

3. NEW WARS AND CONTEMPORARY NON-INTERNATIONAL ARMED CONFLICTS: THE EMERGING TRENDS

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3.1 Introduction

The first, the supreme, the most far-reaching act of judgment that the statesman and commander have to make is to establish ... the kind of war on which they are embarking; neither mistaking it for, nor trying to turn it into something that is alien to its nature.

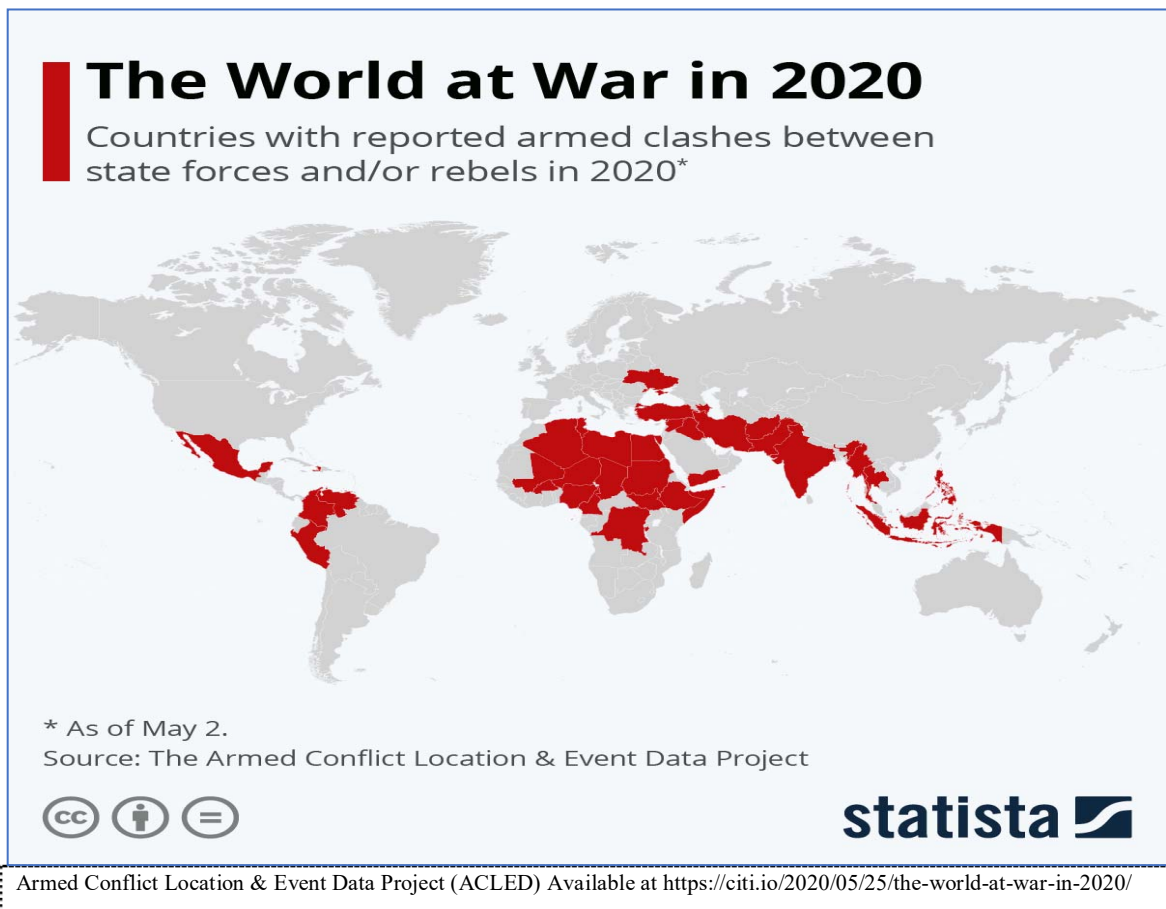
— Carl von Clausewitz,
On War

Geneva Conventions turned seventy in 2019. As already discussed in the earlier chapter, Geneva Conventions or laws of war in general are premised on several distinctions, between the times of war and peace, between State and non-State actors, between combatants and civilians, between international and non-international armed conflicts. On the other hand, the recent trends reflect a phenomenon of diminishing distinction. These eliminations of distinctions are posing serious challenges to the international humanitarian law. Further, these emerging trends in the modern times have led the jurists and theorists to debate on the emergence of modern conflicts or New Wars, which do not fall strictly within the existing straight jacketed rules of international armed conflicts and non-international armed conflicts.

This chapter has attempted to analyse the nature of contemporary conflicts and try and answer whether they fall into the neat distinctions prescribed by the international humanitarian law. It has traced the development of armed conflicts and wars; from the times of monopoly exercised by States over wars till the recent times when States have lost its monopoly over war. Further the chapter has discussed various propositions on the nature of contemporary conflicts, the thesis of fourth generation of warfare and ‘new wars’, the evolving means and methods of warfare. The chapter has also identified features of these modern conflicts and highlight how nature of war and its determination is important to not just humanise the war but also mitigate its effect and bring to an end as soon as possible.

3.2 Generations of Warfare: A Reflection on the Changes

If one looks at the statistics of wars fought after the World War II, every continent on the face of the earth has witnessed the scourge of an estimate 250 conflicts resulting in casualties ranging from 70 million to 170 million, most of whom were non-combatants. Almost no region of the world has been spared of the human and material devastation resulting from violations of international humanitarian law by State as well as non-state actors. The image below displays the regions of the world currently engulfed in the conflict.



A number of research organizations, including the Carnegie Endowment for International Peace, Stockholm International Peace Research Institute (SIPRI), PIOOM (Programma Interdisciplinair Onderzoek naar Oorzaken van Mensenrechtenschendingen) and others, have attempted to identify the number of conflicts of a non-international character and the level of victimization that has resulted in these conflicts. These research projects, however, seldom distinguish between groups of non-state actors who engage in armed conflicts that are legally characterized as international, non-international, or purely internal armed conflicts. A number of legal consequences derive from these characterizations that impact on compliance with the norms of international humanitarian law, and in turn affect the levels of victimization occurring in these conflicts. The characterisations have today become hazy due to the changing nature of wars.

With the end of Cold War, which ended a stale mate between the bipolar world orders, the world instead of witnessing peace and prosperity saw several new hot spots of conflicts, war and violence. War is not new to the mankind. However, the asymmetries present not just in the conduct of conflicts but also in the parties to it during the Cold War and post-Cold War era raised several questions with respect to the strategies of States that were unable to bring the conflicts to end. A major cause of failure to conclude the ongoing conflicts is the lack of understanding of the nature of conflicts that have undergone many alterations and have evolved continuously. More so, the modern era has also been considered to be an era that has witnessed the highest conflicts not just in numbers but also in scope, duration and intensity. There have been several reasons for the same,

- *one* being the technological development that have also impacted the weaponry used in the war and
- *second* being the nature of the conflicts typified by the methods and means of warfare which were evolving on the shoulders of the scientific and technological advancements.

In order to understand the evolving trends in warfare there are several views that have been devised and suggested by military policymakers, humanitarian organizations and academicians. The most prominent and deliberated theories are the 'The Fourth Generation Warfare', 'New Wars' and 'Contemporary Armed Conflicts'. The chapter has further discussed the propositions forwarded by these theories and their tenability.

3.2.1 Clausewitz Classical War: Although an unfinished manuscript, Clausewitz 'On War' still stands as a pioneering work to understand the idea and concept of war from two approaches political and material. It still holds relevance with respect to the nature of classical wars and how it is dependent on the interplay of means and ends. According to Clausewitz, war is 'complex' and 'variable' and is governed by laws of probability rather than of logical necessity.¹⁴⁶ Described as a chameleon, that alters its external appearance according to its environment, war can also alter itself externally but unlike a chameleon that cannot alter itself internally, war is capable of being altered internally in terms of its kind and degree. According to him, war can have two purposes, either overthrowing the opponent or achieving a negotiable settlement. However, the purpose doesn't remain static as predetermined but switches as per the circumstances. Similarly, the intensity of violence and hostility also does not remain static and pulses from high to low or vice versa.¹⁴⁷

Further, according to him, the nature of war is not deduced only from the intensity of violence but is also affected by the social and political conditions. Thus, although all wars had the same nature, the nature of each was dynamic due to its elements in constant flux.

Thus, these aspects have been summed in Clausewitz's trinity- the trinity of purpose, chance, and hostility. The interplay of these three factors mould any war. The purpose defines the military aim, intensity of violence and effort to be employed. War also

¹⁴⁶ Clausewitz, C. von, *On War* 90 (Princeton Univ. Press, 1989).

¹⁴⁷ *Ibid* at 87.

involves possibilities and probabilities calculated after analysing the opponents, his skill and techniques and thus creating chances for one's win. And lastly, hostility which is fundamental to war. He believed that hostility could exist without war, but war cannot exist without hostility. Thus, the trinity lays the basic nature present in all wars, though in varying degrees and all aspects of trinity are equally significant and influential to the nature of war.

