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## **ASYMMETRICAL WAR AND HUMANITARIAN WAR**

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### **ABSTRACT**

The Realism – idealism debate started as the first great debate in the international relations discipline. This debate, which took place between the two world wars and the period after it, can be analyzed with the aim of preventing and ameliorating wars. Consequently, the issue of war took a centre stage in the international relations discipline. The humanitarian approach to war in the 20<sup>th</sup> century has led to the strengthening of the idea that catastrophic destruction and post war catastrophes can be removed or at least reduced. Thus, with the past experience, customary laws of international institutions and the changing dynamics, quite a number of studies had been carried out on some of the existing international agreements or treaties and war laws (Humanitarian Law). Despite the fact that humanitarian law was established on the rules necessitating war and the rules to be observed during war, fundamentally it serves the ultimate purpose of strengthening peace. Institutions that have been set up to check control and monitor humanitarian laws have contributed significantly in the modern world. The work of these institutions has resulted to very unlikely tendency of states to solve their problems by means of war. In other words, states see war as a last resort to solving problems. When we come to think of the fact that in the modern world, war is predominantly among very different groups rather than states and the metamorphosis that occurs during every period of history, then adequacy of the present humanitarian law is definitely questionable or better still it can be subjected to cross examination. As a result, the thrust of this work is to question the applicability of humanitarian laws to asymmetric wars and the extent to which it can be applicable.

### **STRUCTURED ABSTRACT**

The period after the First World War was characterized by several works in the international relations discipline. The disciplines first great debate was the debate between Realism and Idealism. Despite the fact

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that the debate was centered on the ontological framework, the contributions of the debate were beyond the ontological dimension. The discipline won her autonomy and general acceptance through this debate. Idealism has been the dominant theory during the interwar period. Realism on the other hand is the first dominant theory in the discipline and her influence in the discipline with reference to power is still felt in the discipline. Both ideologies have the same objectives of ending war and protecting peace, however, the difference is in the methodological approaches. For example, the two ideologies have divergent opinion on the subject of human nature. Realism argues that humans are evil by nature and they focus on power balance and the balancing of the factors of war. Idealism on the other hand argues that human nature is good and that peace can be maintained through controllable mechanisms. The place of war in the discipline is better understood if one takes a deeper look at the factors responsible for the formation of such a discipline called international relations. The formation of the discipline was purely to prevent wars. In addition to the theories that emerged in order to prevent war, efforts have also been made to stop the destruction caused by war and also to prevent the effects of war on innocent people and none fighting actors.

We cannot say that the basic principles in the UN charter and its purpose have been fully realized in the seventy-two years since the inception of the institution. We can say with some certainty that we have witnessed some internal war within some countries. Although the U.N has not offered the world absolute peace, until today the U.N charter has stand out to be the most successful treaty. It is evident that the rules of the United Nations are not respected by all her members. This is as a result of her organs and also the veto status of some member states. Since international relations are not perfect, weaker states – those in Africa – have little or no option but to listen to the might states.

Humanitarian law is; a set of rules that attempt to limit the effects of armed conflict (Muneer, 2016:2), a branch of law that sets forth the minimum necessary standards of behavior and assistance to be given during war or armed conflict (Tütüncü, 2012:1), a set of international treaties or customary laws that seek to resolve human anxieties during international or local armed conflicts (ICRC, 2004:8). Humanitarian law seeks to prevent war, but in the event war is inevitable, it then seeks to determine what rules should be enforced during war and the rules are binding for all sides of the war. Irrespective of the type of war, its causes, its correctness or the difference in power and ability between the fighters, international humanitarian law (IHL) set out the same rules and principle for all the parties of a war and treats them equally (Blum, 2011:165).

In order to avoid a repetition of the consequences of modern war, international humanitarian law rules have become more important than in any period of history before. At the end of World War II, the US atomic bombing attack on two cities in Japan has shown the catastrophic dimensions of war. Consequently, this prompted the necessity for humanity to work with all its determination to make this magnitude of destruction no longer possible. International mechanism and institutions have been developed to prevent wars. The need to put these wars under the control of the international institutions resulted in the development of humanitarian law.

The dictionary meaning of the term asymmetry is expressed as "invisible, not having any type of symmetry" (Turkish Dictionary). This means that existing customary practices are meant to be excluded. Asymmetry, according to the definition in US military doctrines, is the difference that arises from the organization, equipment, doctrine, possibilities and capabilities among forces (FM 3-0, Operations, 2001). With the end of the Cold War, battles have become more asymmetrical than conventional. The concept of asymmetric warfare seems to have come to the forefront, especially with the emergence of conflicts among states and between armed groups and the states.

The general characteristics of asymmetric warfare are different from conventional warfare in the context of state and non-state and strong-weak conflict. In this context, the characteristics of asymmetric warfare can be summarized as follows. What causes asymmetric warfare is the presence of power imbalance, that is, there is serious power imbalance between the sides. Guerilla War, Special Unions, Fifth Arm Action, Fourth Generation War, Psychological Operation and cyber Attack, are the fighting techniques used in asymmetric warfare. Against the desire of the strong side to end the war as soon as possible, the weak side of the asymmetric war sees a long battle, and as the war goes on, a psychological asymmetry occurs. As long as the non-state party to the war receives help from the enemies of the state, the war continues on for a long time. The greatest struggle of the weak side is not to lose the support of the people; the strong side shows the courage to break this support with the media power that is at her hands. In an asymmetric war, if the non-state actor loses public support, she will lose the ability to continue the struggle.

We can say that the reasons for the violations of humanitarian law in the asymmetrical war originate from some basic variables which are different from classical warfare. Asymmetric wars usually take place in the city centers and as a result of the war being taken to the city centers; Non-state actors usually try to use civilian elements as natural armor, air attacks against the enemy and ball guns cause civilians living in this region to be killed and civilians who should have been protected under humanitarian law are subjected to indiscriminate attacks. This situation results in the violation of military necessity and proportionality principles.

For a more practically of the rules of international humanitarian and in order to reduce the death rate of civilians during asymmetric war, Estreicher suggested some points such as; defining the problem, then make a more realistic analysis of the conflict, determining responsibilities, and increasing the sensitivity of international institution could create a new road map.

