Hacettepe University Graduate School of Social Sciences

Department of International Relations

Jus ad bellum and *jus in bello* in New Wars

Onur GÖKÇER

Master's Thesis

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ACCEPTANCE AND APPROVAL

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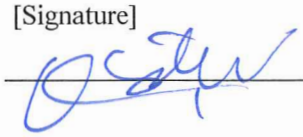

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ETİK BEYAN

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, Doç. Dr. Mine Pınar GÖZEN ERCAN danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

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ABSTRACT

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The concept of warfare has been transforming since the end of the Cold War, and more recently following with the war on terror policy of the United States. This changing concept of warfare created contestations to norms as *jus ad bellum* and *jus in bello*. New wars did not totally transform the traditional wars, but it added new concepts and level of analysis to it. These new concepts and levels of analysis have created contestation areas in which meanings-in-use of *jus ad bellum* and *jus in bello* have been debated. As a result, the war on terror and cyber wars have appeared as a new domain for international law. The regulation of new wars with existing norms/laws have been quite challenging because of the different characteristics and tools of new wars. Not only, universal meanings of these norms have been challenged in this domain, but also existing conventions such as the Geneva Conventions and its Additional Protocol and the Charter of the United Nations have been able to contain new wars. Consequently, contestations and deliberations over *jus ad bellum* and *jus in bello* norms have appeared, creating an opportunity for reconstructing a universal meaning for these norms. In this vein, by examining different processes of policy-making of different actors in specific cases and revealing their differences in their claims of legitimacy for these conflicting ideas, this thesis examines the implications of the norms of the *jus ad bellum* and *jus in bello* in new wars.

Key Words

Jus ad bellum, *jus in bello*, international humanitarian law, new wars, war on terror, cyber war.

ÖZET

Gökçer, Onur, Yeni Savaşlarda *Jus ad Bellum* ve *Jus in Bello*, Yüksek Lisans Tezi, Ankara, 2018.

Savaş kavramı, Soğuk Savaş'ın bitişinden bu yana, özellikle de daha yakın tarihteki Amerika Birleşik Devletleri'nin teröre karşı savaş politikasını takiben, dönüşüm geçirmektedir. Değişmekte olan savaş kavramı, *jus ad bellum* ve *jus in bello* normlarının tartışılmasına yol açmıştır. Yeni savaşlar geleneksel savaşları tamamen dönüştürmemiş ama geleneksel savaşlara yeni kavramlar ve analiz düzeyleri eklemiştir. Bu yeni kavramlar ve analiz düzeyleri *jus ad bellum* ve *jus in bello*'nun anlamlarının tartışıldığı mücadele alanları yaratmıştır. Sonuç olarak, teröre karşı savaş ve siber savaşlar uluslararası hukukun yeni alanları olarak görülmeye başlanmıştır. Yeni savaşların mevcut normlar/kurallarla düzenlenmesi, yeni savaşların farklı özellikleri ve araçları nedeniyle oldukça zorlaşmıştır. Yeni savaşlar neticesinde sadece bu normların evrensel (genelgeçer) anlamlarına itiraz edilmedi, aynı zamanda Cenevre Sözleşmesi ve Ek Protokolleri ve Birleşmiş Milletler Antlaşması gibi mevcut sözleşmeler de yeni savaşları kapsayamadı. Dolayısıyla, *jus ad bellum* ve *jus in bello* normları tartışmaya açıldı ve bu normlara karşı itirazlar yapılarak bu iki normun evrensel anlamlarının yeniden yapılandırılması için bir fırsat yaratıldı. Bu bağlamda, bu tez, belirli durumlarda farklı aktörlerin farklı politika oluşturma süreçlerini inceleyerek ve bu çatışan fikirler için aktörlerin meşruiyet iddialarındaki farklılıklarını ortaya koyarak, yeni savaşların *jus ad bellum* ve *jus in bello* normlarına etkilerini incelemektedir.

Anahtar Kelimeler

Jus ad bellum, jus in bello, uluslararası insancıl hukuk, yeni savaşlar, teröre karşı savaş, siber savaş.

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ABBREVIATONS

ANC – African National Congress

CoE – Council of Europe

DDOS – Distributed Denial of Service

ESS – European Security Strategy

EU – European Union

Eurojust – The European Union's Judicial Cooperation Unit

EUROPOL – European Union's Law enforcement Agency

FLN – National Liberation Front

FRONTEX – The European Border and Coast Guard Agency

ICRC – International Committee of Red Cross

ICT – Information and Communication Technologies

IHL – International Humanitarian Law

IR – International Relations

MIC – Monitoring and Information Center

NATO – North Atlantic Treaty Organization

NPT – Treaty on the Non-Proliferation of Nuclear Weapons

NSS – National Security Strategy

PoW – Prisoner of War

RBN – Russian Business Network

TTB – Time Ticking Bomb

UK – United Kingdom

UN – United Nations

US – United States of America

USSR – Union of Soviet Socialist Republics

WWI – World War I

WWII – World War II

INTRODUCTION

The concept of war has been changing, especially since the Vietnam War, the end of the Cold War, and the "war on terror" after September 11. Wars are no longer considered to occur only between states, and they have taken on new characteristic features. As a result, new wars appear as both similar to and different from the traditional conception of warfare. It is important to note that new wars have not totally transformed the traditional war, but rather blurred the lines (such as combatant and non-combatant distinction and the meaning of battlefield) and added some concepts. These new concepts present some challenges to international law as well.

New challenges toward international law have stemmed from the new wars' characteristics. These new characteristics and concepts make international law hard to implement. Traditional wars[1] occurred between symmetric powers as states on a battlefield with morally equal soldiers who fought face to face. However, new wars are asymmetric in character, and they often lack a clear battlefield. Hence, the regulation of new wars with existing norms and laws is quite challenging too. With these challenges as a backdrop, this thesis focuses on an underexplored topic in International Relations (IR) literature, that is *jus ad bellum*[2] and *jus in bello*[3] in new wars. To this end, it concentrates on (international) terrorism and cyber warfare. Although this thesis does not break new ground in conceptual terms, it studies overlooked domains of new wars where ambiguities remain, such as the relationship between Clausewitzian wars and new wars, as well as where international humanitarian law stands in new wars. Therefore, it is important to comprehend the changing characteristics and conceptualizations of war to gain a better understanding of international law concerning new wars.

So far, the literature has typically focused on legal and security aspects of new wars and specifically on how to cope with these new security threats (see, Hajjar, 2006;

[1] Especially Clausewitzian wars after the 18th Century.
[2] *Jus ad bellum* is a norm that establishes the conditions under which a state can wage a war. Just reasons for a war are its main theme.
[3] *Jus in bello* deals with how each party conducts war. Its main point is the conduct of hostilities.

Bassiouni, 2008; Gregory, 2011; Beall's, 2013) with a main focus on the roles played by states. Therefore, while the existing literature mainly examines new war characteristics, it also tends to be state-centric (see, Choucri, 2000; Kelsey, 2008; Tikk, 2010; Barnard-Wills and Asheden, 2012; Reveron, 2012).

The security aspect of the literature is mainly interested in the changing concept of warfare and new technological weapons. According to some scholars including Houweling and Siccama (1988), Schuurman (1988, 2010), Reid (2003), Lantis (2006), Echevarria II (2007), Herberg-Rothe (2009) and Waldman (2010) the concept of war has not changed. On the other hand, Rosen (2005), Bassiouni (2008) and Daniel III (2015) explain new warfare with new and different terms and claim that new wars are totally different and new tools are required to cope with it. In this vein, the security literature has generally been interested in new technologies and their effects on warfare and state security.

Debates in the literature on legal aspect of wars stem from three different war theories—pacifism, purism and just war. On the one hand, pacifism is not very concerned with laws of war because it basically denies war and killing. On the other hand, just war theories justify and legitimize war when certain circumstances are present. Last but not least, purists such as McMahan (2010) suggest that *jus ad bellum* and *jus in bello* are complementary codes[4].

In light of the existing literature, it can be observed that *jus ad bellum* and *jus in bello* in new wars is a new debate. The cornerstone for this debate was the "war on terror" policy of the United States (US), which was constructed after the 9/11 terrorist attacks. Cyberspace and cyberattacks have also exacerbated the international law position in the new wars debate. The literature expanded to new areas after the emergence of these new phenomena, but the main focus of the literature has been on wars' reasoning, especially on labelling a war as just or unjust. Accordingly, debates on the implementation of these norms, specifically *jus ad bellum* and *jus in bello* in new wars emerged in the literature.

[4] *Jus in bello* is linked with *jus ad bellum*'s requirements. Accordingly, waging an unjust war also makes all combatants unjust.

While some scholars (such as Allenby, 2014) remained pessimistic, believing that these norms are useless in new wars, others such as Finlay (2010) stayed optimistic, believing that it is possible to benefit from these norms. Nevertheless, it is important to note that even though both security and legal aspects of the literature have touched upon the link between *jus ad bellum* and *jus in bello* in new wars, the topic remains underexplored.

In this vein, in its attempt to contribute to the literature, this legal-based research explores the following questions: Are international laws concerning war deteriorating and becoming less important after the 9/11 attacks and the "war on terror"? How can laws of war effectively deal with the fast-evolving character of new wars? Accordingly, the main question of are laws of war seen as a legitimate tool to cope with new concepts and/or aspects of warfare is explored. While these questions have partial answers in the existing literature, these answers remain vague. Therefore, the main objective of this thesis is to dispel that vagueness and create a clearer and more comprehensive framework for the International Relations (IR) literature.

To this end, this thesis adopts a constructivist approach, specifically the theory of contestation to discuss the legitimacy of *jus ad bellum* and *jus in bello* in new wars. International law and legitimacy in new wars requires studying concepts such as changing norms and changing meaning-in-use of norms. It is possible to observe these changes in contestation practices. Accordingly, culture, discourse and social practices of actors are examined in order to understand contestations and change. In this context, Wiener (2014, 2) argues that "as a social activity contestation involves discursive and critical engagement with norms of governance, whether voiced or voiceless, contestation is constitutive for social change, for it always involves a critical redress of the rules of the game." As a result, "contestation appears as a normative, yet practice-based approach centered on conflictive encounters" (Wiener, 2017, 3). It is interested in how social practices such as contestation and critique of norms of actors could affect and change normative meanings of norms. As Wiener (2014, 4) puts it:

> As a normative critique it involves an interest in either maintaining or changing the status quo whether through civil society actors' claims-making, the rejection of compliance criteria in international negotiations, the refusal to implement norms on

> the ground, spontaneous contestation or debating alternative interpretations of norms.

In this connection, the norms of *jus ad bellum* and *jus in bello* are examined in the context of new wars. These norms are not pre-established. According to Wiener (2014, 29), "norms are both structuring and socially constructed through interaction in a context." The primary contexts in this thesis are Clausewitzian wars and new wars. Moreover, norms are not taken as stable but flexible and therefore open to change.

According to Wiener there are three types of norms: fundamental norms (Type 1), organizing principles (Type 2), and standardized procedures (Type 3). Wiener classifies these norms and stresses this classification's importance as follows:

> By distinguishing the morally most broadly defined fundamental norms (such as for example the right to non-intervention, abstention from torture, the rule of law and so on) from organizing principles (such as, for example, the responsibility to protect, the culture of sovereign equality or the principle of common but differentiated responsibility) which are generated through politics or policy processes or, for that matter through jurisprudence or jurisgenerative practice, and from standardized procedures (such as stipulated for example by treaties, agreements or conventions) which entail straightforward instructions, it is possible to address specific conditions of compliance, contestation and potential conflict (Wiener, 2014, 37).

In light of such categorization, *jus ad bellum* and *jus in bello* are taken as organizing principles (Type 2 norms between fundamental norms and standards and regulations) which means they are "constituted through policy-making and politics where normativity ought to be negotiated" (Wiener, 2014, 59). Negotiated normativity refers to the contestation of a norm, and contestation is basically an objection to norms' meanings or meanings-in-use. As Guzzini states, "meanings and knowledge are socially constructed" (2005, 497). This is the thought behind contestedness and contestation. All actors have different cultural backgrounds that shape the meanings-in-use of a norm. All have different ideas about the norm. Also, all stakeholders (norm users) might have different thoughts on a norm's implementation and validation. As a result, "because the meanings of norms are created in the interactive processes and are based on social practices in specific contexts, norms are part of endless cycles of reinterpretation" (Wolff and Zimmermann, 2015, 11). This explanation provides the basis contestedness.

This basically means that norms have different meanings for different actors. According to Wiener "the shared recognition of a norm is less likely" because stakeholders have different cultural backgrounds. These cultural backgrounds create intercultural relations which Wiener considers similar to international relations. All actors that are affected by the norm (i.e. stakeholders) debate the meaning-in-use of a norm. This contestation at the end refers to the legitimacy gap between fundamental norms and procedures (regulations). The purpose of the contestation is to fill the legitimacy gap of a norm, and it is about the "re-construction of normative meaning" (Wiener, 2014, 19).

Such variety in thoughts and discourses (because of the different cultural backgrounds) might help to understand norms' meanings and their effects on policies, as well as the implementation of a norm. If the world has become more pluralist after the end of the Cold War, then this means that socialization among states has increased. However, this does not mean that actors have left behind their cultural experiences. That is why "culture has to be taken seriously" (Wolff and Zimmermann, 2015, 11). It is these different points of view that create contestation, which might at the end give these norms legitimacy. World politics is not limited to keeping a balance between two ideological camps, as it might have been claimed during the Cold War period, especially after the dissolution of the Union of Soviet Socialist Republics (USSR). There are now multiple cultures that shape stakeholders' discourses and ideas toward norms. Therefore, synthesis among various policies is necessary.

In order to understand the legitimacy problem, it is important to examine who participates in the contestation process and what their background is. The contestation approach "centers on conflict and the process and practices that evolve in order to resolve it, rather than focusing on a given norm and its implementation" (Wiener cited in Tully, 2018, 89). How are conflicting ideas on norms going to affect the norm implementation and fundamental norms? Is it possible to fill the legitimacy gap of these norms with contestations? How does this process affect the norms' meanings? Is it possible to legitimize actions of actors in new wars with *jus ad bellum* and *jus in bello*? According to Wiener (2018, 88) "contestations are likely to open windows of opportunity." In order to answer those questions and find an opportunity to make these

norms' meaning-in-use universal, it is vital to examine the process of policy-making strategies of different actors in a specific case and discover conflicting ideas and policies in order to legitimize these norms. This is why process tracing is an important tool for this thesis. Accordingly, as part of analysis, first the US national security strategy documents (before and after the 9/11) are examined in order to understand the changing policy of the US. Then, the European Union's (EU) reports on terrorism and its discourse are examined in the contexts of international terrorism and the war on terror in order to understand the US contestation. This is because contestation is a practice-based activity which includes reactive and proactive practices (Wiener, 2017, 5). These practices might include discursive actions, policies, and debate over a provision of a treaty. Therefore, "the interrelation between practice and normativity is the key" (Wiener, 2017, 6). As a result, discourses and policies of actors are important sources for this thesis. Primary sources used are international conventions, statements on national security strategies of states, and international organizations' reports. The main purpose is to examine these documents' contents in case-specific manner and reveal contestations toward *jus ad bellum* and *jus in bello* norms in new wars.

To this end, this thesis is structured as follows: Chapter 1 provides the meanings of *jus ad bellum* and *jus in bello* in the new war context and focuses on the character of these norms and challenges that they have faced in the new war era. Chapter 2 is mainly interested in Carl von Clausewitz's thoughts on war as these have been highly influential in the construction of international humanitarian law conventions. This chapter aims to show how these norms overlap or contradict with the actors' practices and cultural backgrounds. Challenges to the legitimacy of these norms during and after World War II (WWII) are also examined in this chapter. Finally, international terrorism and policies against international terrorism are examined in Chapter 3. The main contestation that is under focus in this chapter is a result of the United States' war on terror policy. In this vein, the chapter studies the European Union's (EU) fight against terrorism policy in order to understand this contestation process. In Chapter 4, characteristics and concepts of new wars are investigated. After clarifying the differences between new wars and traditional wars, with the cases studied, it is made possible to understand different actors' policies and contestations. The cases of Estonia,

Georgia and Stuxnet are examined in order to reveal the legitimacy gap concerning the international norms in cyberspace. These cases, policies, and contestations show the legitimacy of *jus ad bellum* and *jus in bello* in new wars. Finally, it will be argued that the war on terror policy of the US, Russia's cyber policies and Stuxnet case reveal that new wars' characteristics created contestations toward norms of *jus ad bellum* and *jus in bello*. These contestations also opened windows of opportunities and strengthened these norms meanings-in-use in new wars as a result of the EU's fight against terrorism policy, North Atlantic Treaty Organization (NATO) and the United Nations' (UN) reports on new wars. These reports and the EU's fight against terrorism policy show that *jus ad bellum* and *jus in bello*'s meanings-in-use are universal in new wars era.

