Like No Other* (n 277) 30.

⁷⁹⁴ Bresheeth-Zabner, *An Army Like No Other* (n 277) 30.

Further evidence for how effective the war-normalising discourse is, can be found in the support that the Jewish-Israeli public provides to the army during a wide range of attacks⁷⁹⁵, including the raid over the Mavi Marmara and the attacks on Gaza in 2014, one of the most brutal Israeli operations – and around 95% of Israeli-Jews supported it⁷⁹⁶.

As Bresheeth-Zabner puts it, militarism is the default mode. It is a way of resolving conflicts and achieving national goals. There is no need to impose military control as the nation was created by the army, for the army, and ‘democratically’ from the point of view of the Jews, as there is a Jewish-Israeli consensus that the whole nation is the army⁷⁹⁷. In Israel, the military has a state⁷⁹⁸. Much of the economy is controlled by the army, and the military leads the political agenda through the military–industrial-academic-complex and its affiliates⁷⁹⁹. It is no coincidence that most politicians, including prime ministers, served in high positions in the military, including the Chief of Staff. As a result, a war-normalising discourse habituates society to continuous war⁸⁰⁰.

It is no surprise that cold-blooded murderers like Elor Azaria⁸⁰¹, an IDF soldier convicted of the manslaughter of a Palestinian who stabbed another soldier, and Israeli snipers who served

⁷⁹⁵ Ibid 29.

⁷⁹⁶ Zack Beauchamp, ‘95% of Jewish Israelis Support the Gaza War’ (*Vox*, 31 July 2014) <<https://www.vox.com/2014/7/31/5955077/israeli-support-for-the-gaza-war-is-basically-unanimous>> accessed 25 May 2021; Bresheeth-Zabner, *An Army Like No Other* (n 277) 29.

⁷⁹⁷ Bresheeth-Zabner, *An Army Like No Other* (n 277) 29.

⁷⁹⁸ Yagil Levy, ‘Who Controls the IDF: Between an ‘Over-Subordinate Army’ and ‘a Military That Has a State’ in Elisheva Rosman-Stollman and Aharon Kampinky (eds) *Civil– Military Relation in Israel: Essays in Honor of Stuart A. Cohen* (Lexington Books 2014) 48; Bresheeth-Zabner, *An Army Like No Other* (n 277) 29.

⁷⁹⁹ Bresheeth-Zabner, *An Army Like No Other* (n 277) 29.

⁸⁰⁰ Dalia Gavrieli-Nuri (n 790); Bresheeth-Zabner, *An Army Like No Other* (n 277) 41.

⁸⁰¹ MEE staff, ‘Elor Azaria: From Killer to ‘King’ Leading Life of Luxury in Israel’ (*MEE staff*, 29 August 2018) <<https://www.middleeasteye.net/news/elor-azaria-killer-king-leading-life-luxury-israel>> accessed 5 June 2021; James Orr, ‘Israeli Soldiers Charged Over Shooting of Palestinian Prisoner’ (*The Guardian*, 7 August 2008)

Gaza during the March of Return, are generally accepted in Israel as heroes. These are not 'bad apples', as one might think, but the ultimate patriots that fulfilled the collective settler colonial ideology and the Zionist ethos.

A final example of militarism can be found in Israeli responses to external criticism. The ICC held on 5 February 2021 that the ICC has territorial jurisdiction over Gaza and the West Bank, territories occupied by Israel in 1967. The ICC's chief prosecutor has been expected to open a war crimes probe into Israel's actions, as a last resort, because Israel's judicial system was found insufficient to investigate and prosecute the alleged war crimes⁸⁰². Moreover, on 3 March 2021, the ICC prosecutor announced that he is opening a probe into alleged crimes in Palestine⁸⁰³, including during the time of the 2014 'Gaza war', placing perhaps hundreds of Israeli senior political figures, soldiers, and ex-combatants at serious risk of prosecution⁸⁰⁴.

It is worth mentioning in this context that drone violence can also be considered a war crime under the Rome Treaty, as noted by the ICC⁸⁰⁵. The ICJ similarly emphasised the principle of distinction⁸⁰⁶, as IHL prohibits weapons that harm civilians indiscriminately. Perhaps one day, a probe would focus on military drones. However, so far, excessive mortality has been

<<https://www.theguardian.com/world/2008/aug/07/israelandthepalestinians.middleeast>> accessed 5 June 2021.

⁸⁰² Independent, 'ICC Clears Way For War Crimes Probe of Israeli Actions' (*Independent*, 05 February 2021) <<https://www.independent.co.uk/news/icc-clears-way-for-war-crimes-probe-of-israeli-actions-icc-court-jerusalem-actions-israeli-b1798434.html>> accessed 14 May 2021.

⁸⁰³ UN News 'ICC Prosecutor Opens Probe Into Alleged Crimes in Occupied Palestine' (*UN*, 4 March 2021) <<https://news.un.org/en/story/2021/03/1086342>> accessed 15 May 2021.

⁸⁰⁴ Peter Beaumont, 'ICC Opens Investigation Into War Crimes in Palestinian Territories' (*The Guardian*, 3 March 2021) <<https://www.theguardian.com/law/2021/mar/03/icc-open-formal-investigation-war-crimes-palestine>> accessed 15 May 2021.

⁸⁰⁵ Geert-Jan Alexander Kooijmans, 'The Duality of the Proportionality Principle Within Asymmetric Warfare and Ensuing Superior Criminal Responsibilities' (2009) 9(3) *International Criminal Law Review* 501, 526-527.

⁸⁰⁶ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, International Court of Justice (ICJ), 8 July 1996.

attributed to drone violence, as western countries have been setting the terms of global 'justice', in the name of 'freedom' and 'human rights'⁸⁰⁷.

So how did Israel react to the ICC investigation of war crimes related to Israel's operation in Gaza? Michal Cotler-Wunsh, an Israeli politician who served as an MP, published an article that reflects the popular opinion in Israel, which is against the ICC. She argues that everyone must follow the US lead and condemn the decision of the ICC, due to a 'politicisation' of the Court. She proclaims that a decision to investigate a democracy with a renowned legal system poses a risk to all law-abiding states, pointing the finger at other regimes whose crimes are 'sidelined' in favour of politically motivated cases against Israel⁸⁰⁸.

Cotler-Wunsh is trying to appeal to the Israeli public. In August 2014, 63% of Jewish-Israelis polled that the famous saying 'the whole world is against us' is indeed accurate, reported Shmuel Rosner in the New York Times⁸⁰⁹. Similarly, in 2010, 77% of Jewish-Israelis agreed that 'no matter what Israel does, the world is going to be critical', says Rosner⁸¹⁰.

It seems that the 2014 military attack on Gaza, like all of Israel's 'operations', was seen as morally just by the majority of Israelis. Many of them seem to believe that 'no other country and no other army in history have gone to greater lengths to avoid casualties among the civilian population of their enemies', as Netanyahu said during his address to the UN in October 2014, as Israel's Prime Minister⁸¹¹. From my experience, Israelis typically think that

⁸⁰⁷ Noam Chomsky, *Who Rules the World?* (Metropolitan Books 2016).

⁸⁰⁸ Michal Cotler-Wunsh, 'Take a Stand Against ICC Politicization' (*Jerusalem Post*, 13 March 2021) <<https://www.jpost.com/opinion/take-a-stand-against-icc-politicization-opinion-661733>> accessed 26 May 2021.

⁸⁰⁹ Shmuel Rosner, 'Israel and a Hostile World' (*The New York Times*, 8 October 2014) <<https://www.nytimes.com/2014/10/09/opinion/rosner-israel-and-a-hostile-world.html>> accessed 26 May 2021.

⁸¹⁰ Ibid.

⁸¹¹ Ibid.

the world is against Israel⁸¹² and that the world works tirelessly to delegitimise their country. This perception is seen as essential for the self-preservation of the settler colonial state in the eyes of most Israelis, being practically blind to criticism that has merit through self-pity and self-righteousness⁸¹³.

After spending most of my life in Israel, I concluded that ‘the world’ seems to most Jewish-Israelis as a united anti-semitic front that judges and condemns Israel, while it could never understand Israel, as promised to the Israelites, the ‘chosen people’. The (false) perception that ‘the entire world is against us’ had inspired the rapid development of the military–industrial-academic-complex⁸¹⁴, including military drones. Myths discussed in the previous subsections pushed this development, officially for ‘defence’, as part of a survival mechanism of a settler colonial polity. Like other high-tech and military industries, drones have been a tool for economic survival and development. They allow Israel to control perceived ‘threats’ and create allies, including brutal regimes that use Israel’s weapons to oppress civilian populations⁸¹⁵.

Today’s Israeli parent does not want their six-year-old to offer legal counsel and their eight-year-old to save human lives. Instead, they want them to serve in 8200 – the IDF’s most prestigious and advanced technological unit, an elite unit that develops state-of-the-art weapons for Israel’s war machine. If you are one of the elected boys of 8200, you are ensured of lucrative offers from high-tech companies and a bright future paved with sacks full of dollars, euros, or bitcoins. The changing fantasies of the Jewish-Israeli mother are emblematic

⁸¹² Joshua Muravchik, *Making David Into Goliath: How the World Turned Against Israel* (Encounter Books 2015).

⁸¹³ Rosner (n 809).

⁸¹⁴ Bresheeth-Zabner, *An Army Like No Other* (n 277) 31.

⁸¹⁵ Ibid.

of the trajectory of my home country. Its covert and overt wars and murky arms deals should be of great interest to anyone concerned with the stability and future of the Middle East and the world far beyond.

‘Something is rotten in the state of Israel’ but most Israeli Jews are indifferent to the ills and transgressions of their society, a settler colonial project. For many of them, leading a normal life justifies all means. Hence, the use of drones and other cutting-edge technologies does not even raise an eyebrow. Less and less Israelis are concerned about the tragic predicament of the Palestinians. ‘Suffer and let live’ is the new Israeli mantra. No wonder the use of drones that operate in silence and away from the public’s field of vision is not only acceptable but welcomed. By and large, the Israeli public does not wish to know how its ‘security’ forces deal with Palestinian rage and frustration or try to oppose increasing acts of land confiscation. Sights of demonstrations and arrests, sporadically as they are shown on Israeli media, have desensitised the public to the plight of the Palestinians. The clandestine world of drones is a well-kept secret which is hardly ever covered or discussed.

4.3. How Drones Turned into a Technology of Occupation

Joseph Trumpeldor, who attempted a century ago to establish an isolated settlement in a region dotted with Arab villages, is still hailed in Israel as a hero, a brave pioneer who risked his life to regain control over a land promised to the Jewish people by God himself. In a diametrically opposed narrative, Trumpeldor represents the beginning of the Jewish settler

colonial project, which endeavours to disperse and displace the land's indigenous people⁸¹⁶.

This project was partly accomplished during the war of 1948 when more than 700,000 Palestinians were forced to abandon their homes and villages and become refugees⁸¹⁷.

We jump forward to June 1967 and the Six-Day War, another momentous event which changed the history and geopolitics of the Middle East. Around 250,000 Palestinians were expelled across the Jordan River, some for the second or third time in their lives. Israel annexed Jerusalem two weeks after the 1967 war ended and imposed a military rule that was previously applied to Palestinian citizens of Israel on the Palestinians of Gaza and the West Bank. Israel also criminalised political activities and started to construct Jewish settlements in the Golan Heights and the West Bank on misappropriated Palestinian land⁸¹⁸.

Suggestions made by Palestinian leaders were ignored by Israeli politicians. This includes suggestions for a Palestinian state alongside Israel and suggestions to establish a one democratic state between the Jordan River and the Mediterranean Sea⁸¹⁹, for Palestinians and Israelis⁸²⁰.

Israel was drunk with its new power and sense of space, convinced that its Arab neighbours would soon sue for peace. Instead, the response of the Arab League at a meeting in Khartoum in November 1967 was three resounding noes: no recognition of Israel, no negotiations, and no peace.

⁸¹⁶ Yael Zerubavel and Roni Sarig, 'Trumpeldor in Israeli Popular Culture: from a Legendary National Hero to a Multifaceted Icon' (2021) 39(1) Journal of Israeli History 1.

⁸¹⁷ Ilan Pappé, *the Ethnic Cleansing of Palestine* (Oneworld Publications 2006).

⁸¹⁸ Bresheeth-Zabner, *An Army Like No Other* (n 277) 41.

⁸¹⁹ Avi Raz, *The Bride and the Dowry: Israel, Jordan and the Palestinians in the Aftermath of the June 1967 War* (Yale University Press 2012) 25; Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

⁸²⁰ Leila Farsakh, 'The One-state Solution and the Israeli-Palestinian Conflict: Palestinian Challenges and Prospects' (2011) 65(1) The Middle East Journal 55.

Arab intransigence and Israeli euphoria in the aftermath of the war gave rise to a wave of Jewish messianic fervour and fundamentalism. Religious and secular Jews alike began to call for establishing settlements in the West Bank, which, to them, was part and parcel of the historic 'Land of Israel'. What began as a trickle grew into a huge state project of ethnic cleansing, which, according to prominent Labour politician Avraham Burg, undermines the very fabric and soul of Israeli society: 'After two thousand years of struggle for survival, the reality of Israel is a colonial state, run by a corrupt clique which scorns and mocks law and civic morality'⁸²¹.

In his essay 'Israel: The Alternative', which had 'brought the roof down' on his head, British historian Tony Judt said that the colonial, post-67 Israel was facing three unattractive choices: dismantle the Jewish settlements and return to the 1967 borders, continue to occupy 'Samaria', 'Judea', and Gaza, or else keep control of the territories but 'get rid of the overwhelming majority of the Palestinian population, either by forcible expulsion or by starving them of land and livelihood, leaving them no option but to go into exile'⁸²².

It is obvious which of the three choices was relished and adopted by the state of Israel. No wonder Arthur Hertzberg, a conservative rabbi, scholar, and activist, headlined his article about the Six-Day War and its dour consequences with the words 'Israel: The Tragedy of Victory'⁸²³. To Hertzberg, Israel's refusal to withdraw from the territories and its arrogance and 'exaggeration of power' were the underside of its swift victory in the Six-Day War⁸²⁴.

⁸²¹ Tony Judt, 'Israel: The Alternative' (2003) 50(16) New York Review of Books 8.

⁸²² Ibid.

⁸²³ Arthur Hertzberg, 'Israel: The Tragedy of Victory' (1987) 34(9) New York Review Of Books 12.

⁸²⁴ Ibid.

A tragedy for some. A fulfilment of God's divine plan and a technological and economic bonanza for others. When one tries to understand how Israel became one of the world's leading and most profitable manufacturers of armaments, drones and other tools of repression, the focal point of reference must be its victory over Egypt, Syria, and Jordan in June 1967.

It was the changing geopolitics in the Middle East, brought about by the Six-Day War, and half a century of occupation, that compelled Israel to develop new lethal weapons constantly and to master the art of 'monitoring and surveilling millions of Palestinians'⁸²⁵. Poorly equipped David would eventually turn into a world leader in 'testing', manufacturing, and exporting drones, currently employed by Israel primarily as tools of oppression and a superpower of cyber-intelligence.

To understand how Israel became a formidable and ruthless Goliath, who profits from 'battle-tested' weapons, we can benefit by looking at how drones evolved during a shift in Israel's military needs, status and self-image in the aftermath of the Six-Day War.

On the seventh day of the war, Israel discovered that it had tripled its size and was overcome by a sense of relief that it was no longer under existential threat. But the fighting never ceased. Egypt and Jordan did not give up. Instead, their soldiers continued to bomb Israeli bunkers across the Suez Canal and the Jordan river, inflicting heavy losses and shattering the illusion that the Six-Day War had ended all regional wars⁸²⁶.

⁸²⁵ Antony Loewenstein, 'Exporting the Technology of Occupation' (*New York Review of Books*, 4 January 2019).

⁸²⁶ Michael B Oren, *Six Days of War: June 1967 and the Making of the Modern Middle East* (Presidio Press 2017).

It was at this point in time that three Israeli military engineers began to test a small flying machine, made of plywood, with a wingspan of a stork. Equipped with a camera and operated by radio signals, it flew above the Egyptian and Jordanian installations, trying to gather information on where the shelling was coming from. Shabtai Brill, an intelligence corps officer, who was among the three engineers whose brainchild the reconnaissance drone was, managed to persuade Battalion Head Avraham Arnan and his Airforce associate Shlomo Barak to allocate \$1,000 and to go ahead with the project⁸²⁷.

‘Brill could not have known at the time, but what he started on the shores of the Suez Canal in 1969 would burgeon one day into a massive, billion-dollar industry for Israel and position it as a global military superpower’, say veteran Israeli military correspondents Katz and Bohbot⁸²⁸.

In the 1970s, Israel’s Defense Minister Dayan said that Israel sees itself permanently in the Occupied Territories. Dayan advocated for using every opportunity to construct Jewish-Israeli settlements in areas occupied in 1967, as these territories are a part of the ‘homeland’⁸²⁹. If so, the Yom Kippur War (1973) was not an error of tactics or intelligence – but was based on a misconception of ‘Arab grievances’ and their lack of determination⁸³⁰.

Israel’s failure during Yom Kippur enhanced the motivation to keep developing drones. Self-satisfied and over-confident Israeli generals underestimated Egyptian forces’ motivation, capabilities, and rearmament. As a result, they were unprepared for Russian-supplied SAM 7

⁸²⁷ Ibid.

⁸²⁸ Katz and Bohbot (n 14) 63.

⁸²⁹ Kapeliuk, *Lo Mehdal* (n 388); Ian Black (n 388); Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

⁸³⁰ Ibid; Bresheeth-Zabner, *An Army Like No Other* (n 277) 137.

Surface-to-air batteries that shot down Israeli jet fighters over Sinai with alarming efficiency⁸³¹.

This created an urgent need for drones that might provoke enemy forces to waste their anti-aircraft arsenal on decoys⁸³². So Israel used 'Teledyne Ryan 124 R RPV' with Scout and Mastiff drones to draw fire from SAM missiles⁸³³.

Yom Kippur's failure led to a decision to improve intelligence capabilities to prevent another surprise⁸³⁴. David Harari, who served as head of Israel's drone project, was tasked with developing new drones with real-time surveillance capabilities⁸³⁵. During the late 1970s, Israel began to manufacture Scout and Mastiff, representing a drone technology breakthrough.

By 1981 a new version of the Mastiff drone could disrupt and help Israeli jet fighters to eliminate the Syrian missile batteries in the Lebanon Valley, providing Israel with complete areal control over its northern front⁸³⁶.

⁸³¹ Simon Dunstan, *The Yom Kippur War 1973 (2): The Sinai* (Bloomsbury Publishing 2012).

⁸³² David Rodman, 'Unmanned Aerial Vehicles in the Service of the Israel Air Force: "They Will Soar on Wings Like Eagles"' (2010) 14(3) MERIA 77.

⁸³³ Abraham Rabinovich, *The Yom Kippur War: The Epic Encounter that Transformed the Middle East* (Schocken 2007); Vijay Kumar Saxena, *The Amazing Growth and Journey of UAV's and Ballistic Missile Defence Capabilities: Where the Technology is Leading to?* (Vij Books 2013).

⁸³⁴ Kristian Gustafson, 'Intelligence Success and Failure: the Human Factor' (2019) 95(2) International Affairs 483; Uri Bar-Joseph and Rose McDermott, *Intelligence Success and Failure: the Human Factor* (Oxford University Press 2017).

⁸³⁵ Tom Scheve, 'How the MQ-9 Reaper Works' (*Howstuffworks*, 26 May 2021)

<<https://science.howstuffworks.com/reaper1.htm>> accessed 26 May 2021; Strategy Page, 'Russia Buys A Bunch of Israeli UAVs' (*Strategypage*, 9 April 2009)

<<https://www.strategypage.com/htmw/htairfo/articles/20090409.aspx>> accessed 26 May 2021;

Yuval Azoulay, 'Unmanned Combat Vehicles Shaping Future Warfare' (*Globes*, 24 October 2011)

<<https://en.globes.co.il/en/article-1000691790>> accessed 26 May 2021; David Harari, Michael

Shefer, and Yair Dubester, *The People Behind the Israeli Remote Piloted Drones: How Israel Became Unmanned Aerial Vehicle Power* (CreateSpace Independent Publishing 2018).

⁸³⁶ Clifford A Wright, 'The Israeli War Machine in Lebanon' (1983) 12(2) Journal of Palestine Studies 38; Zeev Schiff, 'Dealing with Syria' (1984) 55 Foreign Policy 92; C L Rubinstein, 'The Lebanon War: Objectives and Outcomes' (1983) 37(1) Australian Journal of International Affairs 10.

1982 was the year of the First Lebanon War. Israel operated two drone squadrons to support ground and air operations and to gather real-time intelligence⁸³⁷. Relying on drone-gathered information, Israeli pilots struck from a great distance, destroying Syrian air defences⁸³⁸. Israeli drones intercepted frequencies of Syrian radars, making Syria believe it was under attack. Syria fired anti-aircraft missiles toward the decoy drones, allowing Israel to destroy Syria's defence, using missiles that homed on a Syrian radar that drones revealed⁸³⁹. These early drone experiences in Syria and Lebanon paved the way for US-made drones in the 1980s⁸⁴⁰. Veteran Israeli military correspondents described the importance of drones in this war:

'It was June 1982, and Israel had decided to invade Lebanon to end the rising cross-border terror and rocket attacks by the PLO... ...In the weeks before, Scout drones flew over the valley to collect radar and communication frequencies... ...An electronic warfare system succeeded in blinding and neutralizing most of the missile systems, and the Scouts assisted Israeli fighter jets in identifying and bombing the missile batteries. The operation was a major success. The IAF destroyed almost all of the Syrian SAMs and in one fell swoop knocked 82 Syrian MiGs out of the sky without losing a single Israeli fighter jet.'⁸⁴¹

⁸³⁷ Kendra LB Cook, 'The silent force multiplier: The history and role of UAVs in warfare' 2007 IEEE Aerospace Conference.

⁸³⁸ Levinson, 'Israeli Robots Remake Battlefield' (n 362).

⁸³⁹ Ibid.

⁸⁴⁰ Singer, *Wired for War* (n 55).

⁸⁴¹ Katz and Bohbot (n 14) 64.

Katz and Bohbot continue with how this event had fundamentally changed Israeli thinking: 'Officers who until then had refused to believe in these new unmanned aircraft[s] had a change of heart. The potential of these miniature drones suddenly seemed unlimited.'⁸⁴².

Drones like 'Scout', which were developed for surveillance against neighbouring countries, will soon be redeployed to reduce the cost of military control over Palestinians. But this paradoxically achieved the opposite. It deepened opposition and animosity towards Israel among many Arab nations and led to constant strife, skirmishes and never-ending 'inter-state conflicts'.

During the First Lebanon War (1982-2000)⁸⁴³, and even more so during the Second Intifada (2000-2005), Israeli leaders learnt that fighting in urban environments requires new technologies that would replace large formations. As a result, the war convinced Israel to develop weapons that would allow the military to operate in heavily populated areas⁸⁴⁴.

Israeli drones like 'RQ-2 Pioneer' became operational in the 1980s⁸⁴⁵. The 'Hunter' was later introduced and quickly modified according to US requirements⁸⁴⁶ for deployment in Iraq (1990–1991; 2003–2011) and Kosovo (1998–1999)⁸⁴⁷. Katz and Bohbot explain how Israel sold 'Pioneer' to the US in the 1980s:

⁸⁴² Ibid.

⁸⁴³ Zeev Schiff and Ehud Ya'ari, *Israel's Lebanon War* (Simon & Schuster 1985); Charles Winslow, *Lebanon: War and Politics in a Fragmented Society* (Routledge 2012).

⁸⁴⁴ Bresheeth-Zabner, *An Army Like No Other* (n 277) 165.

⁸⁴⁵ Richard Major, 'RQ-2 Pioneer: The Flawed System that Redefined US Unmanned Aviation' (Research Report, Air Command and Staff College, Air University 2012).

⁸⁴⁶ Ralph Sanders, 'An Israeli Military Innovation: UAVs' (2003) Winter 2002-03 Joint Force Quarterly 114 <<https://apps.dtic.mil/dtic/tr/fulltext/u2/a483682.pdf>> accessed 26 May 2021; Haulman (n 19).

⁸⁴⁷ Chris Cole, 'The 2012 Drone Wars Briefing' (*Drone Wars UK*, 1 January 2012) <<https://dronewars.net/2012/01/01/the-2012-drone-wars-briefing/>> accessed 26 May 2021; Daniel Brunstetter and Megan Braun, 'The Implications of Drones on the Just War Tradition' (2011) 25(3) *Ethics & International Affairs* 337.

‘Secretary of the Navy John Lehman... ..was handed a joystick and given control over a drone in flight. Similarly, Marine Corps commandant General P. X. Kelley... ..was presented with a kind of home video, shot by a circling drone... ..Both men were sold... ..Lehman decided to simply skip over the usual procedures and had the navy contract Israel Aerospace Industries directly to develop a new drone based on the Scout... ..IAI soon had a prototype, which it called the Pioneer.... ..the US Navy was hooked. It ordered 175.... ..it didn’t take long before they engaged in combat... ..During one operation, a Pioneer drone flew over a group of Iraqi soldiers, who saw the aircraft and, not knowing what it was, took off their white undershirts and waved them in the air. It was the first time in history that a military unit surrendered to a robot...’⁸⁴⁸

Later, Israel began developing the ‘Heron’ drone (late-1980s)⁸⁴⁹. This is Israel’s largest drone, with a wingspan of a Boeing airliner⁸⁵⁰. By 1994 it was deployed in Lebanon⁸⁵¹, Iraq, and Afghanistan⁸⁵². It served Canada, France⁸⁵³, Australia⁸⁵⁴ and Germany⁸⁵⁵, including in missions

⁸⁴⁸ Katz and Bohbot (n 14) 65.

⁸⁴⁹ Sayan Majumdar, ‘IAI’s Heron-the Unmanned Sentinel’ (2014) 3 Vayu Aerospace and Defence Review 85.

⁸⁵⁰ Katz and Bohbot (n 14) 76.

⁸⁵¹ Victor Weissberg and Ami Schwarzberg, ‘Design and Service Experience of a High Endurance UAV’ (2nd AIAA “Unmanned Unlimited” Conference and Workshop & Exhibit, 15-18 September 2003) <<https://doi.org/10.2514/6.2003-6536>> accessed 26 May 2021.

⁸⁵² Shashank Joshi and Aaron Stein, ‘Emerging drone nations’ (2013) 55(5) Survival 53.

⁸⁵³ Katz and Bohbot (n 14).

⁸⁵⁴ George Galdorisi (n 15).

⁸⁵⁵ Christine Sixta Rinehart, ‘Sharing Security in an Era of International Cooperation: Unmanned Aerial Vehicles and the United States’ Air Force’ (2017) 33(1) Defense & Security Analysis 45.

over Africa, Mali, Asia, Africa, South America, and Greece⁸⁵⁶. Katz and Bohbot describe the impact of the 'Heron' and its significance in operations in Gaza, Lebanon, and Syria:

'What makes drones appealing for militaries is that they can successfully carry out "3D" missions—dull, dirty and dangerous. "Dull" refers to routine, mundane missions like patrols along borders or maritime surveillance of seas and oceans. These are physically demanding and are extremely tedious and repetitive. While humans tire after 10 or 12 hours, the Heron drone – the Israeli Air Force's main workhorse since 2005 – can stay airborne for 50 hours... ..The air force, for example, maintains drones like the Heron for reconnaissance missions on all of its various fronts...'⁸⁵⁷

During the 1990s, Israel deployed 'Searcher' and 'Harpy', designed to destroy radar systems' defences⁸⁵⁸. Israel sold 100 'Harpy' drones to China in the 1990s⁸⁵⁹. By 1990, Israel designed the 'Ranger'⁸⁶⁰.

⁸⁵⁶ Bruno Antoniazzi Ronconi and others (n 17).

⁸⁵⁷ Katz and Bohbot (n 14) 69-70.

⁸⁵⁸ Rodman (n 832).

⁸⁵⁹ Boyle (n 19).

⁸⁶⁰ Silvana Pedrozo, 'Swiss Military Drones and the Border Space: a Critical Study of the Surveillance Exercised by Border Guards' (2017) 72(1) *Geographica Helvetica* 97; Forze Aeree and Swiss Air Force, 'ADS 95 Ranger Flight-Campaign National Exhibition Expo 02' (*Forze Aeree and Swiss Air Force*, 2 September 2003) <<https://apps.dtic.mil/sti/pdfs/ADA427549.pdf>> accessed 26 May 2021; Avia, 'IAI, Ruag, Oerlikon ADS 95 Ranger' (*Avia*, 15 October 2015) <<http://avia-pro.net/blog/iai-ruag-oerlikon-ads-95-ranger>> accessed 26 May 2021.

The seed of 'targeted killing' from the air might be attributed to Israel's assassination of Yahya Abd-al-Latif Ayyash (1996). Ayyash was killed by signals transmitted from an aeroplane to his booby-trapped cellphone⁸⁶¹, a technology later perfected by Israel's drone industry.

The performance of Israeli drones in Egypt, Syria, and Lebanon sparked interest in the US and strengthened Israeli-American cooperation⁸⁶². As a result, Israel developed improved models designed to meet US requirements⁸⁶³. Then, the US developed their own models based on the know-how and experience of Avraham Karem, former chief designer of the Israel Air Force, who immigrated to the US⁸⁶⁴. He was the first to develop drones with glider properties. His early drones were long, thin, and could stay at a high altitude for nearly two days. His models served as the basis for the US-made Predator drone, which he supervised and brought to completion in the 1980s⁸⁶⁵.

The Predator represented a technological and military turning point⁸⁶⁶. It was first used to allow manned US F-16s to kill targets with guided lasers. This ability was demonstrated in

⁸⁶¹ Marjorie Miller, 'Most-Wanted Terrorist in Israel Killed' (*LA Times*, 6 January 1996).

⁸⁶² Peter Finn, 'Rise of the Drone: From Calif. Garage to Multibillion-Dollar Defense Industry' (*Washington Post*, 23 December 2011); Rodman (n 832);

⁸⁶³ Daniel F Lyons, 'Aerodynamic Analysis of a US Navy and Marine Corps Unmanned Air Vehicle' (Naval Postgraduate School Monterey CA, 1989).

⁸⁶⁴ Uri Sadot, 'A Perspective on Israel' (*Center for a New American Security*, May 2016) <<http://drones.cnas.org/wp-content/uploads/2016/05/A-Perspective-on-Israel-Proliferated-Drones.pdf>> accessed 20 July 2021; Chamayou, *Drone Theory* (n 9) 28; Brian Glyn Williams (n 865).

⁸⁶⁵ Brian Glyn Williams, 'The CIA's Covert Predator Drone War in Pakistan, 2004–2010: The History of an Assassination Campaign' (2010) *Studies in Conflict & Terrorism* 33(10) 871; Finn (n 862).

⁸⁶⁶ Brian Glyn Williams (n 865); Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, From the Soviet Invasion of Afghanistan to September 10, 2001* (Penguin Books 2004) 528.

Serbia (Operation Allied Force, 1999) and during the bombing of Republika Srpska in Bosnia (Operation Deliberate Force)⁸⁶⁷.

It was in the year of 9/11, 2001, when the Predator became deadly – equipped, for the first time, with hellfire missiles and laser-guided bombs⁸⁶⁸.