The basic principles of humanitarian law are binding on all states because they are concerned with the common interests of the international community. The idea that the parties do not have an obligation to comply with these rules will be considered null and void under international law. Military and economic sanctions imposed by the UN Charter Chapter VII may be imposed on states that violate humanitarian law. However, a mechanism that works within the framework of determined humanitarian law violations is not yet available

(Özsoy, 1998:124). It seems very difficult for non-state actors to face a criminal offense in an environment where violations cannot be fully controlled even within the state.

In the asymmetric war, which is the new concept of war, of modern world the sides of the conflict have been transformed. In this context, the binding of humanitarian law rules in the new war that states and non-state actors face is coming to an end. There is no solution to cover terrorist attacks and counter-terrorism, a method of asymmetric warfare. Asymmetrical wars are different from classical war conditions in which humanitarian law rules are established. It is stated in the ICRC report 2011 that humanitarian conflicts arising from armed conflicts can only be assessed under Article 3 of the Geneva Conventions (ICRC, 2011:10). This shows how inadequate humanitarian law, organized according to traditional wars, is for asymmetric wars (Başer, 2012:147).

After the cold war the world faced a new problem in which an unidentifiable enemy to a war exist, consequently resolving armed conflicts become very difficult under humanitarian law. As a result of continuing new wars with the old rules, international humanitarian law rules must be rearranged in order to prevent the increasing death rates and other violations of civilian people who are impartial in armed conflicts and the legal gaps should be closed.

**Keywords:** Asymmetric War, Humanitarian Law, Modern Conflict War and War Law.

## ASİMETRİK SAVAŞ VE İNSANCIL HUKUK

### ÖZET

Uluslararası İlişkiler disiplininin temelleri disiplinde ilk büyük tartışma olarak adlandırılan Realizm – İdealizm tartışması ile atılmıştır. İki dünya savaşı arası dönem ve sonrasında gerçekleşen bu tartışmanın ele aldığı ve çözümlenmeyi hedeflediği sorunun savaşın önlenmesi olduğu düşünüldüğünde, savaş konusunun disiplin açısından önemli bir çalışma alanı olduğu anlaşılmaktadır. Savaş sorunsalına 20'nci yy. insanının yaklaşımı, yaşanan yıkımın ve savaş sonrası ortaya çıkan felaketlerin ortadan kaldırılabileceği veya en azından azaltılabileceği fikrinin güçlenmesine neden olmuştur. Bu kapsamda oluşturulan uluslararası kurumlar vasıtasıyla geçmiş tecrübeler ve örfi kanunların temelini oluşturduğu ve değişen dinamiklere göre hazırlanmış olan uluslararası anlaşmalar ile Savaş Hukukuna (insancıl hukuk) yönelik birçok çalışma yapılmıştır. İnsancıl hukuku savaşın çıkması için gerekli kurallar ve savaş esnasında uygulanan kurallar olarak iki temel esas üzerinden oluşturulmuş olsa da temelde barışın sağlanması amacıyla ortaya konulmuş kurallardan oluşturulmuştur. İnsancıl Hukuk kurallarının denetlenmesi maksadıyla oluşturulmuş kurumlar sayesinde modern dünyada devletler arasındaki problemlerin savaş yoluyla çözülme eğilimi devletler tarafından son çare olarak görülmektedir. Ancak tarihin her döneminde başkalaşım geçiren savaş olgusunun modern dünyada devletler arasında olmaktan çok farklı gruplar ile yapıldığı düşünüldüğünde, oluşturulan insancıl hukuk kurallarının mevcut duruma yönelik yeterliliği sorgulanmaktadır. Bu çalışmada

bahse konu insancıl hukuk kurallarının, asimetrik savaşlarda ne ölçüde geçerli ve uygulanabilir olduğu değerlendirilmiştir.

**Anahtar Kelimeler:** Asimetrik Savaş, İnsancıl Hukuk, Modern Çatışma Hukuku, Savaş Hukuku

### **Introduction**

According to Carr, the origin of international political science is one that leans on great and disastrous wars. Consequently, the pioneers of this new discipline have been inspired to prevent the reoccurrence of such a catastrophic disease (Carr, 2015:57). Developments that occurred after the First World War (WWI) and the studies that occurred between the two World Wars led to the emergence of international relations as a separate scientific discipline. The period after the First World War was characterized by several works in the international relations discipline. The disciplines first great debate was the debate between Realism and Idealism. Despite the fact that the debate was centered on the ontological framework, the contributions of the debate were beyond the ontological dimension. The discipline won her autonomy and general acceptance through this debate. Idealism has been the dominant theory during the interwar period. Realism on the other hand is the first dominant theory in the discipline and her influence in the discipline with reference to power is still felt in the discipline. Both ideologies have the same objectives of ending war and protecting peace, however, the difference is in the methodological approaches. For example, the two ideologies have divergent opinion on the subject of human nature. Realism argues that humans are evil by nature and they focus on power balance and the balancing of the factors of war. Idealism on the other hand argues that human nature is good and that peace can be maintained through controllable mechanisms.

The place of war in the discipline is better understood if one takes a deeper look at the factors responsible for the formation of such a discipline called international relations. The formation of the discipline was purely to prevent wars. In addition to the theories that emerged in order to prevent war, efforts have also been made to stop the destruction caused by war and also to prevent the effects of war on innocent people and none fighting actors. The ultimate objective of treaties made on the law of wars and the established institutions are to prevent war.

With increasing diplomacy in the 21<sup>st</sup> century, the focus is to resolve problems via peaceful means. This phenomenon has led to the formation of international organization, in which big states play a very pivotal role. The first attempt of such international institution is the League of Nations (LN), which was created after WWI. Members of the LN have four main responsibilities which include: “to develop international development and to ensure international security and cooperation, to accept a number of obligations one of which is not to restore to war, to do away with privacy, to maintain just and honorable international relations, governments should strictly adhere to internationally recognized rules of war, protect justice in the mutual relations of organized people and to respect all obligations arising from the agreements” (Karluk, 2014:142). 19 years after the formation of such an international organization like the League of Nations, whose ultimate aim was to protect the peace, unfortunately it did not prevent the occurrence of the Second World War (WWII) (Leitenberg, 2003:11). WWII led to the death of 17 million civilians and 47 millions (presumably soldiers) of casualties over a period of six years.