CHAPTER 1

JUS AD BELLUM AND *JUS IN BELLO*

This chapter aims to lay out the conceptual framework for the norms of *jus ad bellum* and *jus in bello*. The meanings of *jus ad bellum* and *jus in bello* are examined in order to comprehend their relationship with war. Moreover, the interrelation between these norms, as well as their requirements are discussed in order to understand their *raison d'être*. Brief explanations as to why new wars posit a challenge to these norms are also provided for a better understanding of why actors have been contesting these norms in the context new wars.

1.1. *Jus ad Bellum*

The meanings of war and peace haven been changing with time, especially with the emergence of new wars. However, to better comprehend laws and norms of war, it is important to examine the meanings of peace and war, and to understand when the transition from peace to war, or from war to peace happens. For example, Alliez and Negri (2003) refer to a transition wherein "war becom[es] peace". This suggests that the division is not clear cut. Although there is a tendency in the just war tradition and laws of war to explain peace as the absence of war, this is not entirely true in the case of new wars as Alliez and Negri (2003) suggest.

In the current era, a prominent reason for the blurred lines between war and peace stems from the United States' war on terror policy. Eventually, this might cripple the legitimacy of laws of war. If global society cannot differentiate war from peace, then it will become impossible to conduct laws of war. Therefore, it is vital for just war theorists such as Michael Walzer that war is distinguished from peace. To avoid this situation, it is important to understand the concept of the "war on terror" (explained in the next section) because it is widely misunderstood. Hence, it is vital to treat war as war (even if it is a war on terror) and peace as peace for the sake of proper implementation of international laws of war and the *jus ad bellum* norm.

Before the war on terror and WWII, what this norm meant was not problematic in the eyes of the international community. Its meaning and requirements were described under the 1899 and 1907 Hague Conventions. However, *jus ad bellum* has become more and more important and controversial after 9/11 and the global war on terror because of the Bush Doctrine which put forth the preventive war and pre-emptive strike notions (explained in the war on terror section). The primary idea behind the *jus ad bellum* norm is to explain under what circumstances a state can wage a war. Hence, just causes for war are its main theme. Furthermore, it is a fundamental part of the just war theories and laws of war. In order to control wars, international community uses this norm.

Jus ad bellum is not a new norm, its roots go back to Christian thinking, which was also influenced by colonialism. *Jus* means law and/or right. Therefore, this is a norm generally about what rights states possesses when they wage wars. This is not only a right but also a responsibility because it is mainly interested in the just reasoning of waging war. It has six components: just cause, right intention, competent authority, reasonable chance of success, proportionality, and last resort (Howe, 2006, 45). If an actor of international arena is going to wage a war, these are the main criteria that must be fulfilled.

Just cause obliges actors to wage war under a just reasoning. However, to determine whether a cause is just or unjust is not as easy as it sounds because it is possible for a state to think its cause is just when in reality it might be considered unjust by the international community. Therefore, the "just cause" rule is ambiguous and controversial. The one condition of this norm that is not controversial is the self-defense condition. However, pre-emptive strikes and preventive wars blur the line and make this topic open to debate. There is a discussion on preemption that it is only possible under ticking time bomb (TTB) scenarios. This scenario assumes that "the attack is imminent and will kill many" (Himes, 2010, 198). However, even if this is the case, it is very hard to define "imminent.' Therefore, even under TTB scenarios, the just cause rule is still hard to comprehend in preventive wars. Therefore, even if the just cause principle is at the heart of this norm, it becomes difficult for the international community to speak with one voice about this principle, especially after the US war on terror policy.

Preventive wars are the among the main contestation areas—which is examined in the war on terror chapter—for the just cause principle as the principle has emerged in the context of the traditional (Clausewitzian) war era.

While the US pre-emptive war understanding has not received wide recognition in terms of its legitimacy, the sole circumstance that the international community is in consensus under the just cause principle is the condition of self-defense. The United Nations (UN) considers this as an inherent right, as established under Article 51 of the Charter of the UN, which reads as follows: "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." In this regard, self-defense can be regarded as the sole undisputed just cause to wage war.

Right intention criterion is similar to just cause principle because of its subjectivity. This concept holds the same problem as just cause because even if a state thinks that its intentions are right, it may not be right to other states and actors in the end. Basically, "it might be the case that both sides to a conflict could provide a plausible account of a just cause" (Amoureux, 2014, 80) and right intention. Both sides think that they have the right intention. However, the right intention principle dictates that "a state's intention to wage war should be directed at promoting the just cause" (Dolan, 2005, 164). Therefore, it is possible for the US to claim right intention to wage war against Iraq under Saddam Hussein's dictatorship. However, declaring war for regime change does not seem to be a just cause or a right intention under the meaning-in-use of this norm. Such subjectivity blurs the lines of legality and legitimacy from the perspective of international law in the context of new wars. On the other hand, the so far accepted circumstance for the right intention rule has been the maintenance and/or preservation of international peace and security. However, with new wars and individualism, states tend to support humanitarian intervention more than ever, and this might eventually be used for states' interests. It would not be immediately clear if a state pursued its own interests or tried to perverse international peace and security.

The third criterion, competent authority, refers to the legitimate and lawful governance of a state. Governments need to respect the rule of law and international human rights law (as well as international humanitarian law) and help to strengthen international peace and security. Also, "effective control of the national territory is necessary" (Murphy, 2014 45). However, effective control of the national territory condition in this issue alone is inadequate. Therefore, perhaps the most important part of competent authority for states is to provide security to their citizens and to respect rule of law. As a result, it has to be a legitimate authority. Competent authority "involves a clear statement of not only the envisioned outcome of an action, but the possible alternative futures implicated by the agency of others as action takes shape" (Amoureux and Steele, 2013, 78). Consequently, this criterion is connected to the right intention and reasonable chance of success. Therefore, terrorist organizations, rogue[5] and/or failed states[6] cannot be labeled as having the competent authority to declare war under international law.

Reasonable chance of success is also connected to just cause, proportionality, and right intention. If there is not a reasonable chance of success, then there cannot be just cause, right intention, and proportionality. Essentially, "if it is irrational to go to war, war is simply not available as an option, even as a final option" (Murphy, 2014, 160). As a result, it is important to weigh the benefits and losses when it comes to waging war. If war leads to a catastrophe, international insecurity, and eventually a failed state, then it is impossible that this war is either proportionate or just. Hence, all these rules and conditions are connected to each other and affect the outcome. Without reasonable chance of success there will always be excessive suffering.

Reasonable chance of success, just cause, and competent authority are connected to the last resort principle. War should not be the first option among other choices. Actually, it has to be the last alternative. As mentioned earlier, this condition has become problematic too with the war on terror and new wars. For example, before pre-emptive war and cyber war came into existence, it was possible to calculate choices and

[5] "Rogue states allegedly do not play by the rules of rationality and are, therefore, difficult to deter from using weapons of mass destruction" (Malici, 2009, 39-40).

[6] A failed state is one where a state's government is no longer in control and cannot fulfil its responsibilities towards its citizens. This is typically where a state cannot keep its citizens safe (Brooks, 2005, 1159).

outcomes, and decide whether to wage war, because it was easier to calculate the losses and benefits. Accordingly, the last resort condition is especially applicable to cyber warfare because of its characteristics where no combatants are likely to die. However, the main principle, which is the double effect, hinders this condition. The double effect refers to the "distinction between the unintentional targeting of noncombatants and civilians versus the deliberate targeting of the innocents" (Royden, 2014, 117). Therefore, it is likely that the last resort condition is obstructed by new war's characteristics because civilian infrastructure is highly threatened by cyber warfare. States can use cyber weapons without waging war (because it is a contestation area for actors in cyberspace on whether cyberattacks constitute waging a war) and this will ultimately harm the last resort condition.

Furthermore, there has to be a reasonable chance of success for fulfilling the last resort rule because otherwise it is impossible to think war is an option at all. However, last resort does not mean that an actor must consider all options, exhaust all alternatives, and then decide to wage war. As a result, it does not mean that all peaceful options have to be exhausted. On the contrary, it means that "all genuinely promising ones (options) must have been tried and failed to produce the desired result" (Murphy, 2014, 162). All options are open-ended. Therefore, it is important to try just the promising ones. On the other hand, states might not be aware when the exact moment of last resort condition has arrived. Nazi Germany and Chamberlain's deterrence policy can be given as examples. Chamberlain did not realize that after Germany's Munich Treaty the last resort had arrived. Therefore, it is also important to consider when is the time for opting for the last resort, because "justice delayed is justice denied" (Murphy, 2014, 176-177).

Finally, proportionality is a vital and highly controversial component of *jus ad bellum* especially with the new war phenomenon. Proportionality is at the core of *jus ad bellum*. First, it is important to note that "proportionality is future oriented" (Fabre, 2015, 295). Therefore, it is hard to foresee how a state will meet this criterion. That is why it is the most controversial and vague concept of *jus ad bellum*. When it comes to pre-emptive strike and preventive wars, states act with their interpretation and proportionality becomes a vague concept (Chatterjee, 2015, 70). This ambiguity does

not just stem from its future-oriented characteristic but also from its very conception of war. For instance, it is impossible to estimate the output of war without considering not going to war. Therefore, it is equally important to weigh the costs and losses of not waging a war.

Theoretically, proportionality concerns "balance between means and ends, good outcomes against evil outcomes, and comparing benefits and harms arising from going to war with those relating to not going to war" (Murphy, 2014, 187). However, in today's international community, it is almost impossible to know if the proportionality rule has been met because it is impossible to weigh the outcome in advance.

All of these six requirements of *jus ad bellum* were created for traditional wars that occurred between symmetric actors (i.e. states) in a defined battlefield. Therefore, when the Clausewitzian war era ended, international law was disrupted. Clausewitz and his perfect war description—examined after this chapter—fit perfectly to the *jus ad bellum* norm because in the Clausewitz era the international community agreed on these norms after a number of contestations. At that time, this norm and its principles were seen as legitimate tools for controlling wars. This means that if there was a path that showed how the world would evolve from Clausewitzian war to new wars, then it would become possible to use this norm's meaning in new wars appropriately. If this was the case, actors in the international arena might speak with one voice when it came to international law in new wars.

1.2. *Jus in bello*

Jus in bello deals with the conduct of war. It is not interested in why a war started but how the hostilities are conducted. Therefore, its features are different from *jus ad bellum*. For the purposes of this thesis, it is vital to differentiate *jus ad bellum* from *jus in bello*. The reason is, it reveals the main argument and the problem in the literature that is the just distribution of harms between combatants (McMahan, 2010). To avoid the moral hierarchy among combatants (just and unjust combatant distinction) it is important to separate *jus ad bellum* from *jus in bello*. The main aim of international

humanitarian law is to humanize the brutality of wars: “the law of war civilizes just and unjust wars alike” (Boucher, 2011, 93). This is why *jus in bello* has to be conducted similarly in both just wars and unjust wars. If just combatants—that is, according to McMahan, combatants that fight in just wars—are separated from unjust combatants, then it is impossible to humanize unjust wars. So, it is important to understand the features of *jus in bello*.

First of all, “there is little reason to believe *jus in bello* actually functions primarily to restrict the number of casualties rather than, as its own terms suggest, the types of casualties” (Shue, 1978, 128). To understand how this norm restricts the casualties, it is important to know three main requirements of this norm, which are “proportionality, discrimination, and the concept of the limited war” (Howe, 2006, 45). These three requirements are connected and are intended to prevent escalation to extremes, hatred, and enmity. As a result, there are some contestations with new wars because these requirements, as seen in *jus ad bellum*, fit perfectly with traditional warfare but not with new wars. Therefore, brief examinations of every principle in the context of new wars are needed in order to understand their contestations.

The proportionality rule is useful to minimize unnecessary suffering in wars. Therefore, a combatant has to act accordingly with his military operation aims. The means must be in line with the ends. It is similar to using aerial bombardment instead of ground forces. Clearly, using ground forces is much more proportionate than using aerial bombardment. The double-effect rule is the reason behind this. The doctrine of double-effect allows combatants and states to cause harm to achieve greater good. However, as Walzer (cited in Wheeler, 2002, 216) states, “deliberately killing civilians in the belief that more civilians will be saved is a fantastic, godlike, frightening, and horrendous act.” As a result, using aerial bombardments tactics when it is possible to use ground forces should not be permissible under the proportionality rule. If *jus in bello*’s meaning is thought of as “human centered rather than state centered” (Leebaw, 2014, 264), then the US’ acts (aerial bombardment in particular) in the war on terror become both illegal and illegitimate.

Proportionality is one of the most important requirements in international humanitarian law but one of the most controversial pillars of *jus in bello* is discrimination (/distinction), which is the separation of combatants from non-combatants. First of all, it is important to understand how combatants can manage to discriminate combatants from non-combatants. Soldiers' uniforms and insignias were created to overcome this problem. "A military uniform is a marker of abidance to sets of codes, rules, and laws about the warfare and the battlefield" (Guillaume, Andersen and Vuori, 2016, 56). Therefore, soldiers' uniforms mean that they are the combatants of a war and must obey the laws of war. On the other hand, civilians and those who do not wear uniforms have to be protected from the harm's way.

The law of war is a human-centered issue, nevertheless, this does not explain why civilians or non-combatants (people without uniforms in traditional warfare) need protection in time of war. Shue (1978) and Meisels (2012) propose that civilians or non-combatants must be protected because they are defenseless. There is not any brotherhood of death between civilians and combatants. Civilians do not pose a threat to combatants as combatants of rival parties do to each other. Non-combatants are defenseless because they "lack the protective material equipment and professional military training that soldiers receive" (Meisels, 2012, 924).

There is a fundamental criticism to this "in defense of defenseless" view. For example, Sjoberg (2014) suggests, contrary to the idea that war without civilians will lead to a real just war, that without civilians waging wars might become incredibly hard because there would be no one to defend. "Without guilty people to target and innocent people to protect, war justification becomes much more difficult. In other words, without civilians there are no combatants" (Sjoberg, 2014, 155). This view might be the answer to the problem of distinction in new wars.

Similar to the proportionality rule, combatant and non-combatant distinction stemmed from symmetry. War without civilians might overcome the asymmetry problem. However, with war on terrorism and cyber warfare it might be impossible to conduct war without civilians. Accordingly, McMahan (2010) criticized just war theorists such

as Walzer and proposed distinction concepts like just-unjust combatants and just-unjust civilians. Therefore, McMahan showed how new wars challenge the distinction rule of *jus in bello*. This view stemmed from McMahan's conception of the relationship between *jus ad bellum* and *jus in bello*. According to him, both are connected. As a result, McMahan (2010, 344-345) stated that "doctrine of the priority of combatants applies only to combatants fighting in a just war." Accordingly, without just reason to wage war, combatants become unjust and they have no combatant status under war conventions. This view is apparent when it comes to civilians too. According to McMahan's (2010, 351) individual liability account, "some civilians who are responsible for making significant contribution to an unjust war may be liable to attack." These new concepts and classes in warfare emerges from the new wars' characteristics (especially the war on terror). Similarly, the US' war on terror policy—this thesis treats this policy as a contestation to *jus in bello*—helped McMahan to create these classifications. Also, these new concepts blur the lines between combatant and non-combatant and makes it hard to propose a definitive meaning of this norm in new wars. In short, the moral equality of soldiers has arguably disappeared.

