



Impact of the Applicability of Common Article 3 on the Asymmetric Warfare

Muhammad Asif Safdar¹

¹ Assistant Professor, University Gilani Law College, BZU, Multan, Pakistan.

Email: asif.safdar@bzu.edu.pk

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ABSTRACT

Although International Humanitarian Law endeavors to curtail the calamities of warfare both at international and at national level in the form of non-international armed conflict (NIAC) and international armed conflict (IAC) yet due to the asymmetric nature of warfare there is a dire need to expand the scope of IHL especially the common article 3 (CA3) and the Additional protocol II (ApII) in order to implement it effectively. This article insinuates to broaden the scope of the international humanitarian Law in order to cater the unnecessary suffering and calamities caused the asymmetric warfare. The objective is to further chalking out an adhesive framework and mechanism to cover the cases of asymmetric warfare by extending the scope of Common Article 3 and additional protocol II as well. The research article inspects how asymmetric and symmetric warfare is distinguished and characterized to highlight the evolving dimensions of asymmetric warfare with time.



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Corresponding Author's Email: asif.safdar@bzu.edu.pk

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1. Introduction

It is obvious that warfare trends are evolving day by day as well as the challenges in regard to these trends are increasing over time, the main issue is that the various countries are not prepared to face such challenges. It is generally stated that victory cannot be defined as defeating the opposite party but it is gained when the opposite remained unsuccessful in gaining the political objectives by unconventional or violent means. The parties to the wars are increasing over time with unequal proportions. The fundamental arms' principles of equality are usually not applicable to them. There are various ramifications of asymmetrical warfare. The weaker side is tempted to select any alternative option that could possibly be illegal warfare methods in order to attain the adversaries' strength. Due to perfidious behavior, respect for the law is normally replaced and forgotten. It is can be seen in international terrorism. The considerations for humanity that are protected under article 3 common to Geneva Conventions 1949 develop the commonly binding rules and regulations for everyone including asymmetrical parties as well. Today every war is asymmetric in one way or the other keeping in view the changing circumstances and environment of the nature of the warfare. There is no evenness prevail here to address the war in a conventional way by following the canons of IHL and jus in bello. Now a days the main concern is this how to get maximum advantage from one source to another. In this quest the powerful states and

the feeble combatants come at par. There is a well-known prevalent concept of the combatants who are neither civilians nor soldiers at the same time. There is a situation when they farmers at the day time and fighters at the right time. So, will they be treated as civilian or combatants.? Which law will be applicable to them? Is there presence of asymmetric Warfare or not? Such questions are very much talk of the town these days in order to implement the laws of war in true spirit. Moreover, the states also use such hybrid and novel tactics to deal with such elements. Otherwise, it will be very difficult to the states to capture and arrest such combatants who are pointing out so much damage to the states by adopting unorthodox means and methods of war. So, the states are also helpless to adopt the conventional methods of warfare.

In such like situations asymmetry emerges and poses a serious challenge for the effective implementation of the international humanitarian law which is the focal point of this research article. This article surveys comparatively to pinpoint the main and substantial differences between asymmetric and conventional warfare to elucidate different trends among these. Additionally, this research paper investigates what are the structure and features of the asymmetric actors to highlight their ways of organizing and planning wars and to describe their trustful bonding social life. Then, this article focuses on asymmetrical interests with special reference to international humanitarian law and describes how international humanitarian law maintains the balance between the humanitarian side and the interest of the military.

2. Research Methodology

This article endeavors to critically analyze the concept, scope, and understanding of asymmetrical warfare with the help of qualitative research methodologies. For this purpose, this article inspects the general concepts of asymmetrical and symmetrical warfare and discusses various dimensions and endeavors of various scholars in defining and describing the scope of asymmetrical warfare. Then, this research paper investigates the difference between conventional and asymmetrical warfare to highlight whether these both have some commonalities or not. Moreover, this paper focuses on the characteristics, structure, and features of asymmetric actors. Additionally, this research piece describes the asymmetrical interest with reference to international humanitarian law to highlight the role of international humanitarian law during asymmetrical warfare. In the end, there is a justified conclusion.

3. Significance of Research

The objective of this article is this to broaden the scope of the international humanitarian Law in terms of the non-international armed conflict and international armed conflict in order to cater the unnecessary suffering and calamities caused the asymmetric warfare. The objective is to further insinuates to chalk out the adhesive framework and mechanism to cover the cases of asymmetric warfare by extending the scope of Common Article 3 and additional protocol II as well.

4. Common Article 3 and Asymmetric Warfare

It goes without saying that CA3 contains minimum rules for the protection of the civilians and horse de combat although there is an evolution and development of customary law in addition to it. Yet the articles of APII bear very strict connotation and highlight very stern verge of the applicability on the NIAC with very rigid conditions. Thus, cannot effortlessly be summoned in each plausible situation of interior combat and armed conflict. It is also a fact that most of the non-state organizations do not fulfill such standards. Consequently, the present articles are not obliging the most of the domestic and internal

asymmetrical conflicts Such clouds must be removed from the applicability of IHL for the sake of humanizing the warfare for the Humanitarian protection which is the prime objective of the IHL. So the applicability of CA3 in the asymmetric warfare must be as widened as possible (Ben-Naftali & Diamond, 2023).