Auden’s opinion about WWII is that “No words men write can stop war or measure up to the relief of its intolerable grief” (Auden, 2007:168). He emphasized that in order to completely remove the possibility of war in international relations; there is need for new work. The tragedy of WWII and its aftermath brought the idea for an institution such as the United Nation (UN) in order to ensure that the world is not subjected to the same destruction again. What makes the UN more

established organization is the experience of the failure of the first attempt (LN). UN charter was convened in 1945, at a meeting attended by representatives from 51 states. On 24<sup>th</sup> October 1945, the organization was officially established by the founding states, of which Turkey was a member (UN Web:2016). Many writers argue that UN is considered as the first universal and international organization,( Bouchet-Saulnier, 2002:70) for LN was narrower and not sufficiently widespread.<sup>1</sup>

The introduction of UN treaty indicates the commitments of the people of the United Nations as “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.” (UN Treaty)

With the exception of the introduction, the word war was not used in any other part of the write-up. In the introduction, the basic objectives of the United Nations are understood as; to ensure the protection of the next generation and the people from the catastrophe of war and that necessary actions must be taken to ensure international peace. The aim of the UN is to protect international peace and security in general, to resolve international disputes peacefully, to strengthen world peace and strengthen international cooperation.<sup>2</sup> The aim is to resolve the problem of war, which has been in existence since the inception of humanity.

We cannot say that the basic principles in the UN charter and its purpose have been fully realized in the seventy-two years since the inception of the institution. We can say with some certainty that we have witnessed some internal war within some countries. Although the U.N has not offered the world absolute peace, until today the U.N charter has stand out to be the most successful treaty. It is evident that the rules of the United Nations are not respected by all her members. This is as a result of her organs and also the veto status of some member states. Since international relations are not perfect, weaker states – those in Africa – have little or no option but to listen to the might states.

### **Humanitarian Law**

In spite of all the international organizations, these organizations have not in any way prevented wars and their irreparable damages to human life. In order to prevent wars, not only are international organizations and politics sufficient but also legal restriction are prudent and studies related to the dimensions of the law of war were also carried out. Within this scope, rules of international law were made to mitigate war, and whereas war is unpreventable efforts were made to stipulate rules of engagement in wars. As a result of the two divergent dimensions of war, humanitarian law or armed conflict law and war law came into being. The word “humanistic” has various meanings ranging from; human-loving, human-related, human-worthy, pro-humanist, to humanist (Turkish Dictionary). Humanitarian law seeks to keep harmless and innocent people under

<sup>1</sup> America who brought the idea of league of nations wasn't a member and with time permanent members (Russia left, Italy ve Japan also seperated) came to be only three. For this reason, the possibility of having the desired interaction and authority has turned into an organization that has been left out.

<sup>2</sup>The United Nations aims are; 1. The protection of international peace and security and with this aim: To take effective common measures to suppress acts of violence by means of attack or peaceful deterrence and to correct or resolve international disputes or situations by peaceful ways in accordance with the principles of justice and international law ; 2. To develop friendly relations among nations on the basis of equality of peoples and respect, and to take other appropriate measures to strengthen world peace; 3. Ensure international cooperation in the development and strengthening of respect for human rights and fundamental freedoms, without discrimination on grounds of race, sex, language or religion, and solving international problems of economic, social, cultural and humanitarian nature 4.the attainment of these common ends must be centered on Harmonizing the actions nations undertake.

the protection of her umbrella. The idea of humanitarian law is to put legal restrictions to protect people who are out of war, and to make a clear separation between those who value humans and those who value human destruction.

Humanitarian law is; a set of rules that attempt to limit the effects of armed conflict (Muneer, 2016:2), a branch of law that sets forth the minimum necessary standards of behavior and assistance to be given during war or armed conflict (Tütüncü, 2012:1), a set of international treaties or customary laws that seek to resolve human anxieties during international or local armed conflicts (ICRC, 2004:8). Humanitarian law seeks to prevent war, but in the event war is inevitable, it then seeks to determine what rules should be enforced during war and the rules are binding for all sides of the war. Irrespective of the type of war, its causes, its correctness or the difference in power and ability between the fighters, international humanitarian law (IHL) set out the same rules and principle for all the parties of a war and treats them equally (Blum, 2011:165).

These rules and principles, which bind all sides of an armed conflict, have been formed as a result of the rules determined in the course of conflicts that have taken place throughout history. The codification of the aforementioned rules and principles began in the 19<sup>th</sup> century (Pictet, 1985; Tütüncü, 2012:1) and by the first quarter of the 20<sup>th</sup> century more and more codifications took place (Paris Declaration Respecting Maritime Law- UKHK-ICRC). The Hague Convention, which was signed in 1907, was reviewed and broadened. The Hague convention succeeded in codifying 13 principles<sup>3</sup> that were practiced, also in tried to address some of the legal deficiencies with regards to the law of war. One of the components of The Hague Treaty, the land war principles agreement, was implemented in the Second World War. However, there was no penalty set for situations in which the principles were not implemented. Consequently, The Hague Treaty could not in any way prevent the menace of the Second World War (Aslan, 2008:240).

After WWII, the idea of renewing or reviewing the Geneva Convention was discussed at the 17<sup>th</sup> International Red Cross conference at Stockholm. By the end of the April 1948 conference, which was attended by a total of 64 countries, a four articulated treaty was prepared (Çelik, 2013:44). After the Geneva Conference, the 1949 Geneva Convention (Yamaner, Öktem, Kurtdarcan and Uzun, 1954:III)<sup>4</sup> became a very important proportion of the international humanitarian law. The Geneva Convention included provision which brought some complexities to the global platform. Some of these provisions are; to rehabilitate the conditions of those wounded and sick casualties of land forces, to rehabilitate the condition of those injured or sick casualties of naval forces, treatment for prisoners of war, and safeguarding civil personals (Alsan, 1950:37). The protection of the victims and civilian in the 1949 Geneva Convention became a very important basis and proportion of the international humanitarian law. Members of the United Nations completely agreed to this treaty and 196 countries are signatories to this treaty (ICRC).