These challenges have emerged as wars have transformed. Accordingly, since new wars have an asymmetrical nature, the policies of the involved actors have also arisen as a challenge to the norm of *jus in bello*. In traditional warfare a glorified aspect has been the heroism of soldiers. Following technological developments and increasing public consciousness (because of the fast information flow), soldiers' lives have come to be considered much more vis-à-vis the lives of the civilians on the target country. Consequently, the concept of war as hunt[7] emerged (Guillaume, et. al., 2016). Therefore, the distinction rule has been challenged in new wars and international law (especially *jus in bello*) could not manage to deal with the ambiguity of the new wars. This is a shared problem with *jus ad bellum*. Therefore, when the war-as-hunt concept and asymmetric warfare became ordinary rather than the exception, these norms fell short. However, it does not mean that their purposes are irrelevant. It is possible to see

[7] Guillaume, Andersen and Vuori (2016, 65) notes: 'the actions open to hunter are limited: he may pursue, stalk, track, snare, kill but cannot negotiate, confer, settle.' This new type of warfare created a distance between soldiers and the field (Beard, 2009; 413). Hunter can hunt even if he/she is in another continent as a result of technological developments (e.g. unmanned aerial vehicles).

these norms and regulations as legitimate tools in new wars because they tend to prevent escalation to extremes and unnecessary suffering, and they try to protect basic human rights. Arguably, these norms are better equipped than existing conventions or regulations, which have also been challenged by new wars.

CHAPTER 2

CLAUSEWITZ AND TRADITIONAL WAR

This chapter aims to provide a background on traditional warfare and Clausewitz's thoughts on war, starting with the meaning and aim of the Clausewitzian trinity in order to understand contestations on war-making in the Napoleonic war[8] era. Accordingly, his ideas and their impact on early war conventions are studied. Such analysis reveals how Clausewitz's thoughts made the meaning-in-use of international norms universal in that era. Afterwards, Henry Dunant's—the founder of the International Committee of the Red Cross (ICRC)—thoughts and war conventions are examined at the end in order to understand the nature of war conventions.

2.1. Trinity

For the sake of international humanitarian law, it is necessary to understand the evolution from traditional war to new wars. The Clausewitzian concept of trinity is helpful at this point because its character is accepted as perpetual and never-changing. The trinity is the link between new wars and traditional wars and has become a topic for debate in the literature. Some scholars (see, Rosen, 2005; Bassiouni, 2008; Daniel III, 2015) suggest that Clausewitz's war theory is all about land perception and only concerns states as the main actors. Thus, they consider it as totally different from new wars. On the other hand, some (see, Schuurman, 1988, 2010; Reid, 2003; Lantis, 2006; Echevarria II, 2007; Herberg-Rothe, 2009; Waldman, 2010) argue that Clausewitzian war resembles new wars due to its characteristics and because of the trinity that Clausewitz put forward.

Clausewitz was inspired by classical thoughts when he was constructing the trinity. That is why Corn (2011, 17) highlights that trinity is much like a classical thought that contains "three kinds of efficient causes"—natural, divine and human. Herberg-Rothe (2009, 208) explains Clausewitz's trinity as "composed of primordial violence, hatred,

[8] Revolutionary or total war era.

and enmity, which are to be regarded as a blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of its element of subordination, as an instrument of policy which makes it subject." Therefore, trinity basically contains violence, chance and rational purpose (war as a political instrument) (Schuurman, 2010, 92).

Clausewitz saw trinity not as exclusive to the wars that he had experienced but as embracing all wars. By correlation, violence–chance–war as a political instrument had been seen as the abiding characteristics of war. As a result of this first trinity (violence–chance–war as a political instrument), Shuurman (2010) suggests that the second trinity has emerged. The second trinity contains or concerns the first one's components. Comparatively, violence concerns people, chance applies to commander, and rationality refers to government (Shuurman, 2010, 94). As a result, it contains people, government and military, as well as irrational, rational and non-rational wars. Accordingly, Corn (2011, 11) explains why Clausewitz's works are limited to a short period of time (1618-1819). Nevertheless, trinity is also the reason why scholars think Clausewitz's thoughts are still applicable to new wars.

Clausewitz has not examined all wars but aimed to discover the essence of war, which was thought to be common in all wars. There are two main questions regarding war in Clausewitz's analysis: what war is and how it can be won (Lider, 1977, 187)? Clausewitz's (1997, 22) work contains many descriptions of war, but the most famous one is, "war is a continuation of policy by other means." According to him, war has two aspects: military and political. The military aspect is concerned with how to win a war, while the political aspect is concerned with meeting a state's goals. Thus, war is also seen as a means for politics.

Is war just a subordination to policy or does policy disappear when war has started? How does one pursue policy by bloodshed? Here, it is important to remember that Clausewitz was one of the witnesses of the early transformative stages of states and wars (mainly because of nationalism and national armies). It is noteworthy that the

philosophy of the era was very much about dialect, induction, thesis, antithesis and synthesis, and Clausewitz's famous work, "On War," reflects the trends of the era.

Nonetheless, it is the very same features of the trinity that has made Clausewitz's ideas adaptable to the new wars. One of the formidable critiques of trinitarian thought is that the role of technology in new wars made trinity inadequate. However, Echevarria (1995-1996, 78) highlights that "technology does not require adding a fourth component to trinity." Arguing that changes in technology does not require revising Clausewitz's theory by including a new component does not deny that technology has affected the concept of warfare. Technology certainly sped up the change, but it did not change the concept of warfare in essence or all together. Therefore, Clausewitz's thoughts on war might still be representative of the wars of the 21st century. This also means that Clausewitz's contestations are still valid in new wars (might open a window of opportunity) and it is still possible to achieve a universal meaning-in-use of *jus ad bellum* and *jus in bello*. As seen below, this was the case in early war conventions because of Clausewitz's thoughts and Dunant's contestations.

Dunant also lived in the mid-1800s in almost the same years as Clausewitz when there were no peremptory laws or norms to shape states' behavior in wars. In order to create norms an external shock was needed because norms would have been radical changes considering the law at this point (Lantis, 2006, 26). Therefore, conscience shocking events that would affect human behavior and morality are important for individuals or states to change the kind of behavior and meaning that cause terror among innocents. When Dunant witnessed in 1859 the Battle of Solferino—which was characteristically a Napoleonic War—he decided to establish an organization for taking care of veterans of war. After the battle, "he helped found an organization to promote this cause through an international treaty (Geneva Convention)" (Finnemore and Sikkink, 1998, 897). That is why Dunant and Clausewitz have been of prominence with regard to the development of international norms such as *jus ad bellum* and *jus in bello*.

2.2. Friction and Escalation

For Clausewitz, escalation and friction were tools to reach the synthesis, i.e. trinity. The word "escalation," which Clausewitz used very often, implies that all wars tend to reach extremes. Moreover, if escalation is in the nature of the war so is friction, which restrains wars. As a result, according to Clausewitz (1997, 12) a war's result could not have been absolute, and therefore it had to be entirely political. Limited and total wars are important because these types of wars are determined by whether there is going to be an escalation or friction. Escalation leads to total war if there is no friction. Conversely, friction limits war.

According to Clausewitz, escalation and friction may result from the chance factor, hence, war may be considered as a roulette game. Unlike a card or chess game, but roulette requires chance by all means. Clausewitz argues: "everything is very simple in war, but the simplest thing is difficult" (1997, 66). Therefore, while on paper war is arguably very simple, in practice it is difficult because of the chance factor, which may, depending on the case, create friction and escalation.

If that is the case, then what is the purpose of friction? How does it limit war? As Lider (1977, 195) asks "is war a predictable and advisable means of achieving political goals". First of all, it is important to remember that absolute war[9] is the ideal form of war for Clausewitz (Lider, 1977, 188). Secondly, war has three main concepts according to Aron (1974, 50): violence, objective, and end (see also Ziel and Zweck). In short, having a political objective to reach an end by using violence is war. Sometimes reaching the goal requires escalating violence. Even if there is going to be an escalation of violence, this does not mean that civilians are hurt in Clausewitzian war. War in the 18th century was about demolishing an enemy army on land. When an army lost the decisive battle, war was over. In this way it was impossible to reach the level of escalation of total war. The reason behind that is friction. To clarify this statement, Lider (1977, 188) highlights that "a state of pure violence cannot be achieved owing to

[9] Absolute war is the destruction of the enemy's army through a single battle. It is different from total war, which is an escalated war. Total war is an undesired outcome for Clausewitz because, unlike absolute war, it causes unnecessary suffering (Herberg-Rothe, 2009).

the friction created by some military and psychological factors as well as political aims, all of which set bounds to the amount of violence that can be generated." Thus, it is possible to suggest that total war and extreme violence is not the case or a desired outcome for Clausewitz.

As seen above friction helps to reduce the amount of violence that is inflicted, but "how friction limits war" is a noteworthy question. It is important to provide proportionality while achieving political ends through military means (Aron, 1974, 53). Even if proportionality is a different concept in the international law literature, it is achievable through friction or it might create friction in wars. Absolute war is the ideal form for Clausewitz, but it is impossible to reach due to lack of knowledge and circumstances of reality. When leaders cannot obtain complete information on an enemy, then war is left to chance. At this point, war becomes unpredictable and either limits or escalates itself. As Smith (1994, 137) argues, "friction prevents war from working perfectly." It is not just chance that creates friction. Treisman (2002, 3) reminds that "physical exhaustion of the troops, inaccurate information, weather, and infinity of petty circumstances combine to complicate the implementation of simple plans."

The other component of Clausewitzian war, as mentioned previously, is escalation. Escalation is as important as friction because these two characteristics show that Clausewitz might be right after all while suggesting that these two concepts are ever-lasting features of war. What is escalation and how can it lead to total war? Reciprocity, is considered to be the main cause of escalation. At the beginning of "On War," Clausewitz (1997, 5) states that "war is nothing but a duel on an extensive scale." This implies that war contains reciprocal actions (Nordin and Öberg, 2015, 394). This reciprocity is the main drive behind escalation. That is why Houweling and Siccama (1988, 44) suggest that the necessity of reciprocal actions makes war ungovernable and uncontrollable. Similarly, according to Clausewitz these reciprocal actions require the use of force and violence.

There are other factors for Clausewitz that can cause escalation or friction. For instance, emotions, feelings, and experiences are important factors listed in "On War." There is

the possibility that a war might have not started, but because of emotions such as hatred and enmity, Clausewitz mentions, a situation may eventually escalate into violence so that two communities start fighting. Aron (1974, 51) suggests that "men or people who fight initially without hating each other will at the end come to hate each other because of their very fighting."

Consequently, it is important to note five main causes of escalation: hatred, enmity, revolutionary movements, duration of fighting and public opinion. First of all, as Clausewitz has witnessed, war is no longer in the monopoly of the monarch; rather, it is in the hands of the public opinion because war has become a "total contest for national existence" (Daniel III, 2015, 317). Fanatic revolutionaries became the main component of war after Napoleon. That is the reason why Clausewitz thought they might inflict extreme violence to the opponent. Nationalism plays an important role in this part. This kind of mass mobilization comes with some consequences such as unlimited war and excessive use of violence. Also, because "emotions could affect judgment" (Lebow, 1988, 90) it is probable that hatred and enmity might influence public opinion and lead to extreme escalation. This can be summarized by Lebow's (1988, 90) statement: "Napoleonic Wars had demonstrated that under certain conditions even the most civilized of peoples could be fired with passionate hatred for each other. This happens when important interests are at stake, and when the ensuing conflict endures a long time."

As a result, armies consisted of national identities and ideologies had some consequences to international system, society and law. Consequently, wars became open to escalation to extremes in the 18th century. Identities, culture, and society became more of an issue. This led to just wars under the name of survival, nationality, self-determination (and/or independence), and equality. With the rise of national armies, there came the increased possibility of escalation and extreme violence, as the armies were not just attacking a mercenary; it was also attacking a citizen or an "other." An enemy was still a citizen in soldier uniform. In this context, hatred toward an "other" convinces states to use force and violence while they are receiving support from their

citizens. This is because of enmity. Therefore, one can infer that as fighting extends, hatred and enmity also get stronger, eventually leading to escalation to extremes.

On the other hand, it has to be remembered that total war does not stem from this type of escalation because this is just about the extreme violence that was not profitable for states according to Clausewitz (Aron, 1974, 54). Therefore, the "if I am going down I bring you with me" thought causes undesired outcomes. A "die alone" aphorism is the worst-case scenario for states; thus, it will lead to extreme violence and violate the proportionality rule. This was the case in late 18th century. Hobbesian culture of living created an insecure world where states waged war against each other without trusting each other. This was a revolutionary or total war that Clausewitz contested.

As revolutionary movements are hard to control, they can lead to excessive use of violence (Daniel III, 2015, 316). This causes a cycle in warfare which makes war unpredictable and vague. Consequently, total war deals absolute devastation to the contender (Houweling and Siccama, 1988, 47). Violence was not only unlimited; it was also uncontrolled. Herberg-Rothe (2009, 211) note, "uncontrolled violence for Clausewitz is dysfunctional and self-destructive." Waterloo, where Napoleon Bonaparte was finally defeated, is an example of uncontrolled violence. Therefore, total war was an unwanted consequence for him and Dunant. *Jus ad bellum* and *jus in bello* were created to prevent this consequence.

Initially, these principles were intended to protect soldiers and prevent unnecessary suffering. According to Herberg-Rothe (2009, 210), if war is viewed as "violent fighting of communities," then it is possible to witness these kinds of escalation throughout history. As a result, Clausewitz's trinity is seen as actually a timeless feature of war because all wars have a tendency to reach extreme violence. This is the reason behind Clausewitz's giving a role for international laws of war (contestation to states sovereignty in war-making) and why the world needs *jus ad bellum* and *jus in bello*. Wars have to be restricted, controlled, and humanized. These norms and trinity might help the world to overcome the problem of escalation to extremes in war.

Nevertheless, despite the escalation tendency of trinity, Clausewitz had some proposals to prevent escalation to extremes and total war. The first proposal was to form a professional army rather than some fanatics that hold onto ideology or religion or are full of hatred and enmity. Secondly, he created the term "genius leader." This point is important because genius leaders play major roles in wars as Clausewitz suggested. Genius leaders have both military and political capacity and tend to predict the future. Therefore, they can calculate the means and ends to avoid extreme use of violence. This also restrains war. If there are professional armies and skilled genius leaders, then it is possible to assume that there is also continuation of policy. For that reason, it is possible to suggest that Clausewitz actually has tried to limit total war rather than encourage it. As a result, "it is essential to wage war with clear view" (Daniel III, 2015, 325). This is an important statement because it shows how Clausewitz desired to limit uncontrolled violence. Specific ends by using adequate means is the main aim. Basically, it is all about "doing neither too much nor too little" (Waldman, 2010, 3). As a result, Clausewitz put forth unlimited total war as a thesis with war as continuation of policy as an antithesis and trinity as a synthesis (Shuurman, 2010, 93). Therefore, it is obvious that Clausewitz supported and affected the ideas of just cause and proportionality that are the main components of *jus in bello* and *jus ad bellum*.

With the help of his trinity, Clausewitz tried to avoid revolutionary wars and extreme violence. Consequently, *jus ad bellum* and *jus in bello* were used to diminish violence with Dunant's help in wars in that era. After devastating wars between national armies, *jus ad bellum* created a just reasoning of war waging in war conventions. It reduced the options that states could use while waging war. *Jus ad bellum* and *jus in bello* rules started to become visible in the late 1800s because of Dunant's actions and Clausewitz's thoughts on sovereignty of states in war making, equal combatants, absence of civilians, and unnecessary suffering. The new warfare types, namely revolutionary or Napoleonic wars, led to contestations which created frictions and brought escalation to extremes. The most important contestations in this regard came from Dunant and Clausewitz. Hence, it is important to comprehend their views and their impact on the evolution of international law.

2.3. Clausewitz and War Conventions

In August 1864 Dunant convinced states, specifically the Swiss Government, to host a conference to sign the first Geneva Convention. This was the beginning of the war conventions. The First Geneva Convention only dealt with soldiers wounded in the battlefield because it was the traditional war era. This first step is important for the development of the laws of war. As Alexander (2016, 3) notes, there were not any civilians in battles until World War I. This is why international law did not contain regulations concerning civilians until 1918. The 1899 and 1907 Hague Conventions were actually established prevent escalation of wars to extremes. States gathered to create some kind of friction and prevent total war. This is why Clausewitz and Dunant are so important for international humanitarian law. They both tried to diminish extreme violence in the revolutionary war era.

The Lieber Code, which was the starting point for these conventions, was a great example of a contestation that Clausewitz mentioned in his book. In 1861, during the American Civil War, Franz Lieber[10] created a code to avoid unnecessary suffering by emphasizing the importance of military necessity. This code became the ancestor of the proportionality rule and the Hague Conventions. Its purpose was to control and humanize wars. Regulations of these treaties became important for limiting wars with the Hague Conventions (1899 and 1907). Therefore, it is vital to examine the 1899 and 1907 Hague Conventions for a better understanding of Clausewitz's work. These two Conventions tried to prevent lasting fights and reduce hatred and enmity between rivals.