The most important aspect of Clausewitz idea of nature of war is that the use of violence is regarded as the ends of policy. War is bilateral use of violence, where violence is met by violence and this violent clash of opposing wills is the essence of war. The purpose of violence is to subdue the opponent to fulfil our will.¹⁴⁸ Thus war is a mere continuation of political intercourse by other means.¹⁴⁹ Thus, war is not just a political act but a political instrument.

However, this reflects State-to-State war only, with no acknowledgment of any possibility on non-State wars. But nonetheless, he himself made way for future conflicts, where he states that wars do not conform to a single pattern. 'Each era had its own kinds of war, its own limiting conditions, its own biases. Each would also, therefore, have had its own theory of war.'¹⁵⁰ Thus agreeing that war will never have a linear nature which makes a universally theory on nature of war itself a misnomer and puts Clausewitz work in question.

3.2.2 Fourth Generation of Warfare: This theory developed in late 20th Century, is premised on the evolution of warfare in modern times and has bifurcated it in generations rather than strict period in order to accommodate the changes in a sequential manner with attributes of previous generations carried on even to next generations. Thus, the most

¹⁴⁸ *Ibid* at 75.

¹⁴⁹ *Ibid* at 87-88.

¹⁵⁰ *Ibid* at 593.

significant aspect of this theory is that in order to highlight the new features of latest generations it does not discard the wars and conflicts for past generations and thus stands true to the time. The main proponents of the theory are William Lind, Thomas Hammes and John Robb.

3.2.2.1 William Lind : The term ‘Fourth Generation Warfare’ has been coined by William S Lind, Director of the Centre for Cultural Conservatism at the Free Congress Foundation in his seminal work “The Changing Face of War: Into the Fourth Generation” which is based upon the assertion that modern warfare has evolved in series of phases, each distinct due to the difference in various factors such as new technologies, parties, innovations in strategies, intent, motivation and approach of warfare.¹⁵¹ Primarily as a tactical level theory it has analysed the evolution of modern warfare set from Treaty of Westphalia in 1648 till present, in four generations. The reason for selecting Treaty of Westphalia as the originating point of the four generations of warfare lies in the fact of origin of the modern Nation State that was sovereign and the only one authorized to use force. According to the proponents of this theory, ‘modern warfare’ has emerged with ‘modern Nation States’. As Lind says,

“before the Peace of Westphalia, many different entities waged wars. Families waged wars, as did clans and tribes. Ethnic groups and races waged war. Religions and cultures waged war. So did business enterprises and gangs. These wars were often many-sided, not two-sided, and alliances shifted constantly.”¹⁵²

Thus, modern warfare has developed as a result of Treaty of Westphalia that ended the Thirty-Years War and gave States a monopoly over ‘legitimate organised violence’. It’s in these three and half centuries that modern warfare has passed through three phases and has entered into the fourth.

¹⁵¹ William Lind, “FMFM 1 A: Fourth Generation War” available at <https://globalguerrillas.typepad.com/lind/the-changing-face-of-war-into-the-fourth-generation.html> (last visited August 08, 2020)

¹⁵² Ibid.

As per Lind, the four generations are characterised as follows:

- *First Generation:* From Mid-17th to early 20th century, it lasted from Peace of Westphalia till around American Civil War, characterized by a battlefield of order (i.e., line and column tactics), which created a bureaucratic military culture of order, which was important to create the distinction between ‘military’ and ‘civilian’. This began to break down with the development of industrial age armies, as the military culture of order clashed with the increasingly disorderly battlefield, leading to a period of often bloody confusion. According to Lind, the First-Generation culture of order still exists as most State militaries are designed to fight other State militaries. The disorderly battlefield of the Fourth Generation is in complete contradiction to First Generation State militaries who have to face much difficulty fighting locked in order while everything else, from the battlefield to the society-the theatre of conflict- has become disorderly.
- *Second Generation:* With the development of French ‘firepower-and-attrition model’ of warfare during World War I, the resurgence of Second Generation is traced from early to mid-20th century. It relied on centralized decision-making within a controlling hierarchy, which produced decisive results while preserving the military culture of order. Second generation warfare is thus based on three pillars artillery, infantry, and obedience of orders. Lind describes it’s as ‘school solution’ approach where every problem can be solved by prescribed methods derived from training and education thus inculcating order and obedience over initiative to maintain synchronization.
- *Third Generation:* Emerged in mid-to late-20th century and known as “maneuver warfare” or “blitzkrieg,” like Second Generation Warfare, this developed out of World War I, but was not fully realized until the early German campaigns of World War II and was then picked up by other powers. Third Generation war is

distinct than the other two in terms that it dealt with disorderly battlefield by adopting to disorder. It was characterized by great operational mobility, with decision making pushed down to the lowest levels, and great operational flexibility, with attrition less important than rapid, decisive maneuver to encircle enemy forces with unexpected and dangerous situations and thus pulling them apart mentally and physically. This was made possible by the development of the internal combustion engine and radio. However, Third Generation may be superior, but militaries still follow Second Generation because they are unable to free themselves from order.

- *Fourth Generation*: Mid-20th century to the present. In response to the overwhelming capability of the modern conventional military force, weaker opponents began abandoning its use to resort to alternative ways of waging war, such as insurgency, “terrorism,” and other forms of “asymmetric” conflict. However, the two distinct features of Fourth Generation Warfare are that is driven by technology and potentially by idea too. High Technology driven weapons; “smart” systems available has further deepened the asymmetry. Thus, although the three classic levels of war –strategic, operational, and tactical – still exist in Fourth Generation war however are transformed.¹⁵³

3.2.2.2 Thomas Hammes: Although, Lind explained the Fourth Generation, no consensus has been built over it. Another major proponent of the theory is Thomas X. Hammes, a retired Marine Corps colonel and one of the principal proponents of the idea. In his seminal work ‘*The Sling and The Stone: On War in the 21st Century*’ Colonel Hammes based his propositions on more than “twenty-five years of study of the evolution of war.”¹⁵⁴

¹⁵³Summarized from The Four Generations of Modern War available at <http://www.lewrockwell.com/lind/lind26.html>, and Lind. FMFM, pp. 35-36.

¹⁵⁴ Thomas X. Hammes, *The Sling and The Stone: On War in the 21st Century* 16 (Zenith Press, 6th edn. 2004).

Hammes proposition with respect to the four generations are different from that of Lind in certain ways. Hammes has tried to understand the evolution of warfare in not just military or technological advancements but has traced the political, economic, and social structures that have supported transformation of warfare and transition of generations. Hammes says:

*“The first generation of war grew not just from the invention of gunpowder but also from the political, economic, and social structures that developed as Europe transitioned from a feudal system to a system of nation-states ruled by monarchs. The transition from the ‘chivalry’ of feudal knights to the armies of Napoleon required centuries. This time was required not only to develop reliable firearms but more important, to develop the political system, the wealth-generating national economies, the social structures, and the technologies capable of sustaining the mass armies of the Napoleonic era. During this time, the first generation of modern war evolved slowly, in consonance with the societies of western Europe. It peaked with the massive armies of the Napoleonic Wars of the early 19th century.”*¹⁵⁵

Thus, according to Hammes, it took a long time for medieval warfare to transform itself into first generation modern warfare because it was based upon not just technological but political, social and economic structures too.¹⁵⁶ And this followed in other generation. Hammes believes that, apart from technological advancement in weapon systems, economic prosperity, population growth, better governments and industrialisation of weaponry for increased output coupled with mass motivation led to the growth of second

¹⁵⁵ Thomas X. Hammes, *The Sling and The Stone: On War in the 21st Century* 16 (Zenith Press, 6th edn. 2004).

¹⁵⁶ *Ibid* at 18.

generation. He identifies the World War I 1914-1918 as the period of second generation.¹⁵⁷

Similar to Lind, Hammes also credits the Germans as the fathers of Third Generation Warfare during the World War II. The mechanised attack and maneuverist approach helped Germans overwhelm the Polish Army. However, again, not just the military response to specific tactical problems distinguishes third generation from others. The evolution of third generation was also dependent on the political, economic, social, and technological conditions as he politically unified States could adopt the third generation aided by their social and economic development.

Thus, according to Hammes, none of the generations consisted of sudden transformation but evolved over time.

- The first generation of modern war was dominated by *massed manpower* and culminated in the Napoleonic Wars. The second generation, which was quickly adopted by the world's major powers, was dominated by *firepower* and ended in World War I. In relatively short order, during World War II the Germans introduced third-generation warfare, characterized by *maneuver*. Fourth-generation wars have now evolved, taking advantage of the political, social, economic and technical changes since World War II. An evolved form of insurgency, fourth-generation war uses all available networks—political, economic, social, military—to convince the enemy's decision makers that their strategic goals are either unachievable or too costly for the perceived benefit.¹⁵⁸

¹⁵⁷ *Ibid* at 18-19.