I have attempted to outline how drones evolved from small flying machines made of balsam into terrifying weapons that are a mixed blessing – a story remindful of the Golem of Prague, a monster with glowing eyes and supernatural powers made originally from clay or mud. According to Jewish folklore, the Golem was a mindless entity who served his rabbi under controlled conditions but was hostile to him under other circumstances. The Golem, brought to life to protect the Jews against pogroms, is the perfect metaphor for drones because, not unlike its modern-day robotic incarnations, it can get out of control, go on the rampage, and even crush its creator. But I am getting ahead of myself.

To understand how drones have become, in the long run, counterproductive, tempting Israel to believe it owns a magical weapon ‘with glowing eyes and supernatural powers’ but which is drawing the Jewish state deeper and deeper into endless and bloody wars that might lead, in a worst-case scenario, to a Middle Eastern Armageddon, we must return to the watershed event of the Six-Day War – and to the hypothetical question of ‘What if?’.

The Israelis, says Tony Judt, have won the war in 1967, but they ‘lost the peace: gratuitously wasting the opportunities afforded them by their victory’⁸⁶⁹. Faced with three unattractive

⁸⁶⁷ Ibid; Tyler Cole, ‘Eye in the Sky’ (*International Affairs Review*, Fall 2013).

<https://www.usfca.edu/sites/default/files/arts_and_sciences/international_studies/the_eye_in_the_sky_without_an_eye_-_university_of_san_francisco_usf.pdf> accessed 26 May 2021

⁸⁶⁸ Ibid.

⁸⁶⁹ Judt (n 821).

choices, Israel, as pointed out earlier, has refused to negotiate self-rule, autonomy, and statehood with the Palestinian population under its jurisdiction and opted instead to expand its messianic settler colonial project.

The suppression of the Palestinians and the brutal military means used to control the population and to carry out unlawful land seizures in the West Bank⁸⁷⁰, further alienated its Arab neighbours, who otherwise might have come to terms with Israel's presence in their midst, accepting it painfully and grudgingly as their next-door neighbour. There was a time when Israeli liberals and moderate Palestinians insisted that the only hope was for Israel to dismantle nearly all the settlements, return to the 1967 borders, and accept a two-state solution in exchange for Arab recognition of those frontiers⁸⁷¹.

'It is already too late for that', wrote Tony Judt in the New York Review of Books in 2003, lamenting the fact that 'the settlement program went ahead unimpeded'⁸⁷². Israel, he said, was 'an oddity', 'an anachronism. And not just an anachronism but a dysfunctional one'⁸⁷³. He offered a utopian solution of a single state in Palestine, even if it meant the dissolution of the Jewish state and an end to the Zionist movement.

Judt's essay was a voice in the wilderness and was condemned even by many of his former friends and allies. The fact that political power in Israel gradually shifted to religious zealots and territorial fundamentalists led, as Judt predicted, to the death of the peace process and

⁸⁷⁰ Noura Erakat, 'Taking the Land Without the People: The 1967 Story as Told by the Law' (2017) 47(1) *Journal of Palestine Studies* 18.

⁸⁷¹ Padraig O'Malley, 'Israel and Palestine: The Demise of the Two-State Solution' (2017) 29.1 *New England Journal of Public Policy* 12.

⁸⁷² Judt (n 821).

⁸⁷³ Ibid.

the First Intifada⁸⁷⁴. Palestinian youth took to the streets and pelted Israeli soldiers with stones⁸⁷⁵. It was a relatively mild protest, followed by the Second Intifada, a much more belligerent confrontation with suicide bombers killing hundreds of Israeli civilians inside Israel's major cities and with Hamas firing homemade rockets onto towns in southern Israel⁸⁷⁶.

During the third and fourth rounds of hostilities, Hamas rockets landed in Tel Aviv, Israel's urban centre, scoring a psychological and symbolic victory that imbued the Palestinians in Gaza and the West Bank with a sense of pride and satisfied their long-frustrated wish for revenge. As in the Biblical story of the Jews in Egypt, who were oppressed by their cruel taskmasters but grew even more defiant, so did the Palestinian residents of Gaza, who braved live bullets directed at them by Israeli soldiers and walked in their thousands to demonstrate next to the border with Israel⁸⁷⁷. 'The more they afflicted them the more they multiplied and grew', it says in the Book of Exodus, chapter one, verse 12.

Thus, the violence accelerated – it still does – with the Palestinians getting emboldened with every new round. Nevertheless, Israel remains steadfast and stubborn in its belief that 'what does not work with force will work with more force'⁸⁷⁸. This doctrine of deterrence, formulated by Israeli generals quite early on, continues to dominate Israeli military thinking. To achieve its goals, Israel needs to strike at its opponents with ever-growing brutality and,

⁸⁷⁴ Ibid.

⁸⁷⁵ Jeremy Pressman, 'Throwing Stones in Social Science: Non-Violence, Unarmed Violence, and the First Intifada' (2017) 52(4) *Cooperation and Conflict* 519.

⁸⁷⁶ Robert J Brym and Bader Araj, 'Suicide Bombing as Strategy and Interaction: The Case of the Second Intifada' (2006) 84(4) *Social Forces* 1969.

⁸⁷⁷ Jihad Abusalim, 'The Great March of Return: An Organizer's Perspective' (2018) 47(4) *Journal of Palestine Studies* 90.

⁸⁷⁸ Jan Van Mil, 'The (False) Messiah' (*The Jerusalem Post*, 21 January 2017).

time-wise, on a more or less bi-annual basis. This policy is cynically described in military parlance as ‘mowing the grass’⁸⁷⁹.

But the grass, the hostility and the daring keep growing despite Israel’s military might and vicious cycles engulf the entire region with no end in sight.

Israel’s march of folly reached a certain pinnacle during the First Lebanon War in 1982. According to Arthur Hertzberg, the incursion of Lebanon, masterminded by Defence Minister Arik Sharon, was ‘the ultimate military result of the victory in June of 1967’ and the vastly exaggerated sense of power Israel acquired⁸⁸⁰. Sharon’s ‘grand design’ was to establish a Christian-dominated government in Lebanon, which would depend on Israel for its survival, and to ‘shoot down Palestinian nationalism’ by crushing Yasser Arafat and the PLO leadership, who operated out of Beirut⁸⁸¹. Sharon’s plan also envisioned a weakening of Syria and of toppling Jordan and turning it into ‘Palestine’ (Hezbollah, who wishes to ‘liberate the 1948 borders of Palestine’ according to Hezbollah’s spokesmen, called for Israel’s withdrawal from occupied ‘Shebaa Farms’, located in the north of Israel-proper⁸⁸²).

Both the first and the second Lebanon wars misfired, giving rise to the fundamentalist Islamic organisation of Hezbollah⁸⁸³. Despite a second incursion into Lebanon, Hezbollah failed to be intimidated by Israel’s tactics of massive bombardment. Furthermore, it remains one of the staunchest supporters of the Palestinian struggle for independence. Thus, with an estimated

⁸⁷⁹ Efraim Inbar and Eitan Shamir, ‘“Mowing the Grass”: Israel’s Strategy for Protracted Intractable Conflict’ (2014) 37(1) *Journal of Strategic Studies* 65.

⁸⁸⁰ Hertzberg (n 823).

⁸⁸¹ Ibid.

⁸⁸² Jeffrey Goldberg, ‘In the Party of God: Are Terrorists in Lebanon Preparing for a Larger War?’ (*The New Yorker*, 14 October 2002).

⁸⁸³ Aurélie Daher, *Hezbollah: Mobilization and Power* (Oxford University Press 2019).

arsenal of 180,000 lethal rockets, perhaps Hezbollah poses the greatest threat to Israel's security today⁸⁸⁴. The Hezbollah, which was formed in response to Israel's invasion of Lebanon, and its 18-year military presence in Southern Lebanon, the Hezbollah may one day prove to be the Golem that will destabilise Israel's very foundation.

Unable to change course, stop the Occupation, and relinquish its reliance on force, Israel found itself entangled in numerous military confrontations and battles in the diplomatic arena – all of them the result of the snowballing effect of the Six-Day War and of prioritising settlement of Greater Israel over any other consideration. Drunk with its power, bogged down by its militaristic mentality and the delusion of being 'chosen', Israel became, as Tony Judt wrote in response to criticism of his article, 'a country dominated by zealots and demagogues', a victim of its 'dogma of intolerant, belligerent, self-righteous, God-fearing' irridentism⁸⁸⁵. In short, Israel faced dangers and challenges that were mostly of its own making.

To meet these dangers, Israel needed newer, better weapons to ensure its technological edge. Better armoured carriers, better tanks, better jets, better submarines – and better drones. The arms race was costly, but the end – developing and protecting its settler colonial project – justified the means. Billions of dollars were poured into the Occupied Territories and into the military infrastructure that helped preserve it.

'There is no way of knowing whether more modest policies following the Six-Day War would have produced a better result for Israel... ...and for peace in the region', writes Arthur

⁸⁸⁴ Matthew Levitt, *Hezbollah: The Global Footprint of Lebanon's Party of God* (Georgetown University Press 2015).

⁸⁸⁵ Judt (n 821).

Hertzberg⁸⁸⁶. But what if? There are good reasons to believe that an attempt to settle with the Palestinians in a mutually beneficial compromise would have served Israel better than sticking to a policy of messianism and intransigence. Israel, says Hertzberg, used the new power it had acquired in 1967 deplorably, vetoing consistently any proposal for imaginative diplomacy leading to a peaceful resolution⁸⁸⁷.

Arik Sharon, one of the main architects of Israel's March of Folly, was the first to dismantle Jewish settlements in Gaza, serving as Israel's Prime Minister. However, in no way was it an admission of the failure of the Greater Israel project⁸⁸⁸. It was, for him, the man who spearheaded the settlement enterprise, a matter of demographics – getting rid of 1.5 million Palestinians in a stroke.

As Jonathan Friedman pointed out, Sharon never learned the lesson of fifty years of combat: that 'fighting Palestinian violence with ever-increasing brutality is like putting out a fire with gasoline'⁸⁸⁹; that when you cut off the head of a terrorist faction, 'ten more violent heads would grow in its place'⁸⁹⁰.

Still, the disengagement from Gaza in 2006 was, in its way, an admission that 'if we demand the whole dream, we may end up with nothing at all'⁸⁹¹, as Sharon concluded at the end of his life. Israel, in other words, has swallowed more than it can chew.

⁸⁸⁶ Hertzberg (n 823).

⁸⁸⁷ Ibid.

⁸⁸⁸ Oren Yiftachel, 'From Sharon to Sharon: Spatial Planning and Separation Regime in Israel/Palestine' (2010) 10(1) *Hagar: Studies in Culture, Polity & Identities* 71.

⁸⁸⁹ Jonathan Freedland, 'The Enigma of Ariel Sharon' 53(20) *The New York Review of Books*.

⁸⁹⁰ Ibid.

⁸⁹¹ Ibid.

With his follower in office, Benjamin Netanyahu, the project of ‘repopulating the Promised Land’ got back on track – and so did Sharon’s original belief that ‘a people could be bombed, harassed, and intimidated into docility’⁸⁹². In a speech to lawmakers in 2019, Netanyahu said that ‘power is the most important [component] of foreign policy. “Occupation” is bull. Some countries have conquered and replaced entire populations, and the world keeps silent. Strength is the key. It makes all the difference in our policy’⁸⁹³.

Netanyahu’s comments offer another key to understanding how the life of the Palestinians in the Occupied Territories have turned into a nightmare, and even more so the life of those living in Gaza. He seems to imply that ethnic cleansing is possible, provided one is strong and adamant about it.

Today a 720-kilometre-long wall, rising at some points to twenty-eight feet, separates the Palestinians in the Occupied Territories from Israel, stealing Arab farmland, and destroying villages and livelihoods⁸⁹⁴. Its cost is estimated at 1 million dollars per mile, and, as Tony Judt observed, it will bring nothing but humiliation and discomfort to both sides. ‘Like the Berlin Wall’, he says, ‘it confirms the moral and institutional bankruptcy of the regime it intended to protect’⁸⁹⁵.

A more fortified and menacing wall has been constructed around the Gaza Strip. Described by Israel as a ‘smart fence’, it is a snaking 65-kilometre steel barrier packed with underground and overground surveillance sensors and automatic weaponry that can shoot live

⁸⁹² Ibid.

⁸⁹³ Yuval Karni, ‘Netanyahu: “Occupation is bull”’ (*Ynet*, 11 June 2018).

⁸⁹⁴ Malcolm D Evans, Susan C Breau, ‘I. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion, 9 July 2004’ (2005) 54(4) *International & Comparative Law Quarterly* 1003.

⁸⁹⁵ Judt (n 821).

ammunition⁸⁹⁶. The area next to the Gaza barrier is referred to by Israeli soldiers patrolling the border as the 'Safari'⁸⁹⁷. To most Israelis, Gazans are, at best, a convenient abstraction and, at worst, blood-thirsty killers that need to be caged and kept under control by military and surveillance technology.

When grassroots activists and ordinary citizens staged a so-called 'March of Return' in 2018⁸⁹⁸, Israel called it a 'march of Terror'⁸⁹⁹. Tens of thousands of residents congregated near the wall, but Israeli snipers soon opened fire on them, killing eighteen Palestinians and wounding 703 others on the first day of demonstrations alone (30 March 2018)⁹⁰⁰. 'The youngest casualty', reported Tareq Baconi, 'was a two-year-old boy, with a head injury'⁹⁰¹. However, Israeli military maintained it was only targeting those 'instigating violence'.

Katz and Bohbot explain the IDF's philosophy, when it comes to Gaza and its inhabitants: 'The Gaza Strip is ground zero for Israel's drone revolution. There, on a daily basis, the lawnmower hum of drones can be heard in the narrow alleyways'⁹⁰². They continue with the advantages of using drones in Gaza, from their perspective:

⁸⁹⁶ Oren Barak, Amit Sheniak, and Assaf Shapira, 'The Shift to Defence in Israel's Hybrid Military Strategy' (2020) *Journal of Strategic Studies* 1.

⁸⁹⁷ Ron Ben Yishai, 'The Land Incursion That Never Came' (*Ynet*, 14 May 2021) <<https://www.ynetnews.com/article/rkDkf12du>> accessed 13 March 2022.

⁸⁹⁸ Abusalim (n 877).

⁸⁹⁹ Adiv Sterman, 'The Long March: 7 Things to Know for April 1' (*The Times of Israel*, 1 April 2018) <<https://www.timesofisrael.com/the-long-march-7-things-for-april-1/>> accessed 13 March 2022.

⁹⁰⁰ Fikire Tinsae Birhane, '"Great March of Return" Demonstrations and Israel's Military Response' (ICRC 2018) <<https://casebook.icrc.org/case-study/great-march-return-demonstrations-and-israels-military-response>> accessed 13 March 2022.

⁹⁰¹ Tareq Baconi, 'What the Gaza Protest Portend' (*New York Review of Books*, 15 May 2018) <<https://www.nybooks.com/daily/2018/05/15/what-the-gaza-protests-portend/>> accessed 13 March 2022.

⁹⁰² Katz and Bohbot (n 14) 71-72.

‘In Gaza, drones collect intelligence and help the IDF build its “target bank”... ...During Operation Pillar of Defense in Gaza, in November 2012, the IDF attacked nearly 1,000 underground rocket launchers and 200 tunnels that had been located and identified with intelligence gathered by drones. The first salvo of that operation was fired in a drone-assisted attack... ...Jabari, who had been at the top of Israel’s most-wanted list and had escaped four previous assassination attempts, was finally taken out by a drone. Before Israel bombs Gaza in retaliation for rocket attacks, UAVs are there to survey the target... ...UAVs are there to ensure that children don’t move into the kill zone... ...UAVs are there to provide real-time air support and guide the soldiers safely inside. And when needed, the drones can reportedly also attack.’⁹⁰³.

Katz and Bohbot are clearly aware that since the disengagement, Gaza is under siege and is controlled vertically⁹⁰⁴, primarily by drones that fly overhead, on the ready to shoot those ‘instigating violence’. Unfortunately, Israel does not provide information on how often and how accurately drones have been employed in such operations. Therefore, one must rely exclusively on Palestinian and international sources. Still, the figures provided of people who died in drone strikes during Israel’s various military campaigns in Gaza reveal a disturbing picture of innocent lives lost due to recurrent failures and mistakes in identification.

⁹⁰³ Ibid.

⁹⁰⁴ Weizman, *Hollow Land* (n 472).

In a detailed report, Human Rights Watch outlined six examples of such strikes⁹⁰⁵. All six strikes listed below took place in densely populated neighbourhoods, far away from the hostilities. Among those who were killed in full daylight, there are many children aged 8-16⁹⁰⁶:

27 December 2008 – a drone killed a group of nine students and three other civilians who were waiting for a bus in central Gaza City;

29 December 2008 – a drone killed nine civilians, three of them children, outside a shop near Jabalya refugee camp;

4 January 2009 – a drone killed two boys playing on the rooftop of the two-story home of the Masharawi family in Gaza City;

4 January 2009 – a drone killed two cousins, aged 10 and 12, and maimed three other children who were playing on the rooftop of the al-Habbash family home in al-Sha'f, Gaza City;

5 January 2009 – a drone killed three young men who were using the bathroom of a UN school in Gaza City;

5 January 2009 – a drone killed a 10-year-old boy and injured his two siblings on the roof of the Allaw family home⁹⁰⁷;

The same kind of indiscriminate carnage perpetrated by drones occurred six years later during Israel's next operation, known as 'Protective Edge'. Of 1,545 innocent civilians killed during

⁹⁰⁵ Human Rights Watch, 'Precisely Wrong: Gaza Residents Killed by Israeli Drone Launched Drone Launched Missiles' (*Human Rights Watch*, 30 June 2009) <<https://www.hrw.org/report/2009/06/30/precisely-wrong/gaza-civilians-killed-israeli-drone-launched-missiles>> accessed 25 January 2022.

⁹⁰⁶ Ibid.

⁹⁰⁷ Ibid.

the fighting, 497 are likely to have been killed by drones (32.2%)⁹⁰⁸. Of all Palestinians that lost their lives during Protective Edge, only 17.35% were ascertained to have died in 'combat action' (385 individuals)⁹⁰⁹. These figures indicate once again that in Gaza, as in Afghanistan, and elsewhere, drones have proved themselves to be a faulty and not at all 'surgical' weapon and that the chances for error in drone attacks are disturbingly and disproportionately high. A 32.2% of innocent civilians killed in Gaza during 'Protective Edge' is an alarming ratio of 'collateral damage'.

Hidden in the number of civilians killed during Operation Protective Edge is the horrifying story of four Palestinian boys, aged nine to eleven, all members of the same extended family, who were playing on the beach in Gaza⁹¹⁰. A Hermes drone killed one boy, and the other three tried to escape from the beach. Half a minute later the drone pilots launched a second missile that killed the other three while they were running⁹¹¹. This incident only caught the world's attention because it occurred on a seafront outside a hotel used by foreign press journalists and filmed in real time by a BBC TV crew. It took Israel four years of interrogations by the IMCI (Israel Military Criminal Investigation) to acknowledge that the attack was 'a tragic accident'⁹¹². But wasn't it, in fact, the inevitable result of putting Israeli security above all else? And does Israel resort to using drones because they put civilians at a lesser risk?

⁹⁰⁸ Al Mezan (n 25).

⁹⁰⁹ Ibid.

⁹¹⁰ Robert Mackey, 'Secret Israeli Report Reveals Armed Drone Killed Four Boys Playing on Gaza Beach in 2014' (*The Intercept*, 11 August 2018) <<https://theintercept.com/2018/08/11/israel-palestine-drone-strike-operation-protective-edge/>> accessed 13 March 2022; Haaretz, 'A Drone Killed Four Children on the Beach During Protective Edge due to an Intelligence Failure' (*Haaretz*, 12 August 2018) <<https://www.haaretz.co.il/news/politics/1.6365640>> accessed 28 May 2021.

⁹¹¹ Ibid.

⁹¹² Ibid.

An interview with Efraim Inbar, director of the Begin-Sadat Centre for Strategic Studies at Bar Ilan University, indicates that saving the lives of innocent people, even young boys, is not what motivates Israel to use drones in Gaza. 'The advantage from Israel's point of view is that using a drone for these tasks [gathering intelligence or carrying out an execution] reduces the risk of endangering a pilot's life or losing an expensive plane. That is why we are moving towards much greater use of these kinds of robots on the battlefield'⁹¹³.

Inbar's comments may explain why drones have become a permanent fixture of daily life in Gaza. In the past two decades, the soundtrack of Palestinians' lives includes a constant anxiety-inducing buzzing. Being constantly observed by deadly flying robots was described by Palestinians as 'psychological torture'⁹¹⁴. 'Israel can see what is happening below in the finest detail', says Samir Zaqout, a senior field researcher for Al-Mezan NGO, 'And yet women and children keep being killed in drone attacks. Why the continual mistakes? The answer, I think, is that these are not mistakes. Israel wants to send us the message that there is no protection, whether you are a civilian or a fighter. They want us afraid and to make us turn on the resistance'⁹¹⁵.

Gazans call Israeli drones 'zenana', an Arabic word referring to a wife's relentless nagging, which, according to Jonathan Cook, had been adopted to describe the drone's oppressive noise, and their feelings about it⁹¹⁶. Hamdi Shaquara, Deputy Director of the Palestinian Centre for Human Rights, calls it 'the sound of death': 'When you hear the drones, you feel naked and vulnerable... ...There is no escape, nowhere is private. It is a reminder that,

⁹¹³ Jonathan Cook, 'Gaza: Life and Death Under Israel's Drones' (n 97).

⁹¹⁴ Ibid.

⁹¹⁵ Ibid.

⁹¹⁶ Ibid.

whatever Israel and the international community assert, the occupation has not ended. We are still living completely under Israel's control'⁹¹⁷.

According to Ahmed Tawahina, a psychologist running clinics in Gaza as part of the Community Mental Health Programme, the sense of permanent exposure, coupled with the fear of being mistakenly targeted, leaves deep psychological scars, especially among children: 'There is a great sense of insecurity. Nowhere feels safe for the children, and they feel no one can offer them protection, not even their parents... ..That traumatises both the children and parents, who feel they are failing in their most basic responsibility'⁹¹⁸.

Jonathan Cook further added that the medical journal 'The Lancet' reported that a study conducted after the month-long operation 'Cast Lead' found symptoms of trauma among the children of Gaza: 55% permanently feared the dark; 43% reported regular nightmares; 37% wet the bed and 42% had crying attacks⁹¹⁹.

During the March of Return protests (2018-2019) many Palestinians were killed by a drone that dropped tear gas from the sky. The drone is called by its manufacturer 'Sea of Tears'⁹²⁰; indeed, many tears were shed by Palestinians whose family members or friends were either killed or wounded by this new weapon. These canisters wounded no less than 980 Palestinians on one day of these protests alone⁹²¹. Some suffocated due to inhaling the chemicals used to produce the tear gas. Others were killed when they were hit by these

⁹¹⁷ Ibid.

⁹¹⁸ Ibid.

⁹¹⁹ Ibid.

⁹²⁰ Tariq Dana, 'A Cruel Innovation: Israeli Experiments on Gaza's Great March of Return' (2020) 8(2) *Sociology of Islam* 175.

⁹²¹ Daniel Hilton, 'Drones over Gaza: How Israel tested its latest technology on protesters' (*Middle East Eye*, 18 May 2018) <<https://www.middleeasteye.net/news/drones-over-gaza-how-israel-tested-its-latest-technology-protesters>> accessed 13 March 2022.

weighty, and inaccurate canisters, that are dropped haphazardly from high altitudes. Understandably, Palestinians now run to take cover when such potentially deadly ‘weapons’ are being dropped from the sky⁹²².

In November 2016, a group of human rights organisations, represented by Israeli advocate Eitay Mack, submitted a petition to Israel’s HCJ, asking the IDF to disclose its guidelines for the use of lethal drones in the West Bank and Gaza. Mack’s petition also demanded Israel to comply with the HCJ ruling from December 2006, in which the Court reasoned that a targeted killing is only legal if the decision to kill is ‘1) based on reliable evidence, 2) if there are no other choices to alleviate the danger to Israel’s national security, 3) if the attack is followed by a thorough investigation and 4) if harm to innocent bystanders is limited to the absolute minimum.’⁹²³.

The question that comes up is how can we reconcile this ruling with the situation on the ground? After all, hundreds of innocent bystanders have been killed by drones since the court defined criteria for targeted killings in the Occupied Territories. The IDF blames Hamas for the high rate of collateral damage, claiming Hamas militants are using civilians as human shields and firing missiles from densely populated urban areas.

When asked to explain its mode of operation, the IDF replied, at first, that there are no guidelines for using lethal drones. This led the petitioners to withdraw the appeal and demand a halt to all drone operations until procedures were formulated and clarified. The IDF then

⁹²² Ibid.

⁹²³ HCJ 769/02 Public Committee v. Government of Israel (13 December 2006) <<http://www.internationalcrimesdatabase.org/Case/3253/Public-Committee-v-Government-of-Israel/>> accessed 28 May 2021.

admitted that general guidelines for drone strikes, vetted and approved by legal experts, do exist but refused to disclose them for 'security reasons'⁹²⁴.

In his second petition (October 2017), Mack argued that these procedures also have global significance and implications for the countries buying drones from Israel and should therefore be made public. Unfortunately, the court sided with the army and turned down the request to examine the legality of Israel's lethal drone strikes and what procedures are being implemented to avoid harming civilians. Therefore, it comes as no surprise that Israel refused to sign a document of principles distributed by the US regarding the regulation of exporting offensive drones⁹²⁵.

In practice, the line between what is legal and illegal remains blurred. All attempts to restrain the army through the Israeli Courts have failed. This does not bode well for the future. The Israeli Air Force now has in its possession an even deadlier weapon – a drone that self-destructs, kamikaze-style, on its target. It is not entirely preposterous to imagine it being used by the IDF during the subsequent confrontation between Israel and Hamas, killing even more innocent bystanders than its predecessors.

As this chapter demonstrates, drones were the brainchild of Israeli military engineers. Their original purpose was to reduce heavy losses in human life suffered by Israeli soldiers manning bunkers along the borders with Egypt and Jordan in the post-1967 years. The prototype was a small flying and spying glider equipped with a camera. In a circuitous way, it was

⁹²⁴ Hamushim, 'Another Petition was Filed to Expose IDF Procedures for Approving the Use of Offensive Drones' (Hamushim, October 2017) <<https://hamushim.com/attack-drones-2017/>> accessed 28 May 2021; Abu Saif, *Sleeping in Gaza* (n 24); Hass, 'Clearing the Fog on Israeli Drone Use in Gaza' (n 24).

⁹²⁵ Ibid.

transformed into a killing machine that can, in extreme cases, detonate itself, if necessary, in enemy territory. The 'eye in the sky' has turned into an eye-for-an-eye platform, that often mistakes the 'good' for the 'bad' and the 'ugly' and has become a weapon serving mostly imperial and settler colonial entities. A technology of repression and occupation.

What if?

Let me try my hand at some speculations.

What if Israel did not succumb to the euphoria of victory and the 'rhetoric and practice of aggressiveness in the name of Jewish nationalistic purpose' and adopted a more conciliatory, forthright and visionary policy following its stunning victory during the Six-Day War? What if Israel recognised that the Palestinians were a people who deserved their independent state and, instead of occupying Gaza and the West Bank, left these territories on the negotiating table, waiting for a historic breakthrough? What if Golda Meir was less dismissive of Sadat and did not contend that there was no such thing as 'Palestinians'?

The Yom Kippur War (1973) might have been avoided, and Israel's need to constantly buy and develop new weapons for its defence would have been less urgent. The settler colonial project, which poses the greatest single threat to Israel's existence, might have been replaced by a dialogue that could usher in an era of reconciliation, the kind of which exists between France and Germany or between Poles and Ukrainians, two people who once murdered each other to gain control over the same piece of land.

Sadly, no one paid attention to Israel's former Prime Minister David Ben-Gurion, who said in July 1967 that all the territories that had been captured had to be given back very quickly, for

holding them would distort, and might ultimately destroy, the Jewish state⁹²⁶. The most glorious of Israel's victories could be even more poisonous than defeat.

Thus, in my opinion, the Six-Day War, the Occupation and drones are all historically linked in a way that makes the latter impossible to understand outside the context of the two former elements of this poisonous equation. Drones and Israel's vast arms industry are all the by-products of Israel's enchantment with ultranationalist notions that continue to feed its settler colonial project and have turned the country Ben-Gurion struggled so hard to establish into an endangered and paranoid nation, doomed to live permanently on its sword.

No nation can live forever on its sword alone.

The Biblical story of Samson comes to mind as an allegorical precedent and as a timely warning. Samson, as we are told, felt invincible but lost his strength through hubris and a series of miscalculations. He was eventually compelled to bring down the columns to which he was chained, collapsing the temple and killing himself and the Philistines⁹²⁷. It is a fate neither the Jews nor the Palestinians deserve. Is the next war indeed inevitable?

4.4. Israel as Drones and Arms Superpower

In 1968, a 25-year-old Israeli playwright, named Hanoach Levin, wrote a hard-hitting political satire called 'You, Me and the Next War'. Staged in a small jazz club in southern Tel Aviv, 'You, Me and the Next War' was based on Levin's experience as a member of an anti-aircraft unit

⁹²⁶ Hertzberg (n 823).

⁹²⁷ Joseph Wittreich, *Shifting Contexts: Reinterpreting Samson Agonistes* (Duquesne University Press 2002).

during the Six-Day War. Hanoch Levin, acknowledged today as one of Israel's most important artists, was horrified at what he saw as an easy acquiescence to the loss of life⁹²⁸. In a subsequent play, entitled 'Queen of the Bathtub', he lampooned Israel's cult of militarism and the conquest and glorification of 'holy' sites as well as the moral dangers of the Occupation⁹²⁹.

His ruthless satires, as Janice Weitzman tells it, were hard for the Israeli audiences to stomach⁹³⁰. Official censorship, public outrage and hecklers forced the Cameri Theatre of Tel Aviv to take 'Queen of the Bathtub' off the stage after eight performances only.

The title song of 'You, Me and the Next War' proved prophetic:

'Whenever we go out walking, we're three

You, me and the next war.

And when we're sleeping, we're three

You, me, and the next war...

And whenever we smile in a moment of love

The next war is smiling with us

And when we wait in the delivery room

⁹²⁸ Yael S Feldman, 'Deconstructing the Biblical Sources in Israeli Theater: Yisarei Iyov by Hanoch Levin' (1987) 12(2) AJS Review 251.

⁹²⁹ Shimon Levy, 'Queen of a Bathtub: Hanoch Levin's Political, Aesthetic and Ethical Metatheatricality' in Gerhard Fischer and Bernhard Greiner (eds), *The Play within the Play* (Brill 2007) 143.

⁹³⁰ Janice Weizman, 'Bringing Israel's Best-known Playwright, Hanoch Levin, to a Worldwide Audience' (*Haaretz*, 12 October 2019).

The next war is waiting for us'⁹³¹

The next war, known as the War of Attrition (1967-1970), followed soon on the heels of the Six-Day War⁹³². And then came the Yom Kippur War (1973), The First Lebanon War (1982-2000) and so on. Ad infinitum.

Some profit from these endless wars. From Israel's expertise, the opportunities to test and showcase new, locally produced weapons – and to sell them to a worldwide market at a considerable profit.