5. The Territorial Scope of Application of Common Article 3

It is invariably criticized that CA3 is having a kind of circumscribed scope and applicability in terms of its efficacy and enforceability. To this criticism the bare and plain textual context is the best suitable reply to this critique where various and diverse interpretations and explanations extend its scope and jurisdiction. According to the Anthony Collin the detailed dissection and elaboration of the provisions of the CA3 defines that there is a still room for the inclusion of the territorial clause in it in order to further clarify the regional and topographical extension of the CA3. This partial understanding of the regional range of CA3 can be garrisoned founded on the bare linguistic text of it. However, this wordings can be imparted different and exquisite meaning and understanding in order to apply it to the situations of the prearranged militant violence which is categorized as NIAC grounded on the standards of association and magnitude, which may surpass the limits of the single state and in such situation CA3 can be invoked as well. So this type of comprehension may enhance the scope and applicability of the CA3 (Droege, 2012).

6. Characterization of Asymmetric and Symmetric Warfare

Symmetrical warfare is defined as "it is the opposite of asymmetric which means when both sides share an equal pedestal of battlefield, weaponry, and arsenals as well as following the rules of international humanitarian law at the same level. This term denotes regular warfare where evenness prevails over unevenness in terms of every gadget being used during the conduct of hostilities (Souleimanov, 2010). " At the state level, there is a lot of risk in symmetrical wars and it becomes difficult to ascertain which party will face triumph and domination.

However, in 1999, asymmetric approaches were defined in the Joint Strategic Review of the United States. It was stated that,

"Asymmetric approaches often employ innovative, nontraditional tactics, weapons, or technologies, and can be applied at all levels of warfare strategic, operational, and tactical—and across the spectrum of military operations". (Prados, 2003).

This definition is the least stable as it has expanded the version as well as it has two basic lacunas. First, this definition deals with negative asymmetry. Second, it is specific to the situation of American security and military. So, it cannot be generalized on the ground that it is not giving equal weight to the offensive asymmetric competencies of the stronger party. According to Johnson (2018),

"Asymmetric warfare albeit their definition is ambiguous. It is stated that "in the realm of military affairs and national security, asymmetry is acting, organizing, and thinking differently than opponents in order to maximize one's own advantages, exploit an opponent's weaknesses, attain the initiative, or gain greater freedom of action." (Metz & Johnson, 2001).

However, there are various definitions for asymmetric warfare that can be summarized within a general notion that where one side due to its weakening or failure of the strength of opponents, stayed incapable of acquiring its political purposes or goals through symmetric

means. Moreover, due to it, the weaker side utilizes and generates new ideas, tactics, and weapons in unexpected ways to destabilizing the opponents' strength (Nikola et al., 2018).

In this type of war, the real objective is to capitalize on the vulnerabilities of the feeble party to war and use unconventional tactics for getting over the enemy by whatsoever means and ways. The essential objective of asymmetrical warfare is to chalk out an approach around the opponent's armed strong points by determining and manipulating, in the extreme, its flaws. The feebler entity to war has realized that, chiefly in the contemporary world, to hit soft targets grounds the utmost impairment. Accordingly, civilian targets frequently replace military ones (Pfanner, 2005).

Asymmetric warfare is non-conventional warfare. This warfare is characterized in terms of material asymmetries among the belligerents in context with the number of troops and vastness of technical differences among them. This asymmetrical warfare is also characterized by strategies, moralities, weapons systems, and status (Chehtman, 2020). However, these elements describe that asymmetrical warfare blurs the borders that separate combatants from civilians the peacetime from wars.

It is fact that generally, every war at an international level is asymmetrical. Asymmetry is inevitable when huge and massive powers go to battlefields (Arthur, 2004). In asymmetrical warfare, the belligerents are different and are not identical. It is fought at various levels as well as it has various forms. It has defined its level of operation as well which includes perfidy or betrayal, terrorism, scams, and covert operations. This is a common level. Additionally, on the level of political strategy, it contains cultural clashes and religious wars. But at the level of military strategy, it comprises guerrilla war, bombardment, and gigantic retaliation (Stevens, 2005). Each of these asymmetry forms contains asymmetrical means, powers, times, organization, and methods.

7. Comparison of Asymmetric and Conventional Conflicts

Clausewitz (2003) truly stated that wars are basically the continuation of politics. There are no wars if the political affairs of the countries are stable, effective, and reasonable. Where the countries are respecting the sovereignty of each other and are not interfering or intervening in the affairs of each other then there will be no war. Where the conflict arises at the political level then it always provides a base for all the other conflicts then it has the power of initializing the wars. If it is not going to initiate the war then it can initiate any other conflict including insurgent asymmetric conflicts or terrorism or terroristic attacks.