¹⁵⁸ Thomas X. Hammes, "4GW: Our Enemies Play to Their Strengths," *Armed Forces Journal* 40-41 (2004). See also, Thomas X. Hammes, *The Sling and the Stone: On War in the 21st Century* 2 (Zenith Press, 6th Edn 2004; Thomas X. Hammes, *Insurgency: Modern Warfare Evolves into a Fourth Generation* 18 (Institute for National Strategic Studies 1st edn. 2005).

- Further, while the first generation focused on the direct destruction of enemy, the second relied on firepower to achieve the same goal, both restricted by the war fighting capabilities of their societies. With changing technologies capable to project power over much longer ranges, the third generation took advantage of the same and focused on destruction of enemy's command and control and logistics thus destroying his will to fight. Thus, with each generation, efforts were made to reach deeper and farther in enemy's territory, with finally the fourth generation that attacks the rear of the enemy with the direct destruction of his political will to fight.¹⁵⁹
- Hammes provides vivid description of changes happening in the society on the political, economic, social, and technological front that created the conditions necessary for major changes in war. These changes suggest a logical progression of the three generations.
- To introduce fourth-generation war, Hammes spells out, in considerable detail the changes to society as the fundamental bases of the new generation. The *first* change is the political scene which has changed dramatically due to the exponential increase in number of players at international stage. These non-State players have significantly reduced the monopoly of States that were the only significant players on the international scene.¹⁶⁰ *Secondly*, Hammes identifies the increase in number of nations and stateless actors post-War as an important political change to change the dynamics of world order.¹⁶¹

Hammes further identifies economic changes like the emergence of the international financial markets that are most powerful and least controlled, flow of goods and

¹⁵⁹ Thomas X. Hammes, *The Sling and the Stone: On War in the 21st Century*, 30-31 (Zenith Press, 6th Edn 2004).

¹⁶⁰ *Ibid* at 33.

¹⁶¹ *Ibid* at 34-35.

information across continents that have affected decisions of warring States while taking policy decision.¹⁶²

3.2.2.3 John Robb: Another prominent advocate of 4GW, John Robb, a former Air Force officer, journalist, and businessman, has a neat summary of what he views as the critical factors favouring this new way of war:

- **Global:** Modern technologies and economic integration enable global operations by small actors.
- **Pervasive:** The decline of nation-state warfare has forced all open conflict into the 4GW mould.
- **Granularity:** Multiplication of many extremely small viable groups and a broad variety of reasons for conflict.
- **Vulnerability:** Open societies and economies offer many vulnerabilities and targets of opportunity, while allowing the free movement of individuals.
- **Technology:** New technologies—automatic weapons, cellphones, the internet, GPS, chembio weapons—have dramatically increased the capability of small groups of warriors.
- **Media:** Global media saturation—press, television, internet, cell phone—provides an extraordinary propaganda reach and lends itself to facile manipulation of public opinion.
- **Networked:** New organizational models made possible by improvements in technology are much better at learning, adapting, surviving, and acting.¹⁶³

¹⁶² *Ibid* at 35-36.

¹⁶³ John Robb, 4GW, Global Guerrillas.

available at: https://globalguerrillas.typepad.com/globalguerrillas/2004/05/4gw_fourth_gene.html.

The argument made by Lind, Hammes, and others is that with the advent of fourth generation warfare, the State is losing monopoly over the use of force which was acquired in 1648. Wars are now being fought by many other diverse entities such as sects, political parties, criminal cartels with losing significance of conventional armies bound by their culture and discipline. While technology remains of importance, it's the ability of small force to debilitate a larger force that marks 4GW. Those who apply 4GW attempt to cause the enemy collapse internally rather than by physical destruction. All the proponents of 4GW argue that its principal objective is not the destruction of the enemy's force, but of his will to continue the fight. As Robb states it,

“Victory . . . is won in the moral sphere. The aim of 4GW is to destroy the moral bonds that allows the organic whole to exist—cohesion.”¹⁶⁴

3.2.2.4 Critique of Fourth Generation of Warfare: Although, the idea of fourth generation warfare seems to be quite relevant, there have been several critique of the idea based on the simple premise of the distinction between revolution and evolution, as many believe that although few features have revolutionised, other factors are just evolving as they have been evolving since always. Throughout the history, there have been several developments which have been asymmetrical in nature and thus what's happening today is more traditional way of war. Thus, there is nothing new about the irregularity in war.

Other view holds that prominent features like that of rise of non-State actors does not mean “new” types of conflicts just because they are common. It's the decline of State-on-State war that makes non-State conflicts more noticeable.

The fourth generation of warfare proponents state that one of the main differences of this new warfare is that it is waged for “non-national or transnational [reasons], such as

¹⁶⁴ Ibid.

ideology or religion.”¹⁶⁵ It has been pointed out that even the apparently pure nation-state conflict of World War II was as much about ideological differences between liberalism, socialism, and Nazism as it was about nation-state interests. Even Cold War was also a struggle of modernity between the two ideologies of liberalism and socialism.¹⁶⁶ Thus the fourth generation of warfare is likely to exist with the third generation of warfare as State systems are there to remain, will interact with other and flare up rivalries. Thus, there is no generational shift as such.

Further, the proponents have failed to provide the distinction between “war” and “peace,” nor “lawful” and “unlawful” activity in the conduct of conflict which is particularly important for the applicability of relevant laws. Concepts such as “civilian” and “military” or “combatant” and “non-combatant” have no real meaning in the fourth-generation warfare which makes it difficult to determine the protection and proportionality of force to be applied during the conflict.

One of the main selling points of fourth generation of warfare theory is that, in the words of Colonel Hammes, “Not only is fourth generation of warfare the only kind of war America has ever lost, we have done so three times: Vietnam, Lebanon, and Somalia.”¹⁶⁷

Thus, the theory of four generations of warfare is simplistic and precise while it only sketches the modern history. However, the theory has proved its relevance by bringing under its ambit not just technological changes that have brought changes in the war but also the social, political and economic transformations experienced in modern times, but it fails to identify changes in nature of parties like features of transnational non-state actors. Although, the theory has turned out to be beneficial for military generals and fighters, it fails to guide the law makers and legal scholars to bring changes in legal paradigm concerning laws of armed conflict.

¹⁶⁵ Antulio J. Echevarria, II, ‘*Fourth Generation War and Other Myths*’ U.S. Army War College, Strategic Studies Institute, 2005 4.

¹⁶⁶ Ibid.

¹⁶⁷ Thomas X. Hammes, *The Sling and the Stone: On War in the 21st Century*, Zenith Press, 2004 3.

3.2.3 New Wars and Contemporary Conflicts: With the emergence of new trends like non-State actors, media, globalised economy, deliberate targeting of civilian population among others, identified and highlighted as “underestimated tendencies”, Mary Kaldor coined the term ‘new wars’ for the contemporary conflicts. An important feature of the theory of ‘new wars’ is that it has tried to challenge the applicability of ‘classical war’ doctrine famously propounded by Clausewitz in his work ‘On war’. In her attempt to analyse the war in former Yugoslavia and other countries, Mary Kaldor identified several features peculiar to these armed conflicts and proposed the concept of ‘new wars’. According to her, these wars reflect a new reality, where the traditional distinctions between war, organised crime, human rights violation on large scale are dissolving and political motives and financial interests have become inseparable. Examples of such conflicts: wars in Bosnia, Liberia, Sierra Leone, DR Congo, Sudan, Chechnya, Afghanistan, Rwanda, etc.¹⁶⁸

Mary has identified three major factors that make new wars exceptional and unprecedented,

- Globalisation
- Identity politics and
- Changed modes of warfare.

She considers globalisation as an important catalyst in the emergence of new wars. It’s because of globalisation that States have undergone disintegration and lost their prominence. She says, “the main implication of globalization is that territorial sovereignty is no longer viable.”¹⁶⁹ Further, globalisation has also promoted the development of globalised war economy. The emergent transnational economic networks

¹⁶⁸ Mary Kaldor, ‘*New and Old Wars: Organized Violence in a Global Era*’, LSE, Polity Press 2006 2-3.

See also, Misra, A., ‘*Politics of civil wars: conflict, intervention and resolution.*’ London: Routledge, 2008 3-4.

¹⁶⁹ Mary Kaldor, ‘*New and Old Wars: Organized Violence in a Global Era*’, LSE, Polity Press 2006 91.

are the main pillars of new wars. Also, globalisation has facilitated diverse international agents like NGOs, private security contractors, reporters, volunteers, foreign advisers that further diminish the monopoly of State. The increased presence of media in the conflict zones has also impacted in the conduct of war.¹⁷⁰

Further, identity politics has been important factor in the culmination of new wars. The ‘identity politics’ has been described as a process of political mobilization and power politics, implemented by using certain labels, like ethnic, religious, tribal, or other divisions.¹⁷¹ Identity politics has been important method of involving the common man’s participation in the wars by making them the main target.