The Russo-Japanese War in 1904-1905 and the Boer War[11] in 1899-1902 were two of the main stimuli for gathering a war convention. Because these wars led to escalation to extremes and unnecessary suffering. This was why Tsar Nicholas II called for a convention on the limitations of armaments. The 1899 Hague Convention embraced just one "general rule on implementation, and this concerned the duty of signatory powers to issue instructions to their armed land forces in conformity with the Regulations"

[10] An American commander in American Civil War.
[11] South African rebellion and war against British annexation.

(Kalshoven, 1991, 831). The text mentions only a duty but not responsibility. Therefore, this convention, even though it was a major development for the laws of war, did not guarantee much. Twenty-six states gathered in the First Hague Convention in order to create a binding body and mechanism to decrease munitions and to achieve arbitration between conflicting states (Stoett and Teitelbaum, 1999-2000, 37). This was an endeavor to diminish the escalation in wars. However, for the 1899 and 1907 Hague Conventions' the only concern was land wars, which were symmetrical. Until the 20th century "warfare had become the domain of highly disciplined armies, and the law applied to both sides equally, irrespective of who is the aggressor or victim" (Doswald-Beck, 1987, 252). However, two sentences of the Second Hague Convention were very important for the development of the international law, which revealed the spirit of the Convention and helped international laws of war to become universal. They also helped the universalization of the meaning-in-use of *jus ad bellum* and *jus in bello* at that time. The first sentence explains why High Contracting Parties needed to sign such a convention. The introduction of the 1907 Hague Convention states:

> According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

The second sentence concerns when new threats arise and expand the scope of war beyond what these conventions would cover. In such a case, the world needs an insurance to control war and hinder states from abusing new weapons to avoid unnecessary suffering. Accordingly, the sentence reads as follows:

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

Because this was the revolutionary war era, the 1899 and 1907 Hague Conventions have a Clausewitzian character with reference to sovereign states and proportionate means to a clear end. Consequently, these conventions' clauses only contained states and soldiers,

and not every state accepted these provisions immediately. For instance, Germany refused to take part in these conventions because "Bismarck advised not to rely on international law but on the power of arms, as guarantee, in its international relations" (Schlichtmann, 2003, 379). At that time, the focus was on states' gaining land power and winning the war. As a result, these basic treaties were created mainly to protect soldiers from total wars and from states like Germany who did not obey the rules at the time.

Even though these two conventions only put forward the basic rules on land war, they created a much bigger tendency. The first German judge at the Permanent Court of International Justice in the Hague, Walther Schücking believed that these conventions created developments which could be defined as "international law being transformed into world law" (Schlichtmann, 2003, 381). Therefore, these conventions were the cornerstone for laws of war to gain global support.

2.4. World War II, Clausewitz, and the Geneva Conventions

WWI and WWII added two new components to the traditional war concept that were not taken into consideration in the Hague Conventions. These were aerial warfare and civilians. According to Alexander (2016, 3) "during this time the emergence of aerial warfare, the mobilization of home front, and the propaganda illustrating the suffering of women and children, transformed the traditional category of "private citizens," who stood outside of the conflict, into civilians, who were seen as a both valuable and vulnerable target". After WWII, it became necessary to protect civilians, and new conventions gathered to protect the defenseless in wars. Consequently, many Geneva conventions gathered and were ratified to cope with the new emerging actors in these wars. Moreover, as the battlefield has expanded to cities and villages, these conventions had to expand their scope.

This is why there are four Geneva Conventions of 1949—the first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick Armed Forces in the Field; the second Geneva Convention for the Amelioration of the Condition of

Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the third Geneva Convention Relative to the Treatment of Prisoners of War; and the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. These Conventions are important because they ensured much broader protections for civilians and combatants. As Pictet (1951, 462) observes, "these treaties are founded on respect for the individual and for his dignity; they embody the principle of selfless relief, without discrimination, to all human beings in distress whether they be wounded, pour or shipwrecked and thus defenseless and no longer regarded as enemies." The main reason behind this is the racist ideas of Hitler. Many conventions gathered to prevent racism and to establish equality and human rights after WWII. As a result, international law (and especially *jus ad bellum* and *jus in bello*) appeared to develop more and more as a world law with shared meaning-in-use after the Geneva Conventions.

The two world wars did not totally change the traditional concept of warfare but merely added elements to it. Aerial warfare emerged and face to face battles faded. Therefore, soldiers began to kill without knowing or seeing the enemy. This had some consequences on international law. Soldiers could not be held responsible for what they did in aerial warfare because they did not see the enemy combatant directly. These new elements escalated violence in wars because hatred and enmity were at their highest levels in WWII. Racist thoughts combined with the aerial bombardments led to devastating losses on the battlefields. As a result, WWII appeared to be the total war that Clausewitz had always tried to prevent.

New weapons such as war planes and submarines did not change the concepts of war right after WWII, but these wars had calamitous results for all sides. As a result, these two devastating wars had led to the creation of the understanding of state responsibility in the Geneva Conventions. Although it can be argued that the Geneva Conventions convened only because of WWII, this is not totally true. There is one more reason why states assembled in Geneva: the Balkan Wars (1912-1913). The importance of the Balkan Wars stemms from its mass civilian killings, which were obvious at the beginning of the war because the Bulgarian King declared that he was fated to destroy the Bulgarian race's eternal enemy (Andonyan, 1999, 438). The combination of both

destructive racist discourse and new technology eventually led to mass killings. For instance, Townshend (2005, 25) observes that "the new weapons hastened the already-changing social basis of warfare." As a result of this dangerous combination, civilians became a part of the warfare, as Goldstone (2002, 1049) states:

> in World War I soldiers suffered some 95 percent of all deaths. Armies fought against armies in those days. In World War II the figure dropped to 50 percent. With the deliberate targeting of cities (London, Coventry, Dresden, Hiroshima, Nagasaki), this dramatic increase in the deaths of innocent civilians is not surprising. In the Korean War, 84 percent of those killed were civilians and in the Vietnam War it rose to 90 percent.

Thus, it is possible to suggest that scale of civilians killed increased with each war (Drumbl, 2002, 323). The "main factor here was the development of the air arm, with its dual capability of stand-off air support to ground forces and independent long-distance operations against targets deep inside enemy-held territory" (Kalshoven, 1991, 851). These experiences harmed international law and questioned its universal meaning-in-use of *jus ad bellum* and *jus in bello*. These new technologies and racist discourses created a contestation toward war. At some point, WWII discourse even showed that "a war that targeted civilians could be presented as a legitimate—even a 'good'—war" (Alexander, 2016, 25). Strategists, scholars, and poets thought that civilians were the Achilles heel of states, so that targeting them could end the war earlier. As a result, these contestations led to a new war convention that tried to cover as much ground as possible.

The Geneva Conventions of 1949 appeared to be the most comprehensive steps taken for international humanitarian law. There are three main aspects of this convention: Article 2 and Article 3, protection of civilian persons in times of war, and the status of prisoners of war. First, it is vital to examine Article 2 and Article 3 to understand how WWII changed the understanding of war. Article 2 states:

> In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

> Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

This clause is very important for international laws of war because it proved that norms and rules in these conventions had become world law at that time. Since "what is war and is not war is in fact something that people decide" (Sloane, 2007, 445), it is important to define wars even if other states did not recognize the war situation. International law has to deal with almost all controversies after this provision. Just wars, unjust wars, declared wars and undeclared wars are the same according to this provision. However, uprisings, riots, and other similar situations are not considered war situations. As Mack (2008, 7) states, "armed conflict must have a minimum level of intensity, the duration of the violence is another element that has to be taken into consideration." Even if these vague concepts such as the duration of conflict creates some difficulties to decide when a war situation has started, it was still helpful to humanize wars that were controversial before.

Article 3 in the shortest term is "the quintessence of the Red Cross spirit" (Krafft, 1951, 134). The ICRC based their operations on the Geneva Conventions. Additionally, Article 3 is the main purpose of its actions because it contains non-international armed conflicts as well. This point is fundamental because for the first time, new actors were mentioned in a war convention. Article 3 reads:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> 1) Persons taking an active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> *a)* violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> *b)* taking of hostages;

> *c)* outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> *d)* the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> 2) The wounded and sick shall be collected and cared for.
>
> An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
>
> The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

As a result, war's meaning must be determined in the widest way possible in these conventions. Particularly, the 1949 Geneva Conventions created a "bill of rights" (Ratner, 2008, 26) for individuals related to a war situation. However, non-international war terms in this article posed dangers to states sovereignty. Therefore, some states (including the US) approached this issue cautiously and unwillingly. Still, the part of this provision that stated "treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria" is vital because now it is applicable to all individuals equally. Therefore, Ratner (2008, 27) states that "article 3 protects all persons regardless of their status."

However, by specifying combatant status, the 1949 Geneva Convention avoided adding non-state groups to the system completely (Sloane, 2007, 456). For example, even if an individual was a "militia and member of other volunteer corps, including those of organized resistance movement," he/she still had to fulfil some requirements to count as a combatant. There are four main conditions: being commanded by a person responsible for his subordinates; having a fixed distinctive sign recognizable at a distance; carrying arms openly; and conducting their operations in accordance with the laws and customs of war. As a result, Article 3 did not give everyone a right to become a combatant; it just recognized and regulated non-international armed conflicts as a new concept in wars. It nevertheless has to be counted as a major step for international law. *Jus ad bellum* and *jus in bello* were closer to becoming a *jus cogens* rule after the 1949 Geneva Conventions especially because of the Common Article 3. The non-discriminatory

treatment of those who fulfilled their requirements is the main reason that this clause is so important.

Prisoner of war status is one of the most important parts of this convention after experiencing WWII. Prisoner of war status expanded after the Geneva Conventions to minimize suffering in war. "The Convention itself is designed for the protection of prisoners of war" (Charmatz and Wit, 1953, 397). The Conventions achieved that by labeling some specific groups as "protected persons" and banning reprisal against those groups (Rowe and Meyer, 1996, 480-481). This "protected persons" concept will be expanded in the Additional Protocols. This is why, a prominent part of these conventions derived from the protection of civilians. As mentioned earlier, the main reason behind that was the aerial bombardment and racist discourse that were not seen much before WWII.

Articles 13[12] and 14[13] of the Geneva Convention provided safeguards for prisoners of war. These articles are an expanded version of the 1907 Hague Convention. The Geneva Conventions created something closer to a bill of rights for the prisoners of war and civilians in war territory. As WWII created a need for a more comprehensive framework and safeguards for combatants and civilians, after massive civilian deaths due to aerial warfare, international humanitarian law had to regulate that area. The Universal Declaration of Human Rights also helped to create a bill of rights and liability to states in order to humanize wars.

As Meron (1987, 355) suggests, "the *ergo omnes* character of the many of the norms in these conventions implies that third states have not only the right to make appropriate representations urging respects for these norms to states allegedly in validating them, but also a duty not to encourage others to violate the norms, and perhaps even to

[12] The article reads as follows: 'Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.'

[13] The article reads as follows: 'Prisoners of war are entitled in all circumstances to respect for their persons and their honour.'

discourage others from violating them." This is the main reason why the Geneva Conventions created a bill of rights to combatants and civilians in war zone. However, the 1949 Geneva Conventions did not prohibit and contain all wars.

With Hitler's destructive racism, WWII looked similar to the revolutionary (unlimited and total) wars that Clausewitz had aimed to prevent. New efforts to make international laws of war universal have arisen. Contestations to human rights had some implications for international law as well. The Geneva Conventions were created as a result of this. This was not the last contestation to these norms and international humanitarian law. New contestation areas came forward with the wars of national liberation (de-colonization) and guerilla warfare especially after the Algerian War (examined in Chapter 3). In the end, these contestations forced states to convene and sign the Additional Protocol to the Geneva Conventions in 1977.

CHAPTER 3

THE WAR ON TERROR

In order to understand new terrorism's features and its relationship with international laws of war, it is important to first explain what ordinary terrorism is and its distinction from new terrorism, as well as what is vital about this distinction. As the world saw it in the past, terrorism was not a part of international laws of war. Instead, it was a part of international criminal law. However, this changed after 9/11 and the war on terror. The US waged war against terrorism after the 9/11 events, which made this topic transnational and an issue of international laws of war.

After new terrorism has come to be identified as a war-like event, there emerged. a legitimacy gap between fundamental norms (e.g. sovereignty) and regulations (e.g. combatant status). The US waged war against a terrorist organization but refused to give combatant status to their members. International law has some difficulties when it comes to terrorism because there is not a universally accepted definition of terrorism in international conventions. Therefore, it is a vague concept and it is impossible to label certain acts as terrorism.

Finally, there are two things to add to international law concerning the issue of war in terrorism. Norms' meanings-in-use either evolve in a direction to include new terrorism or they treat terrorists as criminals as it used to be. The latter poses some danger to international law because of the US' contestation toward new terrorism. However, the EU also created its fight against terrorism policy in order to create a universal meaning-in-use of *jus ad bellum* and *jus in bello*. To this end, this chapter attempts to explain how laws of war can overcome this new legitimacy gap problem.

3.1. Ordinary Terrorism

What is terrorism? What are the differences between new terrorism and ordinary terrorism? Why does new terrorism pose much danger? These questions' answers are

vital to comprehend why there are two main views on this issue and how international law must overcome this problem. First, description of terrorism is a must. Explaining the characteristics of terrorism is also important for understanding why the US waged war against terrorism and how it can pursue and achieve its goals while treating terrorism as a war-like event. What are the differences and consequences of regarding terrorism as war versus thinking of it as a crime?

Terrorism is a term that is never fully explained and understood. As Choi (2010, 943) notes: "Terrorism is a particularly difficult concept to define because of its value-laden nature; one country's terrorist may be another country's freedom fighter." There is a variety of terminology for and descriptions of terrorism, but they are unable to provide a full understanding of all terrorist acts, especially acts of new terrorism. It is easier to examine and explain ordinary terrorism because it has limited means and ends. Before the end of the Cold War, it was almost impossible for terrorist groups to acquire weapons and ammunitions. As a result, when its aim was limited, vagueness and the terror inflicted were limited too.

Ordinary terrorism by all means and ends seemed to be a criminal act to reach political aims. Therefore, Andrew Philips (2010, 137) differentiates piracy from terrorism because the former aims at economic gains. James D. Kiras (2009, 366) emphasizes the dominant role of aiming for a political change through terrorism. Political aim is the key factor for terrorism. A similar description comes from Miller (2008, 128-129) who describes terrorism as "political extremism." Additionally, terrorism tries to terrorize civilians by using their civilian infrastructure.

The main ambition of terrorist groups is to intimidate and frighten the enemy. The reason behind this is that terrorists are weak and could not manage to achieve victory against a state in a symmetric warfare. As a result, asymmetry as the primary and most important obstacle to international law appears again with terrorism. Another important characteristic of ordinary terrorism is its criminality. According to the first convention that codified terrorism—the Convention of the Prevention and Punishment of Terrorism of 1937—terrorism is a criminal act. Taking terrorism as a criminal act is important for

Jaggar (2003, 176) in order to distinguish it from both ordinary crimes and acts of war. Ordinary terrorism is asymmetric and labeled as a criminal act with a desire of a political change.

Still, it is important to pay attention to Galicki's (2005, 748) caution to be careful when facing terrorist acts and struggle of self-determination because both are hard to differentiate. There is not any settled description for a terrorist. It is possible for a terrorist to become a freedom fighter. This thought led to new war conventions in 1977 because the Geneva Conventions did not recognize that kind of war. Afterwards, this new convention gave rights to people once called terrorists.

3.2. The Algerian War

The Algerian war was the main contestation area for international law to overcome a legitimacy gap and open windows of opportunity. This war was also similar to the US war on terror where both meanings-in-use of war norms were contested in a similar fashion. The Algerian War of Independence started in 1954. The main motivation behind this independence war was not only political but also cultural. Therefore, "culture was the biggest weapon that colonialism used," and "decolonizing the mind" was the main motive in this war (Betts, 2012). First, even if Algerian people were regarded as French citizens, French law did not give them the same rights as it gave to metropolitan French citizens (Draper, 2013, 578). There were racial concerns (Jaques, 2006, 36) and inequality between metropolitan French and Algerian French. As a result, there was a cultural hierarchy. This type of politics was not acceptable in the eyes of the world especially after WWII. "The newly founded UN and its emphasis on human rights and the rights of self-determination for all nations provided a new international forum that undermined the discretionary policies of the imperial powers and helped to build an international consensus against colonial rule" (Babou, 2010, 43). As a result, self-determination and national liberation movements gained legitimacy. However, France did not recognize this legitimacy and it considered the decolonization movement an uprising, a revolt or a terrorist activity.