At the risk of repeating myself, here are some figures:

In 2009 Israel was the world's single largest exporter of Unmanned Aerial Vehicles and was in control of about 70% of that global market⁹³³. In 2011, the drone industry, comprised of a thousand defence companies, was one of the biggest employers in Israel and accounted for 25% of all its annual exports. In 2013, with more than 45 military UAVs in development⁹³⁴, drone sales accounted for 10% of Israel's total military exports⁹³⁵. As of 2017, the Israeli military industry designing and manufacturing these weapons yielded an annual export average of 6.5 billion dollars in the previous decade and held a prominent position among the ten biggest exporters of arms in the world⁹³⁶.

⁹³¹ Ibid.

⁹³² Robert S Bolia, 'Israel and the War of Attrition' (2004) 84(2) Military Review 47.

⁹³³ Neve Gordon, 'The Political Economy of Israel's Homeland Security/Surveillance Industry' (*The New Transparency*, 28 April 2009) <<https://qspace.library.queensu.ca/bitstream/handle/1974/1941/The%20Political%20Economy%20of%20Israel%20E2%580%2599s%20Homeland%20Security.pdf>> 33.

⁹³⁴ O'Gorman and Abbott (n 20); Musleh (n 20).

⁹³⁵ Frost and Sullivan (n 21).

⁹³⁶ Yoav Zitun (n 345).

Some radical thinkers, such as Naomi Klein, David Lloyd, Patrick Wolfe and Nissim Hania, contend that the unresolved conflicts in the Middle East and the political failure of peace are, to put it bluntly, 'good for business'. For example, in 'The Shock Doctrine', Naomi Klein asserts that Israel's military industry has been at the centre of the Israeli nation-building project, crafting an economy that thrives on permanent war and on the military occupation that Israel has been practising on Palestinian land for decades. This has turned the occupied territories into 'laboratories where the terrifying tools of our security states are being field-tested.'⁹³⁷

Claims that Israel's military industry is one of the biggest benefactors from Israel's aggressive and repressive strategy are substantiated by Antony Loewenstein, an investigative journalist and co-founder of Independent Australian Jewish Voices. According to Loewenstein⁹³⁸, Saar Koursh, former chief executive of Magal Security Systems⁹³⁹, the company that built the fence surrounding Gaza, told Bloomberg that Gaza was a showroom for his 'smart fence' because customers liked that it was battle-tested and proven to keep Palestinians out of Israel⁹⁴⁰.

The 'Sea of Tears' drone⁹⁴¹, mentioned earlier, also became a highly popular and desirable item⁹⁴², once its potential customers could see how effective tear-gas canisters were dropped from the sky on unsuspecting heads of Palestinian protesters. According to Israeli news (Ynet): 'its maker soon received hundreds of orders for these drones'⁹⁴³.

⁹³⁷ Naomi Klein (n 353); Naomi Klein and Neil Smith, 'The Shock Doctrine: a Discussion' (2008) 26(4) *Environment and Planning D: Society and Space* 582; Musleh (n 20).

⁹³⁸ Loewenstein (n 825).

⁹³⁹ Anna Feigenbaum, 'Security for Sale! The Visual Rhetoric of Marketing Counter-Terrorism Technologies' (2012) 2(1) *The Poster* 75.

⁹⁴⁰ Jonathan Ferziger, 'Gaza Barrier Can't Withstand an Assault by Mob, Fencemaker Says' (*Bloomberg*, 11 April 2018).

⁹⁴¹ Tariq Dana (n 920).

⁹⁴² Loewenstein (n 825).

⁹⁴³ *Ibid.*

Loewenstein, one of the very few Jewish journalists to cross into Gaza, asserts that Israel has mastered the art of monitoring and surveilling millions of Palestinians and is now 'packaging and selling this knowledge to governments that admire the country's ability to suppress and manage resistance'. In addition, he points out that Israel's defence exports reached a record of \$9.2 billion in 2017⁹⁴⁴.

Using the Occupied Territories as a giant laboratory of urban warfare began during the Second Intifada, says Eyal Weizmann. Then, Israel tested its weapons and tactics in dense urban environments through ground and aerial raids in Ramallah, Nablus, Bethlehem, Jenin, Balata, and Tulkarm⁹⁴⁵.

One drone developed with lessons drawn during the Second Intifada is the miniature, mobile and hand-operated 'Skylark'. It sends real-time video to a portable ground station and lands on a small inflatable cushion.

Veteran Israeli military correspondents Katz and Bohbot describe Skylark's role in controlling Palestinian lives and turning Israel into a leader in drone technology:

'In the skies above Nablus, IDF drones were keeping a close eye on the Palestinian city and the Israeli troops stationed nearby. Earlier that year, the IDF had launched the Sky Rider Program, under which it equipped field battalions with the lightweight Skylark drone, made by Elbit Systems, a leading Israeli defense contractor. Launched like a football thrown by a quarterback, the Skylark provides key over-the-

⁹⁴⁴ Ibid.

⁹⁴⁵ Weizman, *Hollow Land* (n 472) 188.

hill intelligence, critical for infantry operations. Its delivery to the IDF continued to solidify Israel's standing as a world leader in the development of drones and unmanned systems.'⁹⁴⁶

This hand-launched drone is now in active service by 20 countries, including Croatia, the Czech Republic, Hungary, Macedonia, Poland, Myanmar, Slovakia, and Sweden.

Another drone developed in Israel is the 'Kestrel', which has been used successfully to track illegal immigrants along the US-Mexico border. The 'Kestrel' is a balloon drone that provides real-time images and videos⁹⁴⁷. Such drones also patrol the US-Canada borders and have been used over Pakistan, Yemen, and Somalia⁹⁴⁸.

Israel informed the UN Registrar of Conventional Arms Trade of arms exports to only five countries. However, according to 'Hamushim' NGO, in recent decades, Israel sold arms to nearly 130 countries, including Rwanda during a brutal genocidal war, SA under Apartheid, Serbia during the Balkan wars, and, most recently, South Sudan⁹⁴⁹.

Based on information from the Stockholm International Peace Research Institute (SIPRI), the UN Register of Conventional Arms, and official government contracts, NGO 'Hamushim' had

⁹⁴⁶ Katz and Bohbot (n 14) 13.

⁹⁴⁷ Joe Pappalardo, 'The Blimps Have Eyes: 24/7 Overhead Surveillance Is Coming' (*Popular Mechanics*, 17 May 2012) <<https://www.popularmechanics.com/military/a7624/the-blimps-have-eyes-24-7-overhead-surveillance-is-coming-8922364/>> accessed 28 May 2021; Chamayou, *Drone Theory* (n 9) 203.

⁹⁴⁸ Rey Koslowski and Marcus Schulzke, 'Drones Along Borders: Border Security UAVs in the United States and the European Union' (2018)19(4) *International Studies Perspectives* 305.

⁹⁴⁹ Sahar Vardi and Tanya Rubinstein, 'Israeli Weapons: From Eitan Cliff to South Sudan' (*Haaketz*, 4 June 2015) <<https://www.haakets.org/2015/06/04/%d7%94%d7%a0%d7%a9%d7%a7-%d7%94%d7%99%d7%a9%d7%a8%d7%90%d7%9c%d7%99-%d7%9e%d7%b4%d7%a6%d7%95%d7%a7-%d7%90%d7%99%d7%aa%d7%9f%d7%b4-%d7%9c%d7%93%d7%a8%d7%95%d7%9d-%d7%a1%d7%95%d7%93%d7%90%d7%9f/>> accessed 14 March 2022.

concluded in 2019 that Israel has been shipping arms to over 90 countries. They emphasised that this number ‘provides only partial information on some of Israel’s major arms and small arms exports around the world’ and that ‘Israel’s military industry exports and sells much more’⁹⁵⁰. Little David has discarded his sandals and walks around in Seville Row suites, hosting champagne receptions and giving away business cards to prospective clients.

‘After every campaign of the kind that is now taking place in Gaza, we see an increase in the number of customers from abroad’ said Meprolight CEO Eli Gold in 2014, in a typical Israeli *bravado*. ‘Of course’, he added, ‘we [are] marketing abroad aggressively, but IDF operations definitely affect marketing activity’⁹⁵¹.

Although Israel has roughly 0.1% of the world's inhabitants, and the GDP accounts for less than 0.5% of the global GDP, the Israeli arms industry is 30 times Israel's share of the world population. With \$54 billion in sales between 2016-2020, Israel was the world’s 8th arms exporter. Israel’s high-tech industry lagged with \$46 billion (2019)⁹⁵². Because lethal drones combine two of Israel’s largest industries, high-tech and military, it is not surprising that by

⁹⁵⁰ Hamushim, ‘Israeli Arms Exports Worldwide Map’ (*Hamushim*, July 2019)

<<https://hamushim.com/israeli-arms-exports-worldwide-map/>> accessed 14 March 2022.

⁹⁵¹ Shuki Sadeh, ‘For Israeli Arms Makers, Gaza War Is a Cash Cow’ (*Haaretz*, 11 August 2014)

<<https://www.haaretz.com/gaza-war-is-arms-industry-cash-cow-1.5258893>> accessed 14 March 2022.

⁹⁵² Pieter D Wezeman, Alexandra Kuimova, and Siemon T Wezeman, ‘Trends in International Arms Transfers, 2020’ (*SIPRI*, March 2021) <https://www.sipri.org/sites/default/files/2021-03/fs_2103_at_2020_v2.pdf> accessed 26 May 2021; Eytan Avriel, ‘Israel is the 8th Arms Exporter in the World’ (*Haaretz*, 5 April 2021)

<<https://www.themarket.com/news/macro/.premium.HIGHLIGHT-1.9681547>> accessed 26 May 2021; Hamushim, ‘Defense exports from Israel’ (*Hamushim*, 26 May 2021)

<<https://hamushim.com/israeli-military-export/>> accessed 26 May 2021; Nimrod Halperin (n 11);

2013, Israel became the world's biggest exporter of drones⁹⁵³, with sales of \$4.62 billion over eight years⁹⁵⁴.

For instance, the Israeli drone Hermes 900 is used by Switzerland, Iceland, Mexico, Brazil, Colombia, and Azerbaijan, while Hermes 450 is used by the Philippines, Thailand, US, Mexico, Colombia, Cyprus, Azerbaijan, Georgia, Brazil, UK, and Singapore⁹⁵⁵.

Since the tech bubble of 2000, Israel has been investing heavily, and with equal success, in another lucrative industry – intelligence and security. According to a Privacy International report in 2016, out of the 528 world-leading companies in the field, 27 were based in Israel, making Israel the state with the highest per-capita rate of surveillance and intelligence firms on the planet⁹⁵⁶. In addition, a report published in 2018 by the New York-based data firm CB Insights showed that Israel was the second most prominent provider of cybersecurity equipment in the world after the US⁹⁵⁷.

As Israeli newspaper Haaretz discovered in 2019, some spying equipment was sold to undemocratic regimes that might have used it to track down dissidents. Israel claims it considers human rights when exporting intelligence, surveillance, weapons, and drones. But it keeps selling weapons and espionage equipment to countries that commit severe human

⁹⁵³ Gili Cohen, 'Israel Is World's Largest Exporter of Drones' (*Haaretz*, 11 January 2018) <<https://www.haaretz.com/.premium-israel-is-greatest-exporter-of-drones-1.5243373>> accessed 15 May 2021; Goldenberg (n 10); Heller (n 10).

⁹⁵⁴ Ibid.

⁹⁵⁵ Hamushim, 'Drones – Israel's Main Weapon' (*Hamushim*, 26 May 2021) <<https://hamushim.com/drones-israels-main-weapon/>> accessed 26 May 2021.

⁹⁵⁶ Loewenstein (n 825).

⁹⁵⁷ Ibid.

rights abuses, like the Philippines, South Sudan, Myanmar, Bangladesh, Angola, Bahrain, Nigeria, UAE, and Vietnam⁹⁵⁸.

National Security Agency whistle-blower Edward Snowden alleged that Saudi Arabia used Israeli-made spyware to follow journalist Jamal Khashoggi, via his smartphone. He was later murdered in the Saudi consulate in Istanbul. Snowden claimed that Israeli company NSO Group Technologies had developed software known as Pegasus, and sold it to the Saudis. 'Pegasus', explained the Guardian, 'is a malware that infects iPhones and Android devices to enable operators of the tool to extract messages, photos and emails, record calls and secretly activate microphones'⁹⁵⁹.

If such a deal, has indeed taken place, it was just the tip of the iceberg, as Israel sold spying equipment to Saudi Arabia for around \$250,000,000⁹⁶⁰.

Nevertheless, Saudi Arabia is not the only country to endorse NSOs technology. Mexico has also used their tools to target reporters, activists, and human rights lawyers. Amnesty already accused NSO of spying on its employees. In addition, infected phones have shown up in many countries, including Israel/Palestine, Bahrain, Brazil, Egypt, Turkey, UAE, the UK, and the US⁹⁶¹.

Another corporation, 'Black Cube', an enterprise run mainly through former Mossad officers and other Israeli intelligence agencies⁹⁶², similarly spied on women who accused Weinstein

⁹⁵⁸ Ibid.

⁹⁵⁹ Stephanie Kirchgaessner, Paul Lewis, David Pegg, Sam Cutler, Nina Lakhani and Michael Safi, 'Revealed: Leak Uncovers Global Abuse of Cyber-Surveillance Weapon' (*The Guardian*, 18 July 2021).

⁹⁶⁰ Ibid.

⁹⁶¹ Loewenstein (n 825).

⁹⁶² Michael A Peters and Tina Besley, 'Weinstein, Sexual Predation, and "Rape Culture": Public Pedagogies and Hashtag Internet Activism' in *Aggressive Masculinity to 'Rape Culture'* (Routledge, 2018). 202.

of sexual assault. The company also provided questionable services to Hungary⁹⁶³. Another Israeli spyware firm, 'Candiru'⁹⁶⁴, has been marketing hacking tools while relying on IDF '8200' veterans⁹⁶⁵.

'Pecunia non olet' (money does not stink), said Roman emperor Vespasian.

Nevertheless, Tamar Zandberg, former chairwoman of the left-wing Meretz party and human rights lawyer Eitay Mack, mentioned earlier, suspected NSO of shady dealings. They asked Israel's High Court to suspend NSO's license. The government demanded that the hearings will be held behind closed doors, and the court's ruling was never released to the public. ISC's President Justice Esther Hayut made a revealing comment: 'our economy, as it happens, rests not a little on that export'⁹⁶⁶.

And it does. The spy business must be lucrative. In 2016 a full 20% of global investments in this sector were in Israeli start-ups⁹⁶⁷.

More sophisticated and more harmful drones are already proliferating. The future is already here and it sends shivers down our spines. Once again, Israel is on the frontline. The new brainchild of Israeli technicians is Harop – a suicide drone. A modern equivalent of the Kamikaze plane, minus the pilot. It self-destructs on enemy territory.

⁹⁶³ Loewenstein (n 825).

⁹⁶⁴ Samuel Woodhams, *Spyware: An Unregulated and Escalating Threat to Independent Media* (Center for International Media Assistance 2021).

⁹⁶⁵ Loewenstein (n 825).

⁹⁶⁶ Ibid.

⁹⁶⁷ Ibid.

How destructive is it? Ask the Armenian army, which controlled a territory it conquered from Azerbaijan⁹⁶⁸. During a thirty-year conflict, Armenia had the upper hand militarily, until Azerbaijan purchased hundreds of Harops from Israel. During the 2020 Nagorno-Karabakh War, this deadly suicide drone proved to be the 'game changer' in the battle for control of Nagorno-Karabakh, helping the Azeris to defeat the Armenian army.

Following international criticism regarding the killing of innocent civilians, Azerbaijan claimed that the Harops were used with great care and only against military targets. However, reality shows that the Azeris did not limit themselves to soldiers and military installations. Evidence of indiscriminate bombings that killed innocent people is piling up⁹⁶⁹. According to the Chief of Air Defense Forces of the Armenian Army, Israel has supplied military equipment and operated it during the hostilities⁹⁷⁰.

Israel, once priding itself on being the 'People of the Book', has become within a few decades a purveyor not of justice, and of enlightenment, but, as Haim Bresheeth-Zabner asserts, 'a purveyor of death and destruction... ...[providing] armaments to dictators and strongman leaders on four continents – Europe, Asia, Africa and South America'. Arms production is 'at the very heart of its society, industry, and identity'⁹⁷¹. Bresheeth-Zabner concludes that the

⁹⁶⁸ Shahar Alterman and Yael Fucs, 'The Future is Already Here and It's frightening: This is How Israel's Suicide Drones are Changing the Battlefield' (*Mako*, 10 March 2021) <https://www.mako.co.il/tv-ilana_dayan/2021/Article-638c20f021c1871027.htm> accessed 14 March 2022.

Thomas Gibbons-Neff, 'Israeli-Made Kamikaze Drone Spotted in Nagorno-Karabakh Conflict' (*The Washington Post*, 5 April 2016) <<https://www.washingtonpost.com/news/checkpoint/wp/2016/04/05/israeli-made-kamikaze-drone-spotted-in-nagorno-karabakh-conflict/>> accessed 26 May 2021.

⁹⁶⁹ Alterman and Fucs (n 968).

⁹⁷⁰ Pan Armenia 'Military: Israeli Crew Supported Azerbaijan During Karabakh War' (PanARMENIAN.Net, 24 April 2021) <<https://www.panarmenian.net/eng/news/292378/>> accessed 14 March 2022.

⁹⁷¹ Bresheeth-Zabner, *An Army Like No Other* (n 277) 289.

origins and current success of Israel's military-industrial complex – as well as the use of force to take over the country – are the results of the violence innate in the settler colonial nature of the Zionist project.

Today, Israel is perhaps the most militarized nation on earth besides North Korea, and a leading arms exporter. But violence, weapons of destruction, and more brutal and sophisticated methods of repression, only ensure, as Israeli playwright Hanoch Levin had prophesied in 1968, 'the Next War'. The 'next war', he forewarned, accompanies Israelis when they go out walking, in their sleep, or when they smile in a moment of love. 'And when we wait in the delivery room / The next war is waiting with us'⁹⁷².

4.5. The Perception of a 'Humanitarian' Drone, Accuracy and Distinction

Apologists have argued that drones prevent 'collateral damage', because pilots, when not exposed to any risk, will not attack unless they are sure that civilian casualties are minimised.

Despite the extensive 'collateral damage' and the growing number of 'faulty recognitions', drone violence has become a widely accepted practice by politicians and military generals, including in Israel and the US⁹⁷³.

To further understand Israel's use of drones, it is vital to explore theories regarding the nature of this technology, inquire why it is so appealing, and examine whether those theories may shed light on why conventional IHL has not been able to restrain this technology.

⁹⁷² Janice Weizman (n 930).

⁹⁷³ Ibid.

For most of history, wars were military confrontations between two armies fighting each other face-to-face on an open battlefield. But today, traditional warfare has shifted to urban areas, with civilian populations as potential targets⁹⁷⁴. The lack of reciprocity and the absence of direct physical danger to drone operators increase the temptation to launch pre-emptive or punitive attacks in densely populated areas on the pretext of perceived or imagined threats.

Grégoire Chamayou, a philosopher from the Centre National de la Recherche Scientifique in Paris, described drones as weapons that transformed 'war from possibly asymmetrical into a unilateral death-dealing relationship in which the enemy is deprived of the very possibility of fighting back.'⁹⁷⁵ Chamayou says that drones 'slip out of the normative framework initially designed for armed conflicts...' ⁹⁷⁶. As a result, terms like 'battle' or 'asymmetric warfare' become obsolete⁹⁷⁷. Instead, he says that drones provide a 'synergetic hunting power', so their use might be better understood under 'policing' or 'counterterrorism' paradigms rather than traditional warfare⁹⁷⁸.

Drones also reflect the 'kill don't capture' doctrine⁹⁷⁹. Most military drones have been designed for assassinating individual combatants⁹⁸⁰. This applies not only to drones equipped with Hellfire missiles but also to data gathering operations – as data is used to plan the next

⁹⁷⁴ Chamayou, *Drone Theory* (n 9) 12.

⁹⁷⁵ Ibid 162.

⁹⁷⁶ Ibid 162.

⁹⁷⁷ Grégoire Chamayou, 'The Manhunt Doctrine' (2011) 169 *Radical Philosophy* 2.

⁹⁷⁸ Oliver Davis, 'Theorizing the Advent of Weaponized Drones as Techniques of Domestic Paramilitary Policing' (2019) 50(4) *Security Dialogue* 344.

⁹⁷⁹ Chamayou, *Drone Theory* (n 9) 14.

⁹⁸⁰ Ibid 14.

deadly strike. Therefore, it is not surprising that commanders see drones as a unilateral weapon for death dealings (a paradigm of 'lethality')⁹⁸¹.

In a discourse analysis study conducted by Lee Ludvigsen and Jan Andre, on the perception of drones among Al-Qaeda terrorists, it was found that propaganda magazines portray drones as an oppressive weapon that causes civilian casualties⁹⁸². Three dominant themes emerged in the study: (a) harm to innocent civilians⁹⁸³; (b) Drones are strategically ineffective⁹⁸⁴ as they produce counter-productive results like antagonism and more 'jihadists'⁹⁸⁵; (c) Drones are cowardly and inhumane⁹⁸⁶. If so, drones, in the long run, are ineffective and trigger a 'backlash'⁹⁸⁷. Moreover, with every drone strike, the resentment and antagonism towards the countries that operate them grow.

The same view of drones as cowardly weapons is expressed by Mobasher Jawed 'MJ' Akbar, the founding editor of 'the Asian Age' and Ed Kinane, the co-founder of 'the Upstate Drone Action Coalition'⁹⁸⁸. The Guardian journalist George Monbiot also pointed his finger at the US, claiming it is fighting a coward's war⁹⁸⁹. Similar sentiments were expressed by retired US Army

⁹⁸¹ Furkan Halit Yolcu, 'We Kill Because We Can: From Soldiering to Assassination in the Drone Age' (2019) 21(1) *Insight* 225.

⁹⁸² Lee Ludvigsen and Jan Andre, 'The Portrayal of Drones in Terrorist Propaganda: a Discourse Analysis of Al Qaeda in the Arabian Peninsula's Inspire' (2018) 11(1) *Dynamics of Asymmetric Conflict* 26.

⁹⁸³ Ibid 36; Marina Powers, 'Sticks and Stones: the Relationship Between Drone Strikes and Al-Qaeda's Portrayal of the United States' (2014) 7(3) *Critical Studies on Terrorism* 411, 413.

⁹⁸⁴ Azmat Khan, 'The Magazine that "Inspired" the Boston Bombers' (*PBS Frontline*, 30 April 2013) <<https://www.pbs.org/wgbh/frontline/article/the-magazine-that-inspired-the-boston-bombers/>> accessed 28 May 2021; Ludvigsen and Andre (n 982) 35.

⁹⁸⁵ MSA Security, 'AQAP Releases 12th Edition of Inspire Magazine' (*MSA*, 18 March 2014); Ludvigsen and Andre (n 982) 35.

⁹⁸⁶ Ludvigsen and Andre (n 982) 37.

⁹⁸⁷ Ibid.

⁹⁸⁸ Peter Olsthoorn, 'Risks, Robots, and the Honorableness of the Military Profession' in Bernhard Koch (ed), *Chivalrous Combatants? The Meaning of Military Virtue Past and Present* (Nomos 2019) 161; Cora Sol Goldstein, 'Drones, Honor, and War' (2015) *Military Review* 70.

⁹⁸⁹ Cora Sol Goldstein (n 988).

general David Petraeus and Marine Sargent Matt Walje, who admitted that drones are perceived as cowardly⁹⁹⁰, because they allow a dishonourable ‘ambush’ by an invulnerable killer⁹⁹¹.

Arguably drones are a ‘humanitarian weapon’ – and not because they have the potential to distribute medicine and food. Yet, paradoxically, drones, initially designed to take peoples’ lives, are described as ‘humanitarian’ by drone apologists⁹⁹², who argue that drones pose fewer risks to civilians on the receiving end⁹⁹³.

This idea was embraced by academics and philosophers like Bradley Strawser, a Research Associate at Oxford University’s Institute for Ethics, Law, and Armed Conflict. Strawser says that drones have been rightfully used against terrorists in a moral, ethical, legal, and proportional way. He refers to the moral reasoning of the IDF in its use of pre-emptive strikes and similar reasoning of the US Department of Justice⁹⁹⁴. Strawser asserts that there is a moral imperative for humanity to employ drones to prevent unnecessary risks that are associated with other weapons⁹⁹⁵.

Apologists like Strawser analyse drones under IHL principles of distinction and proportionality. They suggest that drones help soldiers distinguish between combatants and civilians more easily. Arguably, high-resolution data allows drone pilots to see accurately and perform

⁹⁹⁰ Ibid.

⁹⁹¹ Matt Walj, ‘Drone Warfare and Jus ad Bellum: Mala Prohibita under Right Intention’ (*The Polemistés Ethos*, 27 September 2021) <<https://thepolemistesesethos.wordpress.com/2012/09/27/hello-world/>> accessed 28 May 2021; Cora Sol Goldstein (n 988).

⁹⁹² Chamayou, *Drone Theory* (n 9) 135.

⁹⁹³ Ibid 136.

⁹⁹⁴ Bradley Strawser (ed), *Opposing Perspectives on the Drone Debate* (Palgrave Macmillan 2014).

⁹⁹⁵ Bradley Strawser, ‘Moral Predators: The Duty to Employ Uninhabited Aerial Vehicles’ (2010) 9(4) *Journal of Military Ethics* 342.

‘surgical strikes’ against military targets. This philosophy relies on two separate arguments: (a) Drones spare the lives of ‘our’ combatants; (b) Drones are more accurate and allow to distinguish between combatants and civilians and therefore inflict lesser harm than other comparable weapons.

While there is no doubt that drones protect soldiers, at least physically, drones eventually undermine the immunity of civilians⁹⁹⁶. Moreover, scholars like Chamayou reject the claim that drones more accurately distinguish between combatants and civilians, as they often rely on big data algorithms that mistakenly identify individuals as suspected ‘terrorists’ based on minute deviations in behavioural patterns⁹⁹⁷.

The ultimate safety of drone operators combined with the proclaimed surgical capability of drones should increase public pressure on them to minimise collateral damage. It should also encourage a change of the laws of war in a way that would tolerate less collateral damage, says Frédéric Mégret, a Law Professor from McGill University⁹⁹⁸. Drones should arguably come with a lower threshold of acceptability of civilian casualties, and greater accountability should be applied to drone strikes. In other words, because drones have the potential to be more discriminatory, they have the effect of rendering collateral damage less tolerable.

However, the use of drones is often examined within a ‘closed system’ in which only violent options are available with given factors, parameters, and presuppositions⁹⁹⁹.

⁹⁹⁶ Chamayou, *Drone Theory* (n 9) 138.

⁹⁹⁷ Ibid 162.

⁹⁹⁸ Frédéric Mégret, ‘The Humanitarian problem With Drones’ (2013) 5 Utah Law Review 1283.

⁹⁹⁹ Vaheed Ramazani, ‘Killer Drones, Legal Ethics, and the Inconvenient Referent’ (2018) 7(2) Lateral <<https://csalateral.org/issue/7-2/killer-drones-legal-ethics-inconvenient-referent-ramazani/>> accessed 29 May 2021.

Drones have even been normalised by academic experts who work closely with the military and political powers that manufacture or use them. According to Eyal Weizmann, the collusion between the army and the academia has generated a 'necro-economy', which gives the state the power to decide who dies and who lives. Weizmann exemplifies this by referring to Major Gen. (Res.) Professor Isaac Ben-Israel developed an equation that predicts the number of Palestinians the army needs to eliminate by arrests or targeted killings to defeat a militant or terrorist organisation. According to his equation, if you kill or neutralise 20–25% of the members, there is an 85% chance that it will collapse¹⁰⁰⁰. This equation illustrates how coldly and brutally Israel is willing to calculate the elimination of its opponents to uphold its settler colonial project and achieve control over the Palestinian population.

Weizmann has also shown us that it is not just Israeli leadership but the general public who perceive such violence against Palestinians as a 'lesser evil'¹⁰⁰¹. According to Weizmann, the 'lesser evil' argument has been used to justify the bombing of Hiroshima and Nagasaki, as well as indefinite detentions, torture, targeted assassinations, and wars of aggression¹⁰⁰². Arguments from drone advocates like Strawser are self-comforting and self-compromising, as they look at the 'morality' of the 'humanitarian present' revealing 'successful' assassinations with thousands of civilian deaths as 'collateral damage'. This is the 'unavoidable lesser evil' arising from so-called mandatory self-defence against a 'greater evil' of a continuously present terrorist threat.

¹⁰⁰⁰ Weizman, *The Least of All Possible Evils* (n 1001) 20-21.

¹⁰⁰¹ Eyal Weizman, *The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza* (Verso 2011) 6, 4, 10.

¹⁰⁰² Ramazani (n 999).

Drone apologists can arbitrarily interpret any number of civilian casualties as proportional under IHL. Civilian casualties had already been justified on the pretext of saving an unspecified number of Israeli or American lives and the overriding need to preserve the values of freedom, liberty, and democracy¹⁰⁰³.

If drones are accurate and precise, then arguably both the principle of distinction and the requirement to minimise collateral damage can be fulfilled. Collateral damage should be minimised, due to the precision of ‘surgical’ drones. When considering drones’ accuracy and precision, how can Israel explain the death toll in Gaza? If most victims of Israeli drone strikes were Palestinian civilians – were they all acceptable collateral damage?¹⁰⁰⁴.

Perhaps decision-makers are more likely to authorise the use of drones precisely because they are perceived as highly accurate and precise (Weizmann’s ‘lesser evil’). The perceived precision legitimises drone violence and increases the chances that lethal strikes would be authorised, even in densely populated neighbourhoods, markets, homes, mosques, and schools, eventually resulting in civil casualties¹⁰⁰⁵.

Drones may be more accurate than WWII bombers, but their accuracy should be compared to contemporary weapons. The choice is not between a WWII bomber and a drone. Bombers were not designed for surgical strikes, as drones were not designed to shoot down jet fighters.

¹⁰⁰³ Weizman, *The Least of All Possible Evils* (n 1001).

¹⁰⁰⁴ Atef Abu Saif (n 24); Hass, ‘Clearing the Fog’ (n 24); Corporate Watch, ‘Gaza’ (n 24); Cook, ‘Gaza’ (n 97).

¹⁰⁰⁵ Eyal Weizman, *Forensic Architecture: Violence at the Threshold of Detectability* (Zone Books 2017) 24.

Drones should be compared with combat pilots, laser-guided ‘surgical’ ballistic missiles¹⁰⁰⁶, and ground soldiers¹⁰⁰⁷.

There might be confusion between ‘forms’ of weapons and ‘functions’ when selecting the relevant framework of comparison. To evaluate drones properly, they should be compared with weapons that share similar tactical functions. The proper form of comparison should involve ‘function equivalence’. This is why it makes more sense to compare drones and ‘functions of the same order’¹⁰⁰⁸.

Another confusion comes from the term ‘precision’ itself. Precision might refer to: (a) firing accuracy; (b) extent of impact; (c) identification of target. Chamayou provides the example of laser-guided missiles to distinguish between the three. They have high firing accuracy, but their impact is catastrophic due to an extensive ‘kill radius’. For example, a Predator drone might have a ‘kill zone’ of 15 meters, with a ‘wound radius’ of 20 meters. A grenade has a ‘lethal radius’ of 3 meters, while a rifleman or a sniper has an even smaller radius¹⁰⁰⁹.