Regardless of the state of war being invoked by any state, the provisions of the 1949 Convention must apply in the event of any international armed conflict. International law makes this compulsory on sovereign states and weapon industries. When an occupation of another country's

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<sup>3</sup> I. Resolution of disputes between nations by peaceful means, II. Limitation of the Use of Force at the Payment of Contract Liabilities, III. Agreement for the Start of Treasury, IV. Land War Rules Contract, V. Convention on the Rights and Powers of the Neutrals in the Land War, VI. Contract on Transactions Applied to Commercial Vessels at the Beginning of the Conflict, VII. Agreement Concerning the Entry of Trade Vessels into a Warship, VIII. Contract for the Submersion of Submarine Mines, IX. Convention on the Bombing of the Sea in Combat, X. Agreement on Marine War Rules, XI. Convention on the Limitation of the Right to Confiscate in the Naval War, XII. Convention on the Establishment of the International Court of Justice, XIII. Convention on the Rights and Duties of the Neutral States in Sea War.

<sup>4</sup> The 1949 Conventions were signed on 12 August 1949 and came into force on 21 October 1950. These contracts were approved by Turkey on February 10, 1954.

land takes place, the provisions of the Geneva Conventions are applied, even if there is no armed resistance in the area occupied during the occupation (Aksoy, 2016).

In the period following the signing of the 1949 Geneva Convention, there were several conventions made under international humanitarian law. Some of these conventions include; the 1954 Hague convention and protocols, which seeks to protect cultural assets during armed conflicts, the 1972 convention which prohibits the production, development, storage and stocking of bacterial weapons, the 1976 convention on the prohibition of the use of technologies that change or are counterproductive to the environment. Other conventions such as; the addition protocols to the 1977 environmental convention, the 1995 protocol on blind laser weapons, the 1997 convention which prohibits the use, production, storage and transportation of Anti-personnel mines, the 2000 convention on the right of the child and the prohibition in the involvement of children in armed conflict, and the 2008 convention on part effective ammunition were also made (ICRC).

In general terms, when the treaties signed under humanitarian law are examined, the convention referred to as The Geneva Law basically seeks to protect military and civil persons who are out of war and also the protection of the rights of war victims. The Hague Convention on the other hand sets out the rights and obligations of those fighting and also principles of neutrality.

Principles of international humanitarian law are in two different dimensions and humanitarian law is shaped in this form. The first dimension is the legitimacy of the use of weaponry, while the second is the rules by which both parties to a conflict are supposed to comply with. In short international humanitarian law consists of the principle of war and the war laws. These two issues need to be examined independent of each other. Because there can be humanitarian violations in a justified war, there is an option for an unjustified war to be carried out within the framework of humanitarian law rules (Walzer, 2010:47). For this reason, the co-existence of the rules which are in fact the continuation of each other (which initiates the war and which is to be applied in the war) must be examined and examined independently of each other.

Some principles have emerged in the light of the information obtained from the wars made during the past centuries towards these two dimensions of war. As a result of wars that had happened during the past centuries, certain principles emerged towards these two dimensions of war. It cannot be said that academicians have reached a definite agreement on these principles. However, in general, these principles determine; Just cause, legitimate authority, legitimate purpose, suitability, last resort and success within the context of legitimate warfare (Hoş, 2011:85). Secondly, within the context of binding rules during war, fighting civilians must not be discriminated and there must be compliance to treaties or conventions (Hoş, 2011:88). According to another study, four basic principles of the basic principles of armed conflict law were determined.<sup>5</sup> These principles were listed as; discrimination, military necessity, unnecessary suffering and proportionality (Solis, 2010:250). In the next section, humanitarian law practices in Asymmetric Wars will be examined within the framework of these principles.

### **War and The Evolution of War**

There are several dictionary meanings of the word war. Some of these definitions are; 1. Warfare, battle and weaponry struggle that interrupts the diplomatic relations of states, 2. Struggle, hassle, or fight, 3. The struggle between or amongst animals, 4. The struggle to remove or do away with something (Turkish Dictionary). Generally the term war is used to depict a struggle or fight amongst groups. The armed struggle between certain groups is one of the most violent and most complex traditions of human activity (Akad, 2009:11). According to Cicero, the word war (bellum) is derived from the word duello (duo), from the word duo (Yalçinkaya, 2008:21). The combination

<sup>5</sup> Distinction, Military Necessity, Unnecessary Suffering and Proportionality.



of many duels constitutes war and this is why Cicero defined war as a system of steeling misunderstanding and disputes by means of coercion (Williams (Ed), 1996:126).

According to another definition, war is the armed struggle that two or more States undertake in order to impose their will upon one another (Arıboğan, Ayman and Dedeoğlu, 2010:574). War is also defined as a system of states transferring their own accepted goals. At the same time war is the last resort of states resolving their conflicts in interests. That is to say that, states use war as a means when they found out that diplomacy and negotiation have failed to resolve their misunderstanding. Clausewitz defined war as another political means of solving problem between states (Clausewitz, 2011:49). In this context, the decision of war should be given within the framework of applicable policies and that politics should be used as a means.

If it is important for one to summarize the evolution and development of war, then we can say it began with the discovery of bronze. The development and evolution of war is a period characterized by the discovery of bronze, technological advancements and also new discoveries by humans. As a result of human revolution towards agriculture and industries, reciprocal or mutual relations have been greatly affected and radical changes occurred.

In this context, changes and transformations that have taken place on the issue of war can be summarized as; the formation of armies of Sumerians and Egyptians, the discovery of wheels and the use of cars in war, the understanding of professional military service starting with Rome and the idea of a multinational army, the emergence of cavalry, the use of gunpowder in battlefields and the collapse of feudalism, the establishment of national armies, the transition from military to professional army, the consolidation of war, the mechanization of modern warfare, the emergence of air forces, and the discovery of nuclear weapons (Yalçınkaya, 2008:143). All the above mentioned changes have either indicated development or catastrophes. The technological and tactical change and evolution of war has led to widespread and unimaginable destructions. In this context, Roger Spiller ascertains that the goals of modern warfare are that;

“In the modern world, war was no longer a matter of choking weapons. War is no longer an issue of one side victory. War is in the form of forcefully pushing beyond the boundaries of law and custom, and that wars destroy nations and peoples” (Spiller, 2007:299).