Apart from these out-of-front implicit factors, an important on-the-front explicit and most distinguishing factor of new wars is the changed methods of warfare. New wars are characterised by a mix of guerrilla war and counterinsurgency where force is applied for destabilisation of society, spread of fear and hatred, destruction of cultural heritage and violence against civilians. These unique methods where the civilians and the civilisation come under the direct attack, causes the destruction of military hierarchies and regular State units that are replaced by para militaries which are forced to operate in a strange atmosphere of confrontation and cooperation.

In the “new wars” discourse such a symbiosis between transnational financial capital and war is treated as a powerful source of individual gain and this comes as the main grounds for criminalizing new wars. Kaldor argues that the traditional notion of war automatically becomes irrelevant for the analysis of contemporary organized violence, as it cannot cover a range of interconnected interests and economic networks.

New wars, differently from what they call the “*Clausewitzian ones*”, are spreading in the context of declining State’s monopoly of mass violence. The military force is being privatized, the front lines and decisive battles are no more obvious and the distinction

¹⁷⁰ Ibid.

¹⁷¹ Ibid, at 9.

between civilians and combatants is blurring rapidly. Conflicts acquire a protracted character and weak states cannot contain the war, which proceeds according to its own logic. All in all, peace conditions in new wars are replaced by the state of war, in which new social ties and livelihood strategies are created. Thus, the prior imperative that the highest justification for war is peace, in new wars is utterly destroyed. It is important that new wars are relatively cheap because they normally do not rely on high technologies. This kind of primitiveness brings all the favourable conditions for militarists of the developing world: they can easily mobilize their fighters, getting a chance to protract the wars for years, or even for decades. The fact that war becomes a cheap business is one of the reasons why states are forced to compete with private subjects, losing their long-protected monopoly of organized violence.

3.2.3.1 Criticisms: *Firstly*, the very term “new war” and the assumption that war has undergone a transformation is doubtful indeed. For Kaldor, new wars are a kind of antithesis to the old, Clausewitzian ones. However, the Clausewitzian era is not that easy to define – Clausewitz himself admitted that contained inter-State war is only a temporary phenomenon. Furthermore, he welcomed the French Revolution inspired tendencies to return the people to the business of war.

In his book, Clausewitz gave considerable attention to what can be called the “irrational” factors in war: emotions, passion, national spirit, imagination, chances and opportunities. Since the “new wars” theorists have overlooked the difference between the nature and the character of war, they came to identify Clausewitz’s theory merely with modern interstate wars (“old” wars), bounded by a principle of political rationality. It was mentioned that we can describe the character of war as warfare, the art of war or just the conduct of war: it is a product of a particular time period and specific political circumstances.

A majority of the characteristics attributed to the “new” types of organized violence – such as privatization of force, ethnic cleansing and brutality, pragmatic financial motives,

etc. – indicate the changing character of war at best, the very essence of war is not necessarily changing.

The “new wars” discourse is based on the “globalization” of war, however it has neither defined the term nor it has taken into consideration the local factors like religion, tribal affinity and culture which are the moving factors of several contemporary wars today, especially in Africa. Next, the asymmetric character of current wars has been over emphasized but, it has always remained an inherent feature of war. Guerrilla wars have always been the thorn for the military strategists of States.

The assumption that territorial sovereignty and the autonomy of state are no longer viable is probably the weakest part in the “new wars” discourse. The fact that growing global networks are undermining the isolationism of states does not show that territorial sovereignty is no longer relevant. The problem is that new wars break out mostly in the developing world. It means we have to deal with States that have hardly ever seen a proper scale of a State’s integrity. In the better part of the developing States, statehood covers centuries- old tribal structures, where distinct tribes developed their identities only by constantly warring with similar tribes.¹⁷².

Thus, both the theories are pioneering in their own way as they have put forward the changes in means and methods of warfare and have identified the characteristics of the latest pattern of warfare.

3.3 Evolving Means and Methods of Warfare

A lot of discussion that has happened to understand the nature and changing characteristics of contemporary conflicts has given significant importance to continuously changing technology and its impact on the warfare. Undoubtedly, means and methods of warfare play a fundamental role in moulding its nature and features.

¹⁷² Mats Berdal, “How “New” Are “New Wars”? Global Economic Change and the Study of Civil War”, 9 *Global Governance*, 491-493, 2003.

Accordingly, the intensity of conflicts, its scope and even the duration up to which parties can sustain injury to the enemy depends a lot on the technical superiority of weapons. When these technical advancements in weapons are coupled with unconventional techniques, it puzzles the conventional war fighters and maximizes the devastation.

3.3.1 New and evolving technologies of weapons: Initially, wars were fought in close proximity, reason being the reach of force by means of weapon was very short. From the reach of sword, to gun shot, to catapult all of these had a limited reach. The scope of weapon was an important factor as it was even considered while determining the limit of territorial sea as 3 nautical miles simply because, at that moment, a cannon shot could not reach far beyond that distance thus impairing States to protect adjacent seas and water bodies beyond that limit. Thus, the battles before industrialisation were fought in physically limited areas. However, in stark comparison to pre-modern times, the modern times conflict employed utmost use of technical advanced weapons that could inflict injury to an unimaginable extent. The American civil war is one of the pioneer examples of use of sea mines, submarines and machine guns which earned it a title of the ‘first modern war’.¹⁷³ With the outbreak of two World Wars, militaries employed tanks, automated machine guns, aircraft, etc that completely changed the methods of waging war. The speed of technical advancement, from the beginning of World War II towards the end of World War II was so fast, that it completely changes the methods of warfare. With the use of chemical weapons and atom bomb, the World War II marked a new era of warfare. Having the history of being used just once, nuclear weapons have changed the military strategies of States worldwide. With advancements in weapon delivery systems like long range air missiles, stealth weaponry, inter-continental ballistic missiles, unmanned weapons, wars became globalised as now States could impair its enemy situated in a different corner of globe rather than just fighting wars in close proximity with immediate neighbours. With the rise in chemical and biological weapons, wars now became the means to target not just the military but also the civilians. In light of COVID-

¹⁷³ Reid, *The Civil War and the Wars of 19th Century*, Smithsonian NY, 1999, 211.

19, bioterrorism has also resurged in the debates keeping in mind the easy accessibility of biological weapon and the damage it could cause if used during a conflict. Thus, with new weapons and advances, new opportunities of wars have arisen. These changes reflect a significant diminishing distinction between civilians and combatants as wars are no more proximate but intense enough to target a high population of the enemy state. The evolving means and methods have changed the object of wars, which from being to inflict injury on military and impair the enemy has gone too far to inflict injury on innocent civilians and thus break the enemy's political will to fight.

3.3.2 Re-emergence of Irregular Warfare: Another important feature of contemporary conflicts is the messy nature that stems from its irregularity. As highlighted by various theories like fourth generation of warfare or new wars, these conflicts are posing serious challenge to the *status quo* and order of conventional military and taxing their generals to apply their mind so as to deal with these conflicts. They are irregular because they do not fall into the neat definitions of war. This irregular warfare has manifested in several forms like guerrilla warfare, insurgency, hybrid warfare, criminal warfare, and terrorism. All of these may not be new to the history of war, but with the emerging changes in means of war and its nature, these kinds of irregular warfare have given rise to grave asymmetry which was not contemplated earlier. And hence their presence in contemporary war scene has been seen as their re-emergence posing novel challenges to peace.

The reasons for resurgence of guerrilla warfare is seen in two things. Firstly, with new weapons and their proliferation due to globalisation, the proximate wars have become obsolete and has given way to techniques that allow fighters to remain invisible to the enemy. With growing insurgency all around the world, low-intensity conflicts have become a norm. However, guerrillas coupled with criminal gangs and organised violence at all levels, strategic, tactical, and operational level have led to the hybridization of conflicts. The irregular warfare has become so complex that it has challenged the

Western conventional superiority in urban populated areas further aggravated by media presence.

Defined by *International Institute for Strategic Studies*, complex irregular warfare,

“are the wars that have emerged have been irregular conflicts in which adversaries have deliberately sought to negate Western Conventional superiority by retreating into complex terrain and adopting asymmetric approaches to offset technological military power. While that power played an important supporting role, in these conflicts, ground forces have increasingly been required to grapple at closed quarters, relatively unsupported with messy and ambiguous conflict situations on the ground...the day to day prosecution of these conflicts will be increasingly conducted by smaller, more agile mission teams... optimised for operation in complex, urbanised, populated areas marked by pervasive media presence and globalised communication”¹⁷⁴

The irregularity has been further aggravated by recently developed criminal warfare that resorts to criminals dealing in organised crimes like drug dealing, smuggling, human trafficking, etc. These organised gangs that are present not in some but several countries, however, gravely affect any conflict prone zones or help in initiating insurgency in a failed State thereby impacting the matrix of a conflict. These gangs when transpire with political or military leaders of parties in an armed conflict have led to an evil mix. Entrepreneur interests coupled with political aims and goals changed the nature of war materially thereby challenging legal regimes that are not equipped to fight wars with multiple motives transpired by economic interests. An important question that arises here is that whether these organised criminal gangs fall within the purview of international humanitarian law which was developed to regulate politically motivated conflicts. Also, whether the member of these gangs are criminals, civilians or combatants also needs to be answered while characterising the conflicts.