The French view of Algeria is the reason why the Algerian War of Independence is examined under the ordinary terrorism chapter. For instance, French officials referred to this situation as "insurrection, rebellion, terrorism, an act of outlaws" (Branche, 2007, 545); as a corollary, the Algerian side of the war became insurgent, rebel, terrorist, and outlaw in the eyes of the French government. French authorities insisted on these classifications because "the French considered Algeria as a French territory inhabited by more than one million French settlers whom it was unthinkable to abandon" (Perret and Bugnion, 2011, 709). Also, "the French colonial enterprise was framed in official discourse in terms of civilizing mission intended to bring democratic and economic progress to colonized people" (Kemp, 2008, 158). As a result, this conflict was viewed by France as an internal uprising which thwarted the applicability of the Rome Statute to Algerian war of independence. Article 8, Paragraph 2 of the Rome Statute states:

> (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
>
> (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (iii) Taking of hostages;
>
> (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
>
> (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

As a result, these breaches of the Geneva Conventions did not count as serious violations of common Article 3. Thus, it is possible to suggest that France made these categorizations in order to avoid Geneva Convention obligations. Also, "this kind of categorization serves to blame them, as the initial troublemakers, for any violence" (Branche, 2007, 559). Accordingly, this discourse turned Algerian freedom fighters into terrorists in the eyes of the French Government. Consequently, it is possible to suggest

that the French government tried to use the sovereignty rule ("Algeria is France") in order to avoid responsibilities.

Actually, it was the colonizing powers that did not follow the regulations of the Geneva Conventions. For instance, France labelled the Algerian war as "order maintenance operations in North Africa, Algerian Events, Algerian Affair, Algerian Conflict, Algerian Troubles" (Draper, 2013, 585). Odermatt (2013, 26) reminds that "states are simply unwilling to apply laws of war to internal conflicts as this may have the effect of "legitimizing" rebels, terrorists, and other armed groups." As a result, France used torture in the name of the ticking time bomb approach (i.e. imminent threat) because of the conception of "Algeria is France," and the perception of the situation as a national security issue. However, the use of torture to gather information from civilians and fighters damaged the legitimacy of the French government's actions because "many French people could not bear the idea that the police or the French army would use interrogation methods based on those of the Gestapo, against which they had rebelled– risking their lives only fifteen years earlier" (Perret and Bugnion, 2011, 731).

As a result, neither the French culture, nor people in Europe, nor the UN allowed colonizing powers to keep their dependent territories. These reactions to French actions surfaced in 1960 with the UN Declaration on Decolonization of Granting Independence to Colonial Countries and Peoples which stated,

> Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith, welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence.

Additionally, the Manifesto of 121 published on 6 September 1960 stated,

> For the Algerians the struggle, carried out either by military or diplomatic means, is not in the least ambiguous. It is a war of national independence. But what is its nature for the French? It's not a foreign war. The territory of France has never been threatened. But there's even more; it is carried out against men who do not consider themselves French, and who fight to cease being so. It isn't enough to say that this is a war of conquest, an imperialist war, accompanied by an added amount

> of racism. There is something of this in every war, and the ambiguous nature of it remains.

Manifesto of 121 was important because it was the letter that was signed by highly prestigious intellectuals that refused France's sovereignty claims on Algeria. Still, the legitimizing argument by the French government was based on sovereignty because the government stated that "Algeria is France." However, these contestations showed that human rights and norms against torture are still legitimate and it also showed that the sovereignty argument of the French government was irrelevant. WWII, the foundation of the UN, the Universal Declaration of Human rights, the Hitler experience, and the Geneva Conventions made this contestation against France possible.

As a result, two post-WWII circumstances were important for *jus ad bellum* and *jus in bello*: first, the increasing number of internal conflicts after WWII, and second, the increasing number of non-state actors in the international arena (Sloane, 2007, 464). As Kinsella (2011, 137) puts it "combatants in the wars of national liberation were no longer rebels, to be delivered to arbitrary justice, but freedom fighters struggling to secure justice". These de-colonization wars that were previously labeled as internal disturbances had begun to be characterized as just wars. As a result, the sovereignty of Algerian people was recognized. Therefore, national liberation movements gained an international character.

The Algerian War and its actors became important bases for the contestation of *jus ad bellum* and *jus in bello*. People who were called terrorists by the French government were categorized as freedom fighters and combatants after the decolonization movement. This means that this war expanded war conventions to a new war type, namely national liberation movements. Also, it made these wars legitimate. As a result, the actions of the French government became illegitimate and the sovereignty of these colonized people was recognized by the world. Finally, even if "the French have long spoken of the Algerian War, the French Parliament did not officially endorse the expression until October 1999" (Branche, 2007, 545). As a result, these contestations ultimately forced France to recognize this conflict as a war.

It is also important to have a brief look at the South African liberation movement in order to understand contestations of just war reasoning. For the purposes of this thesis, the case of South Africa is important because it reflects the aspect of people fighting against racist regimes. Similarly, to the National Liberation Front (FLN)[14] and the Algerian War of Independence, fighters in this movement of national liberation or fight against a racist regime were using guerilla tactics. This means that the traditional character of war conventions partly ended with the national-liberation wars and guerilla tactics. The internal unrest in South Africa appeared as the main reason for the expansion of international law regulations to encompass states with racists regimes.

The apartheid regime officially began in 1948. The most important organization in the fight against this racist regime was the African National Congress (ANC). The ANC's actions were recognized as a national liberation movement in the eyes of the international community. They claimed that their fight constituted a just war. However, unlike the FLN, the ANC "intended to respect and be guided by the general principles of international humanitarian law" (Murray, 1984, 464). Therefore, the ANC's members were combatants who fought against a racist regime. The reasons were the same as the FLN. After WWII and the Hitler experience, racist regimes became intolerable. As a result, their fight was recognized as a war situation under international law. This movement also added new categories to international law regulations.

If the ANC intended to respect and be guided by the general principles of international humanitarian law, the Additional Protocol I had to contain their rights and responsibilities too. However, South Africa did not sign the Geneva Conventions and the Additional Protocol. This showed that contestation created new opportunities and made this war legitimate. Also, this is how *jus ad bellum* and *jus in bello* appeared as legitimate tools. These situations showed how these norms protected and encouraged other actors to comply with its rules.

[14] FLN was the main actor in Algerian War of Independence. They used guerilla tactics under self-determination rule against the French colonial power. Consequently, French Government labelled them as terrorists and outlaws.

As a result, these wars and contestations were a turning point for these two norms because as Wiener (2018, 88) states, "contestations are likely to open windows of opportunity." These contestations opened a window of opportunity to expand the scope of the international law and its regulations to new areas. The 1977 Additional Protocol I regulated national liberation movements and wars against racist regimes in Article 1 (General principles and scope of application), especially in Paragraph 4, which reads:

> The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Consequently, the Algerian War of Independence created a contestation which led to Additional Protocol I in order to supplement the 1949 Geneva Conventions. As Sloane (2007, 464) argues "the key defect of the Geneva Conventions was the failure to offer irregular non-state combatants any external incentive to comply with the laws of war". It failed to encourage irregular combatants because of its state-centric character. On the other hand, Article 6, Paragraph 5 of the Protocol granted some safeguards to "freedom fighters" by stating "at the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained." As a result, this paragraph encouraged irregular combatants who are fighting in national liberation wars to obey the laws of war. This provision is one of the most important parts of the Additional Protocol because "once rebels have shown their willingness and ability to apply the Protocol and demonstrated that they indeed to abide by its provisions, the Protocol becomes automatically binding on both parties" (Cassese, 1981, 430). However, the Additional Protocol I did not recognize all irregular combatants. It only mentioned people fighting against colonial domination, alien occupation, and racist regimes. This added three new components to warfare.

From this, it can be observed that as long as national liberation movement organizations deem their war a just war and prove it to the international community, then their status becomes combatant. However, the distinction rule became complicated by this type of guerilla warfare. Freedom fighters in that sense had to disguise themselves from colonial powers in order to create an asymmetric war. Their power was not enough to take down an army in a battlefield. Therefore, they could not have met the combatant criteria in the Geneva Conventions. In order to be a combatant under the laws of war requires "having a fixed distinctive sign recognizable at a distance and carrying arms openly." However, "a guerilla seen is a guerilla dead" (Kinsella, 2011, 153) in the eyes of the colonial powers.

This is arguably the reason why the US did not want to sign the Protocol in the first place. There were two other states who opposed this protocol: Israel and South Africa. Israel did not want to sign the treaty because of its problem with the Palestine Liberation Organization, and South Africa objected because it was a fascist regime. The US' reason was similar to Israel's because both thought the Protocol would give rights to terrorists. From this perspective, President Ronald Reagan stated: "we must not and need not give recognition and protection to terrorist groups as a price for progress in humanitarian law" (Aldrich, 1991, 4). However, the Protocols did not give any rights and recognition to terrorist groups as mentioned above. There are some requirements to become a part of humanitarian law. Article 1 and Article 43 specify these conditions.

These contestations were vital for the establishment of a universal meaning-in-use for *jus ad bellum* and *jus in bello*. They showed that in these years both *jus ad bellum* and *jus in bello* are legitimate tools. This also showed how these contestations opened new windows of opportunity. Accordingly, irregular combatants who are fighting in national liberation counted as just combatants and fight against this racist regime accepted as just wars after these contestations.

3.3. New Terrorism

New terrorism is conceptually different from ordinary terrorism because of the new technologies at its disposal, as well as new discourses. Access to ammunition and using civilian infrastructure was inadequate to create a transnational threat before the end of the Cold War. In the post-Cold War era, terrorist groups have easy access to weaponry. Moreover, as Bellamy (2012, 955) suggests, with a high level of globalization and technology, tools have become open to dual use. It is not just about weapons like the AK-47 rifles, or guns, but also the internet has become a tool for terrorists. As a result, terrorists are able to spread their ideology without touching guns.

Terrorists' aims began to change with these dual-use tools. As a result, there are three main reasons why new terrorism is more dangerous than ordinary terrorism. First, extraordinary technologic advancement played a major role for terrorists to acquire dangerous weaponry. Second, the high level of globalization and development of media and the Internet enabled terrorists to spread their views instantly, allowing them to gain support from all around the world. This made it easier to obtain, as well as to create home-made weaponry for terrorist organizations. As Guillaume (2004, 538) argues, "the development of mass media has enabled terrorists to put across their message more effectively." Similarly, Jenkins (cited in Kirby, 2005, 317) suggests that "terrorists want a lot of people watching and a lot of people listening, not a lot of people dead." And third, it is important to note that end of the Cold War played a role in new terrorism as terrorist organizations spread to new territories where the USSR had withdrawn.

New terrorism is more complex and problematic for international law because nowadays it is not clearly evident who are the victor and the defeated. For instance, there was a clear defeated party and a conqueror in traditional warfare. However, especially after guerilla warfares, this began to change. It is now ambiguous and more complicated than old wars. As Kissinger (1969, 214) observed, "a conventional army loses if it does not win but the guerilla army wins if he does not lose." New terrorism is also an example of this concept. It does not contain a specific end and does not embrace a battlefield. War is everywhere and against everyone; it is transnational. Therefore,

every actor and/or individual is losing, and nobody is winning. There is not an apparent victor.

Moreover, there are not "geographically bounded battlefields" in current new wars, as is the case in the war against terrorism. This is why Sciullo (2011, 561-582) suggests that states try to catch ghosts in order to maintain their national security in the war against terror. The US' actions and policies on terrorism has made this concept much more ambiguous. Regarding the definition of terrorists, the 2002 National Security Strategy (NSS) of the US states: it is an evil actor who "waged war against us by stealth and deceit and murder." They could be anywhere and can attack everywhere they want. Therefore, according to the US, the solution is mainly to neutralize them by using force and pre-emptive attacks. The war against terror and terrorism against the US led to the understanding of "everywhere war" (Gregory, 2011), in other words, after 9/11, the battlefield spread to the entire world.

The emergence of global terrorism, according to Bassiouni (2008, 762), led to indiscriminate attacks, which caused some vagueness on who is the combatant and who is not. Because of this, it is important to define terrorism. Mcmahan (cited in Coady, 2004, 694) sees terrorism as "intentionally targeting non-combatants with lethal or severe violence for political purposes." As a result, new terrorist threats, in Baker-Beall's (2013, 213) words, is "more insidious and destructive than entire armies or other traditional threats to the states." It is obvious that this threat is more dangerous than others to international community, and it became more visible after 9/11 and especially after the invention of new technologies that are open to dual use such as the internet. As a matter of fact, terrorist organizations also have the capacity to access weapons of mass destructions.

Nowadays, the world is witnessing excessive use of force and violence by terrorist groups to gain authority. There are not any specific targets; everyone is a target now. Therefore, there is no specific end but there is excessive use of force. War is not just about *realpolitik* and military power like it used to be. This situation relates to the basic element of Clausewitz's escalation to extremes. Especially after the US war on terror,

the whole world became a battlefield in which enmity and hatred were enlarged. As a result, excessive use of violence spread without much friction. In this regard, new terrorism and the war on terror seem similar to the revolutionary wars that Clausewitz had always tried to prevent.

Therefore, new wars have challenged Clausewitz's definition of war and added new levels of analysis and concepts. The traditional concept of war has been altered and flipped upside down, as there are not any equal combatants. This contestation also created moral hierarchy among combatants which has become the most important contestation for international law, and specifically *jus ad bellum* and *jus in bello*

While the US constructed the policies of the "War on Terror" and pre-emptive strike—which have contested the *jus ad bellum* norm—the EU has contested these policies with the "Fight Against Terrorism." These two approaches might be helpful to international law to solve this dilemma. Therefore, it is important to explain the US' policy toward terrorism and to answer the question, could it manage to close the legitimacy gap between fundamental norms (human rights and sovereignty) and regulations (war conventions)? Afterwards, the EU's attitude towards this issue is vital to comprehend what sort of a solution would be helpful? Why do the US and the EU have different approaches? Is it because of the interests they pursue or is it something about their historical backgrounds and standpoints toward the world that shape their points of view? In order to answer these questions and demonstrate new windows of opportunity, it is important to examine Solana's and Bush's discourses and policies.

3.4. The War on Terror (by the US)

War on terror policy is a contestation area to *jus ad bellum* and *jus in bello*. Three components of the US policy created this contestation—preventive war/pre-emptive strike, terrorism as war concept, and moral hierarchy among combatants. The first contested the self-defense norm, the second contested human rights, and the third contested the sovereignty rule.

The world has witnessed pre-emptive strike and preventive war since the war on terror. The main distinction between pre-emptive and preventive war stems from threat perceptions. According to Kumar (2014, 125) "pre-emptive wars occur when a state is motivated to attack another because of the advantage in making first strike, preventive war is more concerned with minimizing one's loses from future decline than with maximizing one's gain by fight now". As a result, states might wage war against each other in the name of war on terror by using preventive and pre-emptive war legitimization (in the name of saving people from the unjust, brutal, and evil regime) (O'Driscoll, 2007, 488). This is a probable scenario after the war on terror. In the end, "peace no longer appears as anything other than the continuation of war by other means" (Alliez and Negri, 2003, 110). In such a context, war becomes a tool to maintain peace, and this a challenge to international law.

An important and helpful question relating to international law is why the US calls it "war on terror" while the EU calls it "fight against terrorism?" One part of the answer lies in the historical background of the US on this topic, which has shaped its policy towards an emerging global threat. In this vein, the bombardment of Fort Sumter is the first reason why the US discusses terrorism as a war-like event. For example, according to Callahan, et. al. (2006, 554) Fort Sumter, the sinking of Maine and Pearl Harbor were the experiences that Bush recalled after 9/11 in his discourse to wage war on terror. The 1861 Battle of Fort Sumter was one of the most important events in American history as it started the American Civil War. Then in 1898, Spanish attacks on the Maine became the cause of the war between Spain and the US, during which Cuban independence took place right after the sinking of the Maine battleship. Finally, there is the example of the US' conduct in the aftermath of the Pearl Harbor incident, in which the US decided to use nuclear weapons on Japan with the claim of avoiding more casualties on its part.