In a study conducted by Gürcan, he scribes a table showing the metamorphosis and stages of war. In the following table, different theorist put in various efforts to explain the; nature, birth and development of war in the history of mankind. In the last 350 years, social and technological developments have been in parallel with; the parties to a war, the goals driven by wars, and the strategies of war. Wars have evolved from monopolies of states and it now involves non-state actors (Gürcan, 2012:74).

Theorist	1. Stage	2. Stage	3. Stage	4. Stage	5. Stage
Lind, Nightengale, Schmitt, Sutton (1989)	PreNation-state wars	<b>1.Generation war</b> Classical wars (1648- 1830)	<b>2. Generation war</b> Total industrial wars (1830-1918)	<b>3. Generation war</b> Maneuver wars (1918-1948)	<b>4. Generation war</b> Unconventional war fares (from 1948 todate)
Martin Van Creveld (1991)	İnstrumentage	Machineryage		Systemsage	Automatisationage
Toffler (1993)	<b>1.Wave:</b> Agricultural society	<b>2. Wave:</b> Industrial society		<b>3. Dalga:</b> Information society	
Arquilla ve Rondfelt (2000)	Sword period	Mass and industrial war peroid		Maneuver war period	Wars derived from eachother

**Table 1:** Theories explaining the nature of war and its evolution (Gürcan, 2012:75-76).

### Turkish Studies

The definition of war made by Yalçınkaya needs to be reconsidered when looking at wars in the current era. This is so because wars that are being carried out in today's world are not only against a state or between states. In this context, war is newly defined as, "*It is a large-scale violent conflict between groups of legitimate organizations who are affiliated with governments or willing to form a government*" (Yalçınkaya, 2008:40).

In order to avoid a repetition of the consequences of modern war, international humanitarian law rules have become more important than in any period of history before. At the end of World War II, the US atomic bombing attack on two cities in Japan has shown the catastrophic dimensions of war. Consequently, this prompted the necessity for humanity to work with all its determination to make this magnitude of destruction no longer possible. International mechanism and institutions have been developed to prevent wars. The need to put these wars under the control of the international institutions resulted in the development of humanitarian law.

### **The Reasons For War and Just War**

In order to solve a problem and prevent its repetition, it is prudent for the causes of the problem to be analyzed first. In this context, a number of studies have been conducted to ascertain the reasons necessary for preventing war. In studies conducted by different disciplines, psychological, ideological, evolutionary, behavioral point of view, there are very different views - ranging from demographic approaches to social theories - with regards to individual freedom. In these views and in part of the work it is argued that humanity's choice of violence in problem-solving is a structural condition stemming from the biological, physical, or psychological structure of the human being. On the other hand some argue that the choice of violence in problem - solving is as a result of the consequences of living in communities (Başer, 2012:20).

For example, Kalevi J. Holsti's study of the battles between 1648 and 1989 did not go beyond defining a fixed cause to prevent possible future wars (Holsti, 1992:306-310). For this reason, the reasons that trigger the start of wars are likely to be based on many different causes, making it difficult to make an analysis based on causes.

It is argued that more definite conclusion can be made about the causes of war if one decides to analyze it from the international relations perspective. In this context, the binary analysis level model which was firstly developed by Singer as "international system and international subsystem" has been developed over time and the analysis level and analysis units are separated from each other (Singer, 1961:77-78). The analysis units determined within the triple model analysis level (philosophical, theoretical and factual) are individuals, groups and the universe (Yurdusev, 2008:4). Waltz came out with the trio of analytical units mentioned in analyzing war in his work. He ascertains them as; Human behavior, internal structures of states and international anarchy (individual / state / states system) units (Waltz, 2009).

Wars;

-At the individual level, the human nature, that is, the approach of nature to war,

-At the level of states, the form of government, economic system, demographic, Physical or geographical qualities and the political stability to evaluate the effects of taking war decisions,

-At the international level, the effect of war will be examined with reference to the relations among the members of the system (Yalçınkaya, 2008:75).

It is thus possible that we can categorize the causes of war by referring to the analysis levels. At the core of the finding of the causes of war is the determination of whether wars made (in a generally accepted way) are based on a justification and the precise determination of the reasons for

just war concept. The idea that unfolds the concept of just war aims to restrict war rather than legitimize war. However, as a result of religion's approach to the concept of just war, the legitimization of war has become increasingly controversial. The idea that uncovered the concept of a lively battle intended to restrict war rather than justify it (Hoş, 2011:15). Studies to determine the justification for war which has been started since the ancient Greek civilizations has been justified with the emergence of holy wars (Yalçınkaya, 2008:109).

The influence of the Enlightenment period, the understanding of the secular state has also affected international law. Hugo Grotius, who is regarded as the strongest proponents behind the creation of international humanitarian law, has emphasized the reasons (Grotius, 1967:51)<sup>6</sup> why he has justify war in the work titled "War and Peace Law". In J. J. Rousseau's (1752) Society Convention, war has been described as "a relationship of one state to another, not that of one man to another". However, according to Rousseau, it was argued that those who surrendered weapons during the war could not be regarded as vehicles of the enemy or the enemy from that moment on, but that there was only one person, and no one would ever have the right to live on them. Thus, the principles of humanitarian law based on religion and tradition have been revealed by the principles of reason and nature (Başer, 2012:34-35).

The establishment of the League of Nations at the beginning of the twentieth century, which was mentioned in the introduction, and the subsequent establishment of the United Nations constitute a daily reflection of the attempts made in humanitarian law and justified warfare. The UN treaty explains the conditions under which the use of force is possible and as well as forbidding war. Accordingly, in cases where the peaceful measures of the UN Security Council, which has the authority to use force, are inadequate, where compulsory measures referred to in Article 41 are referred to, and other compulsory measures are insufficient, there is a right to use force under Article 42. In addition, Article 51 permits states to exercise force within the scope of legitimate self-defense (Yalçınkaya, 2008:127).