¹⁷⁴ Elizabeth Wilmschurst (ed.), *International Law and The Classification Of Conflicts* 79 (Oxford: Oxford University Press, 2012).

These questions become more pertinent when terrorism, one of the kinds of contemporary conflicts, is brought to debate. Although, for some it's a method of warfare rather than it being a type of warfare. However, it being the most prominent term being referred in all the discussions pertaining to conflicts, where most of the non-State armed groups being identified as terrorist groups, terrorism has become one of that factor that has diminished the distinction between crime and conflict to the large extent. When most States are fighting against Al Qaeda, Taliban, ISIS, Hamas while referring themselves as engaged in counter-terrorist operations, the challenge to the relevance of effectiveness of international humanitarian law becomes more conspicuous and pronounced.

3.4 Features of Contemporary Non-International Armed Conflicts and New Wars

With over 70 years of its formation, Geneva Conventions have had a long history of application by armed forces and wide acceptance among the countries. These set of Conventions since their inception, have not lost their importance nor it seems that it would happen in near future. With the rise in number of conflicts, plus their never-ending nature has grown the significance of the Conventions like never before. Small or severe, short or enduring, majorly all parts of the world are finding themselves involved in armed conflicts. Conflicts and hostilities have become a reality and peace just a utopian idea which comes as an interval between two wars.

Wars are undoubtedly an unfortunate part of human civilisational history, but wise men have always tried to mitigate it. With set of guiding principles, attempts have been made to humanise the conduct of war and milder its aftereffects. However, with growing numbers of conflicts and their increasing longevity with the involvement of multiple asymmetric parties, compliance of these rules has become a grave challenge. Sheer disregard of the humanitarian principles has a spiralling effect. Non-abiding of the rules of war weigh down life that hinders recovery further leading to deterioration. It not just

causes grave damage to life and property, it leads to destruction of communities, cities, infrastructure, health, education, economy thereby bringing under its darkness the whole civilisation.

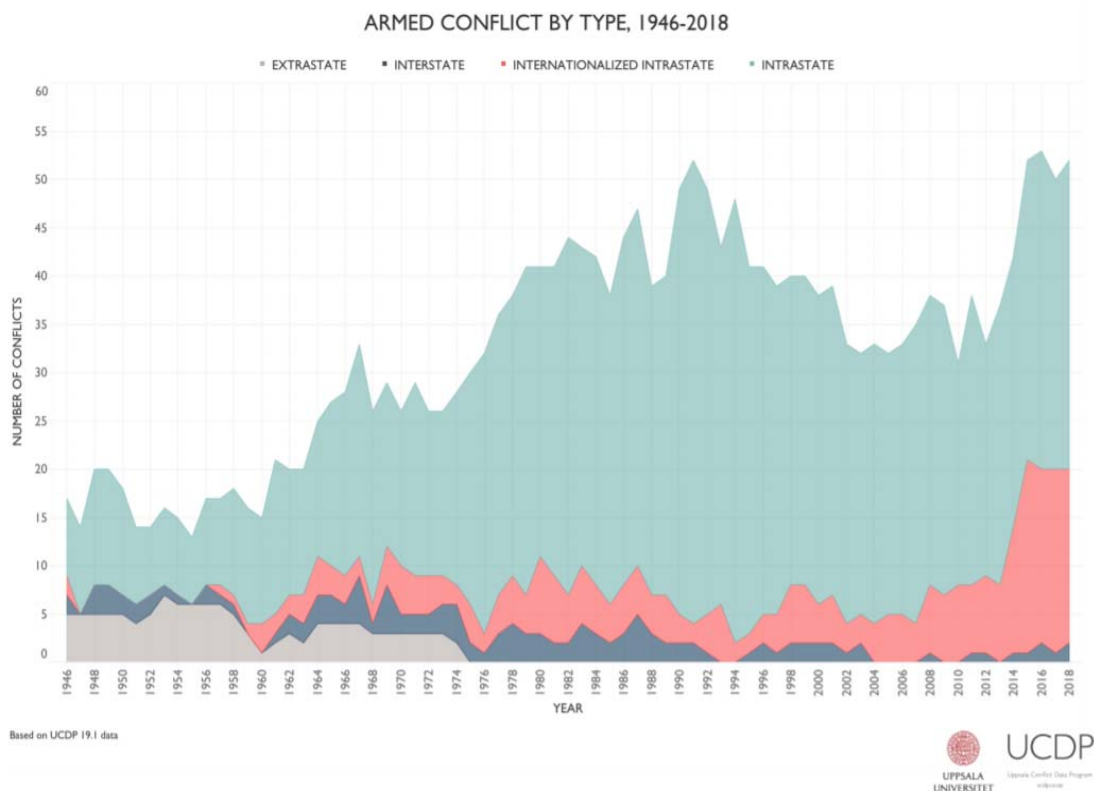
But these challenges are as old as the law itself. The contemporary challenges are more grave than mere non-compliance. They go to the root of laws and challenge its applicability and relevance. The major causes of these challenges have been identified by various theories like the 'Fourth Generation Warfare' and 'New Wars' which have stated that with evolution in methods, means and front of wars make the law unsuitable to these situations. The war zones have shifted from battlefields to urban centres, civilians have become the immediate target of attack, hitting the economy has become the political aim of war, cyber warfare has transcended techniques of inflicting injury on enemy without even using a single weapon. With the actors not taking enough precautions, unnecessary loss of civilian life has been recorded. These situations have been aggravated by terrorism and counter-terrorism measures where people have been deprived of their life and liberty being victim of enforced disappearance, torture and cruel treatment leading to serious violations of international humanitarian law.

The two main features of these contemporary conflicts as identified by ICRC in its 2011 report are, *firstly* the **diversity** of situations of armed conflicts and *secondly* the **duration** of these conflicts, with some enduring for more than a decade, with very few being ending with lasting peace.¹⁷⁵ Our fathers were not able to resolve many of these conflicts, our generation has been so far remained unsuccessful to bring to end the numerous conflicts being fought around and probably our children would also fail to establish peace, if an extensive task so as to understand these conflicts is not undertaken. Our failure to mitigate the war and culminate to its end reflects an inherent challenge we face towards understanding the characteristics and features of these contemporary conflicts

¹⁷⁵ International Committee of the Red Cross, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts" 5, 6, 31IC/11/5.1.2 (2011).

that make them endure and deemed everlasting. The research has identified several features of contemporary conflicts that have been discussed below. This list is not exclusive; however, many contemporary conflicts have several of these if not all. A general understanding of these characteristics is essential to better understand the contemporary conflicts as these tendencies distinguish it from traditional and classical conflicts. A brief analysis of all these features is also significant to understand the challenges they pose to the international humanitarian law.

3.4.1 Predominance of Non-International Armed Conflicts: The graph here provides for the data of armed conflicts that have occurred since the end of the Second World War. No one can doubt the dominance of conflicts with at least one party as a non-State actor. The intra-State conflict have dominated the chart not just for a decade or two but for the w



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eventy years, in such a manner that they have overshadowed the existence of other State based conflict. An astonishing factor of the dominance of intra-State conflict is not just in its rise in number but a simultaneous fall in the numbers of inter-State hostilities. These numbers reflect as if the conflicts not involving States directly have become the normal order in contemporary times.

The major non-international armed conflicts of 2018 have occurred at Afghanistan, Democratic Republic of Congo, Columbia, India, Egypt, Libya, Mali, Sudan, Syria and Yemen.

There might be at the first instance seem no problem with so many intra-State conflicts taking place, however if one closely looks at the classification, it seems to be problematic. All the major reports that provide data with respect to ongoing conflicts are unable to categorise them as non-international armed conflicts. This categorisation is necessary so as to bring them within the purview of international humanitarian law. However, they are reported as internal conflicts or intra-State conflicts which is only one of the features of non-international armed conflict. The other vital features are threshold and non-State parties as recognised 'armed groups'. Internal disturbances not reaching a threshold level or of that intensity so as to qualify as non-international armed conflicts will not be called as such. This determination has been left in the hands of the States who generally to maintain the paramountcy of their sovereignty and to avoid the application of international humanitarian law never recognise an internal conflict as a conflict of Non-International character, Further, to not give any international status to the non-State groups engaged in an inter-State conflict or to recognise it to have State like features, States do not acknowledge of any non-international armed conflict taking place on their territories and rather classify them as Civil War or acts of terrorism. The impact of this is that non- State actors do not find themselves to be protected by the Geneva Conventions and the provisions of customary international law and nor are can they be held accountable or bound by it. Thus, this causes double jeopardy as citizens and non-

combatants face the brunt of a conflict with no measures taken by the parties to humanise it.