Another confusion is between ‘technical precision’ and the ability to discriminate when choosing a target. Drones’ precision should enable distinction between combatants and civilians. Nevertheless, even if drones enable ‘surgical’ killings, it does not mean that they are more capable of identifying who is a legitimate target under IHL. The levels of precision do

¹⁰⁰⁶ Janne E Nolan, *Trappings of Power: Ballistic Missiles in the Third World* (Brookings Institution Press 2010) 80.

¹⁰⁰⁷ Chamayou, *Drone Theory* (n 9) 141.

¹⁰⁰⁸ Ibid.

¹⁰⁰⁹ Ibid 141-142.

not affect targets' suitability. Even the most advanced surveillance mechanisms are far from being accurate when drawing these distinctions¹⁰¹⁰.

If a civilian aims a weapon, they are taking part in hostilities and posing an imminent threat. Therefore, they are now a legitimate target under IHL. However, this IHL principle is ineffective when drones are exclusively used. There is no 'direct participation in hostilities' when the people of Gaza are no longer fighting¹⁰¹¹. Naftali Bennett as Israel's Prime Minister announced in February 2022 that a new interception system would soon cover Israel with a wall of lasers that would defend the country from missiles, rockets, drones, and other threats. He said that 'It will effectively take away the strongest card the enemy has against us', within a year¹⁰¹². If that is the case, will Palestinians still be able to actively participate in hostilities? Will they ever pose a threat in a way that would justify targeting them?

My argument is that there is no imminent threat if no IDF soldiers are on the ground. Most Palestinians are already deprived of any practical chance of participating in 'hostilities'. Drones might be praised for their ability to distinguish between combatants and civilians, but in practice, they eliminate the IHL conditions for such differentiation¹⁰¹³. As mentioned earlier, targets are often selected based on behavioural patterns, statistics, and probabilities¹⁰¹⁴. Such algorithms, combined with cultural differences and pressure on drone pilots to make deadly decisions quickly, lead to inaccurate lethal results.

¹⁰¹⁰ Ibid 142-143.

¹⁰¹¹ Ibid.

¹⁰¹² Jonathan Lis, 'Bennett Announces Laser-based Missile Defense System' (*Haaretz*, 1 February 2022).

¹⁰¹³ Ibid 143-144.

¹⁰¹⁴ Ibid 145.

IHL principles like distinction and proportionality cannot protect civilians who dwell in crowded urban territories¹⁰¹⁵. IHL fails to protect bystanders at a marketplace if their deaths are considered acceptable ‘collateral damage’ (within the large impact radius of a drone) if a military target has been identified. Drones often operate in areas far from active hostilities, which leads to a mixture between combatants and civilians, to a degree that traditional IHL fails to address¹⁰¹⁶.

There have been suggestions to reformulate ‘distinction’ in a way that would require functional analysis of the area to be attacked, so when a ‘death zone’ is a civilian object like a market or an apartment building, the ‘zone’ should be deemed a protected civilian object, even if a valid military objective is present¹⁰¹⁷. Similar suggestions have been made to reformulate ‘proportionality’ in a way that commanders will consider the strategic costs and secondary effects of drone strikes¹⁰¹⁸. Nevertheless, such reforms are far from radically changing the nature of IHL as a set of rules that ultimately serve western countries, placing Third World and indigenous people at a disadvantage.

Cultural differences equally prevent drones from following the distinction principle. As noted earlier, a wedding ceremony was under attack in Yemen because celebratory-symbolic shootings were mistakenly identified as a threat. Let us look again at the bottom line. In Gaza, thousands of people died during ‘Pillar of Defense’, nearly a quarter of them by drones. Most

¹⁰¹⁵ Richard L Wilson, ‘Ethical Issues With Use of Drone Aircraft’ (*IEEE International Symposium on Ethics in Science, Technology and Engineering*, 2014)
<https://ieeexplore.ieee.org/abstract/document/6893424?casa_token=N52Jg2gDXG0AAAAA:1y_h6VXeHfV8fYJquHwJTz2Gn6Wkjltr1XMcvXucQ0WFEiq9KDLF_Q2cE4jFVxFQbtYg_zl2Bp0Kg> accessed 31 May 2021.

¹⁰¹⁶ Joshua Andresen, ‘Putting Lethal Force on the Table: How Drones Change the Alternative Space of War and Counterterrorism’ (2017) 8 *Harvard National Security Journal* 426.

¹⁰¹⁷ *Ibid.*

¹⁰¹⁸ *Ibid.*

were civilians. Distinction and collateral damage might be no more than lip service when looking at this data. If Israel is worried about the lives of civilians in Gaza, how could it be that thousands have died? Such phenomena repeat themselves in places where drones are used, including Afghanistan, Yemen, and Iraq. The road to hell is paved by good intentions, and it is doubtful whether there are indeed good intentions or just a pretence.

Drones killing individuals with anti-tank missiles are likely to harm innocent people. When considering Chamayou's comparison of weapons' radius, the choice of using a long-range weapon with a large radius reflects the value given to soldiers' lives and enemy civilians. If a terrorist took over an Israeli or an American school, drones equipped with Hellfire missiles would not be sent into that school. To save 'our' children, the police would take risks. Most countries would find a safer method to save domestic hostages and maximise their safety, including by risking police officers and soldiers¹⁰¹⁹.

When it comes to Palestinian children, Israel would rather guarantee the safety of Israeli soldiers at their expense while risking the lives of Palestinian citizens (of all ages). This logic fits with the hyper-militarisation of Israeli civil society discussed earlier, and with the settler colonial ideology that sees Palestinians as an existential-demographic threat, regardless of their age or levels of cooperation.

In Israel, there is little criticism of harm being inflicted on Palestinians, including torture¹⁰²⁰.

This allowed Israel to never officially report a drone strike while selling drones worldwide¹⁰²¹.

¹⁰¹⁹ Chamayou, *Drone Theory* (n 9) 142.

¹⁰²⁰ Smadar Ben-Natan, 'Revise Your Syllabi: Israeli Supreme Court Upholds Authorization for Torture and Ill-Treatment' (2019) 10.1 *Journal of International Humanitarian Legal Studies* 41.

¹⁰²¹ Cora Currier and Henrik Moltke, 'Spies in the Sky: Israeli Drone Feeds Hacked By British and American Intelligence' (*The Intercept*, 29 January 2016)

Constant surveillance does not necessarily help with distinction. As demonstrated by Israel's investigation of a murder of a Palestinian child by a drone (2018)¹⁰²², Drone pilots do not necessarily have the means to distinguish between a civilian and a combatant¹⁰²³. Civilian casualties are often declared retrospectively as legitimate targets or as acceptable collateral damage in the name of 'self-defence' and 'self-preservation', with little public critique.

The argument that drones should minimise civilian casualties due to their accuracy leads countries to declare civilians as combatants retrospectively to protect their reputations. Men killed by US drones were retrospectively declared 'combatants' by the US, unless there was specific information that proved that someone was innocent¹⁰²⁴. Guilty until proven innocent seems to be the rule that manipulates statistics. Civilians are considered legitimate targets until proven otherwise, including when their bodies are unrecognisable. This is the humanitarian principle of countries that operate drones. They paradoxically rely on IHL to assert their right to kill¹⁰²⁵.

While soldiers must not harm civilians, it is unclear what constitutes an immediate threat or active participation in hostilities because there is no battle and no soldiers on the battlefield. Some drones kill based on big-data algorithms, and some execute total control over entire towns. 'Manhunt' is perhaps a more suitable paradigm than warfare when it comes to

<<https://theintercept.com/2016/01/28/israeli-drone-feeds-hacked-by-british-and-american-intelligence/>> accessed 29 May 2021; Cora Currier and Henrik Moltke, 'Anarchist Snapshot: Hacked Images From Israel's Drone Fleet' (*The Intercept*, 29 January 2016)
<<https://theintercept.com/2016/01/28/hacked-images-from-israels-drone-fleet/>> accessed 29 May 2021.

¹⁰²² Mackey (n 910); Haaretz (n 910).

¹⁰²³ Chamayou, *Drone Theory* (n 9) 143.

¹⁰²⁴ Ibid 146.

¹⁰²⁵ Ibid.

understanding drones, as they do not allow a clear distinction between combatants and civilians, and there is no battle, just unilateral death dealings¹⁰²⁶.

4.6. Punitive Manhunts, Merciless Algorithms and Recognition of Abnormalities

In 2004, while Predators were already launching Hellfire missiles, entrepreneur John Lockwood launched 'live-shot.com', allowing users to hunt animals online remotely¹⁰²⁷. This practice was advertised as a website that allows you to shoot at real animals comfortably¹⁰²⁸. The website allowed hunters to pull a rifle's trigger remotely: '...in this case it's not a videogame. It's a new kind of hunting experience...' ¹⁰²⁹. Lockwood said he wanted to allow people with disabilities to hunt. But the activity was considered by critics as slaughter. Animal rights groups, hunting enthusiasts and gun advocates all objected¹⁰³⁰, after both conservative and left-wing activists petitioned against Lockwood¹⁰³¹. Pro-hunting groups insisted that internet hunting violates the 'fair chase' idea. The National Rifle Association and Safari Club International argued that a fair chase is a crucial element of hunting¹⁰³². As of 2018, internet

¹⁰²⁶ Chamayou, *Drone Theory* (n 9) 144.

¹⁰²⁷ Peter M Asaro, 'Remote-Control Crimes' (2011) 18(1) IEEE Robotics & Automation Magazine 68.

¹⁰²⁸ Book of Joe, 'Virtual Hunting – For Real' (*Book of Joe*, 8 March 2005)

<https://www.bookofjoe.com/2005/03/virtual_hunting.html> accessed 29 May 2021; Erik Cohen, 'Recreational Hunting: Ethics, Experiences and Commoditization' (2014) 39(1) Tourism Recreation Research 3.

¹⁰²⁹ Kris Axtman, 'Hunting By Remote Control Draws Fire From All Quarters' (*The Christian Science Monitor*, 5 April 2005) <<https://www.csmonitor.com/2005/0405/p01s02-ussc.html>> accessed 29 May 2021.

¹⁰³⁰ Ibid.

¹⁰³¹ Chamayou, *Drone Theory* (n 9) 31.

¹⁰³² The Humane Society of the United States, 'Internet Hunting Fact Sheet' (*The Humane Society*, 29 May 2021) <<https://www.humanesociety.org/resources/internet-hunting-fact-sheet>> accessed 29 May 2021.

hunting has been banned in over 36 US states¹⁰³³, which is probably not happening anymore¹⁰³⁴.

The main difference between drones and internet hunting is that a civilian operates the latter to target an animal. Military drones are typically operated by combatants who presuppose their targets are involved in hostilities. Nevertheless, the history of internet hunting reflects a manhunt concept that undermines war conventions¹⁰³⁵. During a manhunt, human prey has no choice but to run away, like a deadly game of 'hide and seek'. Israel and the US have been using drones for hunting down suspected 'terrorists' while combining live video, sound and GPS data. Manhunts allow a topography of social networks where targets are not necessarily part of a traditional hierarchical chain of command. Instead, the targets are nodes, which are part of a dynamic social network. Humans are tracked while hoping that eliminating key nodes will destroy the entire network¹⁰³⁶.

US military officers have already said that the most effective way to target the structure of a 'terrorist organisation' is by targeting a node¹⁰³⁷. But killing a central node is not necessarily the best way to disrupt the network. It is difficult to predict the position of a suspected 'terrorist' in the dark. Additionally, sometimes key nodes are only responsible for technical-

¹⁰³³ Animal Legal & Historical Center, 'Map of State Internet-Hunting Laws' (Michigan State University, 29 May 2021) <<https://www.animallaw.info/content/map-state-internet-hunting-laws>> accessed 29 May 2021.

¹⁰³⁴ The Humane Society of the United States (n 1032).

¹⁰³⁵ Chamayou, *Drone Theory* (n 9) 33; Chamayou, *The Manhunt Doctrine* (n 977).

¹⁰³⁶ Ibid.

¹⁰³⁷ Tim Minor, 'Attacking the Nodes of Terrorist Networks' (2012)3(2) Global Security Studies 1.

logistics¹⁰³⁸. Drones facilitate seeing 'targets' as parts of networks. They follow targets' homes, families, friends, and colleagues¹⁰³⁹.

Drones can stay for days or weeks in the air, under the sea, or on the ground¹⁰⁴⁰. They provide a constant overwatch, creating an Orwellian reality¹⁰⁴¹, much like Bentham's panopticon¹⁰⁴². Drone operators are unseen¹⁰⁴³, and offer synoptic vision from the shadows. This includes wide surveillance through high-resolution videos. The live stream allows zooming into any public area or private home through a web of CCTVs¹⁰⁴⁴.

Drones will soon be able to create a movie or a live archive of someone's life. They already capture the movement of cars and people in a city, building an archive that can be rewound. Operators can look at different people each time the video is rewound, going through space and time. In addition, drones follow entire communities and review activities from different angles.

The Pentagon has software that tracks individuals from different angles and gathers statistics on their behaviour. This technology resembles how ESPN tracks players during sports

¹⁰³⁸ Tyler J Yazujian, 'A Comparative Social Network Analysis of the 2008 Mumbai, 2015 Paris, and 2016 Brussels Terrorist Networks' (MA Thesis, Pennsylvania State University 2017).

¹⁰³⁹ Chamayou, *Drone Theory* (n 9) 37.

¹⁰⁴⁰ Derek Gregory, 'From a View to a Kill: Drones and Late Modern War' (2011)28(7-8) *Theory, Culture & Society* 188; Dima Adamsky, *The culture of military innovation* (Stanford University Press 2020).

¹⁰⁴¹ Thomas E Ricks, 'We Are (Still) Living in an Orwellian World' (2017) (*Foreign Policy* 24 July 2017) <<https://foreignpolicy.com/2017/07/24/we-are-still-living-in-an-orwellian-world/>> accessed 29 May 2021.

¹⁰⁴² Diego Pimentel and others, 'Drones, an Air Panopticon?' (*Conference: Xxii Congresso Internacional da Sociedade Iberoamericana de Gráfica Digital*, November 2018) <https://www.researchgate.net/publication/328692084_Drones_an_air_panopticon> accessed 29 May 2021; Chamayou, *Drone Theory* (n 9) 38.

¹⁰⁴³ Anne Brunon-Ernst (ed), *Beyond Foucault: New Perspectives on Bentham's Panopticon* (Ashgate 2013).

¹⁰⁴⁴ Chamayou, *Drone Theory* (n 9) 38-39.

events¹⁰⁴⁵. Distinctions between ‘normal’ and ‘abnormal’ activities have been automated under software like the National System for Geo-Intelligence Video Services (NVS). Developed by Lockheed-Martin, the system filters, sorts, and produces reports through profiling according to metadata produced through indexing of socio-spatial information¹⁰⁴⁶.

The US Army has licensed the ESPN analysis software to support counter-insurgent drones. Pattern recognition is increasingly automated by projects like ‘the Mind’s Eye’ of the Defence Advanced Research Projects Agency¹⁰⁴⁷. So everyone’s lives are accessible.

NSA’s Skynet system had already falsely identified innocent people as potential targets for drone strikes. The analysis of the NSA was based on behavioural patterns combined with GSM data collected from mobile phones in Pakistan. The NSA collected data on ‘nodes’ and related them as ‘edges’ based on travel patterns according to SIM and handset swapping of mobile phones between various individuals, which led to the targeting of innocent victims¹⁰⁴⁸.

Drones combine these layers of information. For example, they can connect a phone call to a GPS location and a video.¹⁰⁴⁹ The US Department of Defence (DOD) uses the F-35 Joint Strike Fighter with integrated sensors with 360-degree access to real-time battlefield information.

¹⁰⁴⁵ Zehra Betul Ayranci, ‘Use of Drones in Sports Broadcasting’ (2017) 33(3) Entertainment & Sports Law 79.

¹⁰⁴⁶ Patrick Crogan, ‘The Decomposition of Autonomy: Or, drones and global technicity’ (*Conference: Remote Control: Violence, Containment, Technology*, 6-7 December 2020) 7 <<https://uwe-repository.worktribe.com/output/821309/the-decomposition-of-autonomy-or-drones-and-global-technicity>> accessed 29 May 2021; Stuart Elden, Derek Gregory, and Álvaro Sevilla-Buitrago, ‘Spaces of the Past, Histories of the Present: An Interview With Stuart Elden and Derek Gregory’ (2011) 10(2) ACME: An International Journal for Critical Geographies 313; Erik Blasch and others, ‘Video Observations for Cloud Activity-Based Intelligence (VOCABI)’ (*NAECON 2014-IEEE National Aerospace and Electronics Conference*, June 2014) <https://www.researchgate.net/publication/301476308_Video_observations_for_cloud_activity-based_intelligence_VOCABI> accessed 29 May 2021.

¹⁰⁴⁷ Crogan (n 1046) 7-8.

¹⁰⁴⁸ Ibid 17.

¹⁰⁴⁹ Chamayou, *Drone Theory* (n 9) 41.

The data fusion is reportedly supplied to a pilot, but it can be done autonomously. This 'martial gaze' fuses data from a wide range of sensors¹⁰⁵⁰. Another program that performs data fusion is 'Geo Time'. It visualises geospatial, temporal and intelligence data for the US military. The system combines where, when, and who, creating a 3D array¹⁰⁵¹.

Time and space are fundamental organisational categories for humanity, as life has temporal mobility with past, present and future. Time is also localised in space which leads to a tyranny of distance with spatial templates affected by geography, culture, and class¹⁰⁵². Nevertheless, drone pilots are unfamiliar with the geography, culture, and life patterns of the areas they are targeting. An aerial view inevitably leads to fatal mistakes. Not so when you have a down-up, grassroots viewpoint or first-hand familiarity with indigenous habitats and cultural differences.

Drones segregate and prevent communities from developing over time. If communities are associated with harmony, tolerance, balance, and friendship, drone-related segregation is associated with self-interest, intolerance, prejudice, and discrimination¹⁰⁵³.

Drones facilitate new types of special-temporal maps, recognising accidents and deviations from the ordinary. At the heart of the US's 'counter-insurgency' strategy, the goal is to find new suspects by recognising suspicious behaviours based on deviation from patterns¹⁰⁵⁴.

¹⁰⁵⁰ David Young, 'Noisy Logistics and Human-Machine Perception' (2020) 29(4) *Science as Culture* 617.

¹⁰⁵¹ Derek Gregory, 'From a View to a Kill' (n 1040).

¹⁰⁵² Derek Gregory and Rex Walford (eds), *Horizons in Human Geography* (Macmillan International Higher Education 2016) 155.

¹⁰⁵³ *Ibid* 208.

¹⁰⁵⁴ Chamayou, *Drone Theory* (n 9) 42.

Paradoxically it is now possible to identify and target anonymous people generically, without knowing their names, and 'eliminate' them with a 'surgical strike'.

Journalist David Rohde was kidnapped in 2008 and held in Waziristan for seven months, reporting on the effects of continuous surveillance¹⁰⁵⁵. Rohde described the constant fearful atmosphere due to the buzzing of drones, which kept people awake at night, wondering if a missile might strike, 'a constant reminder of imminent death'¹⁰⁵⁶. It was similarly reported that tribal Pakistani children become hysterical when they hear drones¹⁰⁵⁷. Some 'lost their minds', and locked themselves in rooms due to drones terrorising them. The anger and sorrow of victims are often marginalised as they are not part of the regular body count of victims¹⁰⁵⁸.

Pakistani children had good reasons to be frightened to death. An eye constantly follows them and their parents in the sky. If their father inexplicitly chose to go to a new grocery store, this new behaviour might be flagged as suspicious. The fact that machines were programmed to replace observation by humans with a system of algorithms and produce masses of information repeatedly led to tragic and fatal mistakes. It is practically impossible to distinguish between normal and abnormal behaviour of big populations under an automated recognition process by remote control computers¹⁰⁵⁹.

Entire populations have been subjected to stress, anxiety, and traumatic experiences under the drone-panopticon of empires. This total wreckage of privacy is an acute problem¹⁰⁶⁰, as

¹⁰⁵⁵ David Rohde and Kristen Mulvihill, *A Rope and a Prayer: The Story of a Kidnapping* (Penguin 2010).

¹⁰⁵⁶ Hugh Gusterson, 'Drone Warfare in Waziristan and the New Military Humanism' (2019) 60(S19) *Current Anthropology* S77.

¹⁰⁵⁷ *Ibid.*

¹⁰⁵⁸ Chamayou, *Drone Theory* (n 9) 45.

¹⁰⁵⁹ Derek Gregory, 'From a View to a Kill' (n 1040).

¹⁰⁶⁰ Ann Cavoukian, *Privacy and Drones: Unmanned Aerial Vehicles* (Ontario: Information and Privacy Commissioner of Ontario 2012).

hundreds of millions of people live under constant surveillance of drones buzzing over their heads in search of suspects. With such a high margin of error, life has become a 'Russian roulette' for civilians who have nothing to do with terrorism but are nevertheless monitored around the clock¹⁰⁶¹.

Computers are fragile and dangerous instruments, like Geo-Time¹⁰⁶², 'Argus', and 'Gorgon Stare'¹⁰⁶³, named after the mythological Gorgon who turned anyone into stone¹⁰⁶⁴. Even their operators have recognised these as faulty machines that cause civilian casualties on a massive scale – Gaza is no exception. The IDF has already activated these types of semi-automated systems on a vast scale, as algorithms have been routinely used to identify and hunt human 'targets' in Gaza¹⁰⁶⁵.

It is now unbearably easy to find behavioural anomalies through network analysis of data. This detection is entwined with pattern matching to recognise future threats. But such detection is based on dangerous assumptions¹⁰⁶⁶. It is unclear who is responsible for detecting irregular activities and deciding whether to initiate a pre-emptive strike. While trying to predict the future based on past knowledge, there is a great significance to the identity of the

¹⁰⁶¹ Clive Stafford Smith, 'Why Are CIA Drones Still Causing the Death of Innocents in Pakistan?' (*Huffington Post*, 25 September 2012) <https://www.huffingtonpost.co.uk/clive-stafford-smith/stanford-drones-report_b_1910804.html> accessed 26 September 2021.

¹⁰⁶² Ibid.

¹⁰⁶³ Chamayou, *Drone Theory* (n 9) 43.

¹⁰⁶⁴ Sharon Weinberger, 'Hollywood and Hyper-Surveillance: the Incredible Story of Gorgon Stare' 570(7760) *Nature* 162 (2019); Dario Giambelluca and others, 'The "Caput Medusae" Sign in Portal Hypertension' (2018)43(9) *Abdominal Radiology* 2535.

¹⁰⁶⁵ Yoav Zeitun, 'The "Alchemist" Which Bounced Thousands of Targets in Gaza: a Glimpse Into a System That Will Help Ground Maneuvers' <<https://www.ynet.co.il/news/article/bk5enisbf>> (Ynet, 28 August 2021).

¹⁰⁶⁶ Claudia Aradau and Tobias Blanke, 'Governing others: Anomaly and the Algorithmic Subject of Security' (2018)3(1) *European Journal of International Security* 1, 17-18.

policymaker or programmer that decides what is normal and what is not, who is kept under surveillance¹⁰⁶⁷, and who should die under the paradigm of necro-economics.

4.7. Drones Without Borders and the Question of Sovereignty

Some countries act as if they can hunt down anyone, anywhere, regardless of sovereignty or jurisdiction. Countries like Israel and the US have used their national security needs to justify their military operations. As pointed out by Weizmann¹⁰⁶⁸, Israel vertically monitors, surveys, and follows all Palestinian civilians without recognising their sovereignty, killing suspects and bystanders from the sky¹⁰⁶⁹.

Drones reshaped territorial conceptions of sovereignty, turning the territory into a dynamic network and creating a new mobile landscape of 'ephemeral sovereignty'¹⁰⁷⁰. Both US drone strikes in Afghanistan and Pakistan and Israeli drone strikes in Lebanon demonstrate how easy it is for military giants to violate aerial sovereignty. Nevertheless, Afghan, Pakistani, and Lebanese airspace had been breached without significant repercussions¹⁰⁷¹.

Drones are also deployed in temporarily activated 'kill zones' – without any official war¹⁰⁷². These zones can open and close to kill anyone within them or to kill designated 'targets'. Each

¹⁰⁶⁷ Carla Benzing, 'Artistic Politics of the Drone' (*Academia*, 2019)

<https://www.academia.edu/35996444/Artistic_Politics_of_the_Drone>accessed 29 May 2021.

¹⁰⁶⁸ Weizman, *Hollow Land* (n 472) 212.

¹⁰⁶⁹ Ibid.

¹⁰⁷⁰ Katharine Hall Kindervater, 'Drone Strikes, Ephemeral Sovereignty, and Changing Conceptions of Territory' (2017)5(2) *Territory, Politics, Governance* 207.

¹⁰⁷¹ Alison J Williams, 'Re-Orientating Vertical Geopolitics' (2013)18(1) *Geopolitics* 225.

¹⁰⁷² Anna Mirzayan, 'Creating Killing Machines: On the Relationship between Art and Predation in Surveillance Capitalism' (2018) 7(2) *Evental Aesthetics* 6 <https://eventalaesthetics.net/wp-content/uploads/2021/03/EA_AI2_Vol7_2_2018_Mirzayan_KillingMachines.pdf> accessed 14 March 2022.

box creates an independent space where a drone pilot can fire at will¹⁰⁷³. Kill boxes can open automatically by algorithms, leading to the deaths of anonymous people. These boxes are not fixed sites, but 'ephemeral' ones. They stay above the landscape and transform physical spaces into death zones, regardless of who might be inside¹⁰⁷⁴.

The 'armed conflict zone' can also be surgically reduced to one 'target', as if one body is now the battlefield. At the same time, the entire world becomes a hunting ground. Chamayou calls this: 'the principle of *globalization or homogenization*'¹⁰⁷⁵. The perceived precision of drones allows death dealings anywhere, outside any traditional 'warzone'¹⁰⁷⁶.

Some American lawyers, for example, now advocate for a target-centred concept. They claim that the geocentric concept of 'zone of armed conflict' is out-of-date, and that a battlefield should not be limited to a geographic location. As noted by Kenneth Anderson, a Professor of Law at AUWCL: 'Once parties initiated a non-international armed conflict, and met the thresholds of intensity and all that, the same non-international armed conflict goes where they go, irrespective of geography'¹⁰⁷⁷. This creative interpretation of 'conflict zone' can serve drone apologists.

According to Professor of Law Michael Lewis: 'practice undertaken with the belief that the boundaries of the battlefield are not determined by geopolitical lines but rather by the location of participants in an armed conflict, whether the participants are states or non-state

¹⁰⁷³ Chamayou, *Drone Theory* (n 9) 55.

¹⁰⁷⁴ Mirzayan (n 1072); Chamayou, *Drone Theory* (n 9) 56-57.

¹⁰⁷⁵ Chamayou, *Drone Theory* (n 9) 57.

¹⁰⁷⁶ Ibid.

¹⁰⁷⁷ Kenneth Anderson, 'Self-Defense and Non-International Armed Conflict in Drone Warfare' *Opinio Juris*, 22 October 2010 <http://opiniojuris.org/2010/10/22/self-defense-and-non-international-armed-conflict-in-drone-warfare/> Accessed 21 January 2022; Chamayou, *Drone Theory* (n 9) 57.

actors. This continues to be the standard for determining where the law of armed conflict is properly applied'¹⁰⁷⁸.

Such target-centred concepts have been used to justify drone violence. As pointed out by Chamayou: 'By redefining the notion of armed conflict as a mobile place attached to the person of the enemy, one ends up, under cover of the laws of armed conflict, justifying the equivalent of a right to execute suspects anywhere in the world, even in zones of peace, illegally and without further procedures, one's own citizens included'¹⁰⁷⁹.

If the entire world is a battle zone, then 'armed conflicts' are no longer geographical. If the 'armed conflict' definition requires a particular geographical area for the battle zone, then the practice of kill boxes that follow targets anywhere they go poses not only legal questions, but also ethical ones. On the other hand, if drones operate in areas where there is no 'battle zone', then there is no armed conflict¹⁰⁸⁰. My argument in this context is that drone violence should be understood, in many cases, as a tool used for an 'international manhunt' – rather than a weapon that is used in a traditional conflict. Perhaps we can better understand drones while taking a step outside traditional conceptions of international law, and by looking deeper into the prevailing myths about drones.

¹⁰⁷⁸ Michael W Lewis, 'How Should the OBL Operation Be Characterized?' *Opinio Juris*, 3 May 2011, <https://opiniojuris.org/2011/05/03/how-should-the-obl-operation-be-characterized/> Accessed 21 January 2022.

¹⁰⁷⁹ Chamayou, *Drone Theory* (n 9) 57-58.

¹⁰⁸⁰ *Ibid* 58-59.

4.8. Anti-Terrorism, Short-Term Tactics, and the Myth of Invulnerability

In a US Presidential memorandum on the legal and policy frameworks that inform the use of military force, drones were asserted to be an effective and viable way to address terrorism¹⁰⁸¹. However, the criteria for using military drones and targeted killings against terrorists are obscure or insufficient¹⁰⁸².

We know that anti-terrorism tactics focus on quickly eliminating individuals – as many of them as possible. This tactic had turned entire communities into potential terrorists. While counterinsurgency strategies focus on entire populations, anti-terrorism focuses on killing individuals, regardless of the antagonism that such killings might create among a given community¹⁰⁸³.

Post-9/11 anti-terrorism discourse neglects the origins of hostilities. Moreover, it does not leave room for long-term compromises, ignoring the political implications of using force¹⁰⁸⁴.

It is no surprise that drones are the weapon of choice for anti-terrorism campaigns. However, the number of civilian casualties makes one wonder if drones are counter-productive in the long-run¹⁰⁸⁵.

No risk or loss from the aggressor's side also means no victory and no exit point. This is the paradox of infinite power¹⁰⁸⁶. Drones expand the already disproportional power of countries

¹⁰⁸¹ Loch K Johnson and others, 'An INS Special Forum: Intelligence and Drones' (2017) 32(4) *Intelligence and National Security* 411.

¹⁰⁸² *Ibid.*

¹⁰⁸³ Chamayou, *Drone Theory* (n 9) 68.

¹⁰⁸⁴ Carl Miller, 'Is it Possible and Preferable to Negotiate with Terrorists?' (2011) 11(1) *Defence Studies* 145.

¹⁰⁸⁵ Chamayou, *Drone Theory* (n 9) 69.

¹⁰⁸⁶ *Ibid* 72.

like Israel and the US, as infinite power is rooted within a 'Yes we can' identity, positioning certain countries as global hegemonies of liberal values¹⁰⁸⁷, and silencing the voices of indigenous and Third World peoples.

We have seen that drones, the primary weapon of the 'War on Terror', have replaced long-term strategies with short-term tactics¹⁰⁸⁸. However, in the long run, the most vital force might be the power of ideas and social movements rather than Reapers and Predators. The success of the campaign against SA Apartheid demonstrated this. Afrikaners were more robust in terms of financial capabilities and military might, but they eventually lost the battle over global public opinion¹⁰⁸⁹. Israel, by the way, was one of the few countries that supported SA Apartheid to its end, perhaps because both countries cooperated and shared similar settler colonial interests¹⁰⁹⁰. Like SA¹⁰⁹¹, in the long run, Israel and its policies, may find themselves in growing international criticism, as they already are, in the case of the BDS campaign and radical intellectuals worldwide.

It is worth saying something about the philosophy of invulnerability. Invulnerability has been described as a human will to achieve immortality or supremacy over others. Stories and folklore across cultures and religions have challenged the desire to become invincible.