### **Asymmetric Warfare Among the Types of War**

There are many different classifications in literature in determining the type or types of war. It has been observed that classifications made in this context are usually made under separate headings according to the size, scope and nature of the war. The concept of war can be classified differently such as; formal, mixed, Conventional, Non-Regular, Coalition and Alliance, Nuclear, Total, and Asymmetric (Varlık,2013:121; Gürcan, 2012:115).<sup>7</sup> The focus of the work shall be on asymmetric but not the other forms of war.

The dictionary meaning of the term asymmetry is expressed as "invisible, not having any type of symmetry" (Turkish Dictionary). This means that existing customary practices are meant to be excluded. Asymmetry, according to the definition in US military doctrines, is the difference that arises from the organization, equipment, doctrine, possibilities and capabilities among forces (FM 3-0, Operations, 2001). With the end of the Cold War, battles have become more asymmetrical than conventional. The concept of asymmetric warfare seems to have come to the forefront, especially with the emergence of conflicts among states and between armed groups and the states.<sup>8</sup>Atabek argues that as the difference in income and power between the people and the states grows, the world

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<sup>6</sup> He ascertain them as; Self-defense, withdrawal of something that is ours, punishment.

<sup>7</sup> Examples of different classifications are; Order, Informal order, guerrilla war, Riot and anti-riot, Terrorism and anti-terrorism, and Helping a friendly country in her internal security.

<sup>8</sup> 6 out of the 42 conflicts that occurred in 2015 were between states, the other 36 conflicts are against non-state organizations.

becomes asymmetrical and thus terror in such a world is "asymmetrical terror" and "asymmetric war" (Atabek, 2001).

The first definition of the concept of asymmetric war was made in 1995 in the US doctrine of "war between dissimilar forces" (Joint Publication-1). Examples of non-similar forces are; Air forces against land forces, and naval forces against air forces (Türkeş, 2007:12). The first definition is a limited definition and with new definitions emerging in recent years, it has developed the notion of asymmetric warfare.

New definitions of asymmetric warfare; According to Stephane Marchand, "it is the act of threatening heavy and costly military assets with cheap and light vehicles (Marchand, 2011:55). According to Tamer Akkan and Ahmet Küçükşahin, "it is a war in which at least one side in a conflict acts differently in action, idea and organization from the enemy in order to be able to take advantageous position against the enemy (Akkan and Küçükşahin, 2007:43). According to Haluk Özdemir, "it is a state of war in which irregular militant groups fight against the states and their armies (Özdemir, 2002:162). According to the definition given by Ali Bilgin, "it is a war in which unmatched elements of power, methods of battle, means and weaponry exist (Varlık, 2013:125).

In a war or armed conflict, the forces of Asymmetry strategy can be created in the dimension of space and time, however the creation of fundamental asymmetry is in itself uncertain (Military Review, Doctrine for Asymmetric Warfare, 2003). Terrorism, weapons of mass destruction, psychological operations techniques, information campaigns and cyber-attacks, which are used as vehicles by non-state organizations, have contributed to the uncertainty of the subject matter, but it has also given a deeper dimension to the meaning of asymmetric warfare (Varlık, 2013:125). In traditional wars, military victory is needed to achieve political goals. However, in the asymmetric war, political and social triumphs are being tried to achieve military success. In this context, conclusion can be drawn that in the case of asymmetric warfare, the achievements in the tactical and operative level are not prejudicial if they do not have political and social successes (Türkeş, 2007:12-13).

When the definitions are taken into account; Asymmetric warfare is defined as fighting against the states with stronger (military and economic sense) by non-state organizations, fighting with tools and methods that are not similar to each other by carrying out unusual actions.<sup>9</sup> It is not required for one of the parties in this definition to be a non – state actor. However the realities of 21<sup>st</sup> century require that it is appropriate to use this restriction when it is considered that there is a conflict between state and non-state organization.

The general characteristics of asymmetric warfare are different from conventional warfare in the context of state and non-state and strong-weak conflict. In this context, the characteristics of asymmetric warfare can be summarized as follows. What causes asymmetric warfare is the presence of power imbalance, that is, there is serious power imbalance between the sides. Guerilla War, Special Unions, Fifth Arm Action, Fourth Generation War, Psychological Operation and cyber Attack, are the fighting techniques used in asymmetric warfare. Against the desire of the strong side to end the war as soon as possible, the weak side of the asymmetric war sees a long battle, and as the war goes on, a psychological asymmetry occurs. As long as the non-state party to the war receives help from the enemies of the state, the war continues on for a long time. The greatest struggle of the weak side is not to lose the support of the people; the strong side shows the courage to break this

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<sup>9</sup> For a much broader understanding Asymmetric War; Is the struggle that one of the parties in a conflict is aiming to break the continuity of dynamism and conflict on the other side by means and methods which are not similar to each other by performing actions other than usual.

support with the media power that is at her hands. In an asymmetric war, if the non-state actor loses public support, she will lose the ability to continue the struggle (Yıldız, 2015).

Due to the status difference between the sides fighting in the asymmetric war (State and non-State actor) it is said to be an unidentified war. This is because one party to the war (the state) complies with international humanitarian law, while the other party (non-state actor) does not comply with international humanitarian law. Thus, civil war segregations are very difficult situations to handle because the enemy and target of the war cannot be easily identified (Ackman, 2001).<sup>10</sup>

Asymmetric warfare became widespread and the use of force by the states in the Treaty of Westphalia weakened (Yalçinkaya and Türkeş, 2008:56). Thus, the state, which is used as an analysis unit of the discipline of international relations, is no longer sufficient for the meaning of modern wars. However, certain problems have emerged within the concept of international humanitarian law because of the methods used by the non-state actor in armed conflict.

### **Asymmetric War and Humanitarian Law**

It seems that humanitarian law, which aimed at protecting people who are not participating in a military conflict, did not fully fulfill this in the 21st century wars. Especially in the post-Cold War period, the metamorphosis of the armed conflict and the concept of the new kind of war cause the humanitarian law rules to be less applicable. The fact that innovations in humanitarian law have not been made within the scope of the new version of the armed conflict and the expansion of its scope has caused this problem to grow even further. In addition, some problems with regards to humanitarian law has emerged and the cause of these problems are; the ambiguity of which humanitarian law rules should be applied in which case, the uncertainty of which sanctions are imposed in case of non-compliance, the competences of international humanitarian law organizations and the competencies of states which have to implement these rules.