Secondly, from deliberate targeting of citizens to destroying their property, sexual violence and use as human shields, destruction of social infrastructure leads to forced displacement of the civilians, and all these acts go unaccounted due to lack of applicable rules. It is an accepted fact that rule governing non-international armed conflicts are fewer than compared to international armed conflicts. Although most of the principles of customary international humanitarian law have been accepted to be applicable during the non-international armed conflicts, they are frequently challenged as being unwritten and limited.

Thus, with difficulty in applicability of law, the growing number of conflicts of non-international nature, contemporary conflicts are one of the biggest challenges to the international humanitarian law in particular and maintaining peace in general.

3.4.2 Multinational Nature of Conflicts and Internationalisation: An important premise on which the applicability of international humanitarian law is based is the distinction between International and non-international armed conflicts and between non-international armed conflicts and internal conflicts. But, looking closely at the nature of conflicts that have happened since the second world war, it is apparent that the distinction is blurring and no longer is seen in several of the contemporary conflicts.

Many of these contemporary conflicts have been classified as non-international armed conflicts however, they are not purely internal in character. Their nature as non-international has been diluted due to international interference by other States. These mixed conflicts bearing the characteristics of both international as well as non-international are usually referred as Internationalised Armed Conflicts. These

internationalised armed conflicts are also referred as New Wars which have become the reality of current times.

There have been several reasons attributed for the rise in mixed conflicts, the most prominent factor that actually led to the emergence of internationalised armed conflict was the the adoption of principle of prohibition of use of force under the UN Charter. With States being not allowed to use force, use war as a tool of State policy, they could only accomplish their agenda of controlling other States only by interfering in their internal matters and influencing the non-State actors. Also referred to as proxy wars, where internal conflicts metamorphed into international armed conflicts.¹⁷⁶ Thus, with these latent and covert means, States invade and conquer other States tacitly, various examples of which can be found during the Cold War.¹⁷⁷

Secondly, globalization and interdependence has also led to this change in the conduct of conflicts, where vested interest and economic benefits motivate external interference in an ongoing internal conflict.¹⁷⁸ Sometimes, conflicts have a spill over effect when its impact is borne by the neighbouring countries thereby creating reverberations felt outside the State which is the theatre of war, like the movement of people creating refugee crises in neighbouring States and sometimes starting a fresh conflict in the host State due to the influx, as it happened during the Bangladeshi, Syrian, and Rohingya refugee crises. Sometimes, other States participate by supporting to the belligerents, directly or indirectly either by providing a safe haven or by providing necessary supplies, by training or by mere moral support.¹⁷⁹ The conflict in Rwanda is an illustrious case describe

¹⁷⁶ Dietrich Schindler, "International Humanitarian Law and Internationalized Internal Armed Conflicts" 22 *IRRC* 255-264 (1982).

¹⁷⁷ War by Proxy in Angola, Afghanistan and Vietnam between US and USSR

¹⁷⁸ James G Stewart, "Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict" 850 *International Review of the Red Cross* 313 (2003).

¹⁷⁹ Rupert Ticehurst, "The Martens Clause and the Laws of Armed Conflict" 317 *IRRC* (1997).

internationalised armed conflict which was originally an ethnic internal warfare. **Bassiouni** explains this aspect as-

“[t]he conflicts in Rwanda and in the Great Lakes area of Africa, including the Congo and Uganda, are characterized as internal ethnic and tribal warfare, notwithstanding the involvement of combatants from several states.”¹⁸⁰

Although being internal the conflicts in the Great Lakes region were also affected by high levels of foreign involvement by other African states. The foreign fighters were not just involved for ethnic vindication but also for access to resources and international markets.¹⁸¹ Thus, most of the times foreign intervention extends the duration and expands the intensity of the conflict and thus worsening the conflict.

3.4.3 Presence of Multinational forces: The issue is further mired when any internal conflict is further intervened by multinational forces who usually join the conflict as observers of ceasefires and monitoring. Usually referred to as ‘peacekeeping operations’ conducted under UN auspices and command and control comprise of multinational forces indulging in conflict prevention, peace keeping, peace-making and peace building. However, in recent times with changing roles of these multinational forces from peace keeping to participants in hostilities, like in Afghanistan, Libya and Congo, a need for coherent legal framework has arisen. Not just States where multinational forces are engaged by the multinational organisations too have denied being a subject of international humanitarian law thus giving rise to issues of legal classification of the conflict.

¹⁸⁰ C. Bassiouni, “The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors” 98 *Journal of Criminal Law and Criminology* 748 (2007).

¹⁸¹ G. Prunier, *Africa’s World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*, (Oxford: Oxford University Press, 2011).

3.4.4 Dominance of Armed Groups: Nature and Complexity: Undeniably, globalisation brought dynamic changes to international law, with decreasing value of State actors and increasing influence of non-State actors like NGO, Corporations and individuals. This change has also transformed one of the most prominent branches of International Law that is law of armed conflict. The four Geneva Conventions that formalised not so formal laws of war, included Common Article 3 that deals with armed groups and so does the Additional Protocol II. However, 70 years ago these limited provisions would not have reflected their inadequacy, but with rise in new wars and contemporary conflicts, where conflicts of inter nature have taken centre stage, increased prominence of armed groups has been seen.

Although, States have a long history of fighting wars with non-State actors, an essential development in contemporary times is that now they don't fit it the parameters of the laws of war. They don't just pose challenge to the local law enforcement law, but also to the international laws. Some of the major non-State actors dominant in armed conflicts today are, ISIS, Al Qaeda, Taliban.

Mostly identified as terrorist groups and organisations, the spectrum of these non-state actors is broad enough to encompass organised armed groups, transnational corporations, private military and security companies, paramilitary forces, urban gangs, militias and huge variety of transnational criminal entities like pirates.¹⁸² With wide range of identities, motivations and abilities, their responsibility and rights under International Law in general and under international humanitarian law in particular has been a matter of debate and discussion for some time now.

One important aspect of these non-State armed groups are their members who are diverse from men, women and children joining voluntarily or forcibly, organised or un-organised,

¹⁸² Australian Red Cross, "The Changing Face of Warfare in the 21st Century," *International Humanitarian Law Magazine*, 4, 2012. available at: http://www.redcross.org.au/files/IHL_Magazine_Issue_1_2012.pdf,

acting in rural or urban spaces globally or locally with varying degree of political motivations and tactics. Although regarded illegitimate by the States they pose severe challenge to the peace and security of civilians due to their peculiar characteristics.¹⁸³

Moreover, these non-State groups are characterised by their statelessness, emancipation, privatisation and asymmetry in comparison to State actors which makes them problematic. This is further aggravated by their irregularity, difficulty to respond to or acted upon and usually not recognised by States to keep their sovereignty unchallenged and also finding no place in the laws of war.¹⁸⁴ Other emerging issues associated to armed groups is their use as State surrogates in waging proxy war which was feature of cold war but has remained relevant even today making holes on the regime of international humanitarian law.

A significant feature of today's armed groups is their transnational presence making the conflict transnational in nature. It refers to those conflicts where a State is fighting against a non-State actor outside its borders encompassing territories of other States. These conflict thus do not fall into the neat distinction of the International and non-international armed conflicts.

3.4.5 Asymmetric Warfare and Hybrid Conflicts: Since the second half of the last century unseen changes in the conduct of war have taken place and has been already highlighted, they all are based on primary two causes, firstly change in methods of war due to technological revolution in the weaponry and secondly due to large scale emergency of non-State armed groups dominating the scene of armed conflicts. These

¹⁸³ DCAF, Geneva Call, "Armed Non-State Actors: Current Trends & Future Challenges," *The Geneva Centre for the Democratic Control of Armed Forces*, 7 2011.

available at: <http://www.dcaf.ch/Publications/Armed-Non-State-Actors-Current-Trends-Future-Challenges>.

¹⁸⁴ Program on Humanitarian Policy and Conflict Research, "Transnationality, War and the Law- A Report on a Roundtable on the Transformation of Warfare, International Law, and the Role of Transnational Armed Groups" 10(2006).

two factors have shaped the contemporary armed conflicts and caused lot of confusion and highlighted the need to re-look at the existing legal framework of the law of armed conflicts. A significant change that has mostly questioned the application of existing legal regime is the asymmetry in these contemporary conflicts. US- Taliban, US- Al Qaeda, Israel Palestine, Lebanon- Hezbollah and Hamas are few instances of asymmetric conflicts.