Furthermore, it is vital for the US to act in accordance with its idealistic world vision that is rooted in Wilson's Fourteen Points. After the 9/11 terrorist attacks, the US had to legitimize its actions. To this end, it followed an idealistic identification, and preferred to introduce itself as the protector of democracy, human rights, and law. As a consequence, the United States promoted its mission to spread democracy, promote

human rights, and ensure cooperation against terrorism.[15] This was the US' solution to terrorism. This complement the US' post-Cold War role of the world police, according to which it had promised to solve any conflict in any region. Considering the 9/11 as an attack to its independence, human rights, democracy, and a threat to world because of its past experiences, the US also acted in line with its history by using force in the name of self-defense. Cultural background, or "cultural validation" as Wiener (2014, 45) labels it, and the past experiences of the US were arguably the reasons for this contestation.

After a brief examination of the reasons as to why the US has waged a "war on terror," examining the "how" question will shed light to the discourse of the US regarding this contestation. First of all, before the presidency of George W. Bush, there was a different objective and course of action toward terrorism. The June 1995 Presidential Directive of the US stated: "We shall have the ability to respond rapidly and decisively to terrorism directed against us wherever it occurs, to protect Americans, arrest or defeat the perpetrators, respond with all appropriate instruments against the sponsoring organizations and governments and provide recovery relief to victims, as permitted by law." Accordingly, before 9/11 terrorism was actually seen by the US as a crime that should be punished by national criminal laws. The African Embassy attack of 1998 changed that point of view. In this Embassy attack of 1998, "almost simultaneously, bombs exploded at US embassies in Nairobi, Kenya and Dar es Salaam, Tanzania, killing 224 people and more than 5,000 are wounded whom twelve of those killed in Kenya are US citizens" (CNN, 2003). and afterwards the United States targeted important individuals of organizations instead of terrorist organizations themselves (Gambone and Kurt, 2012, 226). This was a factor towards the transformation of US policy on terror. This created a tendency for the US to use its military power to solve terrorism issue. Afterwards, the US made reprisals to Sudan and Afghanistan, with which it bombed suspicious targets. These were not precise targets, and eventually, "the ill-judged response to the bombings made the Taliban, who had been initially wary of

[15] Terrorism was always an issue for other states and the US. However, the change on the part of the US from cooperation to democracy-based policy to prevent-terrorism-by-force led to the war on terror.

the extremist Arabs living in territory they had recently conquered, more sympathetic towards Bin Laden and his global agenda" (The Guardian, 2015).

However, the terrorism policy of the United States did not change significantly until the 9/11 attacks. In 1999, the NSS of the US stated: "Americans benefit when nations come together to deter aggression and terrorism, to resolve conflicts, to prevent the spread of dangerous weapons, to promote democracy and human rights, to open markets and create financial stability, to raise living standards, to protect the environment–to face challenges that no nation can meet alone" (1999 NSS of the US). This security strategy was still focused on economic, democratic, and judicial solutions. Terrorism was considered as a transnational threat—"along with drug trafficking and other international crime, illicit arms trafficking, uncontrolled refugee migration, and trafficking in human beings, particularly women and children" (1999 NSS of the US)—but treated as an international crime. Hence, in 1999, it was not yet considered as something against which a state could wage war.

Nevertheless, 9 September 2001, when four passenger planes were hijacked and flown into the World Trade Centre and the Pentagon, and killed nearly 3000 people, marked the turning point for the US policy on terrorism. Following the attacks, President Bush stated: "America was targeted for attack because we are the brightest beacon for freedom and opportunity in the world." This statement reflects the US' self-identification at the time. According to him, there was a jealousy of the US democracy. Contrary to his view, most terrorist organizations' ambitions stemmed from political and economic reasons. Therefore, terrorist organizations exploited fundamental religious ideas in order to abuse the weaknesses of groups of people in states that think that the source of their poverty is the international political and economic system that was maintained by the US and other wealthy states. In short, the attacks actually were made against the international system. Basically, this approach expanded the battlefield to every inch of the world and Bush declared war against this kind of structure.

Bush remarked: "the United States military is powerful and it is prepared" (New York Times, 2001). This was a sign that there was going to be a war, not a fight, against

terrorism. This was a signal that Bush intended to use military force. He also stated: "America has stood down enemies before, and we will do so this time and none of us will ever forget this day, yet we go forward to defend freedom and all that is good and just in our world" (New York Times, 2001). This statement is also applicable to this issue because the United States' past experiences and its mission of being the world police allowed this contestation.

Accordingly, 46th Vice President of the US Dick Cheney remarked: "there is only one way to protect ourselves against catastrophic terrorist violence—and that is to destroy the terrorists before they can launch further attacks against the United States" (Los Angeles Times, 2003). This statement signaled the pre-emptive strike strategy and exposed the reasons behind an illegitimate war waged on Iraq. Afterwards, in 2002, the US declared a policy in order to prevent terrorism, which was in the "National Security Strategy of the United States of America." The following statement perfectly supports the argument for why the US called this the "war on terror:"

> Defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. We will not hesitate to act alone, if necessary, acting preemptively to such terrorists (National Security Strategy of the US, 2002, 6).

These all suggest that the US did not see terrorism as an internal problem but as an external one, wherein the terrorist group was defined as the "other," namely the enemy. Hülsse and Spencer (2008, 585) argue that the US "constructed Al Qaeda as a state-like actor." Such conceptualization created a legitimacy gap because it gave sovereign rights to terrorist organization.

Regarding armed forces Article 43 of the 1977 Additional Protocol states the following:

> The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

However, al Qaeda did not fit this description of armed forces. For instance, Bellamy (2012, 954) suggests that "most notably, Al Qaeda operates in clandestine cells and its terrorists are indistinguishable from civilians most of the time." That is why thinking of terrorism as a war-like situation might not sound right at the outset because this might make terrorists' status in international law problematic. If that was the case, international law would have to see terrorist organizations as states and its members as soldiers (combatants). Therefore, the definition of war given by Clausewitz and that in international law does not fit with the US war on terror approach. First of all, the problem of terrorists' status (which the US gave) in the global war on terror harmed international law's combatant-non-combatant distinction. The US decided to call Al Qaeda members "unlawful combatants" in order to avoid this problem (Hajjar, 2006, 31). However, this new classification leads to a new prisoner of war group status that does not exist in international humanitarian law. This means that captured terrorists have no rights under international humanitarian law (Hajjar, 2006, 31).

In order to avoid responsibility such as giving rights to captured terrorists, the US was not too keen on these new classifications. Civilian and combatant distinction is at the heart of these classifications and contestations. That is why there is also a discussion on how an individual loses his/her immunity in war time. For instance, Walzer suggests that these immunities only disappear when civilians contribute firsthand to war making actions (cited in Wheeler, 2002, 213). McMahan (2010), as well as Yoo and Ho (2003) oppose these ideas and propose something else. For example, McMahan (2010, 359) posits that "noncombatant immunity is a matter of degree and that in some cases it is permissible for just combatants to fight in a way that will foreseeably harm innocent noncombatants as a side effect rather than fight in a different way that would involve greater risks to themselves." Yoo and Ho (2003, 222) propose a similar alternative.

On the other hand, there are severe criticisms against this strand of thought. One comes from Ratner (2002, 269-70), who reminds:

> A broader claim for targeting terrorists is that they are not legally civilians who temporarily lose their immunity, but rather some third category of persons, neither civilian nor combatant, referred to as either an "unprivileged" or "unlawful"

> combatant. Critics of a category of unlawful combatant fear that this opens the door to creating a class of persons with no protections under IHL [International Humanitarian Law], for example, if captured they would enjoy neither POW (Prisoner of war) status (including immunity from prosecution for combat-related activities other than war crimes) nor civilian status (including strict limits on the length and conditions of confinement).

For such classification, Ross (2007, 562) exemplifies the consequences in the cases of treatment of terrorists in Abu Ghraib prison and Guantanamo Bay as follows: "prisoners were subjected to long-term sleep deprivation, extremes of heat and cold, painful stress positions, beatings, forced nakedness and other degrading treatment, indefinite solitary confinement, and other abusive interrogation methods."

In light of this, it can be argued that the new classification of unlawful combatants in the US' "war on terror," has further weakened international law, especially International Humanitarian Law, as well as the chances for constructing a universal meaning-in-use for *jus ad bellum* and *jus in bello*. While, as Nye and Welch (2010, 440) suggest whether or not the terrorism problem is going to be solved is not primarily dependent on the destruction of al Qaeda, waging war against a non-state organization blurs the combatant-non-combatant distinction and causes excessive collateral damage on civilians. This situation conflicts with international humanitarian law regulations. It also to the detriment of international law because definitions become meaningless and vague in the case of the war on terror.

There also remains the question, are terrorist organizations state-like actors or are they criminal units? Although the US' war on terror policy created problems for applying international law to terrorists, it was helpful in creating a contestation toward Type 2 norms such as *jus ad bellum* and *jus in bello*. Approaching terrorism from the point of war placed the asymmetry problem of new wars on focus. While the US waged war against an enemy that considered itself to be under both colonial domination and alien occupation, this made Al Qaeda similar to a national liberation movement. For Philips (2010, 140) "Osama bin Laden beheld a global Islamic community (or *ummah*) being victimized by a combination of apostate local tyrants (the 'near' enemy) ruling at the behest of their infidel Western sponsors (the 'far' enemy)". Even if Reagan did not want

to give any recognition to terrorist groups, Bush gave them the opportunity to be considered under international humanitarian law because of his discourse of war. Moreover, preventive war understanding also damaged just war reasoning. Until the war on terror policy, there was a universal meaning-in-use for the inherent right of self-defense. This is why the US' war on terror policy has created a contestation. As a result, the EU created its own discourse, and opted for its "fight against terrorism" policy, in an attempt to avoid the legitimacy gap between sovereignty, human rights and international law regulations.

3.5. The Fight Against Terrorism

The EU's policy on terrorism has been different from that of the US. The US approach to the issue from the perspective of war is not the only reason for the EU to opt for the fight discourse. First of all, it is again important to take into consideration the EU's historical and cultural experiences. Why did the EU opt for a fight against terrorism and not to follow the US' lead?

Given that the primary aims of preventing another European war and preserving peace were at the backdrop of the creation of the EU and the European integration, the EU has generally not been considered to become a military power. Peace and stability are two things that have to constructed through peaceful means, and as Manners (2002, 239) observes, the EU has pursued this idea and tried to maintain this uniting "ideological power." This cultural approach, is one of the reasons as to why the EU preferred not to wage a war against terrorism but opted for the language of a fight.

Secondly, as a supranational but regional power, the EU does not identify itself as a world police as the US does, and its identity does not require it to bring stability and peace around the world by using all means necessary. Hence, the policy-making processes of the EU are different than the US. Bossong (2012, 530-32) suggests that the EU's policy of the "war on terror" especially against Iraq had decomposed because it has bandwagon to the US until 2003 (Iraq War started to divide the EU member states' opinions on terrorism issue).

Until 2003, the EU did not have a complete plan to fight against (new) terrorism, hence from 2001 to 2003 it followed the US policy of war on terror. It was the Madrid and London terrorist attacks that pushed the EU to create its own approach against new terrorism. The EU departed from the US' policy in terms of discourse, conduct and objectives.

The year 2003 was an important year for the EU because the Iraq War had started to divide the EU member states on whether or not to support the US. This was the very year that "the European Union faced serious difficulties in speaking with one voice" (Beyer, 2010, 56). After 2003, the Union realized that it had to create a common and credible policy on terrorism. According to Bossong (2012, 527), 2004 and 2005 were also important years for the EU because of the Madrid terrorist bombings and the London terrorist attack. On 11 March 2004 there were explosions on trains in Spain. "Islamic militants who were based in Spain but inspired by Al Qaeda were designated later as the prime suspects" (CNN, 2013). As this was an attack carried out people who were inspired by the terrorist organization of Al Qaeda, the EU did not perceive it as an attack coming from a foreign state. On 7 July 2005 there were attacks in London. The perpetrators killed 52 people and injured nearly 700. Three of the perpetrators were born in England (Hasib Hussain, Mohammad Sidique Khan, and Shehzad Tanweer), while the fourth came to the United Kingdom (UK) when he was one-year-old. Hence, the attacks were perceived to come from UK citizens. Arguably, the most determining feature of those attacks was the location of the perpetrators' homes. According to Bossong (2012, 527) the perpetrators of those terrorist attacks were living in Europe, which showed the EU that the enemy was inside. Such perception was highly different from that of the US. This was reflected in the 2003 European Security Strategy (2003, 13), which stated: "better co-ordination between external action and Justice and Home Affairs policies is crucial in the fight both against terrorism and organized crime". This means that the EU identified the enemy as internal, not as an "other." This has had two consequences. First, the EU had to solve the problem without excluding them from society because if they alienated them, the EU's foundational principles could be harmed. Therefore, alienation was not an option for Europe. Second, this meant that the

Union had to see this problem as an internal one and try to resolve it through peaceful means while upholding EU laws.

Then Secretary-General of the Council of the European Union and the first high representative for the common foreign and security policy Javier Solana (cited in Beyer, 2010, 90) also agreed with this point of view and stated: "we must not jeopardize our values and principles" while dealing with this issue. Accordingly, as Beaker-Beall (2013, 213) observes the EU has "constructed terrorism as primarily an internal security threat best dealt with through a criminal justice-based approach."

The evidence of such approach can be found in the EU documents. Almost every paragraph of the European Security Strategy 2003 contained the word terrorism. It gave some clues and policies on how to deter terrorism, of which one stated that "dealing with terrorism may require a mixture of intelligence, police, judicial, military and other means" (ESS 2003, 7). Perceiving the issue an internal one, the EU sought the deal with this threat in accordance with law as indicated in the 2003 ESS: "It is a condition of a rule-based international order that law evolves in response to developments such as proliferation, terrorism and global warming" (ESS 2003, 11).

Following this, the 2004 European Union Plan of Action on Combating Terrorism put forward seven points to fight against terrorism. These were: deepening the international consensus, reducing the access of terrorists to financial resources, maximizing the capacity within the European Union bodies to investigate terrorists, ensuring an effective system of border controls, enhancing the European Union capacity, addressing the factors of why an individual becomes a terrorist, and providing cooperation with third countries (EU Plan of Action on Combating Terrorism, 2004, 2). This also showed that the EU tried to solve this problem with political, judicial, humanitarian and economic means. In the document, it was also stated: Member states, Coordinator and Commission "support the Council of Europe's (CoE) work on combating terrorism and in particular support the CoE Committee Experts on Terrorism in their work on formulating a limited scope or instruments dealing with the prevention of terrorism and covering existing lacunae in international law or action" (EU Plan of Action on

Combating Terrorism, 2004, 12-13). Therefore, it is possible to state that the EU leaned more on the law side than the US in the case of new terrorism.

In 2005, the EU put forth a broader and more detailed plan for counter-terrorism, which had four pillars: prevent, protect, pursue and respond. The plan focused on preventing people from turning to terrorism by finding the root causes, protecting citizens with border and transport security, pursuing and investigating terrorists and bringing them to justice, and finally responding with solidarity for minimizing the consequences (European Union Counter Terrorism Strategy, 2005, 3). As a result, this document proved that the EU was determined to overcome terrorism by addressing root causes such as those primarily connected to economic and political reasons, and by resorting to peaceful means rather than military ones.

In this document the EU described terrorism (as a criminal activity that waging war against it is harmful to international law) differently than the US, which is as follows:

> Terrorism is a threat to all States and to all peoples. It poses a serious threat to our security, to the values of our democratic societies and to the rights and freedom of our citizens, especially through the indiscriminate targeting of innocent people. Terrorism is criminal and unjustifiable under any circumstances (European Union Counter-Terrorism Strategy, 2005, 6).

The EU also tried to solve the terrorism issue through the Monitoring and Information Center (MIC)[16], the European Border and Coast Guard Agency (FRONTEX)[17], the European Union's Judicial Cooperation Unit (Eurojust)[18], and European Union's Law enforcement Agency (EUROPOL)[19] which all are judicial, economic, and political organs/agents. Thus, it can be seen that terrorism is an internal and criminal issue for the EU, where economic, political and humanitarian means are better suited than military means. The 2011 document stated: "Counter-terrorism activates are not about Al Qaeda and its affiliates alone" (EU Action Plan on Combating Terrorism, 2011, 3), which is a different point of view than that of the US.