In the post-cold period, especially after the September 11 terrorist attacks in the United States, the size of terrorist acts and the damage caused to the other side as an asymmetric warfare technique have been well understood (Thorton, 2007:1).<sup>11</sup> In this context, as a result of the characteristics of asymmetric warfare the consequences of its actions have made great reactions. In order to ensure the continuity of humanitarian law and to respect humanitarian principles during the non-international armed conflicts (armed conflicts with non-state actors), the third article of the Geneva Conventions;

“Article 3 states- Where a non-international armed clash occurs on the territory of one of the High Contracting Parties, each of the parties to the conflict shall, at a minimum, be obliged to apply the following provisions:

1. Any person who does not directly participate in the disposition, who abandons his or her arms and who is out of combat due to illness, injury, or any other reason, irrespective of race, color, religion and gender, gender, birth and wealth, they will be treated in human form. For this reason the above mentions issues satisfies the following points:

- a) Life, body integrity and personal rape are all killers, mutilation, brutal treatment, torture and cruelty.
- b) Take hostage

<sup>10</sup>After the September 2001 attack, the US president George W. Bush tried to define the concept of a faceless enemy as a situation in which a war exist but the enemy is not certain.

<sup>11</sup> The attacks of the twin towers, in which 3000 people lost their lives, caused an economic damage of approximately 18 billion dollars.

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- c) The rape of the souls of the people
  - d) Execution of convicts sentenced to death by a court without prejudice, with judicial assurance known as civilian nations.

2. The wounded and the patients will be collected and treated. An impartial humanitarian organization, such as the International Committee of the Red Cross, will be able to provide services to the parties in the event of a conflict. The International Committee of the Red Cross shall try to enforce all or part of other provisions of this Convention through special agreements.

The application of the above provisions shall not affect the legal status of the parties in conflict.

With this article, the basic rules that the parties have to comply with in case of a non-international conflict are set forth. Apart from the 1949 Geneva Conventions, the 1979 2<sup>nd</sup> Nol. Supplementary Protocol, Article 1;

*“In the territory of the High Contracting Party armed with its own armed forces, opposition armed forces or other organized armed groups which are under the command of responsible persons, engaged in continuing and planned military operations and which have control over a part of the territory of this High Contracting Party, It is applied in all armed conflicts. Secondly this Protocol shall not apply to cases of internal tension and internal disorder, such as insurrection, individual and irregular acts of violence and other acts of a similar nature, which are not considered to be armed conflicts ”.*

The conflicts between non-state armed organizations under the common Article 3 have been excluded from this Additional Protocol. However, it became a party to non-state armed groups. In Article 8 of the Rome Statute, which was enacted in 1998, international and non-international armed conflicts have been distinguished and armed conflicts between two non-state actors have been included in war crimes, and the armed confrontation must continue for a long time (Albayrak, 2013:37-38). The 1949 Geneva Conventions and additional protocols have not been set forth in the context of asymmetric warfare and the laws of war. Especially when the examples in the scope of the struggle against terrorism such as the intervention of US in Afghanistan is considered, it is not clear how the humanitarian law rules will be applied in an environment of non-international conflict outside the US borders.

For example, the United States announced that al-Qaeda militants, which it had caught in Afghanistan, were in the illegal combat status and could not benefit from international humanitarian law. Thus, the terrorists who are members of the al-Qaida have not been brought into the category of civilian or combatant. For this reason, these people have been left out of humanitarian law and become open to many violations (mainly torture). Human rights are applicable to everyone irrespective of being civilian, militant, terrorist, etc. For this reason, humanitarian law rules are insufficient in the scope of asymmetric war or fight against terrorism (Aydın, 2015:604-606). Hence, humanitarian law rules should change in response to the new forms of war.

One of the basic principles of humanitarian law is protection of civilians. This principle is generally stated in Article 75 of the first Additional Protocol under the title of Basic Guarantees. With this substance, civilians should be treated humanely, should not be exposed to violence, and should be freed as soon as possible. The 50<sup>th</sup> article of the same protocol defined civil, and it emphasized that civil separation should be done according to this definition. In this context, the non-combatants must be treated within the scope of the Humanitarian Laws. In pursuant of the first protocol of the 48 article, it is compulsory to make a distinction between civilians and militants. Thus, the needs to ensure that the targets to be impacted are absolutely within the scope of military necessity are underlined.

In the framework of the principle of not causing unnecessary suffering, what constitute forbidden and non-discriminatory attacks are explained by the fifth paragraph in accordance with the provision of the fourth paragraph of article 51 of the first protocol.

“Article 51 - Protection of civilian population

5. The following types of attacks are considered to be non-discriminatory attacks, including but not limited to:

a) Attacks in the form of a bombardment, regardless of the method or means used, such as a city, town, or a similar place where civilians or civilian goods are intensely located, but considers a number of military targets as a single military target.

b) in the pursuit of obtaining military advantage, an excessive loss of human life is unacceptable mainly that of civilian life.

In this context, it is observed that while states are paying attention to asymmetric wars, it is observed that civilian military distinction is not taken into account in actions carried out by non-state actors. For this reason, the sensitivity of participating states during asymmetric wars is insignificant to the non-state actors and thus causes the increase in the loss of civilian lives.

The other basic principle of humanitarian law is also the provisions of the IHL agreement. (Estreicher, 2011:6) In this context, the discrimination of parties in attack will be considered as not causing any unnecessary suffering. The items to be evaluated within the scope of proportionality;

“Article 57- Measures taken during the attacks

2. The following measures will be taken with regard to the attacks:

A) Those that plan an attack or decide to make an attack are:

i) It must do everything that can be done to verify that the targets to be attacked are not civilians and are not subject to special protection, only military targets in the context of the definition given in paragraph 2 of Article 52, and that there is no prohibition against attacking these places under the provisions of this Protocol.

ii) It should take all possible precautions when choosing the means and means of attack in order to prevent the accidental loss of civilian life, injury to civilians and damage to civil property, and in any case to minimize them at all costs.

iii) It should refrain from deciding on an attack that could be expected to cause an accidental loss of human life, injuries and civilian property damage or co-occurrence of all these losses and damages in civilian life, which is considered excessive as compared with the concrete and direct military advantage expected to be achieved.