Asymmetry is nothing but the inequality, and this inequality between the parties of the conflict in the above mentioned two factors, inequality in weaponry and inequality in status, has become a prominent feature of conflicts of contemporary times. These revolutions made the army generals think about the 'Fourth Generation of Warfare' and several theories on 'New Wars' have also been propounded for legal understanding that have termed these conflicts as 'asymmetric warfare'. Asymmetric warfare is characterised by significant disparities between the military capacities of the belligerent parties¹⁸⁵ and these disparities can be at different level and in different forms, where the most prominent one is the technological asymmetry, wherein one side is better off with superior weapons than the other. The other is the asymmetry involving methods of warfare like terrorism which is adopted by the weaker party to balance the existing asymmetry between the adversaries.

One of the subtypes of asymmetric conflict is hybrid warfare. to refer to the conflicts between non-State actors and States, was first used William Nemeth¹⁸⁶ and later propounded by Frank Hofmann¹⁸⁷. According to Hoffman, "hybrid wars incorporate a

¹⁸⁵ ICRC, "International Humanitarian Law and the challenges of contemporary armed conflicts" 30IC/07/8.4 p.no.16 (Oct 2011).

¹⁸⁶ William J. Nemeth, Future war and Chechnya: a case for hybrid warfare, Master Thesis, California: Naval Postgraduate School Monterey, 2002
http://calhoun.nps.edu/bitstream/handle/10945/5865/02Jun_Nemeth.pdf?sequence=1, (last visited on December 5, 2019)

¹⁸⁷ Franck G. Hoffman, Conflict in the 21st Century: The Rise of Hybrid Wars, Potomac Institute for Policy Studies, 2007, p. 18,

range of different modes of warfare including conventional capabilities, irregular tactics and formations, terrorist acts including indiscriminate violence and coercion, and criminal disorder”.¹⁸⁸ This multi-modal hybrid warfare is different from the guerrilla techniques because of the inherent criminality in the attacks to attain political objectives. Thus, hybrid warfare is a technique employed by parties that perceive to be in an asymmetric conflict with an opponent to level the unequal status.

Asymmetric conflicts are not new however, they have become a prominent feature in contemporary conflicts. States today are engaging in conflicts with armed groups that are not equipped with weapon systems as compared to States due to which they tend to act in manner which is more harmful and prohibited by the law. Unable to match to the sophisticated capabilities of the State parties, the non-State armed groups end of engaging in practices like mingling with and attacking civilian populations that compromise the existing principles of international humanitarian law. Attacking protected objects like religious or cultural sites, medical units or attacking protecting people like civilians, are most common features of asymmetric conflict where a disadvantaged party usually a non-State actor indulges in such soft targets. In modern societies such targets on civilians or civilian objects cause the greatest damage and can be in the form of suicide attacks and more often taking civilians as hostages. The object of these attacks is to create a public opinion against the war thus breaking the will to fight, but ultimately it instigates the State parties and thus the conflict sees no end.

3.4.6 Urbanisation of Warfare- A Great Equaliser: With world getting urbanised, the conflicts have too become so, choosing urban spaces as the theatre of hostilities. The most dreadful attacks like the 26/11 Mumbai attack in 2008, attack on the Westgate

http://www.potomacinstitute.org/images/stories/publications/potomac_hybridwar_0108.pdf, (last visited October 15, 2019)

¹⁸⁸ Ibid, pg 20.

shopping mall in Nairobi in 2013, Bataclan theatre attack, France in 2015 are one of the most dreaded urban attacks. However, these might be one or two or series of sporadic attacks but they reflect a culture of war and are no different than the air attacks by US against ISIS in Iraq and Syria that ravaged several cities and uprooted the civilization. With fighting taking place in urban areas, civilians have been the most affected people by war. They have either become military targets or a part of combatants by direct participation in hostilities igniting several humanitarian principles. In a study by ICRC in 2015, it was found out that urban warfare has affected around fifty million civilians so far and the fatalities in urban conflicts is almost eight times more than a conflict in a rural environment.¹⁸⁹ In Iraq and Syrian it was found out that, an attack on military object resulted in 56% of the casualty of civilians which rose to almost 82% in densely populated areas.¹⁹⁰

Urban warfare or urbanisation of conflict is a distinguishing feature of contemporary conflicts, one of the causes of which is the asymmetry in the contemporary non-international armed conflicts. “Urban battlefields ... are characterized by the intermingling of civilians and combatants, the proximity of civilian objects and military objectives, and a complex web of interconnected urban infrastructure. In particular, the use of explosive weapons with wide-area impact in densely populated areas continues to raise legal questions and significant humanitarian concern.”¹⁹¹ Attacks on urban centre affects the life of a large majority of people who end of migrating to safer places erupting in other kinds of humanitarian crisis like mass migration and refugee. However, the most irreversible damage caused is the mental and psychological trauma which goes unacknowledged and unaddressed.

¹⁸⁹ International Committee of the Red Cross, “*Urban Services During Protracted Armed Conflict*”, 2015.

¹⁹⁰ Understanding explosive weapons with wide area effects, PAX, October 2016. Available at https://www.paxforpeace.nl/publications/all-publications/areas-of-harm_ (last visited October 15, 2019)

¹⁹¹ ICRC, “International Humanitarian Law and the challenges of contemporary armed conflicts - Recommending to Protection In Armed Conflict On The 70th Anniversary Of The Geneva Conventions” 33IC/19/9.7 p. no.3 (last visited October 19, 2019)

3.4.7 New Technology and Modern Weapons: Since, history is been understood, it is evidently clear that technology has changed the course of history and mankind. History of human progress has never remained linear due to its interactions with technology. Every technological development has changed the nature of human society and the same is implied to the nature of war. Long distance wars transformed with more sophisticated weapons war can cause more damage with greater intensity in very less time. With drones, autonomous weapons, cyber technologies wars now can be fought with more precision causing less destruction with well identified and assessed targets. However, these new technologies when used arbitrarily, the chances of which are more, have caused and can cause more damage and destruction while challenging the principles of armed conflict not just on the front but also normatively. Major technologies that challenge the international humanitarian law framework is cyber technologies, autonomous weapon systems and artificial machine learning.

Cyber warfare is a potential threat in the age of information. Critical civil infrastructure when attacked can cause great damage to any State and its population, that may not be measurable in terms of regular war loss. Some recent instances of cyber-attacks include, attack on Estonian Government websites in 2007 and Lithuanian commercial and government websites in 2008, email breach in Pentagon and denial of service attacks on websites of Georgian President and Ministries, causing injury, death and property damage.¹⁹²

A more damaging technology being used in modern weapons is autonomous weapon system operated by artificial intelligence and machine learning, which can select and attack targets without human intervention. “The most important aspect of autonomy in weapon systems – from a humanitarian, legal and ethical perspective – is that the weapon

¹⁹² Lesley Swanson, “The Era of Cyber Warfare: Applying International Humanitarian Law to the 2008 Russian-Georgian Cyber Conflict”, 32 *Loyola of Los Angeles International and Comparative Law Review* 309 (2010).

system self-initiates, or triggers, an attack in response to its environment, based on a generalized target profile. To varying degrees, the user of the weapon will know neither the specific target nor the exact timing and location of the attack that will result. Autonomous weapon systems are, therefore, clearly distinguishable from other weapon systems, where the specific timing, location and target are chosen by the user at the point of launch or activation.”¹⁹³ The most controversial aspect of this technology is the loss of human control over use of force as instead of being an attack by a human, the autonomy shifts to the machine which cannot be held responsible in cases of failure of judgments. Moral and legal accountability would be difficult to be placed upon a human as human agency was not responsible for the use of force. ¹⁹⁴

The third emerging technology that can be easily availed by the parties of contemporary armed conflicts is biological weapons which can cause damage unthinkable of. With COVID-19 currently at its peak of disaster and mortality, one can imagine the irreversible damage that could be caused to the world if a biological weapon is used in a conflict which once released into the environment cannot be controlled or restrained.

3.4.8 Terrorism and IHL: One of the most controversial confrontations that this generation has seen in theoretical debates and application of international humanitarian law is to about the acts of terrorism by non-State actors engaged in hostilities. Terrorism as a means of violence is not new to the mankind and have always been out of the purview of the law of armed conflicts being governed by different field of law. However, they have become synonymous to each other for two reasons. *Firstly*, terrorist activities have become a prominent method of warfare in recent times and *secondly*, States instead of recognizing non-State actors in conflict as armed groups are categorised as terrorist

¹⁹³ The International Committee of the Red Cross, Report on International Humanitarian Law and the challenges of contemporary armed conflicts - Recommitting To Protection In Armed Conflict On The 70th Anniversary Of The Geneva Conventions, 33IC/19/9.7 23 (Dec, 2019).

¹⁹⁴ Ibid.

organisations. Both of these have questioned the adequacy of the international humanitarian law during the contemporary conflicts and initiated a discussion on the distinction between armed conflict and terrorism as two separate set of regimes.