[16] Its mission is to give a quick response to disasters and monitoring hazards.
[17] Its mission is to promote, coordinate, and develop border management in the EU.
[18] Combating terrorism and organized crimes involving more than one EU country are its main duties.
[19] Fighting against terrorism, cybercrime, and other serious crimes are its main duties.

Treating new terrorism as an internal issue and solving it with economic, humanitarian, and judicial means is more preferable from the of international law because it preserves the combatant and non-combatant distinction, and it is in line with the regulations of international humanitarian law. Therefore, the European Union's fight against terrorism approach is not state-centric, as well as humanitarian in comparison to the war on terror approach.

However, the EU might have exaggerated the role of international cooperation to solve terrorism. New terrorism is not a thing that can be solved only by national criminal laws. Terrorist attacks might come from anywhere, especially with cyber terrorism. Therefore, it seems that the EU has relied heavily on international cooperation as stated in "The European Union Plan of Action on Combating Terrorism 2004." However, this does not mean that terrorism has to be dealt with through force. The main tool for overcoming this problem is to use international law and strengthen international norms such as *jus ad bellum* and *jus in bello*. UN Security Council Resolution 1535 (2004) reminds "States that they must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law." In this vein, the EU's fight against terrorism policy is in line with this approach.

In summary, the US war on terror policy created contestations toward *jus ad bellum* and *jus in bello* because of the understanding of preventive-preemptive wars, as well as the loss of the distinction between combatants and non-combatants. Basically, the US policy has contested the fundamental principle of sovereignty of states and human rights in war situations. On the other hand, the EU's fight against terrorism policy created a tendency to put *jus ad bellum* and *jus in bello* on the right track. Traditionally, these norms meaning-in-uses were based on the goal of preventing escalation to extremes and unnecessary suffering in war times. As a result, it is possible to see the EU's efforts as an endeavor to maintain the already existing universal meanings of these norms. The US contestation created new opportunities, and eventually created a case for strengthening these norms.

CHAPTER 4

CYBER WAR, CYBER TERRORISM AND CYBER ATTACKS: GEORGIA, ESTONIA AND STUXNET CASES

This chapter aims to build a comprehensive cyber war and cyber terrorism perspective. This perspective is necessary for understanding new war characteristics and the changing concept of warfare. First, it is vital to examine the role of globalization for a better understanding of cyberspace. Secondly, the changing concept of warfare and new characteristics of cyberspace have led to new contestations. Therefore, this chapter aims to reveal areas of contestation, which are necessary to understand in order to create a universal use of *jus ad bellum* and *jus in bello* norms. To this end, it is vital to examine case studies in order to create a comprehensive framework of norm contestation in cyberspace. Hence, as primary examples, the cases of Georgia, Estonia, and Stuxnet are examined. These cases provide contestations from Russia and Israel, which have expanded the meanings of *jus ad bellum* and *jus in bello* norms to new areas. The main problem is their legitimacy in these new areas. Accordingly, this chapter tries to demonstrate whether or not these norms are seen as legitimate norms in these new areas of deliberation.

4.1. Cyberspace and Cyberthreats

At the beginning of the new millennium, security scholars confronted a new threat to security with the developments in computer sciences, which led to the understanding of cyber security. These cyber threats strengthened with globalization and as a consequence of interdependence. This is a different type of security threat because it has different concepts and requires to be approached from a different level of analysis than traditional security studies. Traditional understanding of battlefield or combatants do not exist in cyberspace. There are no heroes or soldiers that fight face to face. Actors in cyberspace hide in dark corners similar to camouflaged soldiers in a battlefield. There are no guns but electronic mails, and no bullets but computer viruses. As Nye (2013) observes, the world is evolving “from bombs to bytes.” Hence, with the coming of the

information age, traditional understanding of war with battlefields and soldiers have transformed into a new one, which includes cyberspace and hackers.

First of all, cyberspace needs to be explained. It has six features: complexity (Choucri, 2000, 125), fast-evolving structure (Tikk, 2010, 110), anonymous character (Barnard-Wills and Asheden, 2012, 118), an ungovernable nature (Barnard-Willis and Asheden, 2012, 116), a tendency to produce asymmetric warfare (Barnard-Wills and Ashenden, 2012, 118; Reveron, 2012, 148), and cheap cyber weapons (Kelsey, 2008, 1445). These characteristics are the sources of cyber threats. Also, it is because of the features that cyberspace is considered to be insecure. If there is a solution to strengthen cyberspace in a direction that blocks anonymity and asymmetry, cyberspace could be secure eventually.

According to Cavelty (2010, 180) there are three occurrences of cyber threats: cybercrime, cyber terrorism, and cyber war. All actors of international community can be a subject of these threats because "the potential harm is everywhere" (Gartzke, 2013, 52). Since potential harm is everywhere (even in guarded locations) societies, individuals, groups, and entire communities are exposed to an extensive variety of potential threats (Gartzke, 2013, 50).

Nevertheless, as Eriksson and Giacomello (2006, 225) remind, "cyberspace has been designed to maximize the simplicity of communication, not to secure the communication." They argue that the information revolution created a more insecure world for all parts of society (Eriksson and Giacomello, 2006, 222). There is an ambiguity to cyber threats because of their complexity and "fast-evolving character" (Tikk, 2010, 110). As a consequence of this vagueness of cyber threats, security theories could not manage to include cyber issues in international security. With the exception of constructivism, almost all theories inadequately explain cyber threat as a security issue. They treat it as a threat but not as a national security issue because there is typically no life lost. There is also anonymity in cyber threats and perpetrators are hard to find. As a result, it is argued that the term "cyber war" is deceptive because it is not brutal enough (Gartzke, 2013, 49). According to Kello (2013, 8) "it nevertheless has consequences for

important issues in the field of security studies, including nonmilitary foreign threats and the ability of nontraditional players to inflict economic and social harm". Therefore, now all Internet users are prone to be affected or capable of harming others by using their keyboards.

To understand how cyber threats become real, physical and constant, it is necessary to understand the notions of information age and globalization. According to Keohane and Nye (2000, 105) "globalization refers to shrinkage of distances in a large scale". It contributes to increasing the rate of interdependence and thus, cyber threats become more visible.

Keohane and Nye (2000) also categorize types of globalizations. According to them there is not just one type of globalization—namely economic globalization. There are military and cultural globalizations as well. Nowadays it is also possible to mention cyber globalization. Globalization concerns all the interconnections and flows of ideas, goods and humans. With the information age, the world is witnessing intensive cyber interdependence, which has affected almost all actors in international and domestic arenas. Furthermore, cyberspace allows this confrontation to take place more often. Therefore, with globalization and the information age, it can easily be said that new concepts of security and war have emerged. Individuals hiding while attacking states' cyber infrastructure is something new. Pressing buttons without any danger to the physical well-being of an attacker erased heroic battlefield stories. In order to clarify the consequences of globalization Nye and Welch (2011, 347) provide the following example: It took almost three thousand years for smallpox to arrive to Australia in 1789, and AIDS spread to all of the world in nearly 30 years but "love bug" computer viruses spread across the world in three days. This can explain the reach of actions in the information age and globalization.

Anonymity is the main problem for cyberspace. It is possible to witness civilians getting hurt in larger scale in cyberspace because an offender can hide without any responsibilities in a cyber domain, unlike in aerial or traditional warfare. As a result, new threats and new actors come to surface. Changing conceptions (traditional to new,

heroic to post-heroic) and developing technologies (cavalry to aerial forces and now to cyberspace) are creating new contestation areas related to both international law and politics all around the world.

Additionally, shrinking distances create higher interdependence among states, and most states now depend on high-tech cyber systems to increase their military and economic capacity. Thus, as Nye observes such dependence on cyber systems could harm states because of terrorist exploitation. Cyber systems are dual purpose tools, with military and civilian uses. Therefore, it is easier to use them without being detected. As a result, they are open to the abuse of terrorists. "Dependence on complex cyber systems for support of military and economic activities creates new vulnerabilities in great powers that can be exploited by non-state actors" (Nye cited in Gartzke, 2013, 41). This exploitation harms state structures. As a result, state sovereignty becomes challengeable by cyberspace because of its characteristics.

Nye and Welch (2011, 425) foresee the dissolution of nation-state structure in the near future due to the information age. They suggest that just as cavaliers and gun powder tore down castles in the Middle Ages, now the Internet is going to close the nation-state era. The Internet has no borders or nationality. While symmetric warfare where soldiers fight in a heroic manner is disappearing (traditional warfare), arguably with globalization and the information age cyber threats are becoming more and more real and constant.

4.2. Cyber Terrorism

Cyber terrorism is usually related to non-state actors (terrorist organizations and individuals) (Nye, 2013, 9). If terrorism is defined as "intentionally targeting non-combatants with lethal or severe violence for political purposes" (Cody cited in McMahan, 2004, 694), cyber terrorism can be defined "as intentionally targeting non-combatants with lethal or severe violence for political purposes" in cyberspace. However, severe economic and social harm has to be added to this definition. Cyberspace can help terrorists to construct physical threat to states, societies,

organizations and individuals without getting caught because of the anonymity and ungovernable features of cyberspace.

On the other hand, Gartzke (2013) suggests that cyber terrorist threats are hollow threats and only cause annoyance and anger. As long as it is not going to cause any losses of life, it must not be called terrorism. Thus, Gartzke (2013) does not recognize cyber terrorism as a real and effective terrorist action. However, in cyberspace "protection is inevitably incomplete and could come with its own consequences including other forms of insecurity" (Gartzke 2013, 51). As a result, terrorists can connect to railway software and make two trains crash. They can also do this with airways too. The world could witness hundreds of lives lost with these kinds of actions. Furthermore, terrorism should not have to be limited to loss of human life. It could affect society economically, culturally, or socially. It could spread fear and frustration among citizens and cause trouble for governments. It could exert bad influence on market and economy.

According to Wills and Ashenden (2012, 117), there are dark corners in cyberspace where threats can hide. Because of this anonymity of cyberspace, there is a low risk of getting caught and it is easy to build a virus. Therefore, this new type of threat is daily and comes from everywhere. This means that an individual can get away with anything if he/she has adequate information about cyber technologies. It is possible to inflict harm without using guns or ammunitions, and even without physical contact. Cyberspace is a totally different domain that has not maintained a physical battlefield or soldiers. As a result, cyber domain serves as an important tool for terrorist organizations.

How can terrorists manage to terrorize the world and states on the internet? A terrorist can inflict great damage to a state's infrastructures and national security by using the internet. Terrorists can transmit their radical thoughts by using websites and can influence thousands of peoples. Moreover, terrorists can inflict harm solely in cyberspace by using the internet. For example, on 15 April 2013, there was an attack on the Boston Marathon, which was carried out by a radical Muslim. Tsarnaev was not part of a terrorist organization. He made bombs from pressure cookers, with the help of the

internet. He was a radical jihadist with no affiliation to any terrorist organization. There was evidence that he and his brothers had been reading militant Islamic websites before the bombings and that they were influenced by them. This could be considered a hybrid attack, a combination of knowledge from the Internet and a physical attack. This phenomenon showed that cyberspace is ungovernable and because of that it allows asymmetric warfare. If an individual with no connection to terrorist organizations can attract attention from all around the world, terrorist organizations can do it too. Therefore, Osama bin Laden, the leader of Al-Qaeda, described cyberspace as a place where he could harm both the American economy and morality (Marinucci, 2013, 236).

Cyber threats are symbolic ones to societies' core values and to states. Almost all terrorist actions are symbolic just like 9/11. It was a message telling western values to stay away. An individual can speak about everything and affect millions of people because of the Internet. Therefore, cyberspace is an effective space for terrorists to declare what they want. Still, contrary to traditional terrorist attacks which cause loss of life and demand great attention from the international public, in most cases cyber terrorist attacks are nor directed towards causing death of populations. Because of that, some may think that cyber terrorism has no actual affect and cannot be a security issue. Nevertheless, because cyber space has lots of dark rooms where no one can trace a terrorist attack, it might be used effectively by terrorists to inflict different sorts of damage.

4.3. Cyber War

In the current era, there is a multiplicity of actors, some of which arise as challenges to states because of the characteristics of cyberspace. Accompanied by more visible actors and cyberspace's unique characteristics as an unbounded battlefield, some authors such as Gentry and Eckert (2014) describe this newly emerging warfare as different from traditional ones. That is why it can be said that cyber war is going to broaden the depth of warfare. However, for Gartzke (2013) and Walt (2010) it is controversial to consider cyber war as a war because it is insufficiently violent. Still, there are possibilities for a cyber Pearl Harbor.

There are resemblances between cyber war and the Pearl Harbor attack because both are unpredictable and sudden, and because of that unpreventable. Even if the Pearl Harbor attack resembles cyber war, a cyber-attack takes place much quicker and with fewer causalities. The Pearl Harbor attack was a devastating surprise attack that took place on 8 December 1941 by the Japanese forces. However, an electronic Pearl Harbor can take place at the speed of light where its source might be untraceable or unknowable. Hence, an electronic Pearl Harbor will have new characteristics and outcomes as well. In a case like an electronic Pearl Harbor, "phone systems could collapse; subway and cars suddenly stop, and the money of thousands of people become inaccessible as banks and automatic teller machines stop functioning" and as a result "society and government would lose the ability to function normally" (Eriksson and Giacomello 2006, 226). This is a challenge to states' sovereignty. Therefore, it can be considered a national security threat. Furthermore, it has to be addressed by international law because of these characteristics. As a result, this new threat creates a new contestation area where state sovereignty and non-intervention norms are at stake. This contestation area will be examined in depth via case studies.

Correspondingly, Kelsey (2008) provides some genuine characteristics of cyber warfare and its consequences. First, there cannot be a combatant and non-combatant distinction in cyber warfare because it is ungovernable and structurally global, and it relies on dual-use/purpose technologies. Without combatant and non-combatant distinction, cyber-attacks could harm everyone. It is forbidden for states to harm non-combatants under the 1899 and 1907 Hague Conventions. Still, with cyber warfare it can be suggested that without this distinction, warfare becomes even more dangerous for every individual.

Also, it became almost impossible to distinguish enemies from allies in cyberspace because of its anonymous character. Attacks could come from within an ally state, from an enemy minority or individual. In addition, waging a cyberwar is much cheaper than waging a conventional war. Therefore, it is highly likely that actors will wage a cyberwar. With all these features, Kelsey (2008, 1449) describes cyber war as "a war with minimal expense in lives and resources."

The fast-evolving character of cyberspace has made it impossible to defend a cyber-attack completely. As a consequence, an attack is more beneficial than defense in cyber war. Anonymity encourages attackers because there is little risk of being caught. In addition, states are incapable of defending themselves (excluding superpowers) if they cannot get help from international organizations because cyberspace is ungovernable. As a result, cyberspace creates an asymmetric warfare. For that reason, Gartzke (2013, 44-45) suggests that the US or other major powers are in great danger because many smaller nations or non-state actors tend to benefit by taking advantage of this asymmetric characteristic of cyberspace. Therefore, these features make cyber war a real and constant threat to international security. As a result, cyber war has become one of the most important threats to the international system.

Additionally, cyber war can harm civilian infrastructures and enemy military capabilities. As Lynn (2010) states, "computer programmers can, if they find a vulnerability to exploit, threaten the US' global logistic network, steal its operational plans, blind its intelligence capabilities, or hinder its ability to deliver weapons on target." It is almost impossible to calculate the actual damage in cyberwar.

Alternatively, Walt (2010) suggests that cyber threat is overblown because of its complexity and vagueness. As a matter of fact, an ordinary individual cannot really understand cyber threats without knowing computer science. Furthermore, it is not clear how much information was stolen from a cyber-attack. Therefore, states cannot actually measure the damage and cannot understand the threat of a cyber-attack. Walt (2010) stats that "cyber threats are not as dangerous as we are currently being told they are." Still, with the cyber war examples of Estonia, Georgia and Stuxnet,[20] the international community has learned how much damage cyber threats can inflict. Stuxnet opened a new era because it is so far the most complicated and harmful virus that has been implemented to-date.

Furthermore, states can use hybrid warfare (as in the Georgian case), combining cyber and conventional tactics and weapons. According to Gartzke (2013, 57), this is more

[20] These cases are examined in Chapter 4.

effective than using just conventional forces "because cyber war does not involve bombing cities or devastating armored columns where the damage inflicted will have a short-term impact on its targets." Therefore, if there is a need for a lasting effect, then states might use this hybrid system. By doing so, cyber war and threats become more visible and dangerous.