¹⁰⁸⁷ Altina Ruli, 'The Lives of Others: Has America's Drone War in the Obama Period Threatened Established Concepts of Human Rights and Civil Liberties and What Have Been The Consequences?' (*Academia*, 31 May 2021) <http://www.academia.edu/download/46515064/Essay_425_The_Lives_of_Others.doc> accessed 31 May 2021.

¹⁰⁸⁸ Chamayou, *Drone Theory* (n 9) 65-66.

¹⁰⁸⁹ Paul Di Stefano and Mostafa Henaway, 'Boycotting Apartheid: from South Africa to Palestine' (2014)26(1) *Peace Review* 19.

¹⁰⁹⁰ Sasha Polakow-Suransky, *The Unspoken Alliance: Israel's Secret Relationship with Apartheid South Africa* (Vintage 2010).

¹⁰⁹¹ Christabel Gurney, 'A Great Cause: The Origins of the Anti-Apartheid Movement, June 1959-March 1960' (2000)26(1) *Journal of Southern African Studies* 123; Jonathan Hyslop, Salim Vally, and Shireen Hassim, 'The South African Boycott Experience' (2006)92(5) *Academe* 59.

Achilles, a mythological hero of the Greeks, is known for his invulnerability – except for the back of his heel. Esfandiar, a legendary Persian, tried to achieve invulnerability¹⁰⁹², but his eyes stayed vulnerable after closing them while bathing in Zoroaster’s pool of invincibility¹⁰⁹³. Esfandiar and Achilles were vulnerable, despite their status, age and bravery. They were adventurers, arrogant, and weak in a particular body part. Both died tragic, premature, and unexpected deaths¹⁰⁹⁴. Attempts to achieve invulnerability are likely to expose an unexpected weakness. An enemy that seems to be invincible is likely to have an ‘Achilles Heel’. History has taught us on numerous occasions that no country whose rule of others is based on violence and oppression of human rights can last forever.

Drones, and countries that use them, have weaknesses. Drones depend on weather conditions and the lack of anti-aircraft capabilities of the enemy. In 2009 and 2011, US drones were dropped in Iraq and Iran, and their video was hacked¹⁰⁹⁵. Hezbollah developed a system to capture Israeli videos from drones and discover where Israeli soldiers are hiding. These examples show how drones can provide eyes for the ‘enemy’¹⁰⁹⁶. Palestinians have intercepted Israeli drone transmissions during the Second Intifada¹⁰⁹⁷. IDF drones have been

¹⁰⁹² Mohammad Ghazanfari, ‘Invulnerability in Greek and Persian Mythology: A Comparative Study of Achilles and Esfandiar’ (2nd International Conference on Literature, Languages & Linguistics 2009) <<https://profdoc.um.ac.ir/paper-abstract-1020607.html>> accessed 31 May 2021.

¹⁰⁹³ Mary Boyce (ed), *A history of Zoroastrianism: The Early Period. Vol. 1.* (Brill 1996).

¹⁰⁹⁴ Ghazanfari (n 1092).

¹⁰⁹⁵ Mike Mount and Elaine Quijano, ‘Iraqi Insurgents Hacked Predator Drone Feeds, U.S. Official Indicates’ (CNN, 18 December 2009) <<http://edition.cnn.com/2009/US/12/17/drone.video.hacked/index.html>> accessed 31 May 2021; BBC, ‘Iran shows ‘hacked US spy drone’ video footage’ (BBC, 7 February 2013) <<https://www.bbc.co.uk/news/world-middle-east-21373353>> accessed 31 May 2021.

¹⁰⁹⁶ Chamayou, *Drone Theory* (n 9) 75.

¹⁰⁹⁷ Avi Issacharoff, ‘PA Intercepted Israeli Drone Transmissions During Second Intifada’ (*Times of Israel*, 9 November 2014) <<https://www.timesofisrael.com/pa-intercepted-israeli-drone-transmissions-during-second-intifada/>> accessed 23 March 2022.

reportedly downed on multiple occasions by Palestinians in Gaza in the year 2021 alone¹⁰⁹⁸. In 2011 malware infiltrated the US air force, including malware that can record passwords. It is similarly possible to break into drones virtually¹⁰⁹⁹. As drones rely on GPS, it is easy to take down a drone by transmitting falsified GPS signals and forcing it to follow any destructive trajectory¹¹⁰⁰.

4.9. Sacrifice, Heroism, Kamikaze, and the Soldiers' Oath.

Using technology to attack from a safe distance is as old as war itself. In 1898, the Sudanese were armed with swords and spears, while the Anglo-Egyptians had automatic machine guns and bolt-action magazine rifles. It was a long-ranged massacre – 'an execution'. The battle reported 10,800 Dervishes killed, while the Anglo-Egyptians suffered 48 losses¹¹⁰¹, reflecting the relatively low risk for the Anglo-Egyptians. We have seen that Israeli soldiers have been well protected, especially since the introduction of military drones. In 2020, 28 soldiers died, but only one died during an operation in the West Bank. Nine committed suicides, five died of illness and medical causes, and thirteen died in training, traffic, and work accidents¹¹⁰². Similar figures apply to the year 2019.

¹⁰⁹⁸ Uri Cohen, 'Israeli Military Drones Dropping Like Flies in Enemy Territory' (*The Jerusalem Post*, 9 February 2021) <<https://www.jpost.com/middle-east/israeli-military-drones-dropping-like-flies-in-enemy-territory-657760>> accessed 23 March 2022.

¹⁰⁹⁹ Chamayou, *Drone Theory* (n 9) 76.

¹¹⁰⁰ Andrew J Kerns and others, 'Unmanned Aircraft Capture and Control via GPS Spoofing' (2014) 31(4) *Journal of Field Robotics* 617.

¹¹⁰¹ David M Leeson, 'Playing at War: The British Military Manoeuvres of 1898' (2008) 15(4) *War in History* 432.

¹¹⁰² Yaniv Kubovich, 'A Third of Deaths in the Israeli Army in 2020 Were by Suicide' (*Haaretz*, 4 January 2021) <<https://www.haaretz.com/israel-news/.premium-a-third-of-deaths-in-the-israeli-army-in-2020-were-by-suicide-1.9422723>> accessed 31 May 2021.

While drones take technology to the extreme by using machines to the maximum, kamikazes use humans to the maximum. Drones offer a complete detachment from the body – that remains safe. Kamikazes require an absolute sacrifice – certain death¹¹⁰³. A kamikaze acts once and then is gone forever. Drones can shoot multiple times, be reloaded, and redeployed. The death of the kamikaze is inevitable, while the death of the drone operator is impossible. Two opposites of the risk-level spectrum¹¹⁰⁴. A kamikaze relies on human sacrifice. Drone pilots rely on technology that prevents the need for sacrifice. Kamikazes sacrifice themselves for a ‘greater cause’, but drone pilots operate like ghosts. They mirror each other on the relationship between death, sacrifice, and self-preservation¹¹⁰⁵.

It has been argued that terrorists who use suicide bombers do not appreciate life, and that drone technology cherishes it, eliminating the need for sacrifice. Nonetheless, we have seen that countries that operate lethal drones ‘cherish life’ in a way that is limited to the lives of their population at the expense of the lives of ‘enemy’ civilians¹¹⁰⁶. As a result, such countries are likely to find new ways to protect their own tribe¹¹⁰⁷.

Virtues like courage, heroism and sacrifice were created to turn killing into something acceptable. A crucial factor for victory was soldiers willing to die. Soldiers must swear an oath of allegiance that often indicates that they are ready to die for their country. In Israel, the oath contains: ‘I hereby swear and undertake... ..to obey all commands and orders that are

¹¹⁰³ Chamayou, *Drone Theory* (n 9) 83.

¹¹⁰⁴ *Ibid* 84-85.

¹¹⁰⁵ *Ibid* 86.

¹¹⁰⁶ *Ibid* 87.

¹¹⁰⁷ Mégret, ‘The Humanitarian Problem With Drones’ (n 998) 1310; David Bell, ‘In Defense of Drones: A Historical Argument’, (New Republic, 27 January 2012) <<https://newrepublic.com/article/100113/obama-military-foreign-policy-technology-drones>> accessed 31 May 2021.

given by authorised commanders, and to dedicate all my strength and even to sacrifice my life to protect the homeland and the freedom of Israel'¹¹⁰⁸. This oath does not only reflect militarism, but also the value of sacrifice¹¹⁰⁹, even if sacrifice is no longer needed.

Israeli MP Avshalom Vilan suggested in 2007 to amend it, replacing 'sacrificing life' with 'giving whole self', as Israeli soldiers rarely risk their lives¹¹¹⁰. However, his suggestion was rejected, as every Jewish-Israeli is expected to enlist and be ready to die for his homeland, even if death is unlikely. This reflects a contradiction between the ethos of sacrifice and the attempt to preserve soldiers' lives, shifting the risk to 'enemy' civilians (imperial combatant immunity).

Playwright Yonatan Geffen wrote a cynical poem on this manner: 'Warning: the Health Ministry announces that smoking is bad for your health; Warning: the Transport Ministry announces that driving on Israeli roads shortens your life; Warning: the Ministry of Defence announces that war can kill you.' The poem reflects the paradox of militarism, where security is a 'modern Golem' that eventually harms the safety of all Jewish citizens who are required to enlist and be ready to die – even if death is unnecessary and improbable¹¹¹¹.

Drones mirror the hierarchy of Israel's sensitivity to the loss of lives within the ethos of sacrifice. Soldiers' deaths are more sacred and noble than civilian ones. Paradoxically, Israeli combatants are considered more valuable than Israeli civilians¹¹¹². Their deaths are unacceptable and tragic. Sacrifice is no longer a requirement for the self-preservation of the

¹¹⁰⁸ Udi Lebel, 'Militarism Versus Security? The Double-Bind of Israel's Culture of Bereavement and Hierarchy of Sensitivity to Loss' (2011)16(3) *Mediterranean Politics* 365.

¹¹⁰⁹ James Eastwood, 'Rethinking Militarism as Ideology: The Critique of Violence After Security' (2018)49(1-2) *Security Dialogue* 44.

¹¹¹⁰ Yaakov Katz, 'MK: Change IDF Oath to Prevent Refusals' (*Jerusalem Post*, 19 August 2007) <<https://m.jpost.com/israel/mk-change-idf-oath-to-prevent-refusals/amp>> accessed 31 May 2021.

¹¹¹¹ Lebel (n 1108).

¹¹¹² *Ibid.*

settler colonial polity. In Israel, drone pilots take the soldiers' oath, but, like most Israeli soldiers, they do not take a physical risk. If sacrifice is no longer required for self-preservation, then sacrifice-based heroism is not possible for drone pilots and most Israeli soldiers¹¹¹³. We have also seen this problem in NATO's pilots who bombed dense civilian populations from a safe height¹¹¹⁴.

Other ideals have been emphasised in Israel and the US to portray drones as heroic¹¹¹⁵. Preserving combatants' lives has become the new ethos. Self-preservation is the new 'heroism'¹¹¹⁶. The old ethos of physical sacrifice on the battlefield is suddenly regarded as 'barbaric', 'primitive', and 'uncivilised'¹¹¹⁷. A 'primitive' ethos is for the ones who know that their death is inevitable (Third World or indigenous peoples). To keep the perception of heroism, a new meaning for war was developed alongside drones, through new terminologies that fit into the settler colonial mindset¹¹¹⁸.

For instance, in 2012 the pentagon and the US Defence Secretary planned to award drone operators Distinguished Warfare Medals, outranking combat medals like the Purple Heart. The public outcry and opposition inside the military to the proposal reflect the ambivalence and unease about whether operating a drone calls for heroism¹¹¹⁹. It is essential to understand that there is a difference between moral and physical courage. These two forms

¹¹¹³ Chamayou, *Drone Theory* (n 9) 98.

¹¹¹⁴ Prost (n 54).

¹¹¹⁵ Chamayou, *Drone Theory* (n 9) 100.

¹¹¹⁶ Ibid 101.

¹¹¹⁷ Tezenlo Thong, 'Civilized Colonizers and Barbaric Colonized: Reclaiming Naga Identity by Demythologizing Colonial Portraits' (2012) 23(3) *History and Anthropology* 375.

¹¹¹⁸ Chamayou, *Drone Theory* (n 9) 101.

¹¹¹⁹ Robert Sparrow, 'Drones, Courage, and Military Culture' in George Lucas (ed), *Routledge Handbook of Military Ethics* (Routledge 2015) 380.

of courage do not necessarily correlate as modern armies emphasise moral, rather than physical, forms of courage¹¹²⁰.

Drone operators can be perceived as courageous if they demonstrate that they are willing to overcome the fear of making difficult moral decisions and if they decide to do what is right rather than what is customary, expected, or prudential¹¹²¹. In that sense, there is an argument that courage is required to take someone's life, especially when seeing the results on a high-resolution monitor. Arguably, it takes courage to kill or to be an assassin, especially when the act is being recorded, documented, and possibly scrutinised. A drone pilot might be expected to replay a video of himself taking someone's life – and re-live this horrible moment¹¹²². Through this twisted logic, drone pilots have been portrayed as the new heroes of warfare, even though they are protected – if not mentally – then physically.

Despite this new emerging ethos, old ones still exist. Drone operators have been criticised for being 'computer geeks' while 'real soldiers' deal with 'real war'¹¹²³. Drone pilots are often recruited at a young age among the 'geeky' gaming community¹¹²⁴. They described their own experience using terminologies associated with 'geek' culture. They described drone violence as a science fiction experience in which they were 'electrified' and 'adrenalized'. Operators said that flying a drone is like playing the computer game Civilization¹¹²⁵. One analyst who served at US Central Command explicitly said that drones are 'like a videogame' and that 'It

¹¹²⁰ Peter Olsthoorn, *Military Ethics and Virtues: An Interdisciplinary Approach for the 21st Century* (Routledge, 2010); Peter Olsthoorn, 'Courage in the military: Physical and moral' (2007) 6(4) *Journal of Military Ethics* 270.

¹¹²¹ Sparrow, *Drones, Courage, and Military Culture* (n 1119).

¹¹²² Ibid 102.

¹¹²³ Ibid 106.

¹¹²⁴ Uhl (n 81).

¹¹²⁵ Akbar Ahmed, *The Thistle and The Drone: How America's War on Terror Became a Global War on Tribal Islam* (Brookings Institution Press 2013) 3.

can get a little bloodthirsty. But it's fu**ing cool'¹¹²⁶. Such statements reflect the two-competing interpretations of heroism and the complexity of the sacrifice ethos.

Perhaps the real type of heroism comes from being a whistle-blower like Bryant, who undertook a massive risk by going public against the US's drone program. As a result, he endured threats from strangers and was called a traitor by former friends and colleagues. Bryant says that the FBI had contacted him to tell him that he was on an ISIS hit list. The FBI reportedly said that 'bragging on social media' only puts Bryant at greater risk¹¹²⁷. In Israel, testimonies gathered by the Israeli NGO 'Breaking the Silence' demonstrate that at least some Israeli soldiers become whistle-blowers, showing genuine regret for their former actions. Nevertheless, they are a small minority¹¹²⁸.

Ex-combatants who show regret through remorseful confessions are a relatively small group¹¹²⁹. The mentality of being proud of atrocities is more common among drone pilots and IDF soldiers. We got a rare glimpse into the mindset of the Israeli Airforce, when its would-be lieutenant general, Dan Halutz, was asked what he felt after dropping a one-ton bomb on Gaza: 'a light bump to the plane as a result of the bomb's release. A second later it's gone, and that's all.'¹¹³⁰ This was after he dropped a one-ton bomb on the house of the Palestinian

¹¹²⁶ Tyler Wall and Torin Monahan, 'Surveillance and violence from afar: The politics of drones and liminal security-scapes' (2011) 15(3) *Theoretical criminology* 239, 248; Robert Sparrow, 'Building a Better WarBot: Ethical Issues in the Design of Unmanned Systems for Military Applications' (2009) 15(2) *Sci Eng Ethics* 169, 184.

¹¹²⁷ Vegas Tenold, 'The Untold Casualties of the Drone War: Former Members of the U.S. Drone Program Expose the Hidden Price of Remote Control Combat' (*RollingStone*, 18 February 2016) <<https://www.rollingstone.com/culture/culture-news/the-untold-casualties-of-the-drone-war-67029/>> accessed 28 March 2022.

¹¹²⁸ Israel Hayom, '600 Anti Breaking the Silence Officers' (*Israel Hayom*, 20 December 2015) <<https://www.israelhayom.co.il/article/340373>> accessed 31 May 2021.

¹¹²⁹ Sara Helman, 'Challenging the Israeli Occupation Through Testimony and Confession: The Case of Anti-Denial SMOs Machsom Watch and Breaking the Silence' (2015) 28(4) *International Journal of Politics, Culture, and Society* 377-394.

¹¹³⁰ Cassif, 'The War with Gaza' (n 1131).

leader Salah Shehadeh on 22 July 2002, killing 14 civilians, over half of them under 15, and wounding 170 people¹¹³¹. The same arrogant and smug attitude must have guided him when he became Chief of Israel's Airforce and took command of the entire fleet of Israel's drone operations (and later on, as Chief of Staff). Ofer Cassif, an Israeli politician from the Hadash party, used Halutz's quote not only to demonstrate Israeli apathy to the lives of the Palestinians, but also to show that 'most Israeli combatants... ...perceive the bombing and targeting of Palestinian civilians as no more than another simulation – a continuation of flight simulation, analytical models...¹¹³².

4.10. Moral and Psychological Injuries: PTSD, Anxiety, and Stress

Drone pilots are physically safe – but they risk their overall well-being. Their psychological wounds have been used to sustain a new heroic ethos of sacrifice¹¹³³, providing ethical grounds for drone violence. We have seen that drone pilots might be seen as brave because they are 'sophisticated' and 'civilised', unlike 'primitive' enemies who sacrifice themselves like 'barbarians'¹¹³⁴. At the same time, drone pilots might be considered 'brave' because they risk something – their mental state¹¹³⁵.

Most victims of drone strikes, all across the globe, are civilians. This may explain why some operators who are exposed to killing harmless individuals have PTSD. The responsibility of

¹¹³¹ Ofer Cassif, 'The War with Gaza Did Not Take Place' (2015) *Theory & Event* 18.1; Gary Solis, 'Targeted Killing and the Law of Armed Conflict' (2007) 60(2) *Naval War College Review* 127.

¹¹³² Cassif, 'The War with Gaza' (n 1131).

¹¹³³ Chamayou, *Drone Theory* (n 9) 103-105.

¹¹³⁴ Seneca H Forch, 'Is it a Sin to Use a Drone? Assessing the Applicability of Christian Just War Theory to the US Use of Drones in North Waziristan, Pakistan' (2019) *Honors College Theses* 226.

¹¹³⁵ Enemark (n 89).

taking someone's life is a terrible burden. Several empirical studies have corroborated this. 6%-7% of drone pilots reportedly suffer from PTSD¹¹³⁶. 'Existential conflicts', guilt, or remorse have often been quoted¹¹³⁷.

Drone pilots suffer from what Enemark calls a 'moral injury'. It is caused by a contradiction between their moral standards and the orders received by their superior officers. As a result, drone operators are exposed to moral and psychological injuries, which undermines the risk-avoidance rationale for using them in the first place¹¹³⁸. This might be one of the 'Achilles Hills' of this technology.

Additionally, operators' fatigue creates physical, emotional, and mental pressures, like the ones that doctors, nurses and lawyers deal with. If that is the case, some operators might suffer from a stressful workload, like other long-term monotonous jobs¹¹³⁹. Some described their experience as mundane, with stress associated with long shifts., as if their job is 'boring'¹¹⁴⁰. If so, some operators' stress might be related to 'occupational burnout'¹¹⁴¹.

Some might have doubts, asking themselves, did I make the right decision when targeting that building? Nevertheless, so do doctors at the ER. So perhaps PTSD should be widely interpreted

¹¹³⁶ Wayne Chappelle and others, 'Combat and Operational Risk Factors for Post-Traumatic Stress Disorder Symptom Criteria Among United States Air Force Remotely Piloted Aircraft "Drone" Warfighters' (2019) 62 *Journal of Anxiety Disorders* 86.

¹¹³⁷ Forch (n 1134).

¹¹³⁸ Enemark (n 89).

¹¹³⁹ Xinyun Hu and Gabriel Lodewijks, 'Detecting Fatigue in Car Drivers and Aircraft Pilots by Using Non-invasive Measures: The Value of Differentiation of Sleepiness and Mental Fatigue' (2020) 72 *Journal of Safety Research* 173; Wayne Chappelle and others, 'Assessment of Occupational Burnout in United States Air Force Predator/Reaper "Drone" Operators' (2014) 26(5-6) *Military Psychology* 376-385.

¹¹⁴⁰ Chamayou, *Drone Theory* (n 9) 109.

¹¹⁴¹ Chappelle 'Assessment of Occupational Burnout' (n 1136).

as an experience involving drone pilots and healthcare workers who make quick life-and-death decisions¹¹⁴².

Psychological issues of drone operators are related to guilt after killing or seeing someone die. This reflects people's moral scruples after committing or witnessing a murder¹¹⁴³. Some actions are memorable, emotionally upsetting, and cause stress without formally being diagnosed with PTSD¹¹⁴⁴.

Even if most drone pilots have not been diagnosed with PTSD, many suffer from prolonged anxiety. Studies suggest that the anxiety of typical soldiers is related to killing rather than being killed¹¹⁴⁵. At the end of WWI, studies indicated that soldiers suffered from 'war neuroses', as defined by Freud¹¹⁴⁶. The 'neuroses' took place not when soldiers were in danger, but when they were the cause of danger. The act of killing was associated with anxiety¹¹⁴⁷ and traumatic symptoms like the fear of death¹¹⁴⁸.

Unwillingness to kill is related to being powerless¹¹⁴⁹, while killing anxiety might be related to fear of enjoying the killing. Soldiers are expected to love their nation but within the boundaries of military norms. Discipline is a tool for sublimation under Freud's model of anxiety, as soldiers suffer from anxiety because they try to repress their urges¹¹⁵⁰. According

¹¹⁴² Damian Jacob Sendler, Aleksandra Rutkowska and Marta Makara-Studzinska, 'How the Exposure to Trauma has Hindered Physicians Capacity to heal: Prevalence of PTSD Among Healthcare Workers' (2016) 30(4) *The European Journal of Psychiatry* 321.

¹¹⁴³ Chamayou, *Drone Theory* (n 9) 110.

¹¹⁴⁴ Enemark (n 89).

¹¹⁴⁵ Dave Grossman, *On killing: The Psychological Cost of Learning to Kill in War and Society* (Back Bay Books 2009).

¹¹⁴⁶ Sándor Ferenczi, *Psycho-Analysis and the War Neuroses*. No. 2. (International Psycho-Analytical Press 1921).

¹¹⁴⁷ *Ibid.*

¹¹⁴⁸ *Ibid.*

¹¹⁴⁹ Nolen Gertz, 'Blood/Lust: Freud and the Trauma of Killing in War' 1(1) *Formations* 65.

¹¹⁵⁰ *Ibid.*

to Freud, the ego knows that any satisfaction driven by an instinctual demand should be suppressed. The idea that training and discipline are used to organise soldiers' impulses is also reflected in studies that most of them had chosen not to use their guns against their rivals in WWII¹¹⁵¹. Such findings led to changes in military training to increase the fire rate during combat¹¹⁵².

Bryant, who was mentioned earlier, reflects on such repressed emotions. He recalls how he witnessed a young Afghan child being killed by his drone. This experience kept haunting him. His superiors tried to belittle the incident by insisting that it was not a child but a dog. His peers cheerfully shouted 'Splash!' when dead bodies were flying around, declaring that: 'Bryant's popped his cherry!'¹¹⁵³. This demonstrates the possible high levels of psychological distress among drone pilots. Bryant felt the deaths of his victims closely. He knew it was wrong, but it was his job to keep a laser aimed at a building to guide a missile. Bryant also described how the military placed recruits in a movie theatre to watch a brutal montage of drone strikes played to heavy metal. His sergeant said that their job was to kill people. He was given narcotics to wake up and sleep while being ridiculed for being a 'Chair Force'. His squadron alone was involved in killing 1,626 people¹¹⁵⁴.

¹¹⁵¹ Samuel Lyman Atwood Marshall, *Men Against Fire: The Problem of Battle Command* (Combat Forces Press and William Morrow & Company, 1947).

¹¹⁵² Gertz (n 1149).

¹¹⁵³ Dan Hall, 'I Killed a Child With a Drone and Watched Them Die — But my Superiors Claimed it was 'Just a Dog'' (*The Sun*, 6 February 2020) <<https://www.thesun.co.uk/news/10789432/drone-operator-brandon-bryant-killed-13-people-child-dog/>> accessed 31 May 2021.

¹¹⁵⁴ Ibid.

If drone pilots suffer from stress, PTSD or 'moral injuries', how come they continue to kill other human beings? How do they overcome the inherent human tendency to avoid killing? A possible answer to these questions can be found under the 'Anatomy of Killing' model.

4.11. The Anatomy of Killing

Quite surprisingly, historical research on soldiers' behaviour on the battlefield disproves the accepted assumption that soldiers' natural impulse is to kill their opponents. Quite the opposite. Only 15% of ground soldiers ever used their weapons against the enemy on the battlefield in WWII. After WWII, the US Army Air Corps reported that 80% of soldiers did not fire their weapons at the enemy, even when their lives were at stake¹¹⁵⁵. In the 19th century, an even smaller number of soldiers fired their musket rifles at the enemy¹¹⁵⁶.

No wonder several experts have tried to inquire how contemporary militaries have indoctrinated their soldiers to increase their motivation to take someone else's life.

One such expert is David Grossman, a retired US Army lieutenant colonel. He founded the Killology Research Group, which explores the psychological effects of using lethal force, and developed a model called 'the Anatomy of Killing'. According to his model, several factors (elaborated below) increase the likelihood of soldiers overcoming their inherent resistance to kill, including the effect of authority, group absolution, distance, target attractiveness, and

¹¹⁵⁵ Atwood Marshall (n 1151).

¹¹⁵⁶ Grossman, *On Killing* (n 1145); Dave Grossman, 'Trained to Kill' (1998) 10 Christianity Today 137.

predispositions¹¹⁵⁷. This model is also applicable to drone pilots. Professor Charles Trappey from the Institute of Business and Management, NYCU, conducted a similar analysis¹¹⁵⁸.

4.11.1. Demands of Authority

In the 1960s, Milgram published his well-known obedience experiments. Participants believed they were administering electric shocks to a 'learner', an actor who pretended to be a participant. Whenever the 'learner' answered memory questions incorrectly, the participant was instructed to administer an electric shock, with the voltage increasing for each wrong answer. These fake shocks increased to levels that would have been fatal had they been real. Milgram's experiments found that many participants were all too willing to administer lethal shocks when instructed to do so by a figure of authority wearing a white lab coat¹¹⁵⁹.

When Milgram, a figure of authority, stood near his participants, they were likelier to obey. However, when he gave orders over the phone, fewer did. A study conducted by General S.L.A. Marshall found that soldiers behave in the same way. For example, he showed that soldiers are more likely to fire when officers are nearby when compared to soldiers who have no commanders around¹¹⁶⁰. Additionally, a significant factor that ensures a soldier keeps

¹¹⁵⁷ Grossman, *On Killing* (n 1145); Cody Moen, 'Anatomy of Initiation: A Unified Theory on Interstate War Initiation' (Thesis, College of Liberal Arts & Sciences 2020);

¹¹⁵⁸ Charles V Trappey, *Cultural Shaping of Violence: Victimization, Escalation, Response* (Purdue University Press 2004) 227.

¹¹⁵⁹ Stanley Milgram, 'Behavioral Study of Obedience' (1963) 67(4) *Journal of Abnormal and Social Psychology* 371.

¹¹⁶⁰ Moen (n 1157); SLA Marshall (n 1151).

fighting is the degree of respect for superior officers. Ben Shalit, Grossman, and Moen all noted a 1973 Israeli study that reached a similar conclusion¹¹⁶¹.

Milgram's experiments were followed by another renowned study: Zimbardo's Stanford Prisoners experiment (1973). It showed that students who were assigned to act as 'guards' could be cruel and brutal towards their peers designated to serve as 'prisoners'¹¹⁶². The experiment was planned to run for two weeks, but on the 6th day, Zimbardo had to stop it, due to the excessive aggression of 'guards' and the psychological breakdowns of 'prisoners'. While these studies are now considered unethical, more recent experiments similarly showed that participants would easily give what they perceive as lethal electric shocks to computer-generated avatars¹¹⁶³.

The intensity of a clear order to kill issued by a well-respected figure of authority increases the likelihood that a soldier would pull the trigger. This assumption relates to Freud's assertion of the power of the need to obey. We have seen in Milgram's and Zimbardo's experiments that the position of the researcher as a figure of authority affected the willingness of ordinary participants to be cruel and administer lethal electric shocks. Similarly, military officers represent legitimate lawful commands that are expected to be executed quickly and without hesitation. This typically includes an order to eliminate a 'terrorist' or a 'combatant' rather than a 'child' or someone explicitly 'innocent'¹¹⁶⁴.

¹¹⁶¹ Ben Shalit, *The Psychology of Conflict and Combat* (Praeger Publishers 1988); Moen (n 1157); Grossman, *On Killing* (n 1145).

¹¹⁶² Philip G Zimbardo and others, *The Stanford Prison Experiment* (Stanford University 1971).

¹¹⁶³ Dariusz Doliński and others, 'Would You Deliver an Electric Shock in 2015? Obedience in the Experimental Paradigm Developed by Stanley Milgram in the 50 Years Following the Original Studies' (2017)8(8) *Social Psychological and Personality Science* 927.

¹¹⁶⁴ Moen (n 1157).

Israeli law generally protects soldiers who blindly follow orders. The duty to follow all orders, and the impunity from committing illegal orders, had both been emphasised in the IDF's Manual on the Rules of Warfare: 'a soldier who has carried out an unlawful order will not be charged with an offence...'. In Israel's case law, the District Military Court for the Central Judicial District had similarly stated that: '...a soldier must obey every order (subject to the exception) given him by his commander while fulfilling his duty... ...the exception is that he need not execute an order that is manifestly illegal'¹¹⁶⁵.

The Court further defined the circumstances under which it is imperative for a soldier to refuse an order issued by his commander:

'The identifying mark of a "manifestly unlawful" order must wave like a black flag above the order given, as a warning saying: "forbidden". It is not formal unlawfulness, hidden or half-hidden, not unlawfulness that is detectable only by legal experts, that is the important issue here, but an overt and salient violation of the law, a certain and obvious unlawfulness that stems from the order itself, the criminal character of the order itself or of the acts it demands to be committed, an unlawfulness that pierces the eye and agitates the heart, if the eye be not blind nor the heart closed or corrupt. That is the degree of

¹¹⁶⁵ District Military Court for the Central Judicial District, Military Prosecutor v. Malinki (Kfar Kassem Case), Case No. 3/57, Judgment, 13 October 1958; ICRC, 'Practice Relating to Rule 154. Obedience to Superior Orders' (ICRC, 30 March 2022) <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_cou_il_rule154> accessed 30 March 2022.

“manifest” illegality required in order to annul the soldier’s duty to obey and render him criminally responsible for his actions’¹¹⁶⁶.

But, as of 2022, no case has been recorded of a soldier who refused an order because it was “manifestly unlawful” and was protected by a military court for refusing to obey the command¹¹⁶⁷.