The reason for distinction between terrorism and armed conflict is based on the principle of distinction that allows certain form of violence and prohibits other. However, terrorist act as such is unlawful completely. Armed conflict signifies war time, whereas terrorist activities occur in peace time and do not ignite the principles of international humanitarian law until it reaches a certain intensity apart from other requisites. The terrorist act is always penalised and cannot be exempted from prosecution. The legal regime of terrorism has been formulated under thirteen different treaties that although did not prescribe a comprehensive definition of terrorism but have defined and made punishable specific acts of terrorism.

However, international humanitarian law does prohibit certain acts that would be designated as terrorist acts if committed during peace time. Nonetheless, it does not completely isolate itself from terrorist actions. international humanitarian law prohibits terrorist activities committed during armed conflicts as war crimes and also range of other activities that would be terrorism if committed outside armed conflict.¹⁹⁵ Moreover, counter-terrorism operations of States have also been a cause of concern recently due to blatant human rights violations being done in the guise of security.

3.4.9 Private Militaries: Undeniably, the rise of non-State actors, armed groups and non-international armed conflicts have diluted the presence of State at the international scene and broken the monopoly of the State over use of force. However, a new feature that has also emerged due to numerous conflicts mushrooming in recent times, is the State itself thinning its traditional role and delegating its job to private actors. Due to

¹⁹⁵ The International Committee of the Red Cross, Report on International Humanitarian Law and the challenges of contemporary armed conflicts, 3IIC/11/5.1.2 49 (Dec, 2011).

globalisation and privatisation, backdoor contracting of work and jobs has been a common feature in civilian tasks. However, since the past decade, it has been seen that States have also contracted with Private Security Companies and given out their military roles to these military companies. Private Security Companies have not been new as they were prominently involved in logistical support to the armed forces, but their roles and involvement has drastically changed in past two decades. They are now involved in “... protecting military personnel and assets, training and advising armed forces, maintaining weapons systems, interrogating detainees and sometimes even fighting”. The possible reason behind their close proximity to the military operations can be accredited to their global presence and expertise in modern warfare thus making it easier for States to bestow their roles upon them and use as surrogates or proxy. Even international organisations and non-governmental organisations have started using their services to maintain presence in the conflicts fought in the remotest corner of the world.

3.4.10 Organised Crime and Armed Conflicts- Economics of War: As most of the conflicts today are fought by non-State actor, finance and funds for the conflict is one of the major challenges that these non-State actors face. They don't have legitimate source of funding or budget to purchase arms or have a standing military. Thus, in order to get access to modern weapons, mobilise members to the armed groups and maintain a continuing hostility, armed groups indulge into illegal trade or get involved with criminals already into illegal trade and crime. Thus, a booming illegal trade, smuggling and trafficking has become a powerful source of funds and arms for the non-State armed groups and actors. The organised crime and terrorist activities, illicit arms trade, human trafficking of refugees and armed conflicts form a vicious circle made of sinister alliances, where each supports the other and thus continue their proliferation giving a hard time to States in fighting these groups at different fronts and under different regimes. Columbia, PKP in Kurdish areas in Turkey, Afghan warlords are examples where drug traffickers were protected in lieu of finance and funds.¹⁹⁶

¹⁹⁶ M Cherif Bassiouni, “New Wars and Crises of Compliance”, 98 *Cardozo Law Review* 777 (2008).

Hence, in order to deal with armed groups, States must catch hold of the criminal threats of organised nature that run a parallel economy and system. “The illegal trade in drugs, arms, intellectual property, people, and money is booming. Like the war on terrorism, the fight to control these illicit markets pits governments against agile, stateless, and resourceful networks empowered by globalization. Governments will continue to lose these wars until they adopt new strategies to deal with a larger, unprecedented struggle that now shapes the world as much as confrontations between nation-states once did.”¹⁹⁷

Thus, a symbiotic relationship between organized criminal gangs and armed groups has made many conflicts continue for perpetuity with no end to be expected until a multi-dimensional approach is adopted.

3.5 Are we in Fourth Generation of Warfare?

If one analyses the war in Afghanistan in 2001, in Iraq in 2003 and that in Syria since 2011 were 3GW where the forces relied on the manoeuvrist approach. However, it turned out that third generation of warfare techniques were outdated and of limited application on the changing circumstances characterised by something other than regular inter-State war. It is in the realm of non-international armed conflicts that involves non-State armed groups, that one can find the fourth generation of warfare present.

“In general, fourth generation of warfare blurs the lines between war and politics, conflict and peace, soldier and civilian, and battlefield violence and safe zones. This new form of warfare has arisen from the loss of the Nation-States monopoly on violence; from the rise of cultural, ethnic, and religious conflict, and from the spread of globalisation, particularly advanced technology.”¹⁹⁸ Although the fourth-generation warfare is

¹⁹⁷ Moises Nairn, “The Five Wars of Globalization”, *Foreign Policy*, Jan.-Feb. 2003.

¹⁹⁸ John Robb, “Fourth Generation Warfare.” *Global Guerillas* (May 2008): 1.

decentralised in nature it has spread all around the world. With no spatial boundaries and defined battlefield, it is conducted simultaneously in population centres, rural areas and virtual networks and keeps constantly moving to avoid detection meanwhile keeps targeting its enemy's vulnerabilities. As Wilkinson puts forward Lind's analysis "actions will occur concurrently throughout all participants' depths, including their society as a cultural, not just a physical, entity. Fourth Generation Warfare's targets are not just soldiers, but also non-combatants, religious ideas, legal frameworks, media outlets, international agencies and agreements, economic activities, political power, and the minds of the people. Accordingly, targets are selected not just for physical destruction but more for their mental and moral impact on an adversary. In the end, fourth generation of warfare's goal is to exploit an adversary's weaknesses and undermine its strengths in order 'to convince the enemy's political decision-makers that their strategic goals are either unachievable or too costly for the perceived benefit'".¹⁹⁹

Proponents of fourth generation of warfare often argue that the "Clausewitzian Trinity" of war making—the ties among government, people, and armed forces—which they claim prevailed during the first three generations of modern war, is no longer valid.²⁰⁰ Marginalized during the first three generations, the non-state actors—tribes, sects, criminals, corporations—are once again able to engage in war. Thus, to some extent, fourth generation of warfare is a return to the pre-Westphalian politico-military environment, and that given in this "decline of the State," there "can be no purely military solution to Fourth Generation threats."²⁰¹

¹⁹⁹ S. Williamson, *From Fourth Generation Warfare to Hybrid War: Strategy Research Project* (2009) 3.

²⁰⁰ William Lind, "FMFM 1 A: Fourth Generation War" available at <https://globalguerrillas.typepad.com/lind/the-changing-face-of-war-into-the-fourth-generation.html> (last visited August 8, 2020)

²⁰¹ Lind, FMFM, p. 4. The notion that the "nation-state" is a dying entity is explored in Martin van Creveld's *The Rise and Decline of the State*. (New York: Cambridge University Press, 1999).

3.6 Conclusion

An analysis of the changing nature of war, its features and characteristics points out severe consequences on the legal regime. The most important ones are, the blurring of the distinction between the war time and the peace time, the role of non-State actors and seeking compliance of laws of war and the impact on the classification of the conflicts. With so frequent new wars fought around the globe, their complex nature has further questioned the dichotomy of international armed conflicts and non-international armed conflicts. The new wars have highlighted the existing imbalance between the international armed conflicts and non-international armed conflicts. With diminishing divide between the two types of conflicts, the inflexibility of the framework has further complicated the applicability of international humanitarian law. Although, customary law has tried to fill the void and bridge the gap between the two regimes, a full transplantation is yet a distant dream.

Thus, state of conflicts today, overall failure of effective response to the overwhelming humanitarian needs they produce – has prompted critics from many quarters to declare the “end of humanitarianism”, or more precisely, “the end of international humanitarian action”.²⁰²

To further understand the impact of new wars on the current framework and test its applicability, the research has delved into four different case studies in the next chapter. Looking at the humanitarian tragedy caused by the ongoing wars, the whole exercise of classifying them into a type of armed conflict feels irrelevant and abstract. But nonetheless, classification is one the primary exercise to determine the rights and obligations of those participating in the hostilities. Thus, the exercise of classification can lead to actual identification of parties who can then be held accountable for their actions

²⁰² Afghanistan: The End of Humanitarianism? *available at:* <http://oneworld.org/2012/12/10/afghanistan-the-end-of-humanitarianism> (Last Visited on August 8, 2019).

causing violations of humanitarian law. Therefore, conflict classification is a vital step towards humanizing conflict and safeguarding the implementation of the laws of war. However, the object of this chapter is not just to classify the conflicts but also identify those features of the selected ongoing conflicts that makes the classification difficult. In this chapter an attempt has been made to analyse the conflicts from the lens of the 'new wars' theory and test whether the conflicts are similar to the old wars and traditional hostilities or have some distinct features that challenge the application of international humanitarian law. The conflicts chosen for analysis are Syrian Conflict, War on Al-Qaeda, Kashmir Conflict and Naxal Movement in India.