The insurgents, as well as the terrorists, have their well-defined notion and by relying on or believing in it they start to initialize conflicts with the state. The belief of the terrorists or the insurgents is the basic foundation that the fundamental requirement that guides their conduct to conventional warfare. Huba (2006) states that usually the social and political significance is pronounced by the modern manifestations of asymmetric warfare rather than the acquiring any political, social, or financial advantages (Huba, 2006). However, Fredholm thinks a bit differently and more precisely as he states that conflicts are usually occurred for acquiring personal and economic advantages (Fredholm, 2017). But they could also be initialized to save and protect any ideology or notion. It is sufficient to believe that ideology can be a cause to initiate any conflict and usually conflicts are initialized by provoking the terrorists or the insurgents at their ideological level.

Galula (1964) says that conventional conflicts always have diplomatic support and these conflicts are organized on the basis of diplomacy as well as military actions based on the conventional pattern are also based on diplomacy. Moreover, economic pressure is also a tool for acquiring goals by utilizing conventional conflict methodologies. Additionally, Galula

believes that politics has always played a part in the organization of these conflicts. Politics play a vital role in the preparation and planning of conflicts (Galula, 1964). However, it is submitted that politics can play a role in provoking such conflicts as well.

Galula says that these conflicts are prepared and planned politically but when these conflicts are initialized then politics are nothing to do with it (Galula, 1964). However, Galula is a bit specific as it was not described whether such conflicts are could be ended with the help of politics or not.

8. Structure and Features of Asymmetric Actors

The tribal structure is generally considered as a form or structure of an asymmetric actor. Such tribal structure exists in Pakistan and Afghanistan. These are the remote areas that have a non-hierarchical structure. Usually, their non-hierarchical structure is formed unintentionally. The people of these tribal areas live a combined life. They are socially and economically independent of each other. They have a great level of trust in one another. They are honest with each other and they work for each other. Their social life is interconnected and all the families living in this structure are known to each other. They have good relations and they used to protect and fight for each other. It is very difficult to be part of them as they have characteristics such as do not trust anyone. They never feel comfortable with the stranger and they really distrust him due to their strong social affiliation with one another.

The organizational structures have their fashion of working as they generally start their organization and functioning at the local level after that they move to the global and the international level and try to affect the international environment. The influence of technology has increased globalization and has started helping actors to communicate easily and effectively. These organizations have very general and simple functioning but they are very effective at it. Due to their organization, they could possibly and easily affect law enforcement agencies and intelligence. Not only agencies but also intelligence struggle and make programs and plans to counter their opponents, particularly asymmetric opponents.

Brzica (2017) has recently noted

“a similar phenomenon is recognizable in recent attacks in Europe. Namely, attacks have been carried out at broadly dispersed geographic locations, not only under the auspices of the IS, but also of several other Jihadist groups, with little or no operational involvement from the countries of origin of such groups (Brzica, 2017).

It is a kind of principle that the guidance on every issue and step is generally issued by the leader including the guidance related to the strategic plans as well as the occurrence of the operational coordination is prominent at each level.

9. Asymmetrical Interests in Context with International Humanitarian Law

It is the characteristic of international humanitarian law that it always tries to maintain the balance of humanitarian and the interest of the military as described in Article 3 (4) Common to the Geneva Conventions 1949. The question is whether international humanitarian law protects the parties from the total destruction of the enemy. Whether international humanitarian law tries to restrict the methods and the ways of the destruction of the opponents or the weaker side. Ignatieff (2005) states that

“in particular, persons not or no longer taking part in hostilities, such as civilians or wounded or captured soldiers, must be spared. Humanitarian and military interests do not

necessarily clash. It is undoubtedly in the interests of an army to treat prisoners of war well and to expect the enemy to do the same (Ignatieff, 2005).

Pfanner (2005) while relying on Article 4.A.2 (d) of the Geneva Convention III (1949) states that,

“Traditionally international armed conflicts or armed conflicts demand their participant to respect the war's customs and the law while fighting. This means that there is a kind of respect for the customs and traditions of wars during the wars. It can also be supposed that the member of the opposition will also respect the wars' laws and traditions (Hersch, 1953).”

It is normally considered by the other side it would be better for them and it would be best for their interests if they considered them above all and they are not bound by the wars law although it is best for both sides to follow the law and should not consider them above the law. Moreover, these open confrontations and challenges are less advantageous and more disadvantageous.

10. Conclusion

It is submitted that asymmetrical wars never rest well with the war concept by Clausewitz or traditional international humanitarian law. With time, the warring parties are unequally and irregularly increasing as well as the arms equality principles generally do not apply or implemented to them. They have various contrasting and different aims and they utilize different illegal ways to attain their aims. In this way, the classical international armed combats are now an exception where the military strength is so-called equal. However, internal wars nowadays are fought among unequal adversaries. Asymmetry has some ramifications regarding the belligerent's legitimacy and war's legality in context with international humanitarian law and due to deceitful attitude the laws are not followed by the parties. The challenges regarding unconventional asymmetric security are increasing day by day. The challenges include violent terrorism, insurgencies, and extremism, and the measures related to the policy and strategy are crossing and overriding the domain of conventional approaches.

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Muhammad Asif Safdar: Initiate the idea complete the draft, and incorporate the comments.

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Endnotes

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