4.11.2. Group Absolution

According to Grossman's model, group absolution consists of the following variables: intensity of support for killing; number in immediate killing group; identification with killing group; proximity of killing group.

This paradigm is also highly applicable to drone pilots since all these variables seem to be present in the control centre from which drones are typically launched. In addition, drone pilots are under intense group pressure to kill their targets. Colleagues might perceive failure to do so as turning one’s back to comrades in arms, even when a suspected terrorist poses no imminent threat. Here, too, soldiers who highly identify with their unit are – as Grossman points out – more likely to pull the trigger.

¹¹⁶⁶ Ibid.

¹¹⁶⁷ Itai Haviv Signature, ‘Courage to Refuse Letter’ (*Seruv.org.il*, 6 August 2002) <<https://web.archive.org/web/20021005170938/http://www.seruv.org.il:80/Signers/ItaiHavivEng.asp>> accessed 30 March 2022; Gershon Gorenberg, ‘The Thin Green Line: Do Israeli Soldiers Who Refuse to Serve in the Occupied Territories Advance the Cause of Peace or Hurt It?’ (*Mother Jones*, October 2002) <<https://www.motherjones.com/politics/2002/09/thin-green-line/>> accessed 30 March 2022;

Nearby soldiers might see hesitations and interpret them as treason. A soldier is more likely to kill when their comrades are nearby. Additionally, the bigger the military unit, the more anonymity it provides. There might be a reduction in personal responsibility if drone pilots sit together in a large room. Even if anonymity is not provided, this setting provides intense peer support, especially if the military unit is perceived as trustworthy and legitimate.

We have seen, for example, how American whistle-blower Bryant reflects, in his own words, on the importance of this group absolution among drone operators. They are indoctrinated to identify themselves with their military unit and to see it as legitimate. As a result, they spend 'quality time' close together in small groups, form bonds, and support each other when making the first kill (e.g., Bryant 'popped his cherry')¹¹⁶⁸.

In Israel, total identification, not only with one's peer group, but with the collective, mainly the Jewish state itself, is drilled into people's minds from a very early age. Children are pulled into the Zionist conveyor belt, which churns out young adults indoctrinated to believe that they are surrounded by enemies constantly plotting to destroy them. This makes it easier for them to fight and kill when they are enlisted as soldiers.

Many Israelis who serve together in combat units form long-lasting friendships during the time they spend together in training and active duty. For instance, Israeli soldiers of the 'Nahal', typically live together in a commune for one year before enlisting together as a group. When asked 'what's it like to enlist with your best friends?', one prospective soldier

¹¹⁶⁸ Dan Hall (n 1153).

answered: 'You totally feel safer and calmer when you know you're going to go through training with friends'¹¹⁶⁹.

Reflecting on the first year of living in a commune before enlistment, one prospective soldier said: 'We developed a sense of responsibility and took care of each other... ...We are really like family...'¹¹⁷⁰. The prospective soldiers said they knew they would be part of this military unit since 'seventh grade' or 'ninth grade'. They also explained that they had gone through months of preparations for the IDF, in which they talked about the significance of the People's Army and the value of defence. One prospective soldier said:

'you're put into teams with people you've never met. You are told that from now on you are each other's best friends and that in the future you will stand side by side in the battlefield. During the training we trained together, studied together, got to know each other in depth, but what really shaped us the most were the journeys – miles of walks with weights on our backs and no talking. The only thing that holds you back is knowing that your team is with you and they will help you no matter what happens... ...this is the thing that strengthens me the most and gives me the strength to keep going'¹¹⁷¹.

¹¹⁶⁹ Noa Reina, 'Carnival in Nahal: Living Together and Enlisting Together: Diary of Nahal Recruits' (*Mitgaisim*, 31 March 2022) <<https://www.mitgaisim.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA/%D7%A8%D7%90%D7%A9%D7%99/%D7%98%D7%95%D7%A8%D7%99%D7%9D-%D7%90%D7%99%D7%A9%D7%99%D7%99%D7%9D-%D7%95%D7%A8%D7%90%D7%99%D7%95%D7%A0%D7%95%D7%AA/%D7%A0%D7%97%D7%9C/#>> accessed 31 March 2022.

¹¹⁷⁰ Ibid.

¹¹⁷¹ Ibid.

This testimony fits perfectly into Grossman's paradigm and illustrates the intense cohesion and solidarity among Israeli youngsters who train themselves to join a fighting unit.

Even though autoethnography is not one of the primary methodologies of this dissertation, I still wish to share that when I was part of an Israeli youth movement ('Hashomer Hatzair'), we went through similar indoctrination, preparing us to eventually join prestigious combat units. When I was all of 14, I took part in the yearly 'Reconnaissance Survival Trip', tailored specifically for my age group. We carried our heavy equipment in potato sacks on our backs and had to navigate and survive in harsh weather conditions for three days and three nights. There was no shelter and no food. We did not sleep for 72 hours. We hiked and searched for our destination in a small squad, wholly detached from the world, with no technology besides a compass, a map, and an emergency radio. This trip is considered the most difficult and challenging one in the youth movement, testing your metal, both as a would-be youth guide and your potential as a future soldier¹¹⁷².

In retrospect, I understood that sending 14-year-olds to such dangerous 'survival missions' was a hazardous and irresponsible act.

A case in point is the Nahal Tzafit disaster, which occurred on 26 April 2018, when nine girls and one boy aged 17-18 died during a 'formation trip'. They were caught in a wadi by a flash flood and drowned in the middle of a season of heavy rainfall¹¹⁷³. The ten victims were students of a private-run pre-military preparatory school in Tel Aviv, whose purpose is to

¹¹⁷² Rakeft Heyman Zehavi, 'Research by the Council of Youth Movements: Trips of Youth Movements in Israel' (Council of Youth Movements, 2017) <https://bleknet.net/tni/Zafuna_VaNegba.pdf> Accessed 31 March 2022.

¹¹⁷³ Stuart Winer, 'Nahal Tzafit, Where 10 Students Died in a Flood, is a Popular Canyon Trail' (*The Times of Israel*, 26 April 2018) <<https://www.timesofisrael.com/nahal-tzafit-where-9-students-died-in-a-flood-is-a-popular-canyon-trail/>> accessed 19 September 2022.

foster a Jewish-Israeli-Zionist identity and to prepare Israeli youngsters, physically and mentally, for enlistment in the IDF. As of 2020, 54 such pre-military schools have been operating in Israel, training around 3,500 pupils yearly¹¹⁷⁴.

The average cost of sending your child to a pre-military training school is \$3600 (USD) per annum, a heavy financial burden for a typical Israeli family. But even more stunning is the willingness of parents to rob their sons and daughters of their carefree, formative years and to impose on them a harsh military discipline long before they are required to do so by law.

However, this aggressive nationalism ensures a fresh supply of recruits who have bonded in the youth movement or pre-military schools and are highly committed and motivated to perform unhesitatingly whatever task is assigned to them by their military superiors. In other words, Grossman's paradigm of 'Group Absolution' on steroids.

With such a high level of solidarity and motivation, it is easy to understand how Israeli soldiers can shoot Palestinian protestors with live ammunition or press a button that activates a lethal drone, killing and injuring in both instances, unarmed civilians who pose no threat to Israel's security or survival as a state.

4.11.3. Physical and Emotional Distance

Unlike Milgram's and Zimbardo's experiments above, the video game setting of drone pilots distances them from their violent acts in a different way. On the one hand, there is an

¹¹⁷⁴ The Joint Council of Mechinot (Pre-Military Leadership Academies), 'About the Joint Council' (*Mechinot*, 19 September 2022) <<https://mechinot.org.il/en-us/the-jcm/about-us/about-the-joint-council-241>> accessed 19 September 2022.

explosion elsewhere, which is communicated through technology without smelling the bodies. On the other hand, high-resolution digital videos and sounds are very similar to present-day computer games. Played on High-Definition monitors, or VR systems, modern video games produce a hyper-realistic gaming experience. Avatars of in-game characters often look like real people. The video game setting paradoxically distances operators from their actions by creating a digital proximity that immerses young soldiers in a reality-like experience they are used to getting as former gamers. If drone violence had not been carried out in such an immersive environment, it would not have felt like a video game because today's games are hyper-realistic. Launching a missile or flying an aeroplane does not feel like a video game, precisely because of the low visibility of these messy real-life conducts. Nevertheless, present-day drones provide complete visibility that mimics modern computer games.

According to Grossman, the distance between the target and the soldier consists of two variables: physical and emotional. Both affect the likelihood of overcoming the resistance to kill. According to this approach, aerial bombers and artillery barrages have the lowest level of resistance to kill, as these combatants are removed from the destruction they cause. It is less likely that a soldier would kill at point-blank, as it is harder to deny that the 'target' is as human as the soldier, who hears, sees, smells, and feels the 'enemy' die.

Emotional distance also allows soldiers to deny the humanity of their 'targets'. It rationalises and justifies killing through cultural, moral, and social differences and mechanical equipment. The cultural distance can be maintained by racial, ethnic, religious, and other differences. Moral distancing legitimises the elimination of the 'guilty' target, while class-based social differences allow soldiers to look down on victims. The mechanical distancing is enhanced by

sophisticated technologies like screens and night-vision goggles that turn people into green blobs¹¹⁷⁵.

Drone pilots might see the consequences of their actions with greater proximity than aeroplane bombers. A 'Predator' lets operators see the attack in real-time and witness the consequences. The operator's experience might be personal, close, and graphic, but so is the experience of professional gamers¹¹⁷⁶.

Lack of visual reciprocity is also connected to the morality of the attack. If there is no reciprocity, there is less shame in harming individuals because they can be killed without seeing the perpetrators. Drone pilots may be able to see their targets, but the targets do not see the pilots. It is easier to kill someone when you know that they do not see you. Seeing under Grossman's model is a two-way street that requires a target to be able to see the pilot and the pilot to notice that the target is seeing them. It is about establishing a line of communication between the aggressor and the victim. Most murderers need to pay the price of not only seeing the faces of their victims but the price of noticing that the victims see their faces – which might serve as a natural emotional deterrence of taking someone's life¹¹⁷⁷.

4.11.4. Target Attractiveness

Under Grossman's model, three 'Target Attractiveness' variables affect the willingness to kill: relevance of available strategies; relevance of victim; payoff of killing.

¹¹⁷⁵ Moen (n 1157).

¹¹⁷⁶ Katherine E Hollist, 'Time to be Grown-Ups About Video Gaming: the Rising Esports Industry and the Need for Regulation' (2015) 57 Ariz. L. Rev. 823.

¹¹⁷⁷ Chamayou, *Drone Theory* (n 9) 118.

Well-protected combatants, like drone pilots, are more likely to kill than vulnerable ones. One might think that not being at immediate physical risk would offer more opportunities for sparing the enemy due to the lack of immediate danger. However, when ‘targets’ do not pose any physical risk, it paradoxically reduces the possibility of altruism and mercy.

Killing is already challenging, so being at risk of being harmed while trying to survive makes it even harder to kill someone else. A nightly raid against an enemy who does not have night vision is relatively easy. An overwhelming military advantage, like the ability to use drones, gives soldiers greater assurance of surviving when trying to kill, so they can focus on their lethal task more efficiently when compared to soldiers who must constantly think about their survival.

The identity of the ‘target’ also plays a key role. There is a difference between killing enemy soldiers, political prisoners, civilians, or children. Different groups are perceived as posing different threat levels. For example, we have seen that an armed ‘military-aged male’ is perceived as threatening, even if they participate in a wedding ceremony. However, killing an unarmed individual who does not pose any threat is generally seen as unlawful and immoral – unless their death is part of an acceptable ‘collateral damage’ (which is too often the case).

The perceived ‘payoff’ also affects the likelihood of killing. What a soldier thinks they would gain from killing is an important variable in the target's attractiveness (as well as what an enemy might be losing). As a result, soldiers are more likely to kill people who provide a great advantage to the enemy¹¹⁷⁸. This can be exemplified by the perceived Israeli gain from killing Shehade, the leader of Hamas's military wing. As mentioned earlier, Shehade was killed by a

¹¹⁷⁸ Moen (n 1157).

one-ton bomb in a densely populated neighbourhood, followed by a controversial comment by the pilot (who later became Chief of Staff)¹¹⁷⁹. For most Israelis, the perceived gain of 'taking out' such a high-profile target justified dropping a bomb, at night, on a three-story apartment building, killing 14 innocent civilians who were asleep (acceptable 'collateral damage'), including nine children, and wounding 170 people¹¹⁸⁰.

4.11.5. Aggressive Predispositions of Soldiers

According to Grossman, the willingness to kill relies on aggressive predispositions across three variables: training and conditioning of the soldier; past experiences of the soldier; individual temperament of the soldier. In addition, conditioning has been used to manipulate the predispositions of people and animals¹¹⁸¹.

Modern training uses B. F. Skinner's conditioning techniques. For example, a soldier is more likely to kill if their training simulates actual combat conditions and includes some form of privilege or reward associated with completing his tasks. This is why drone pilots often train in simulators that look like the 'real thing'.

Negative experiences of soldiers can increase the likelihood that they will kill or seek revenge.

Grossman emphasises that:

¹¹⁷⁹ Avnery (n 141).

¹¹⁸⁰ Solis, 'Targeted Killing and the Law of Armed Conflict' (n 1131); Cassif, 'The War with Gaza' (n 1131).

¹¹⁸¹ B Frederic Skinner, 'Two Types of Conditioned Reflex and a Pseudo Type' (1935)12(1) The Journal of General Psychology 66.

‘The deaths of friends and comrades can stun, paralyze, and emotionally defeat soldiers. But in many circumstances soldiers react with anger... ..even our law includes concepts such as temporary insanity and extenuating and mitigating circumstances. Revenge killing during a burst of rage has been a recurring theme throughout history, and it needs to be considered in the overall equation of factors that enable killing on the battlefield...’¹¹⁸².

The murder of three Israeli teenagers in June 2014, kidnapped near the Israeli settlement of Alon Shvut in the West Bank, caused a public outcry and calls for revenge, leading to Operation Protective Edge, arguably, a classical case of ‘revenge killing’. 2,219 Palestinians lost their lives in this operation¹¹⁸³, carried out not only to deter similar acts of terrorism but also to appease Israeli public opinion.

Some Israeli combatants have testified about bombing Gaza during another deadly operation, ‘Cast Lead’. When asked by an interviewer: ‘Did you hesitate while pulling the trigger, or did you ask again?’ One soldier answered:

‘It feels terrible that we fired there. But we’d always get a phone call about the results of our hits. We were not told we had killed innocents, but we were told we hit three launcher crews... ..we killed the bad guys and the head of the Hamas high-arc [high-trajectory] ballistics section, so yes, you’re proud of yourself and your abilities. You feel like a Defense Force. We are hitting innocents and our artillery fire there was insane, but on the other

¹¹⁸² Moen (n 1157); Grossman, *On Killing* (n 1145).

¹¹⁸³ Al Mezan (n 25).

hand, you hear about shooting out of Gaza and you return fire immediately.’¹¹⁸⁴.

The quote above reflects how soldiers overcome possible hesitations and justify taking someone else’s life in a way that fits into Grossman’s model – by seeking revenge.

When considering aggressive predispositions, drones might be used to bypass the difficulty of turning civilians into assassins. A combatant might avoid shooting at someone due to a gesture of the target or something else that stops them from pulling the trigger. An enemy might light a cigarette in a way that would lead them to avoid shooting. It might feel like murder – and soldiers mostly do not wish to become murderers. Soldiers might see signs in their opponents that reveal they are as human as them¹¹⁸⁵.

4.12. The Right to Kill, the Right to Live, Altruism, Mercy, and the Duty to Refuse

Roman playwright Terence wrote in his play *Heauton Timorumenos* in 163 BC: ‘I am human, and I think nothing human is alien to me’¹¹⁸⁶. Over 2,000 years later, we still witness almost daily acts of humanism and sympathy, even among Israeli combat soldiers who have been indoctrinated to view Arabs as their implacable enemies.

One such soldier is retired brigadier general Iftach Spector, one of Israel’s legendary pilots, who took part in the destruction of Iraq’s nuclear facility. Spector and his fellow pilots are

¹¹⁸⁴Breaking the Silence, ‘Soldiers’ Testimonies from Operation Cast Lead, Gaza 2009’ (*Breaking the Silence*, 2009) <https://www.breakingthesilence.org.il/wp-content/uploads/2011/02/Operation_Cast_Lead_Gaza_2009_Eng.pdf> accessed 2 June 2021.

¹¹⁸⁵ Chamayou, *Drone Theory* (n 9) 197.

¹¹⁸⁶ Publius Terentius Afer, *Heauton Timorumenos* (163 BC).

considered Israel's first and foremost line of defence and are universally idolized as the crème de la crème. His 'J'accuse' letter, signed by 27 IDF reserve pilots, declared that he and his comrades would refuse to fly missions which put the lives of innocent Palestinians at risk:

'We... ..are opposed to carrying out illegal and immoral attacks, of the type carried out by Israel... ..we, who have been educated to love the state of Israel refuse to take part in attacks in civilian population centres. We refuse to continue harming innocent civilians.'¹¹⁸⁷.

This letter sent shock waves all across Israel's military establishment and triggered a broad and predictably negative response. Knesset members of the Likud party accused Spector and the other signatories of serving the interests of Israel's enemy and applauded the air force for removing them from active service¹¹⁸⁸. Spector's phone was inundated by angry and threatening calls. 'The signatories were branded enemies of the force, and all of Spector's mailboxes - physical, electronic, voice - and even his fax were jammed with abusive messages, echoed by newspaper articles in the same vein.'¹¹⁸⁹.

So did an autobiography Spector published following the scandal that erupted after his letter was made public. In his autobiography, Spector accused Air Force chief Dan Halutz of corrupting the moral values upon which Israeli pilots have been brought up. Interviewed by Haaretz he said:

¹¹⁸⁷ Conal Urquhart, 'Israeli Pilots Refuse to Fly Assassination Missions' (*The Guardian*, 25 September 2003) <<https://www.theguardian.com/world/2003/sep/25/israel>> accessed 2 June 2021.

¹¹⁸⁸ The Knesset, 'Special Conference: The fifty-sixth session of the Sixteenth Knesset' (Knesset, 29 September 2003) <https://knesset.gov.il/tql/knesset_new/knesset16_huka/HTML_28_03_2012_04-52-37-PM/FTR_056-03SEP29_SIFRIA-006.html> accessed 3 April 2022.

¹¹⁸⁹ Neri Livneh, 'Spreading His Wings' (*Haaretz*, 6 December 2007).

'I opened the paper and read the interview with Dan Halutz [then the commander of the IAF] and realized that the mistake was mine. When he replied to the question of what he feels when he drops a one-ton bomb on a densely populated neighborhood in Gaza by saying that he felt only a light tremor on the wing, and it passes, and that he sleeps well at night afterward – I understood that this was not a mistake, but moral deterioration. That illegal and immoral operations were being carried out deliberately.'¹¹⁹⁰.

A decade later, 43 reservists from elite IDF Intel unit 8200 published a similarly critical letter, which condemned the persecution of the Palestinian population, in which they participated against their will. In their letter, they said that: 'Intelligence is an integral part of Israel's military occupation over the territories'¹¹⁹¹.

In terms of prestige, being offered a job in unit 8200 is comparable to being accepted to Harvard's Law School. What exactly soldiers who serve in this intelligence-gathering unit do is shrouded in secrecy. Israel military expert Anshel Pfeffer attempted to give the readers of Haaretz a rare glimpse into the complex reality and sometimes painful dilemmas facing soldiers serving in 8200:

'Warfare in the 21st century is becoming increasingly sterilized, with less and less soldiers on the ground taking part in the cycle of intelligence gathering and target acquisition, with the actual strike often carried out by an

¹¹⁹⁰ Ibid.

¹¹⁹¹ Gili Cohen, 'Reservists From Elite IDF Intel Unit Refuse to Serve Over Palestinian 'Persecution'' (*Haaretz*, 12 September 2014) <https://www.haaretz.com/43-ex-unit-8200-soldiers-to-refuse-reserve-duty-1.5264418> Accessed 21 January 2021.

unmanned drone or fighter-jet launching a standoff missile beyond the visual range of the target. This high-tech, impersonal, new style of warfare may remove soldiers from the battlefield but it also makes those non-combat intelligence soldiers who learn intimate details of the potential targets' lives, see their photographs and hear their voices, feel much closer and emotionally involved than ever before.¹¹⁹²

When asked by Haaretz if he was a war criminal himself, Spector minced no words:

'No. I was not, and I think most of us were not. I think the air force and the IDF and the whole country, myself included, 'slid' into war crimes by going along with illegal acts that have been going on for years; and the fact that I did not say so from the first day of the occupation is because I am not as wise as [the late Prof.] Yeshayahu Leibowitz. What can I do?'¹¹⁹³.

That such top-level soldiers can express compassion, recognise an opponent's right to life, and admit to war crimes, shows that altruism and mercy can override dehumanising labels such as 'enemy' and 'terrorist'; that nothing human is alien even to high-ranking officers who have mastered the art of war and have devoted their entire life to practice it.

Spector was not the first, and certainly not the only Israeli, who called the bluff of Israel's claim that the IDF is the 'most moral army in the world'. Because of his illustrious military career and integrity, which is beyond reproach, his blunt criticism is an essential nail in the

¹¹⁹² Anshel Pfeffer, 'Unit 8200 Refuseniks Shed Light on Ethics of Israel's Intel Gathering' (*Haaretz*, 15 September 2014) <<https://www.haaretz.com/.premium-refuseniks-blow-lid-off-israel-s-intel-gathering-1.5301168>> Accessed 21 January 2022.

¹¹⁹³ Livneh (n 1189).

coffin of Israeli rhetoric that Israel is not violating human rights and the *jus in bello* in occupied Palestine. It is also further proof that individuals matter and that mercy and the right to live and refuse illegal orders can and should be upheld.

4.13. Israeli Philosophy of Military Ethics: A Dangerous Mix Between *jus ad bellum* and *jus in bello*

The 2008 UN Goldstone Report on Israel's operation 'Cast Lead'¹¹⁹⁴, had accused both the IDF and Palestinian militants of war crimes and of infringing on the fundamental right of civilians not to be targeted. The Israeli government denounced the report as prejudiced and full of errors. Israel denied that it deliberately targeted civilians and provided evidence that made Judge Goldstone express some regret about his report on the Gaza war. However, to the consternation of his colleagues on the UN committee, he retracted his claim that civilians were targeted intentionally as a matter of policy.

What is Israel's policy on target killings? In a previous chapter, it had been noted that the IDF has consistently refused to explain when and under which circumstances is a drone pilot authorised to operate their weapon. When human rights activists petitioned Israel's High Court, the IDF admitted that such guidelines exist but refused to offer specific details.

As noted earlier, the smug response of Dan Halutz, former Chief of Israel's Air Force, to the question of how it felt to drop a one-ton bomb on a house of a Palestinian militant, which

¹¹⁹⁴ Arye L Hillman and Niklas Potrafke, "The UN Goldstone Report and Retraction: An Empirical Investigation' (2015)163(3-4) Public Choice 247; B'tselem, 'Fatalities since Operation Cast Lead' <<https://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event>> accessed 31 May 2021.

resulted in the death of 12 children, gives us a glimpse into the kind of restraint exercised by Israeli pilots on similar missions. Even retrospectively, Halutz – Israel’s future Chief of Staff at the time – was unable and unwilling to express remorse over the tragic consequences of his mission.

We can come closer to understanding what role moral considerations play in Israel’s military policy by examining the army’s Code of Conduct, written by Asa Kasher, professor of professional ethics and philosophy of practice at Tel Aviv University and an academic adviser to the IDF. Kasher’s frequent television appearances have turned him into an easily recognisable media superstar. He has become an unofficial arbiter of what is morally right and wrong in warfare, a local guru who is consulted whenever a moral dilemma involving IDF operations is being debated in public. To his many detractors in the academic world, he is a colleague who has degraded himself by serving as His Master’s Voice, an unquestioning spokesman and supporter of the army.

Kasher and Major General Amos Yadlin (IDF’s military attaché to Washington, former head of Israel’s military intelligence, and former general in the Israeli Air Force) claim that the safety of Israeli soldiers takes precedence over the safety of enemy civilians¹¹⁹⁵. They justify dropping a bomb on a house of a terrorist – even if the collateral damage involves the death of many children – instead of risking the lives of Israeli soldiers by sending them on a dangerous commando raid that could have saved the lives of non-combatants¹¹⁹⁶. To put it crudely, the lives of Israeli soldiers matter to Kasher and Yadlin more than anything else.

¹¹⁹⁵ Asa Kasher and Amos Yadlin, ‘Assassination and Preventive Killing’ (2005) 25(1) SAIS Review of International Affairs 41.

¹¹⁹⁶ Ibid.

Kasher and Yadlin argue that Palestinian militants violate IHL not only by targeting Israeli civilians, but also by hiding amongst, and attacking from the midst of, the Palestinian civilian population¹¹⁹⁷. By doing so, they absolve the IDF of responsibility for the lives of those living in the vicinity:

‘...A combatant is a citizen in uniform. In Israel, quite often, he is a conscript or on reserve duty. His state ought to have a compelling reason for jeopardizing his life. The fact that persons involved in terror are depicted as noncombatants and that they reside and act in the vicinity of persons not involved in terror is not a reason for jeopardizing the combatant’s life in their pursuit.... ...The terrorists shoulder the responsibility for their encounter with the combatant and should therefore bear the consequences.... ...where the state does not have effective control of the vicinity, it does not have to shoulder responsibility for the fact that persons who are involved in terror operate in the vicinity of persons who are not’¹¹⁹⁸.

Kasher’s and Yadlin’s position was criticized by Philosophy Professor Avishai Margalit from the Hebrew University of Jerusalem, and Professor Michael Walzer from the Institute for Advanced Study in Princeton. Margalit and Walzer’s main contention is that Kasher and Yadlin’s claim is wrong and dangerous: ‘It erodes the distinction between combatants and

¹¹⁹⁷ Gili Cohen, ‘Author of IDF Ethics Code: Show Compassion, as Long as It Doesn’t Risk Israelis’ (*Haaretz*, 7 October 2014) <<https://www.haaretz.com/author-of-idf-ethics-code-show-compassion-as-long-as-it-doesnt-risk-israelis-1.5312528>> accessed 2 June 2021; Avishai Margalit and Michael Walzer, ‘“Israel and the Rules of War”: An Exchange’ (*New York Review of Books*, 11 June 2009); Michael Walzer, ‘The Risk Dilemma’ (2016) 44(2) *Philosophia* 289.

¹¹⁹⁸ Avishai Margalit and Michael Walzer, ‘Israel: Civilians and Combatants’ (2009) 56.8 *The New York Review of Books* 14.

non-combatants, which is critical to the theory of justice in war (*jus in bello*)'. Margalit and Walzer have this to say on Kasher and Yadlin's rules of engagement in Gaza:

'What is true for states is also true for state-like political bodies such as Hamas and Hezbollah, whether they practice terrorism or not. The people they represent or claim to represent are a people like any other... ..Fighting against a state is fighting against the human instruments of that monopoly — and not against anyone else... ..In settling disputes a gladiatorial duel would be better than a war. But duels like that take place in the Bible or in Homeric epics, not in the real world. In the real world, we watch with dismay a tendency to enlarge, rather than to reduce, the scope of wars.... ..non-combatants are innocent because they do not participate directly in the war effort; they lack the capacity to injure, whereas combatants qua combatants acquire this capacity. And it is the capacity to injure that makes combatants legitimate targets in the context of war. Men and women without that capacity are not legitimate targets'¹¹⁹⁹.

Kasher and Yadlin point out that during Operation Cast Lead the IDF made significant efforts to minimise collateral damage by distributing warning leaflets and by making more than 150,000 warning phone calls to terrorists' neighbourhoods to alert innocent inhabitants of an incoming Israeli attack. But Margalit and Walzer replied that 'some civilians never leave, despite repeated warnings... ..If an army is committed to taking positive measures to

¹¹⁹⁹ Margalit and Walzer, 'Israel: Civilians and Combatants' (n 1198).

minimize civilian casualties, and to accepting “costs” to its own soldiers, then it can’t be enough to make phone calls, even a lot of phone calls’¹²⁰⁰.

The position of Kasher and Yadlin relies on the ‘Double Effect’ doctrine, which holds that when soldiers attack a legitimate military target, they are not blameworthy for collateral damage, even if they know that it will harm civilians – so long as they do not intend the damage and so long as the damage is proportionate to the military advantage of the attack. Walzer proposed a revision of this doctrine, arguing that: ‘it isn’t enough not to intend the damage, it is morally necessary to intend that the damage not occur, and then to take positive measures, including measures costly to yourself, to avoid or minimize the damage’¹²⁰¹.

Kasher interprets IHL principles in a way that the lives of Israeli soldiers are more valuable than the lives of enemy civilians. Margalit and Walzer challenge this idea, that in a supposedly ‘just’ war the safety of ‘our’ soldiers takes precedence over the safety of ‘their’ civilians.

They continue:

‘The presumption of just war theory is that all the combatants believe that their country is fighting a just war. This is a necessary and also a reasonable presumption, given the way those who become combatants are brought up, educated, and indoctrinated. We can demand of soldiers that they react morally to concrete combat

¹²⁰⁰ Margalit and Walzer, “‘Israel and the Rules of War’: An Exchange’ (n 1197).

¹²⁰¹ Ibid.

situations; we can't demand that they judge correctly the moral merit of the reasons their political leaders give'¹²⁰².

Margalit and Walzer say that Kasher and Yadlin fail to separate two different senses of a just war: *jus ad bellum* (justice of the decision to go to war) and *jus in bello* (justice of the conduct of war). Blurring this line undermines the categorical distinction between combatants and non-combatants and puts enemy civilians at greater risk. Therefore, crimes committed by Hamas and Hezbollah should not allow their enemies to give up their obligation to avoid or minimise civilian deaths and injuries¹²⁰³:

'The rules of engagement for Israeli soldiers are the same in all the cases, no matter how they feel toward the different groups... ..merely "not intending" the civilian deaths, while knowing that they will occur, is not a position that can be vindicated by Israel's condemnation of terrorism... ..Its soldiers must, by contrast with its enemies, intend not to kill civilians, and that active intention can be made manifest only through the risks the soldiers themselves accept in order to reduce the risks to civilians... ..Without a willingness to fight in that way, Israel's condemnation of terrorism and of the use of human shields by its enemies rings hollow; no one will believe it... ..The military headquarters of the Israeli army – including its war situation room – is located in the middle of north Tel Aviv, in one of its most expensive residential areas. This is no secret, and the civilians living near the

¹²⁰² Ibid.

¹²⁰³ Margalit and Walzer, 'Israel: Civilians and Combatants' (n 1198).

headquarters knowingly put themselves at risk. Should they be more at risk because they live there voluntarily? We don't think so'¹²⁰⁴.

To sum it up, Margalit and Walzer argued that self-risk is morally required and that soldiers must take extensive risks to avoid becoming murderers. Margalit and Walzer assert that serious efforts should be taken to protect enemy civilians, as soldiers are moral agents. They see Kasher's philosophy as a dangerous mix between *jus ad bellum* and *jus in bello* – a mix that served Israel well in justifying the extensive death toll in Gaza. Kasher managed to turn what Chamayou sees as 'unilateral death dealings' into a moral 'duty'. Sacrificing enemy civilians is now allowed under Kasher's philosophy, and even mandatory, to save anyone who is part of Israel's nation-state. IDF's 'collateral damage' has always been justified in Israel under this logic.