B) An attack that may involve the loss of human life in the civilian capacity to the extent that the objective is not a military target or that it is subject to special protection or that it is considered excessive as compared with the concrete and direct military advantage expected from the attack to be done and that it is expected to result from it; It will be stopped or suspended if it becomes clear that the loss and damages will cause the accidental occurrence of all of the above mentioned.

C) Except where circumstances do not permit, an effective pre-warning must be made for attacks that may affect civilian populations.

However, we can say that these issues are not respected in terms of the parties that are currently fighting asymmetric warfare. For example, in the ongoing civil war in Syria, according to

the Aleppo Civil Defense Association, between November and December 2016, 2000 air strike were made by the Russian and Syrian regime forces resulting to 2000 civilian casualties (AA New Agency).

We can say that the reasons for the violations of humanitarian law in the asymmetrical war originate from some basic variables which are different from classical warfare. Asymmetric wars usually take place in the city centers and as a result of the war being taken to the city centers; Non-state actors usually try to use civilian elements as natural armor, air attacks against the enemy and ball guns cause civilians living in this region to be killed and civilians who should have been protected under humanitarian law are subjected to indiscriminate attacks. This situation results in the violation of military necessity and proportionality principles.

It is observed that the necessity of separating civilian military from humanitarian law rules can be made very difficult during asymmetric wars. It is particularly difficult for states to target because the non-state actor behaves like civilians during the day and they become a fighting force at nights. For this reason, mistakes arise when civilian military discrimination is made and there is an increase in the number of civilian deaths.

During asymmetric wars, states do not accept armed conflicts within their borders, and therefore do not accept the obligation to comply with humanitarian rules of law during the conflict. This presents another challenge as an obstacle to the implementation of the humanitarian rules of asymmetric warfare.

In asymmetric war, the weaponry prowess of states is known in the context of humanitarian law. The weaponry prowess of non –state actors is unknown in the context of humanitarian law and they do not comply with this law (Muneer, 2016:9-10).

In an asymmetric war, states try to keep the losses that their military personnel may have to experience to minimum in order not to encounter the reactions of the national public. For this reason, whenever they are fighting with non-state military units, they aim to destroy the enemy with the technological weapons they have at hand. While this reduces the military's loss to a minimum, it destroys many civilian lives as a result of air strikes. Within the scope of the increase of civilian death due to the mistakes made in targeting; one example is that the US has caused 1000 civilians to die as a result of the air strikes made in response to the loss of 15 US soldiers (Cohen, 2010:3).

Due to the fact that non-state actors participating in asymmetric wars do not encounter any sanctions if they do not comply with the Humanitarian Laws, and because they do not treat their prisoners in accordance to these rules humanitarian laws are having problems. States compliance to these rules can be control be international organizations even if it is partial. However, it is very difficult to control or get in touch with non-state actors. For example, the chances of the international committee of the Red Cross to meet with non-state actors are not possible due to the unavailability of managers of these organizations and the lack of trust in such organizations. Even whereas such meetings are possible, usually states refuse to support such efforts for they consider the non-state actor as a terrorist group and that the intergovernmental organization is supporting the non- state actor (Pfanner, 2005:167).

Samuel Estreicher's work on the steps to reduce or eliminate civilian deaths caused by asymmetric warfare is presented in five steps. The solutions he suggested are;

1. First, when humanitarian law rules are established, concepts must be correctly defined and correctly named. In this context, civilian casualties in asymmetric wars need to be stated in clear terms, such as the massacre or killing of people. Calling these deaths as attacks, military targets,



political tensions, rebellions, and insurrections is considered to hide the truth and no progress can be made.

2. During asymmetric wars, it should be emphasized clearly that torture from both sides is absolutely unacceptable and no one should die as a result of torture.

3. The United States and countries that share the same ideology with her should not publicize and misrepresent humanitarian law and armed conflict outcome reports.

4. Countries that host immigrants or non-state actors on their own territory should be responsible for their wellbeing under the third article of the Humanitarian Law

5. During asymmetric wars, International organization and the UN Security Council should struggle for peace to be reinstalled (Estreicher, 2012:602-603).

For a more practically of the rules of international humanitarian and in order to reduce the death rate of civilians during asymmetric war, Estreicher suggested some points such as; defining the problem, then make a more realistic analysis of the conflict, determining responsibilities, and increasing the sensitivity of international institution could create a new road map.

### **Conclusion**

The basic principles of humanitarian law are binding on all states because they are concerned with the common interests of the international community. The idea that the parties do not have an obligation to comply with these rules will be considered null and void under international law. Military and economic sanctions imposed by the UN Charter Chapter VII may be imposed on states that violate humanitarian law. However, a mechanism that works within the framework of determined humanitarian law violations is not yet available (Özsoy, 1998:125). It seems very difficult for non-state actors to face a criminal offense in an environment where violations cannot be fully controlled even within the state.

In the asymmetric war, which is the new concept of war, of modern world the sides of the conflict have been transformed. In this context, the binding of humanitarian law rules in the new war that states and non-state actors face is coming to an end. There is no solution to cover terrorist attacks and counter-terrorism, a method of asymmetric warfare. Asymmetrical wars are different from classical war conditions in which humanitarian law rules are established. It is stated in the ICRC report 2011 that humanitarian conflicts arising from armed conflicts can only be assessed under Article 3 of the Geneva Conventions (ICRC, 2011:10). This shows how inadequate humanitarian law, organized according to traditional wars, is for asymmetric wars (Başer, 2012:147).

After the cold war the world faced a new problem in which an unidentifiable enemy to a war exist, consequently resolving armed conflicts become very difficult under humanitarian law. As a result of continuing new wars with the old rules, international humanitarian law rules must be rearranged in order to prevent the increasing death rates and other violations of civilian people who are impartial in armed conflicts and the legal gaps should be closed.

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