It is noteworthy that Margalit and Walzer were not the first to argue that soldiers must risk themselves to minimise harm to enemy civilians. According to Albert Camus in 'The Rebel', one cannot kill unless prepared to die¹²⁰⁵. Drone pilots have become invulnerable if soldiers try to kill while avoiding death¹²⁰⁶. This is why Walzer favours ground interventions over long-distance ones to protect civilians under IHL.

We have seen that in one of Israel's operations, most Palestinians killed were civilians, almost a quarter of them by drones¹²⁰⁷. We also saw that this approach was adopted by other forces, like NATO, which intervened in Kosovo. Pilots flew at 15,000 feet to preserve their own lives,

¹²⁰⁴ Ibid.

¹²⁰⁵ Daniel Stern, 'The Fellowship of Men That Die: The Legacy of Albert Camus' (1998) 10(2) Law & Literature 183.

¹²⁰⁶ Michael Walzer, *Arguing About War* (Yale University Press 2006) 16.

¹²⁰⁷ Atef Abu Saif (n 24); Hass, 'Clearing the Fog' (n 24); Corporate Watch, 'Gaza' (n 24); Cook, 'Gaza' (n 97).

compromising accuracy and civilian lives¹²⁰⁸. Both NATO and the IDF disregarded the universal principle that all human life is of equal value.

‘What’s the use of moral philosophy?’ asks Chamayou, ‘[if] among other things, it facilitates the waging of war’¹²⁰⁹. In his pursuit of understanding drone violence, Chamayou quotes Menahem Yaari (the S.A. Schonbrunn Professor of Mathematical Economics at The Hebrew University of Jerusalem and former President of the Israel Academy of Sciences and Humanities):

‘A military code of conduct that discriminates, in cases of hazards being inflicted upon innocent civilians, on the basis of whether these civilians are ‘ours’ or ‘theirs’ is all the more worrisome when viewed against a general background of growing ethnocentric and xenophobic attitudes in Israel’s traditional establishment. We see an ongoing drift from universalism and humanitarianism toward parochialism and tribalism’¹²¹⁰.

Chamayou continues and says that:

‘We need to assess the full scale of this assault. The project is nothing less than a dynamiting of the law of armed conflict as it was established in the second half of the twentieth century: an evisceration of the principles of international law in favor of a nationalism of self-

¹²⁰⁸ Prost (n 54).

¹²⁰⁹ Chamayou, *Drone Theory* (n 9) 133.

¹²¹⁰ Ibid 133-134; Menahem Yaari, ‘Israel: The Code of Combat’ (*New York Review of Books*, 8 October 2009).

preservation. And, as we shall see, that is also the primary principle of the necroethics of drones'¹²¹¹.

4.14. The Legal Framework: Warfare, Law Enforcement or Manhunt

Two paradigms have been used to justify drone violence under international law: warfare (Law of Armed Conflict or IHL) and policing (law enforcement). The latter includes policing actions performed by combatants in a situation with no armed conflict. The former allows soldiers to shoot and destroy any legitimate military target. On the other hand, the police may shoot only as a last resort, for self-defence, or to protect others from an immediate threat.

We have seen that drones have been designed for killing – not capturing. They do not give the enemy a chance to surrender. IHL relies on a reciprocal balance between the rights and obligations of flesh-and-blood combatants who are assumed to be at some level of risk¹²¹². If that is the case, how can warfare be the appropriate framework for analysing drone violence?

Professor Bradley Strawser, who was mentioned earlier, proclaims that riskless warfare is preferable¹²¹³. Much like Kasher and Yadlin's argument, he blends *jus in bello* contentions with *jus ad bellum* arguments. Strawser claims that commanders have a moral obligation to

¹²¹¹ Chamayou, *Drone Theory* (n 9) 133-134.

¹²¹² Ibid 168.

¹²¹³ Anders Henriksen and Jens Ringsmose, 'Drone Warfare and Morality in Riskless War' (2015) 1(3) Global Affairs 285.

protect their soldiers in a just war and makes the following claim: 'drones offer clear normative advantages by better protecting their operators from harm...' ¹²¹⁴.

Lisa Hajjar, a Professor of Sociology at the University of California-Santa Barbara, criticised Strawser's claim. She argues that Strawser makes abstract moral arguments about drones and that such arguments must isolate what distinguishes them from other lethal technologies ¹²¹⁵.

Hajjar replies to Strawser:

'if drones offer a clear advantage to their operators, it is an advantage that compares to the combatant who perfidiously disguises himself to approach and kill his target unawares or the sniper who kills from a distance. Perfidy in the context of war is a war crime because the advantage the combatant gains from disguised sneak attack is illegal...
...Being present in or proximate to the battle or even flying manned crafts above targets and risking being shot down are the kinds of "disadvantages" that unmanned lethal technology eliminates. Thus one key question that drone warfare raises is whether it is moral (or legal) to be in war and be able to kill surreptitiously and systematically without the risk of being killed.' ¹²¹⁶.

Drones are used for 'riskless targeted killing', which 'negates an entire side of the "balance" that factors into what war is', says Hajjar. She is concerned with how seductive, and available

¹²¹⁴ Bradley Jay Strawser, 'Drones: Potential Moral Gains and Potential Moral Dangers in Tension' in Strawser (ed) *Opposing Perspectives on the Drone Debate* (n 994) 10.

¹²¹⁵ Lisa Hajjar, 'Is Targeted Killing War?' in Strawser (ed), *Opposing Perspectives on the Drone Debate* (n 994) 22.

¹²¹⁶ Ibid 22-23.

drone technology is and how drones have recently become a driving factor in the expansion of what is considered a 'just war'. The expansion of drone warfare created a 'total war', with 'no conceivable end or victory'¹²¹⁷. The terms of the debate around drones should be grounded in empirical realities, says Hajjar, not theoretical abstractions. And the reality is that the US (and Israel) misrepresent, as a matter of policy, what they do with drones and why¹²¹⁸. Hajjar further maintains that:

'for a moral argument to be moral, it should be grounded to the extent possible in empirically verifiable facts. One empirically verifiable fact is that targeted killing has become the centerpiece of US counterterrorism policy... ...in the propagandistic claims of officials who wish to legitimize it to a national public. That public may choose not to know the facts, but that is not the same as saying that the facts are not knowable'¹²¹⁹.

She concludes that '...war may someday end, but not because drones killed all the enemies in the world'¹²²⁰.

Strawser is not the only apologist who argues that drones fit well into the warfare paradigm. Jeff McMahan, White's Professor of Moral Philosophy at the University of Oxford, supports the idea of riskless war through drone technology: 'In war the fact that remotely controlled

¹²¹⁷ Ibid 29.

¹²¹⁸ Lisa Hajjar, 'A Sociological Intervention on Drones and Targeted Killing' in Strawser (ed), *Opposing Perspectives on the Drone Debate* (n 994) 83.

¹²¹⁹ Ibid 112-113.

¹²²⁰ Ibid 29.

weapons can be used without risk to the operator makes them unambiguously good in the hands of just combatants – that is, those who fight in a just war...'¹²²¹.

McMahan asserts, against Walzer, that whoever fights an 'unjust war' can never meet the *jus in bello* requirements. McMahan thinks that the moral status of combatants must rely on the 'just' cause for which they are fighting. He rejects the need for reciprocity and believes in a one-sided right to kill 'illegal' or 'unlawful' combatants, which is supposedly a 'just cause'. His approach divides the world into 'good guys' and 'bad guys', while the 'good guys' must do anything to kill the 'bad guys', like a Spaghetti Western¹²²². Like his colleague Strawser, McMahan can be criticised for blurring the crucial separation between *jus ad bellum* and *jus in bello*.

The opposite thesis to Strawser and McMahan relies on arguments from scholars like Walzer, Margalit, Hajjar, and Benvenisti. IHL is based on equality between the rights and obligations of combatants from all sides of an armed conflict regardless of whether the war is 'just'. Illegal actions committed by combatants' governments, commanders or even themselves do not imply that combatants are 'illegal' or 'unlawful'. Nevertheless, Scholars like Strawser and McMahan eventually analyse the Law of War and IHL in a way that glorifies drones, including autonomous ones, while ignoring the brutal reality of civilian casualties¹²²³.

Like Kasher and Yadlin, Strawser and McMahan ignore that today's drones are designed to operate in urban environments – not battlefields. There is no battle, so the ethics of warfare,

¹²²¹ Jeff McMahan and Bradley Jay Strawser, *Killing by Remote Control: the Ethics of an Unmanned Military* (Oxford University Press 2013) x; Henriksen and Ringsmose (1213).

¹²²² Henriksen and Ringsmose (1213); McMahan and Strawser (n 1221); Chamayou, *Drone Theory* (n 9).

¹²²³ Chamayou, *Drone Theory* (n 9) 165.

IHL, or the Law of War become irrelevant. Drones should be examined and understood under law enforcement guidelines or the 'manhunt doctrine' but not under traditional IHL categories. There are no clear combatants-civilians when drones are used, not in a meaningful sense. An enemy is often a 'prey', targeted even while having a family dinner. Reality is different from the canonical image that the ICRC has been portraying. Consequently, drones reflect a crisis in the war theory, as reciprocity is no longer there. The non-reciprocal right of combatants to kill without punishment becomes dangerous in the hand of drone operators¹²²⁴.

Riskless warfare creates a paradox. Without reciprocity, there are no moral grounds for injuring or killing. *Hors de combat* and non-combatants are not legitimate targets. Battlefield morality should be based on a variation of self-defence in the case of drones because any additional injury should be considered disproportionate and prohibited¹²²⁵.

Using force under the policing paradigm is permitted under international law only if there are no other means to deal with an imminent threat. Efforts to prevent 'collateral damage' become irrelevant. We are left with no more than extra-judicial executions. Applying lethal force 'proportionally' and 'distinctively' does not justify a lethal drone strike if the policing paradigm is applied.

We have also seen that the way in which drones are designed prevents them from following regulations, principles, or guidelines of policing. For example, the police cannot argue that they tried to follow 'proportionality' and 'distinction' when killing someone instead of doing

¹²²⁴ Ibid 163.

¹²²⁵ Paul W Kahn, 'The Paradox of Riskless Warfare' (2002) 22(2) *Philosophy and Public Policy Quarterly* 1; Chamayou, *Drone Theory* (n 9) 163.

everything in their power to capture them and bring them to justice, even if a suspect is running away. The police must warn a suspect before using lethal force and give the suspect a chance to surrender. With a few exceptions, drones were never designed for such tasks.

A drone is more like a ‘Robocop’¹²²⁶, or a police officer who wears full-body bulletproof vests that also prevent the police from arresting anyone. The only option according to how military drones are designed today, is to use violence – and kill without capturing, being judge, jury, and executioner¹²²⁷. The ‘kill, not capture’ ethos of drones violates the fundamental guidelines of law enforcement.

Some drone pilots might be civilians themselves, without a uniform. Under the Law of Armed Conflict, it is a war crime to allow civilians to engage in hostilities¹²²⁸. Perhaps some drone operators who violate IHL by not wearing a uniform can be defined as ‘unlawful combatants’ under the ‘Bush Doctrine’ mentioned earlier¹²²⁹. Operators might be criminals who commit extra-judicial murder under the law enforcement paradigm¹²³⁰.

US and Israel have tried to create new ad-hock governance for drone violence and targeted killings with no legal restraints. ‘Targeted killing’ is portrayed as a ‘just war’ of self-defence. Collective responsibility is used to justify drone violence against terrorists who conduct ‘unjust attacks’¹²³¹.

¹²²⁶ Melisa Foster and Virgil Haden-Pawlowski, ‘Regulation Robocop: The Need for International Governance Innovation in Drone and LAWS Development and Use’ (2015) 33.2 Security and Peace 61.

¹²²⁷ Chamayou, *Drone Theory* (n 9) 169.

¹²²⁸ Ibid 170.

¹²²⁹ Scheipers (n 623); Delahunty and Yoo (n 623).

¹²³⁰ Chamayou, *Drone Theory* (n 9) 171.

¹²³¹ Abraham D Sofaer, ‘Targeted Killings from Many Perspectives’ 91 Texas Law Review 925; Jeff McMahan, ‘Targeted Killing: Murder, Combat or Law enforcement’ in Claire Finkelstein, Jens David

Lethal drone strikes have been authorised under the argument that targets have posed an imminent threat that could not have been effectively addressed otherwise¹²³². According to McMahan, the burden of proof of criminal law, ‘beyond a reasonable doubt’, is suspended when terrorists conspire and train in evil countries that protect them. He justifies targeted killings through the law enforcement paradigm by arguing that drones are used against ‘unusually dangerous terrorists’ who cannot be arrested safely. The target is always a ‘rampaging gunman’ who ‘resists arrest’ and may be shot at and killed¹²³³. The US Supreme Court has adopted such approaches. For example, In *Tennessee v. Garner*¹²³⁴, judge Burger held that there are times when it is not constitutionally unreasonable to use deadly force in this manner.

Similarly, Phillip Montague, Professor of Philosophy from Western Washington University, argues that an attack on terrorists is acceptable when there is a joint action by a community against the action of a terrorist group. He justified targeted killings as a response to terrorists and their supporters¹²³⁵. Amos Guiora, a former Lieutenant Colonel in the IDF, justifies targeted killings under the principle of self-defence and under a checklist that examines the degree of danger from the target. He proclaims that Israel already follows proportionality,

Ohlin, and Andrew Altman (eds), *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University 2012) 135; Sofaer (n 1231).

¹²³² Richard V Meyer, ‘The Privilege of Belligerency and Formal Declarations of War’ in Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds), *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University 2012) 183.

¹²³³ Ibid.

¹²³⁴ *Tennessee v. Garner* [1985] 471 US 1, 11; Sofaer (n 1231).

¹²³⁵ Phillip Montague, ‘Defending Defensive Targeted Killings’, in Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds), *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University 2012) 285; Sofaer (n 1231).

necessity, and judicial review, based on intelligence¹²³⁶. However, this approach sustains unsuitable definitions like 'unlawful' or 'illegal' combatants'¹²³⁷, in which suspected terrorists lose all protections under IHL and law enforcement¹²³⁸. Israel has even used this idea to deny fundamental rights to POWs who are perceived as illegal combatants¹²³⁹.

The right to 'self-defence' combined with the idea of 'illegal combatants' allows countries like Israel and the US to attack anywhere, with impunity, while killing thousands of civilians, with no need to decide if there is an 'armed conflict'. Moreover, the 'war on terror' and the 'bush doctrine' allows Israel and the US to avoid taking any responsibility for the citizen death toll, and there is little chance of finding them accountable under the current enforcement mechanisms of international law¹²⁴⁰.

Self-defence is limited to the rights under Article 51 of the UN Charter, according to Law Professor Craig Martin. While post-9/11 discourse gave rise to self-defence argument, Martin relies on ICJ and claims that targeted killings are consensual attacks within other states' jurisdictions. This undermines *Jus ad Bellum* under the UN Charter, especially when such attacks are pre-emptive¹²⁴¹. This position reveals the fragility of the policy of targeted killings

¹²³⁶ Amos N Guiora, 'The Importance of Criteria-Based Reasoning in Targeted Killing Decisions' in Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds), *Targeted Killings: Law and Morality in an Asymmetrical World*. Oxford (Oxford University 2012) 303.

¹²³⁷ Keseme Philip Odudu and Ebitari Joshua Allison, 'International Humanitarian Law: the Status of Unlawful Combatants' (2017)8(2) Nnamdi Azikiwe University Journal of International Law and Jurisprudence 38.

¹²³⁸ Emanuel Gross, 'The Third Player-Illegal Combatant' (2015) 17 San Diego International Law Journal 199.

¹²³⁹ Hamza Ahmed Khalil Salman, 'Application of the Rules of International Humanitarian Laws to Palestinian Prisoner in Israel (MS thesis, Kuala Lumpur, Ahmad Ibrahim Kulliyah of Law, International Islamic University Malaysia 2020).

¹²⁴⁰ Chamayou, *Drone Theory* (n 9) 172.

¹²⁴¹ Craig Martin, 'Going Medieval: Targeted Killing Self-Defense and the Jus ad Bellum Regime' in Claire Finkelstein, Jens David Ohlin, and Andrew Altman (eds), *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University 2012) 223; Craig Martin, 'Challenging and Refining the Unwilling or Unable Doctrine' (2019) 52(2) Vanderbilt Journal of Transnational Law 387.

by drones. The way that force is used has changed. Colonial and settler colonial projects treat the 'enemy' differently than their subjects.

4.15. Protecting a Militarised Oppressor in a Neoliberal World

We have seen that drones reflect a wide gap between the two principles: preservation of life and the right to kill. Under Hobbesian logic, at times of peace, the sovereign protects the citizen, while at war, citizens must protect the sovereign¹²⁴². Under this logic, Carl Schmitt, a jurist and political theorist who was a prominent member of the Nazi Party (who was mentioned earlier), suggested a third principle: citizens must obey the sovereign and sacrifice themselves to enjoy protection. Similarly, according to philosopher Jean-Jacques Rousseau, one's life belongs to the state. This is the relationship between people and the sovereign, according to these modern political philosophers¹²⁴³.

The myth of the neo-liberal state relies on the protection of life, liberty, and property. The existence of the liberal-security state is used to justify the 'dronization' of warfare. Countries operating drones can be warmongers without sacrificing their citizens while violating other countries' sovereignty¹²⁴⁴.

Kings were able to sacrifice their subjects. Subjects were considered an expansible product of the sovereign due to the king's labour¹²⁴⁵. Nevertheless, under a Kantian philosophy, the 'right to war' is granted from the sovereign's duty to its citizens, so the Kantian relationship reverses

¹²⁴² Arihiro Fukuda, *Sovereignty and the Sword: Harrington, Hobbes, and Mixed Government in the English Civil Wars* (Clarendon Press 1997).

¹²⁴³ Chamayou, *Drone Theory* (n 9) 178-179.

¹²⁴⁴ *Ibid* 181.

¹²⁴⁵ *Ibid* 182.

Hobbes and Rousseau. Kantianism equally contrasts Schmitt's logic, in which citizens must obey and protect the sovereign, who easily risks citizens' lives¹²⁴⁶.

Replacing soldiers with drones reduces public criticism against state violence, as there is seemingly no warmongering penalty. For example, one of the main arguments against the Vietnam war was its cost to American lives. Similarly, in hyper-militarised Israel of the early 1950s, 'liberal' Zionists have used a new slogan – 'Let us live in this country!' – to contrast the nationalist ideal of 'it's good to die for our country', itself a paraphrase of the Roman motto of 'It is sweet and fitting to die for the homeland'¹²⁴⁷. The new slogan expressed the economic and class interests of landowners and other public sections, alarmed by the cost of war¹²⁴⁸.

Heavy casualties suffered by the IDF in South Lebanon drove Ehud Barak, Israel's Prime Minister, to pull Israel's forces out of the Lebanese quagmire. Much like the anti-war demonstrations in the US against the Vietnam War, Israeli Civil society NGOs like 'Four Mothers' acted within the settler colonial consensus in anti-war campaigns, emphasising IDF losses¹²⁴⁹. When soldiers are at the front line, their lives (as citizens and subjects) are at risk. There is a better chance for concerned voices to be heard from within, especially in countries that portray themselves as 'liberal democracies'. Under a Kantian approach, this reflects

¹²⁴⁶ Ibid 183.

¹²⁴⁷ Andrea Salvatore Antonio Barbieri, 'Men and Death in the West. Towards a New Interpretive Paradigm?' (2020) 5(1) *Culture e Studi del Sociale* 195.

¹²⁴⁸ Maya Mark, 'Just Ring Twice: Law and Society Under the Rent Control Regime in Israel, 1948–1954' (2013) 32(1) *Journal of Israeli History* 29.

¹²⁴⁹ Dafna Lemish and Inbal Barzel, 'Four Mothers' The Womb in the Public Sphere' (2000) 15(2) *European journal of communication* 147; Daniel Lieberfeld, 'Parental Protest, Public Opinion, and War Termination: Israel's 'Four Mothers' Movement' (2009) 8(4) *Social Movement Studies* 375; Daniel Lieberfeld, 'Media Coverage and Israel's 'Four Mothers' Anti-War Protest: Agendas, Tactics and Political Context in Movement Success' (2009) 2(3) *Media, War & Conflict* 317.

citizen mobility outside parliament, which would be difficult to achieve when drones replace soldiers¹²⁵⁰.

Drones incentivise using the military for amusement, profit, oppression, aggression, and settler colonialism – with no short-term physical risks. In militarised societies like Israel and the US, it is easy to get public support for acts of aggression, as governments present drones as preferable to risking soldiers. The deterring force of warfare risks is absent, as evident from Israel's motivation to continue and oppress Palestinians with 'risk-free' weapons¹²⁵¹.

This mentality is the opposite of the Kantian idea of a peace-seeking regime, as countries have little incentive to avoid drone warfare or prohibit it. 'What's the point of having this superb military you're always talking about if we can't use it?' ¹²⁵², screamed Madeleine Albright at Colin Powell. The history of colonialism and settler colonialism also demonstrates the motivation to engage in costless wars if the cost is not too high¹²⁵³, as demonstrated by the fall of SA Apartheid and the failure of colonialism in India.

When the price is externalised on 'enemy' civilians, there is no interest in peace, and a hyper-militarised state becomes even more appealing. During the first Intifada (1987-1993), Palestinians managed to pose a risk to Israeli soldiers and civilians. This led to a growing Israeli 'peace camp' that realised for the first time that 'occupation' has a cost. The risk that Palestinians posed to Israelis was one of the leading Israeli motivations to negotiate 'peace'. But in practice, the 'Oslo Accords' introduced new settler colonial practices and continued

¹²⁵⁰ Chamayou, *Drone Theory* (n 9) 184.

¹²⁵¹ Ibid 185.

¹²⁵² The Guardian, 'Reluctant Warrior' (*The Guardian*, 30 September 2001)

<<https://www.theguardian.com/world/2001/sep/30/usa.afghanistan>> accessed 2 June 2021.

¹²⁵³ Chamayou, *Drone Theory* (n 9) 186-187.

Palestinian oppression more brutally¹²⁵⁴. Today, Palestinians generally pose little risk to Israelis, and there is no significant 'peace camp'¹²⁵⁵. There is no short-term cost of oppressing Palestinians.

Israel's sovereign is in a hyper-militarised state that can perform what Kant wanted to prevent – leading citizens to a 'risk-free' war. Instead, violence is the default policy. In both colonial and settler projects, the risk has been shifted towards civilians of the 'enemy', often indigenous people. Equally, drones reduce the political price of losing human lives, the economic costs of military action, and the reputation loss associated with violence. Arguably, drones are unethical as they reduce the price of military action, while drones enjoy the projection of IHL due to their perceived precision, accuracy, and protection of human lives¹²⁵⁶.

Israeli-American sociologist Amitai Etzioni was criticised for his article 'Should Israel Flatten Beirut to Destroy Hezbollah's Missiles?'¹²⁵⁷. Under his logic, drones do not make it easier to go to war. After referring to the disengagement in Vietnam and the withdrawal from Iraq and Afghanistan, he proclaims that ground troops would have prolonged the war with more significant casualties and larger battle zones. Etzioni emphasises the advantages of drones and argues that the ability to deploy force with minimum casualties allows flexible and effective humanitarian intervention. He believes the US should learn from NATO's

¹²⁵⁴ Tariq Dana and Ali Jarbawi, 'A Century of Settler Colonialism in Palestine: Zionism's Entangled Project' (2017)24 *Brown Journal of World Affairs* 197; Veracini, 'The Other Shift' (n 421).

¹²⁵⁵ Eran Halperin and Daniel Bar-Tal, 'The Fall of the Peace Camp in Israel: The Influence of Prime Minister Ehud Barak on Israeli public Opinion: July 2000–February 2001' (2007)6(2) *Conflict & Communication Online* 1-18.

¹²⁵⁶ Chamayou, *Drone Theory* (n 9) 189.

¹²⁵⁷ Ben Norton, 'Prominent American Professor Proposes that Israel "flatten Beirut" — a 1 Million-Person City it Previously Decimated' (*Salon*, 18 February 2016) <https://www.salon.com/2016/02/18/prominent_american_professor_proposes_that_israel_flatten_beirut_a_1_million_person_city_it_previously_decimated/> accessed 2 June 2021.

intervention in Libya through drone strikes¹²⁵⁸. There will always be civilian and military casualties on all sides, and drone strikes are the 'lesser of two evils', says Etzioni, who justifies inflicting reasonable 'collateral damage' because it is impossible only to kill 'bad people'. He consequently thinks that Israel and the US should rely on drones extensively¹²⁵⁹. His approach fits with settler colonial militarised mentalities.

Opposing Etzioni, Benjamin Friedman argues that better decisions are more likely to be taken without drones. The blowback and the humanitarian toll are often not worth the benefit. The question should not be what the best way to kill is, but if we should kill at all. According to Friedman, there are non-lethal alternatives. Civilians would be better off if they were subjected to close combat because 'risk-free wars' are 'dumb wars'. The lack of consequences makes it easier to 'casually' drop bombs. Drones minimise restraints like human and economic costs of warfare, so they encourage whimsical violence. By lowering costs, drones prevent public debate and make killing easier¹²⁶⁰.

Like Friedman, Weitzman says that the very logic of violence leads to an attempt to moderate it in a way that allows states to abuse IHL. Military action allows violence to be managed and calculated – if the level of violence is acceptable. Lethal drones are falsely perceived as a moral technology because scholars like Etzioni ignore unsustainable greater evils. Drones are the

¹²⁵⁸Amitai Etzioni, 'The Great Drone Debate' (*Military review*, 1 April 2013) <<https://ssrn.com/abstract=2274211>> accessed 2 June 2021.

¹²⁵⁹*Ibid.*

¹²⁶⁰Benjamin H Friedman, 'Etzioni and the Great Drone Debate' (*The National Interest*, 5 October 2011) <<https://nationalinterest.org/blog/the-skeptics/etzioni-the-great-drone-debate-5982>> accessed 2 June 2021.

primary method of exercising violence, while flexible terms, such as degree, negotiation, proportion, and balance, are abused¹²⁶¹.

Weitzman sees drones as a technology that shapes our humanitarian present. They help Israel govern Gaza at a 'humanitarian minimum', that is tolerated internationally. While some regard drones as 'necessary', they are arguably the worst type of evil because of how tolerated and acceptable they are, says Weitzman. Such evil can be used frequently and leads to more victims. This can be demonstrated even by looking at NGOs that shifted from focusing on victims of war to mechanisms of law violations. This includes a Human Rights Watch report on civilian casualties in Gaza that focused excessively on drones' technical capabilities (2009)¹²⁶².

Current neoliberal governments still require basic welfare to be able to recruit soldiers. National insurance and education increase the possibility of recruiting soldiers who are healthy, educated and without a criminal record. Militarised countries might invest in human capital, education, health, and welfare. 'Dronization' reduces a General's need for welfare. This is another way of understanding the 'zero loss' and the attempt to preserve subjects' lives. It is a paradox when the sovereign does not risk its civilians and then harms the same lives – socially¹²⁶³.

¹²⁶¹ Weizman, *The Least of All Possible Evils* (n 1001).

¹²⁶² Ibid.

¹²⁶³ Chamayou, *Drone Theory* (n 9) 193-194.

4.16. Automated and Autonomous

One of the Pentagon's goals is to use fully autonomous drones eventually. The dream of future wars is a self-driven weapon without a human operator buzzing overhead. Current principles already predict minimal humane control over drones. The pressure of the 'war on terror' combined with advances in computerisation and miniaturisation would eventually lead to fully autonomous weapons, exposing civilians and indigenous people to injury and possible death. Human Rights Watch has already called for new laws to abolish autonomous drones in over thirty countries. Pakistan, a country that suffered perhaps the most from lethal drone strikes, was the first to join this initiative in 2013¹²⁶⁴.

In the future, drones might become autonomous through advancements in artificial intelligence that would make deadly decisions autonomously. Of course, some non-lethal weapons are already semi-autonomous, including surveillance drones and drones that gather intelligence, but even these tools are currently under human control.

The prospect of drones that act autonomously might serve oppressive regimes even further, as there would be no moral agent that would be able to refuse or act ethically when ordered to commit war crimes. Moreover, autonomous drones pose legal and moral dilemmas, including their ability to act according to the principles of proportionality and distinction, as humans should eventually be found accountable for the harmful consequences of autonomous drones on civilian populations. For instance, in October 2018, the Human Rights Committee recommended that autonomous weapons be banned because they lack human emotions and judgment, infringing the right to life. Furthermore, the rapid progress in

¹²⁶⁴ Moyn, *Humane* (n 35).

artificial intelligence might introduce a new kind of dehumanisation associated with the use of drones – this time with no human operators or without humans throughout the decision-making process.

Some might consider this future development a possible humanitarian achievement, thanks to automated decision-making processes' perceived 'accuracy'. Drones might be programmed to act 'legally' and 'morally', with an artificial conscience. The software will act according to IHL and ethics without any emotions. No fear, frustration or revenge. This perception relies on drones being more humane than human operators¹²⁶⁵.

According to Ben-Naftali and Trigger, autonomous drones are a technological response to states and political entities that use humans as weapons, like suicide bombers and Kamikaze. Autonomous drones represent a desire to make artificial anthropoids that serve and protect the creators. Ben-Naftali and Trigger reflect on problems of this technology, including programming errors, unpredictability, ambiguity, lack of transparency, deviation from regulation in the name of security, economic considerations connected to investors, and expectations for financial or political returns¹²⁶⁶.

This political process of 'dronization' is affected by the economic environment. Drones already serve profit and domination, leading to the development of systems that are not just automated but also autonomous – capable of making their own decisions¹²⁶⁷. According to the US Air Force, drones have a right to self-defence. Targeting drones, including with radar,

¹²⁶⁵ Ibid 208.

¹²⁶⁶ Ben-Naftali and Triger (n 127).

¹²⁶⁷ Ibid.

raise a right to kill, according to US military lawyers¹²⁶⁸. Attacking drones does not fundamentally differ from attacking other types of military objectives. Such an attack endangers a possible perpetrator to use the self-defence doctrine if the attack on the drone is an 'armed attack' under Article 51 of the UN Charter or under IHL that sees hostilities participants as legitimate targets¹²⁶⁹.

This brings up to the meaning of 'humanity'. Humanism creates a semantical gap around the meaning of being humane. One meaning is what people are, their essence. Another is being a decent human – acting humanly. Philosophical humanism reflects both of those meanings. It is unclear if the ethics of autonomous drones would be more humane than present-day ones under these meanings. Theoretically, the 'humanism' of drones might be possible if the 'right' rules of engagement are programmed, as humans apply 'robo-ethics', such as Asimov's rules of robotics, to kill more ethically or, according to IHL. But when autonomous drones kill, it might be considered murder¹²⁷⁰.

IHL distinguishes between a weapon that is an object and a combatant that is responsible for its use. But drones are already partially autonomous – decisions are being made based on automated processes such as algorithms and statistical data on deviations from behavioural patterns. The weapon and the combatant are already the same, without an appropriate status

¹²⁶⁸ Peter Singer, 'Ethical Implications of Military Robotics' (*US Naval Academy*, 25 March 2009) <https://www.usna.edu/Ethics/_files/documents/PWSinger.pdf> accessed 2 June 2021; Ben-Naftali and Triger (n 127).

¹²⁶⁹ Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, article 4; Additional Protocol I to the Geneva Conventions of 12 August 1949 (n 608), article 43; Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, article 13(3); Ben-Naftali and Triger (n 127).

¹²⁷⁰ Chamayou, *Drone Theory* (n 9) 209.

under IHL. Accountability and justice become nearly impossible with drones. If a drone commits a war crime based on information from algorithms, it is unclear if the responsibility lies with the commander, the programmer, or someone else. The commander or the operator might say that they had no control over the information or that they acted according to the information provided by a program. The manufacturer or the sovereign might have accountability, or even the drone itself¹²⁷¹.

Human agents already take less and less responsibility in the decision-making process, even if an operator pushes a button under his commander's approval. There are layers of semi-autonomous technologies already, as well as automated mechanisms. But Robo-ethics will make it difficult to find who is accountable in the future¹²⁷². During the US war on Iraq, there was a computer software that calculated that 22 bombs would lead to over 30 citizens killed. But the US still approved these attacks, not because of an error under the fog of war, but as an informed decision to risk and kill civilians. So, the bar of proportionality can be easily manipulated¹²⁷³.

Robots cannot refuse and cannot rebel, as they currently do not have a conscience and might never have one¹²⁷⁴. In theory, robots might be more 'ethical' than humans and make better decisions. Nevertheless, their ability to decide relies on human input. Additionally, robots might be used in 'unjust wars'¹²⁷⁵.

¹²⁷¹ Ibid.

¹²⁷² Ibid 212.

¹²⁷³ Ibid 216.

¹²⁷⁴ Ibid 218.

¹²⁷⁵ John P Sullins, 'RoboWarfare: Can Robots Be More Ethical Than Humans on the Battlefield?' (2010) 12(3) Ethics and Information Technology 263.

Perhaps there is no sense in talking about inanimate objects as ‘being humane’. Humans can show kindness, mercy, or compassion, but it is unclear if these attributes are relevant when it comes to robots. Robots might further dehumanise the battlefield, as anthropomorphic terms such as ‘humane’ and ‘ethical’ are false attributions regarding robots. Using ‘humane’ to describe drones or robots opens the gate to other meanings with little intrinsic validity to what robots do¹²⁷⁶.

4.17. Conclusions

Zionists have been acquiring and occupying Palestinian territory since the early 20th century, first, by purchasing them from wealthy Arab landowners and forming isolated Jewish enclaves. Then, during the War of 1948, by driving hundreds of thousands of Palestinian inhabitants away through a policy of intimidation, massacres and forced expulsion.

Israel’s settler colonial plan went into high gear in 1967 when a swift military victory triggered an unprecedented wave of euphoria and messianic fervour. Religious and secular Jews alike began to believe in a divine intervention designed to help them regain control of the Land of Israel, which had been promised to their ancestors in biblical times. Virulent nationalism and religious fundamentalism gave rise to a ‘Make Israel Great Again’ movement, which led to a dizzyingly rapid establishment of settlements in what was described as ‘Greater Israel’ (though, historically, there never was such an entity and Jews were in full control of parts of their homeland for no more than seven decades).

¹²⁷⁶ Noel E Sharkey, ‘The Evitability of Autonomous Robot Warfare’ (2012) 94(886) International Review of the Red Cross 787.

In the Spring of 1963, Israel's first Prime Minister, David Ben-Gurion, wrote to President Kennedy that the liberation of Palestine would bring another holocaust: '[the liberation of Palestine] is not possible without the destruction of the Israeli people. But the people of Israel are no longer in the miserable situation of the six million defenceless Jews who were killed by Nazi Germany...'¹²⁷⁷.

Since 1967, Israel has intensified its domination of the Palestinians with impunity. Coupled with Israel's fanatic militarism, its delusional ideas of being 'the Chosen People' and how the memory of the Holocaust is constantly being manipulated to induce a sense of paranoia and a forbidding feeling of existential insecurity may give us a clue as to how Israel can so easily humiliate, harass, suppress the Palestinians and to place such a low value on their lives. In one of the recent rounds of fighting between Israel and Hamas in May 2021, more than 230 Palestinians were killed in less than two weeks – over a quarter of them children¹²⁷⁸. More specifically, at least 67 Palestinian children were killed, reported the New York Times¹²⁷⁹.

It is important to note that Israel's appetite for expanding its territory in the aftermath of the Six-Day War was not limited to biblical lands. As soon as the guns were silenced, Israel built settlements in the Sinai Peninsula, an uncontested Egyptian territory, and in the Golan Heights. This Syrian region had been annexed and is still under complete Israeli control.

¹²⁷⁷ Zertal, *Israel's Holocaust and the Politics of Nationhood* (n 742); CCCB, 'Idith Zertal. Nation and Death' (CCCB, 16 February 2010) <<http://www.cccb.org/en/activities/file/idith-zertal-nation-and-death/218008>> accessed 5 June 2021; Baruch Kimmerling, 'Israel's Culture of Martyrdom' (*The Nation*, 22 December 2004) <<https://www.thenation.com/article/archive/israels-culture-martyrdom/>> accessed 5 June 2021.

¹²⁷⁸ Adam Shatz, 'Ghosts in the Land on the war in Israel-Palestine' (2021) 43(11) *London Rev. of Books* 1.

¹²⁷⁹ The New York Times 'They Were Only Children' (*New York Times*, 29 May 2021) <<https://www.nytimes.com/interactive/2021/05/26/world/middleeast/gaza-israel-children.html>> accessed 10 July 2021.

‘The sleep of a labourer is sweet, whether they eat little or much, but as for the rich, their abundance permits them no sleep’, says Ecclesiastes¹²⁸⁰. Now, with an abundance of newly acquired land, Israel – facing opposition and troubles brewing all along its long and hard-to-monitor and defend borders – has a lot to lose sleep about.

The need to protect the conquered Egyptian, Syrian and Jordanian territories presented new, vastly more complicated dangers and necessitated the possession of better, smarter, more lethal weapons. Thus, the emergence of a burgeoning arms industry, tasked with the mission of developing mortars, tanks, and aeroplanes. And – in a serendipitous stroke of luck – a crewless aircraft, designed initially to gather information on enemy positions. But, like a butterfly that starts its life as an unobtrusive egg, it was transformed, in due course, into a dazzlingly beautiful flying machine. A ‘magic weapon’ that poses no danger to its operators can kill individuals thousands of miles away with ‘surgical precision’.

The drone, a brainchild of Israeli engineers, is indeed proof that necessity is sometimes the mother of invention. Though, in Israel’s case, it is, arguably, not so much a matter of necessity as it is a self-inflicted need to remain forever a nation of warriors, always on the lookout for the next calamity. It is a tragic predicament of its own making, which goes back to Zionists’ deliberate decision to adopt a settler colonial stance.

With a population of 8,654,535 Israel is one of the world’s smallest countries. Next on the list is Switzerland – with 8,654,622 inhabitants. And yet, Switzerland has no arms industry to speak of, whereas Israel is on the world market, selling weapons to over 130 nations on

¹²⁸⁰ *Ecclesiastes* 5:12 (New International Version of the Holy Bible, 1978).

earth¹²⁸¹. In 2009, Israel was the world's leading producer and exporter of drones¹²⁸², selling them incongruously to the world's leading superpowers – Russia and the US. In 2013 Israel was still the biggest exporter of drones on the planet, selling \$4.6 billion worth of drones in less than a decade¹²⁸³.

As of 2019, there are more than 30,000 military drones used in over 100 countries¹²⁸⁴, and consequently, there has been an increase in the scope of drone violence. Due to the significant number of civilian casualties, the UN acknowledged and discussed their legal, ethical, and political implications¹²⁸⁵. However, in Israel, there is little public discussion of this phenomenon¹²⁸⁶, and drones are mostly portrayed as a low-cost and risk-free solution to the 'Palestinian problem'.

For young Jewish-Israeli soldiers, who had been brought up to believe that they are God's 'chosen people', entitled to all of the Land of Israel¹²⁸⁷, pressing a button that transforms suspected Hamas militants into charred bodies, is, perhaps, an essential, life-saving task. As discussed earlier in this chapter, drone violence is regarded by most Israelis as a fully justified

¹²⁸¹ Yoav Ziltun (n 345).

¹²⁸² Neve Gordon, 'The Political Economy' (n 933).

¹²⁸³ Cohen 'Israel Is World's Largest Exporter of Drones' (n 953).

¹²⁸⁴ Warren P Strobel, 'Military Drones Now Common to Nearly 100 Nations' (*The Wall Street Journal*, 25 September 2019) <<https://www.wsj.com/articles/military-drones-now-common-to-nearly-100-nations-report-finds-11569403805>> accessed 15 May 2021; New America 'Who Has What: Countries with Armed Drones' (*New America*, 15 May 2021) <<https://www.newamerica.org/international-security/reports/world-drones/who-has-what-countries-with-armed-drones/>> accessed 15 May 2021.

¹²⁸⁵ UN, 'Discussing Drones at the UN Headquarters' (UN, 27 October 2015) <<https://www.un.org/disarmament/update/discussing-drones-at-the-un-headquarters-2/>> accessed 2 June 2021.

¹²⁸⁶ Hamushim, 'Drones – Israel's Main Weapon' (n 955).

¹²⁸⁷ Nur Masalha, *The Bible and Zionism: Invented Traditions, Archaeology and Post-Colonialism in Palestine-Israel*. Vol. 1. (Zed Books 2007) 17-18.

act of self-defence and an expression of sheer patriotism. Consequently, pre-emptive acts of retribution for possible future crimes have been carried out with few reservations.

When it comes to a vengeful mindset, passions of hatred, nihilistic militarism, Islamophobia and ultra-nationalism, the US does not lag far behind Israel. See the white supremacists who elected Trump and stormed the Capitol in a tsunami of lawlessness¹²⁸⁸. They are still parading the streets of America, spreading their vitriol and terrorizing minorities – as the FBI had recently announced that hate crimes against Black and Asian minorities had risen to the highest level in twelve years¹²⁸⁹.

Perhaps only by exposure to physical risk do soldiers have the potential to become moral agents. This capacity is less connected to ‘What should I do?’ but more to ‘What will I become?’. We have seen in this chapter that Israel decided to adopt the ethics of total self-preservation, as Kasher formulated it, an ethical philosophy tailored to the IDF's needs. The philosophy of self-preservation legitimises drones as a tool for violence, oppression, and assassinations¹²⁹⁰.

This type of ethics has been used to justify the transformation of warfare, from possibly asymmetrical, to being completely ‘unilateral’¹²⁹¹.

¹²⁸⁸ Jin Chang, ‘White Supremacists and the White Urge to call them Terrorists’ (2021) 20(3) *Taboo: The Journal of Culture and Education* 5.

¹²⁸⁹ David Nakamura, ‘Hate Crimes Rise to Highest Level in 12 Years Amid Increasing Attacks on Black and Asian People, FBI Says’ (*The Washington Post*, 30 August 2021) <https://www.washingtonpost.com/national-security/hate-crimes-fbi-2020-asian-black/2021/08/30/28bede00-09a7-11ec-9781-07796ffb56fe_story.html> accessed 26 September 2021.

¹²⁹⁰ *Ibid.*

¹²⁹¹ Anna Hadfield, ‘Review: A Theory of the Drone’ (*Drone Center*, 19 March 2016) <<https://dronecenter.bard.edu/theory-of-the-drone/>> accessed 2 June 2021.

In response to this new form of unilateral violence, in a small field in Pakistan, international activists from ‘#NotABugSplat’ project have placed a massive portrait of a nameless girl who lost her parents and her brother as ‘collateral damage’ to a drone strike on 21 August 2009.

The artists said that:

‘Since 2004, drone strikes in Pakistan have killed an estimated 3,000+ people. While some of these were high-profile targets, a large number were civilians. Including 160 children. The people who operate the drones describe their casualties as “bug splats”, since viewing the body through a grainy-green video image gives the sense of an insect being crushed’¹²⁹².

The portrait, without saying a single word, significantly scrutinises the civilian death toll in Pakistan: ‘Now, when viewed by a drone camera, what an operator sees on his screen is not an anonymous dot on the landscape, but an innocent child victim’s face’, says a post on the website NotaBugSplat.com¹²⁹³.

Drone pilots can see more than a dot on a landscape. We have seen that their experience mimics hyper-realistic video games and that the US Airforce routinely recruits teenage gamers to serve as drone pilots, who often use gaming counsel controls¹²⁹⁴. Former drone pilot Joe

¹²⁹² Inside Out, ‘Not a Bug Splat’ (*Inside Out Project*, April 2014) <<https://www.insideoutproject.net/en/explore/group-action/not-a-bug-splat>> accessed 7 April 2022.

¹²⁹³ ImFeed, ‘A Child Faces Up To Drone Operators in Pakistan’ (*ImFeed*, 6 April 2014) <<https://ilmfeed.com/a-child-faces-up-to-drone-operators-in-pakistan/>> accessed 7 April 2022; Michael Hastings, ‘The Rise of the Killer Drones: How America Goes to War in Secret’ *Rolling Stone* 16 (2012).

¹²⁹⁴ Uhl (n 81).

Clark confirmed this, by saying that his job mimics his childhood gaming experience, and that he had been prepping for it since he was a kid¹²⁹⁵.

The extent of the vast and foreign territories that drone pilots operate in means that they are equally unaware of the culture of local populations under surveillance. They use unreliable clues and visualise violent intentions that justify their deadly Hellfire missiles. Recorded conversations between drone operators have demonstrated that oriental clichés can turn any typical civilian activity into a ‘terrorists’ cell that may be eliminated. For example, we have seen drone pilots define men under their gaze as potential combatants using terms like ‘military age males’. No wonder the US refrains from counting deceased men as civilians and almost automatically regards them as combatants. Even children are sometimes called ‘fun-size-terrorists’ by drone pilots¹²⁹⁶.

Humanity, in several decades, went from ‘carpet bombing’ and dropping nuclear weapons to ‘surgical’ drones. But these more precise ‘vultures’ pose greater moral dilemmas. Defenceless civilians are killed, and they have little consolation in humane intention, in this ‘road to hell’. The real reason for using drones is not to protect enemy civilians, but to preserve the privileges and supremacies of superpowers. In the case of Israel, it is to preserve settler colonial aspirations. Drones have become the extension of war by less cumbersome and expensive means, with the bonus that they do not appear to be a flagrant breach of IHL.

It is worth mentioning that after US’s chaotic and ignominious flight from Kabul in 2021, an article published in The Guardian called 20-year of military involvement in Afghanistan ‘the

¹²⁹⁵ Graham, ‘Drone: Robot Imperium’ (n 4).

¹²⁹⁶ Ibid.

most epically damaging man-made calamity of recent times'¹²⁹⁷. Political analyst Simon Tisdall said 'The long-term negative ramifications of this unforgivable, avoidable disaster are unfathomable'¹²⁹⁸.

With Tisdall's remark in mind, drones are not a cake we can eat and still have. Even Obama, who prided himself on his human rights record, succumbed to the temptation to believe that the benefits of drones far outnumber their disadvantages and multiplied their use during his presidency. Civilian losses are far worse than reported. We cannot gloss over the fact that oppressed people find it even more difficult to achieve justice and shake off their shackles. Drone violence results in more rage, frustration, and despair – leading to extreme situations like 9/11, ISIS and suicide bombers in central Tel-Aviv. Drones might soon lead to a new outburst of violence between Israel and the Palestinians. Such an outburst will pale to what we have seen so far and might spill into a regional and perhaps even a wider world 'conflict'.

¹²⁹⁷ Simon Tisdall, 'Lives Lost, Poverty, an Arms Race, Rights Destroyed ... The Continuing Cost of 9/11' (*The Guardian*, 12 September 2021) <<https://www.theguardian.com/commentisfree/2021/sep/12/lives-lost-poverty-an-arms-race-rights-destroyed-the-continuing-cost-of-911>> accessed 29 September 2021.

¹²⁹⁸ Ibid.

CHAPTER V – DISCUSSION & CONCLUSION

This dissertation started by asking how it is possible that my home country, Israel, a tiny state with about 0.1% of the world's population, became the world's biggest exporter of military drones¹²⁹⁹. I have concluded that this astounding achievement is inherently connected to what I regard as Israel's legacy of being a settler colonial power.

As I pointed out earlier, Settler colonialists can be understood as collective minorities who suffered from persecution (mainly in Europe), so they were looking for a one-way ticket out of their state of origin. They were searching for a new homeland and dreaming of discovering empty lands of wilderness to build up their new nation. But their dreams were quickly shattered when they realised that the desired destination is already populated. This is why settler colonialists committed horrible crimes, including ethnic cleansing, genocide, and transfer – to take over indigenous land, and replace the natives. The long list of polities that have been described as settler colonial includes the United States, Canada, Australia, New Zealand, South Africa, and Israel.

With this in mind, I explored in Chapter II the inherent benefits of drone warfare for the settler colonial paradigm. Trying to understand the nature and extent of settler colonial violence led me to legal scholars who formulated TWAIL and have rightfully placed third world people's experiences at the centre of their attention. TWAILers have scrutinised the way in which international law has been serving western countries at the expense of the third world – a

¹²⁹⁹ Gili Cohen, 'Israel Is World's Largest Exporter of Drones' (*Haaretz*, 11 January 2018) <<https://www.haaretz.com/.premium-israel-is-greatest-exporter-of-drones-1.5243373>> accessed 15 May 2021; Goldenberg (n 10); Heller (n 10).

critical approach that shares similarities with the understanding of historians who focus on settler colonialism.

Following up on TWAIL scholarship, I suggested a new complimentary idea called SCAIL. I introduced this idea to offer a fresh perspective on the spread of surveillance, control, and assassinations by drones, not only in my home country, but also in other settler colonial situations, like the US. The distinction between settler colonialism and traditional colonialism has been emphasised, including the settlers' focus on the elimination of the natives, rather than subjugation or exploitation of their labour force. In my opinion, such differences are key to understanding why drones have been developed, of all places, in Israel, as a direct result of the Zionist myth of biblical and historical entitlement to 'Greater Israel'.

This dissertation then continued with the premise that International Humanitarian Law (IHL), the set of rules that seeks to restrain the devastating consequences of warfare on civilians and hors de combat, has proven highly ineffective in governing drone violence and ensuring more humane conduct (Chapter III). The role of history and the genealogy of IHL in facilitating drone violence has been explored, rather than a doctrinal analysis of the laws of armed conflict. The main point in Chapter III was that IHL has been indirectly enhancing not only imperial and colonial types of violence, but also settler colonial ones.

According to its canonical narrative, IHL should have been used to motivate countries to follow humanitarian ideals. Instead, IHL has been perpetuating injustice and serving the interests of powerful western countries. This has been demonstrated by the highly disproportionate number of casualties suffered by civilians in the third world, as opposed to the lives of western combatants. Instead of reforming the abuses of drone warfare, IHL was

willing to accept the euphemism ‘collateral damage’, and to shift its attention from the increasingly growing number of third world innocent victims.

Drones have been described as ‘surgical’ and ‘accurate’, reducing the level and intensity of military escalations around the world – a fallacy that was disproved throughout this dissertation. And, yet, they are still referred to almost reverentially as a ‘magical weapon’. But magical for whom? The havoc and cost in human lives perpetrated by drones, used by both the US and Israel, demonstrate that they serve the interests of settler colonial powers in their efforts to control and subjugate indigenous populations throughout the world.

What sets drone technology apart from other military technologies to the disadvantage of third world combatants? We have seen in Chapter IV that drones have been described as weapons designed for ‘unilateral death dealings’, with no chance of reciprocity. The fact that drone technology gives the undisputed upper hand to imperial and settler colonial powers has drawn criticism from radical thinkers like Gregoire Chamayou. Based on their studies, I concluded that drones are incompatible with the traditional paradigms of battlefield warfare or ‘policing’, and should be treated as a weapon for ‘manhunting’ or ‘unilateral death dealings’.

To understand drones’ present and future, I analysed the past that brought them into existence. I argued in Chapter IV that the pressing need to conquer and control Palestinian territories gave rise to a vast arms industry and triggered the serendipitous development of military drones in Israel¹³⁰⁰. Israeli militarism, alongside Zionist myths and a sense of supremacy and entitlement, were part of the historical and mental landscape that played a

¹³⁰⁰ Laura Jordan Jaffee, ‘Disrupting Global Disability Frameworks: Settler Colonialism and the Geopolitics of Disability in Palestine/Israel’ (2016) 31(1) Disability & Society 116.

significant role in the constant search for better, more lethal weapons, needed to ensure Jewish sovereignty over historical Palestine. I also noted that, despite Israel's apparent 'imperial' aspirations, military operations in neighbouring countries have always been secondary to sustaining and expanding the settler colonial project in Palestine itself.

Faced with over two million subjugated and hostile Palestinians living in the densely populated Gaza Strip, drones, with their remote-control capabilities, are manna from heaven for Israel. And so are their automated algorithms that might autonomously detect deviations from behavioural patterns, helping the IDF to select targets for elimination.

The entire area of Gaza is constantly watched over by towers equipped with machine guns operated remotely by advanced electronics, and by drones ready to strike at a minute's notice. This grim and frightening reality is the epitome of how technology serves to silence and control a helpless civilian population and prevent any sort of protest or resistance. My research was given impetus by this predicament of the residents of Gaza, the majority of whom were driven out of their homes by Israeli soldiers in 1948 and are now at the mercy of an invisible enemy.

The West Bank is accessible to all Israelis. But except for IDF soldiers, and Jewish-Israeli settlers, very few Israelis chose to venture into these areas, leaving the Palestinians to fend for themselves.

In retrospect, the origins of this dissertation can be traced back to the time I spent on the hills surrounding the village of Bil'in in the West Bank, where, standing next to its Palestinian residents, I tried to dodge tear gas canisters and, occasionally, live bullets fired at us by Israeli soldiers.

I wasn't aware of the term 'settler colonialism' yet, but even so, it was not too difficult to realise that – contrary to its name – the IDF (Israel Defense Forces) was not engaged in self-defence. Instead, it was busy violating and suppressing the human rights and dignity of the indigenous inhabitants of the land, on which they had been living for a millennium.

Bil'in became the symbol of combined Palestinian, Jewish Israelis and international resistance to the occupation. It was to be a while before human rights groups began to label Israel's policies in the Occupied Territories as 'apartheid', and 'racism', terms dismissed by Israel as expressions of antisemitism. The dominant Jewish view concerning Palestine has been expressed bluntly by Benjamin Netanyahu's father, Bentzion, in 2012: 'This land is Jewish, it is not for the Arabs, there is no place here for the Arabs, and there will be no place for them'¹³⁰¹.

Bentzion Netanyahu's supremacist ideas are now enshrined in the 2018 Basic Law, which states: 'the right to exercise national self-determination in the state of Israel is unique to the Jewish people'¹³⁰².

With such views held by a solid Jewish majority, one can safely assume that Israeli drone pilots, indoctrinated to view Palestinians as enemies and usurpers of Jewish lands have no moral scruples about targeted killings of 'suspects' in Gaza. Getting drone pilots' perspectives on Israel's surveillance and suppression of Gaza residents was all but impossible since all of Israel's drone operations are shrouded in secrecy. Even Israel's Supreme Court refused to compel the IDF to share its guidelines with the public. One had to turn every stone, read every

¹³⁰¹ Adam Shatz (n 1278).

¹³⁰² Amal Jamal, 'Israel's New Constitutional Imagination: The Nation State Law and Beyond' 2019 18.2 *Journal of Holy Land and Palestine Studies* 193.

article and scrutinize every document to get a glimpse of the protocols and drone operations over Gaza.

Much of the material is based on research and interviews conducted by investigative international reporters and NGOs who had access to combatants or ex-combatants, mostly from the US. For instance, I discovered that American drone pilots are often recruited when they are teenagers in the gaming community, and that the video game setting of drone pilots mimics hyper-realistic video games, making it much easier to pull the trigger. One can extrapolate from the experience of American drone pilots to that of their Israeli counterparts, who would be equally familiar with video games and computer technology.

When discussing the reported experiences of Israeli and American soldiers and drone pilots, I realised how important the training procedures are, during which they are 'programmed' to kill without hesitation. Indoctrinated from an early age to believe that the future of their country is not yet guaranteed, Israeli youngsters have no problem swearing allegiance to the IDF, declaring their will to obey all its laws, including the order to sacrifice themselves on the altar of the Jewish State. Operating drones, which, according to recent reports, are to be employed in the West Bank as well, raises no moral dilemmas.

There is nothing to indicate that today's generation of Israelis join the army with a fraction less enthusiasm or that the new recruits, growing up in a volatile reality, have reservations about their role as settler colonialists and ethnic cleansers. On the contrary. With the country becoming more Messianic and ultra-nationalist, with unapologetic racists such as Itamar Ben Gvir elected to the Knesset, the prospects for a change of heart or policy are less than negligent.

By and large, the Israeli public does not wish to know how its 'security' forces deal with Palestinian rage and frustration or try to oppose escalating theft of Palestinian land. Sights of demonstrations and arrests, sporadically as they are shown on Israeli media, have desensitised the public to the plight of the Palestinians, who are condemned to live in a 'forcibly Judaized land'. One would be hard-pressed to find reference to drone operations conducted by the IDF inside Palestinian territories or elsewhere. Israel's covert and overt wars and murky arms deals are out of bounds for the Israeli public – and preferably so.

The indifference and acquiescence of the Israeli public are alarming. Similar attitudes could be observed in the US when George Bush launched its 'War on Terror' following 9/11, claiming that the US went in to hunt and kill Osama bin Laden to deliver freedom for the American and the Afghan people. The problem, as articulated by Moyn, was that 'America went off to fight [terrorists] and never came back'¹³⁰³. Obama, the constitutional lawyer who followed Bush to the White House, found drones equally impossible to resist and became 'the assassin in chief'. He expanded the war to a 20-year campaign that cost 8 trillion USD, resulting in the death of 200,000 innocent civilians¹³⁰⁴.

The paradox is that drones that appeared to make war look 'cleaner' and more humane, and should have reduced the brutality and extent of armed conflicts, led instead to endless wars. The failure to harness and curtail the use of new weapons stems from human nature. As Robert Oppenheimer, head of America's atomic bomb project, forewarned, humanity's scientific and technological leap forward was not accompanied by an equivalent moral

¹³⁰³ Verso, 'Humane' (Verso, September 2021) <<https://www.versobooks.com/books/3941-humane>> accessed 26 September 2021; Moyn, *Humane* (n 35).

¹³⁰⁴ Tisdall (n1297).

leap¹³⁰⁵. The impulse to fight and kill for territory manifests itself as soon as Adam and Eve are driven out of Paradise and Cain murders his brother Abel.

The US military adventure in Iraq and Afghanistan has had little to do with the war on terror and much to do with America's insatiable need to dominate and control the planet. Military experts admit that 'even informed commentators and decision-makers don't seem to know where the US is fighting at any given moment'¹³⁰⁶.

Likewise, Israel's drone warfare is not guided principally by fear of terrorists and jihadists but by a desire to grab as much Palestinian land as possible and by the Zionist attachment to delusional narratives of Jewish destiny and superiority.

The fires are stoked by multitudes of civilian lobbyists, contractors, arms manufacturers and consultants, who live in symbiosis with the IDF, profit from the Palestinian predicament and tragedy – and help to sustain the endless conflict in the Middle East.

For centuries, innocent civilians had been eradicated with guns, germs, and steel. Now, the buzz of drones is the 'sound of death' for millions. Drones are a favourable weapon for domination, oppression, and elimination, regardless of how counterproductive they are to security and global stability¹³⁰⁷.

¹³⁰⁵ Robert Oppenheimer, 'Farewell Speech' (Atomic Heritage Foundation, 2 November 1945) <<https://www.atomicheritage.org/key-documents/oppenheimers-farewell-speech>> accessed 14 March 2022; Heinar Kipphardt, *In the Matter of J. Robert Oppenheim: A Play* (Hill and Wang 1964).

¹³⁰⁶ Henrietta Wilson, 'Send in the Drones: Failings and Excesses of the US Military Industrial Complex' (TLS, 16 July 2021) <<https://www.the-tls.co.uk/articles/the-generals-have-no-clothes-william-m-arkin-review-henrietta-wilson/>> accessed 26 September 2021; William M Arkin, *The Generals Have No Clothes: The untold story of our endless wars* (Simon and Schuster 2021).

¹³⁰⁷ Jeremy Scahill, 'The Drone Papers' (The Intercept, 15 October 2015) <<https://theintercept.com/drone-papers/the-assassination-complex/>> accessed 3 October 2021;

According to a highly placed source in the military, US's national security establishment has become so 'addicted' to these remote-controlled weapons that it is impossible to stop using them. So much so that 'swords', according to Moyn, 'have not been beaten into ploughshares. They have been melted down for drones'¹³⁰⁸.

It is time to reverse this trend and beat drones back into ploughshares. It is, needless to say, a Herculean, perhaps an utterly utopian task, far beyond my humble abilities – and certainly beyond the scope of this dissertation.

What practical solutions are there? How do you save innocent lives in Gaza and elsewhere? How do you convince people that drones are invisible killing machines, Golems that have created 'a world of permanent dread'¹³⁰⁹? The answers are certainly not to be found in 'words, words, words', as Hamlet said to Polonius. Legal words, that is. Briefs, rules, and laws matter, but they are out of their depth in the actual world, regardless of how many brilliant and principled minds joined hands to formulate them. Though, it would have been helpful, as Oppenheimer suggested, if scientists (and members of the military establishment) spent time together with legal scholars and humanists, trying to imagine a better world – and how to get there.

Empirical and ethical studies become more vital as drone wars expand and multiply, resembling the famous scene of the deluge from the Sorcerer's Apprentice. When looking for

Micah Zenko, 'Addicted to Drones: Is the Allure of War by Remote Control the Root Cause of America's Dangerously Unbalanced Foreign Policy?' (FP, 1 October 2010)

<<https://foreignpolicy.com/2010/10/01/addicted-to-drones/>> accessed 26 September 2021.

¹³⁰⁸ Moyn, *Humane* (n 35); Moyn, 'How the US Created a World of Endless War' (n 40).

¹³⁰⁹ Jackson Lears, 'The Forgotten Crime of War Itself' (New York Review of Books, 21 April 2022)

<<https://www.nybooks.com/articles/2022/04/21/the-forgotten-crime-of-war-itself-samuel-moyn-lears/>> accessed 21 April 2022.

a hopeful horizon, I am inspired by journalists, activists, conscientious individuals, and whistle-blowers who have been working tirelessly to expose – often at enormous risk – the dangers of drone technology.

What we need is more people with personal courage and a deep and principled aversion to war itself. People who will spread the words of Isaiah: ‘Nation will not take up sword against nation, nor will they train for war anymore’¹³¹⁰.

Samuel Moyn, a law professor and a realist, believes that lifting swords should be undertaken only as ‘the genuine last resort’¹³¹¹. I, perhaps naively, but still loyal to the principles that guided and motivated me all along, prefer to side with the Irish poet Seamus Heaney, who gets the last – and buoyant – word in this long journey into the painful and complex history of drones, warfare, IHL, and Israeli settler colonialism:

‘History says, don’t hope

On this side of the grave

But then, once in a lifetime

The longed-for tidal wave

Of justice can rise up

And hope and history rhyme’¹³¹²

¹³¹⁰ *Isaiah* 2:4 (New International Version of the Holy Bible, 1978).

¹³¹¹ Ibid; Moyn, *Humane* (n 35); Moyn, ‘How the US Created a World of Endless War’ (n 40).

¹³¹² Seamus Heaney, *The Cure at Troy: A Version of Sophocles’ Philoctetes* (Farrar, Straus, and Giroux 1991).

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