Accompanied by cyberspace's features—fast evolving, producing asymmetric warfare, allowing the building of a cheap cyber weapon, anonymous character, and complexity—the world has become a more threatening place. These elements of cyberspace made cyber war, cyber terrorism and cyber-crime probable. In addition to those traits, without states' collective effort, the world may never witness a secured cyberspace because there are threats to cyberspace and from there to states, organizations, societies and individuals.

Still, the goal of cyber security is hard to achieve because of cyberspace's fast evolving character and complexity. Because of that, the world is going to face new concepts and threats. Even if there are new concepts in security studies in the information age, "cyber threats are fast evolving. Therefore, it makes it impossible to establish a definitive catalogue of cyber threats" (Tikk, 2010, 110). Nevertheless, this thesis tries to establish a broad and exclusive cyber security definition,[21] and then describes cyber security as an international security issue (one that has to deal with international law) because of its features. And with those features, the international community can observe new vulnerabilities in states and societies, which can be exploited by individuals, terrorist organizations and states. Facing cyber risks on a daily basis makes cyber threats expected and real.

A cyber war between great powers is less likely due to the interdependence between them (Brenner, 2013, 18). Therefore, it is pointless to expect such confrontation between super powers. On the other hand, the world might experience conflicts regarding cyberspace in regions which are conflict zones, due to power vacuums.

[21] If 'security is the absence of threats' as Eriksson and Giacomello (2006, 222) note, then cyber security is the absence of threats to cyberspace.

Hence, terrorist organizations can be more active in these regions. Therefore, international regulations over the cyber domain is necessary, which leads to the most important problem on this issue for this thesis: How is it possible to legitimize norms of *jus ad bellum* and *jus in bello* concerning cyberspace?

In the 20th century, the phenomena of cybercrime, cyberterrorism, and cyber war did not exist. As a result, it is possible to suggest that the UN Charter is noticeably outdated and does not completely embrace the 21st century's new war characteristics for numerous reasons. Most importantly, "the United Nations Charter, which has existed for over half a century, does not fully contemplate cyber war tactics, since the 'use of force' language contained in it was intended for aggressor states using kinetic weapons, not cyber war tactics" (Kim, 2011, 327). There is another problematic issue in cyber war, which is launching a cyber-attack on a state by a non-state actor. According to the UN Charter and most war treaties (such as the 1899 and 1907 Hague Conventions) only states can wage war against each other. Currently, there are no international treaties on cyber domain that states can follow in their conduct.

As a result, the cyber domain is extremely problematic for international law especially for *jus in bello* and *jus ad bellum*. The main legitimacy problem stems from the sovereignty norm because of asymmetry and anonymity. Basically, cyber networks challenge state sovereignty. That is why some states (especially Russia) want to control cyberspace. As a result, all features of cyberspace as mentioned above broaden this legitimacy gap. This is why cyberspace and its relationship to state sovereignty and international humanitarian law regulations appear as a contestation area. *Jus ad bellum* and *jus in bello* are Type 2 norms in cyberspace that help to overcome the legitimacy gap problem. In order to create a universal meaning-in-use of these norms, it is vital to examine these contestations.

4.4. Georgia and Estonia

The cases of Georgia and Estonia mainly relate to Russia's cyber policies. What Russia was trying to do in cyberspace is vital because it showed that with effort and mutual

assistance from other states, basic rules might be applicable in cyberspace. Also, it shows that unique features of the cyberspace might create a contestation area for international law, and eventually serve to strengthen international norms.

While cyberspace affects states, organizations and individuals all over world, Russia is an actor that is close to conflict zones. As mentioned earlier, in unstable areas, cyber terrorism tends to be more common. As a result, Russia had to create its "Doctrine of Information Security." It is named as such because Russia prefers to call cyber warfare "information warfare." This discourse is important because it is reflective of its historical and cultural background.

According to Choucri and Goldsmith (2012, 73), Russia sees information war as "actions by a state to undermine another state's political, economic, and social systems." Thus, Russia takes cyber threats and information war seriously. The first incident that demonstrated why Russia has to take this so seriously was the Chechen War (1994-1996). As Reveron (2012, 176) suggests, the Russian experience during the First Chechen War between 1994 and 96—particularly the Chechen use of computer and communication technologies to conduct military strikes and information operations—further alerted the Russian national security community to the dangers posed by these new technologies, as well as an awareness of a weakened and diminished Russia's ability to use such tools itself. This means that Russia was trying to create a comprehensive cyber policy. As Clapper (2016, 3) notes:

> Russia is assuming a more assertive cyber posture based on its willingness to target critical infrastructure systems and conduct espionage operations even when detected and under increased public scrutiny. Russian cyber operations are likely to target US interests to support several strategic objectives: intelligence gathering to support Russian decision-making in the Ukraine and Syrian crises, influence operations to support military and political objectives, and continuing preparation of the cyber environment for future contingencies.

Russia has suffered from cyber terrorism as seen in the Chechen War, cyber wars in Ukraine, Estonia and Georgia; and has witnessed cyber espionage in the case of the

WikiLeaks.[22] Furthermore, Russia has experienced the power of cyberspace with the Arab Spring. This, in turn, pushed Russia to create its own strategy toward cyberspace, which it considers a national security issue, and as something with borders (Ebert and Maurer, 2013, 1066; Giles, 2012b, 2). "Noninterference in Russian cyberspace, internet sovereignty and control over the information space" (Giles, 2012b, 2) are the most important themes and goals for Russia to secure cyberspace.

In accordance with its defensive policies, Russia tried to strengthen its attack power too. Russia has several groups for addressing cyber terrorism issues and has a hacker school. Thus, Russia is considering using cyber means in wars. As a matter of fact, the world has witnessed Russia's actions in line with that policy in Estonia and Georgia. Even if Russia has never accepted responsibility for these events, it has not clearly denied it either. While some claim that Russia was behind those cyber-attacks, Deibert (2011, 4) argues that "it was impossible to prove whether or not the Russian government itself was behind the attacks." Hence, there is the possibility that Russia is capable of taking advantage of the weaknesses of cyberspace and exploiting it to gain power.

The Russian state's entitlement of cyber security as "information security" arises from its perception that the government's information hidden on the Internet is more important than all the threats of cyberspace. As a result, Russia wants to secure cyberspace by controlling it (Giles, 2012, 65). These ideas and Russia's actions toward Estonia and Georgia could be considered as a contestation to norms of international humanitarian law, which shows that these norms' meanings and legitimacy have to be strengthened in the realm of cyberspace. Consequently, it is vital to examine the cases of Estonia and Georgia for a better understanding of Russia's contestation to international laws of war.

It is noteworthy to remind that Estonia regained its independence after the end of the Cold War. It was the first state that turned its face to Europe. In 1995, Estonia applied

[22] In 2010, the WikiLeaks became an important part of international relations and mainly for the US. Mainly, it was the leaks from top secret documents, such as politicians' correspondence, as well as war documents (such as Vietnam, Afghanistan, and Iraq). The leaks made available to public top-secret documents and information from closed door meetings, which were thought to be the normal for the policy-making in Clausewitzian and Cold War era.

for EU membership. It has been a member of the EU and the North Atlantic Treaty Organization (NATO) since 2004.

Estonia's desire to integrate with Europe and NATO has been a source of disturbance in Russia because it has always been strategically placed in an insecure area. Especially after WWII, Russia considered Europe to be an unreliable and dubious actor. In WWI and WWII all the attacks to Russia had come from Europe, mainly Germany. Therefore, historically Russia tended to create a buffer zone in order to feel safe after the independence of Estonia and Georgia (Haas, 2009, 4). Logically, this buffer zone had to be created in the area where Estonia, Georgia, and Ukraine were situated. As a result, when Estonia turned its face to Europe, Russia considered this a threat to itself, and was concerned that this would have encouraged others to do the same (Mearsheimer, 2016, 28).

The triggering event for the Estonia-Russia confrontation was the dismantling of the Bronze Soldier statue in April 2007. This was an independence symbol for Estonia that memorialized how Russia had liberated Estonians. After the dismantling of the Bronze Soldier statue, Russia allegedly started the cyberattacks on Estonian networks. This tactic was very beneficial for Russia because "Estonia has been highly dependent on the Internet where almost the whole country was covered by the Wi-Fi Internet, all Government services were available online, 86% of Estonian populations did banking online" (Kozlowski, 2014, 238). Therefore, according to Delerue's (2017, 148) suggestion, Estonia saw this attack as an armed attack and tried to invoke Article 5 of the North Atlantic Treaty.[23] While Russia denied the accusations, NATO refused the Estonian invocation.

[23] Article 5 reads as follows: "The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."

At the time, this implied that cyber-attacks from another country did not count as a war. However, it was obvious that these actions and policies created a contestation to international law. This contestation stemmed from Russia's understanding of cyberspace (cyberspace with borders) and the sovereignty rule. The main reason behind that was cyberspace's two characteristics of anonymity and asymmetry. After that war, Estonia rapidly improved its internet security. Also, as Robinson (2017, 134) posits, "the 2007 cyber-attacks against Estonia, which for a brief period of time took most of the country offline are universally regarded as a wakeup call." It was with the Georgian case that the wakeup call became more apparent.

The Georgian case was quite unique, because it was a hybrid war that the world did not witness before. Georgia gained its independence in 1991, after the dissolution of the Soviet Union. South Ossetia was recognized as being under Georgia's sovereignty. However, there were some Russia-supported separatists in South Ossetia. On 7 August 2008, Georgia decided to suppress this separatist movement and launched an attack. Russia immediately struck back on 8 August and the war began. Even though this war ended in almost a week, cyber-attacks continued until 27 August 2008. As Tikk et. Al. (2010, 71) summarise, "the cyber-attacks directed against Georgia primarily involved defacement of public websites and launching Distributed Denial of Service (DDoS) attacks against numerous public and private (financial and media) targets–methods similar to those used in attacks against Estonia in 2007." "The Georgian Government said that the disruption was caused by attacks carried out by Russia as part of the ongoing conflict between the two states over the Georgian province of South Ossetia" (Swaine, 2008).

According to Swaine (2008) "the Georgian sites are being bombarded by a distributed denial-of-service (DDoS) attack, in which hackers direct their computers to simultaneously flood a site with thousands of visits in order to overload it and bring it offline." However, cyberspace is a different battlefield than the traditional one. There are a lot of places that attackers can hide to avoid getting caught. Consequently, according to Clarke and Knake (2012, 21) similar to the Estonian case, Russia denied the accusations and argued that the attack was not related with the Russian government.

In the meanwhile, Russia entered South Ossetia and parts of Georgia with its ground military forces.

Even if the case of Estonia was not accepted as a cyber war (because it was the first cyber war that world has ever witnessed, and it was not considered to be as violent as traditional wars), the Georgian war was mainly seen as a cyber war. Russia used traditional war tactics, as well as cyber war tactics in Georgia.

Consequently, NATO considered accepting cyberattacks as an armed attack that will trigger Article 5 of the Washington Treaty. In 2014, the Enhanced NATO policy on Cyber Defence stated, "for the first time, cyber defense was brought under the umbrella of collective defense in Article 5 of the Washington Treaty" (Robinson, 2017, 137). Basically, the Wales Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales stated:

> Cyber threats and attacks will continue to become more common, sophisticated, and potentially damaging. To face this evolving challenge, we have endorsed an Enhanced Cyber Defence Policy, contributing to the fulfillment of the Alliance's core tasks. The policy reaffirms the principles of the indivisibility of Allied security and of prevention, detection, resilience, recovery, and defence. It recalls that the fundamental cyber defence responsibility of NATO is to defend its own networks, and that assistance to Allies should be addressed in accordance with the spirit of solidarity, emphasizing the responsibility of Allies to develop the relevant capabilities for the protection of national networks. Our policy also recognizes that international law, including international humanitarian law and the UN Charter, applies in cyberspace. Cyber attacks can reach a threshold that threatens national and Euro-Atlantic prosperity, security, and stability. Their impact could be as harmful to modern societies as a conventional attack. We affirm therefore that cyber defence is part of NATO's core task of collective defence. A decision as to when a cyber attack would lead to the invocation of Article 5 would be taken by the North Atlantic Council on a case-by-case basis.

This means that a cyberattack could be counted as an armed attack. Accordingly, it is possible to suggest that cyberspace became a part of international humanitarian law for NATO. As Robinson (2017, 137) observes, "the Enhanced Policy also recognized that international law, including international humanitarian law and the United Nations (UN) Charter applies to cyberspace."

Russia's policies and understanding of cyberspace created a new term in international law: cyber war. As seen above, Russia's actions toward Estonia were not considered a cyber war. This means that *jus ad bellum* and *jus in bello*'s legitimacy in cyberspace was weak at that time. However, Russia's alleged actions toward Georgia changed that. NATO recognized that international law, including international humanitarian law and the UN Charter, applies in cyberspace. As a result, Russia's contestation to the sovereignty norm (interference in internal affairs of Estonia and Georgia by exploiting cyberspace's weaknesses) made *jus ad bellum* and *jus in bello* legitimate tools in cyberspace, at least for NATO. This contestation and the meaning of these norms in cyber war became more apparent with the Stuxnet case.

4.5. Stuxnet

Stuxnet is more complicated than Russia's actions toward Estonia and Georgia because it contained highly developed technologies. Stuxnet stands as a perfect example of why the world needs regulations in cyberspace. Cyberspace was just a tool for Russia to gain military and political power in Estonia and Georgia, and the military attacks followed cyber-attacks in both events. Therefore, it was not solely a cyber war or cyber attack; they were examples of hybrid war. However, Stuxnet was just about cyberspace and cyber attacks that might constitute a cyber-war. While no loss of life occurred, physical harm was inflicted in the case of Stuxnet.

At this point, it is important to explain why there was an attack to Iran's Natanz nuclear facility. In 2005, the International Atomic Energy Association (GOV/2005/77) adopted an important decision about Iran which stated: "Iran's many failures and breaches of its obligations to comply with its NPT [Treaty on the Non-Proliferation of Nuclear Weapons] Safeguards Agreement constitute noncompliance." According to the news in Washington Post (2012) "Stuxnet was first developed during the George W. Bush administration and was geared toward damaging Iran's nuclear capability gradually while sowing confusion among Iranian scientists about the cause of mishaps at a nuclear plant." As a result, the Stuxnet virus sent a massage to Iran to stop what it was doing and give up its ambitions of uranium enrichment even though they were peaceful.

Although Iran has always claimed that the nuclear plant in Natanz was established only to improve civilian infrastructure, and not to develop nuclear weapons, for strategic reasons it is logical that Israel might have wanted to disturb the Iranian nuclear program.

As Farwell and Rohozinski (2011, 31) suggest, "Stuxnet may represent a new twist: first use of a cyber weapon, hidden within a shroud of ambiguity by the use of off the shelf and deniable resources drawn from the global cyber-crime community to help avoid attribution." Therefore, the untraceable character of cyberspace appeared to be helpful at this point. Bombing another country's nuclear sites is a cause of war; it is unlawful and more expensive. These are the reasons behind Stuxnet.

In 2010, the Stuxnet virus was inserted into the centrifuge systems of Iran's nuclear Program. It did not harm infrastructures all around the world. It was built only for Iran's uranium enrichment facility in Natanz. This was a virus that set back Iran's nuclear program for approximately 18 to 24 months. Stuxnet was created to overrun the centrifuges to the point of causing damage to Natanz's uranium enrichment site. While doing that, the virus also "shut off safety monitoring systems, hoodwinking operators that all was normal" (Williams, 2011). When it fulfilled its mission, it destroyed itself. Also, "if it does not find the specific configuration, the virus remains relatively benign" (Fildes, 2010). Therefore, it was the most advanced virus that was ever seen. At the end, the Natanz nuclear plant became nonfunctional. There was no loss of life but economic losses and human suffering according to Iranian claims.

It is possible to suggest that Stuxnet was so sophisticated that the collateral damage was less than traditional war. Still, it caused collateral damage. As Farwell and Rohozinski (2011, 34) states, "it is clear that Stuxnet damaged the property of a number of parties outside Iran, which sustained only 60% of the Stuxnet infections." It affected almost 60000 computers in India, Indonesia, China, Azerbaijan, South Korea, Malaysia, the United States, the United Kingdom, Australia, South Korea, Finland, and Germany (Farwell and Rohozinski, 2011, 34). Farwell and Rohozinski (2011, 34) are not sure about how Stuxnet virus has spread to other computers in other countries. According to

Brenner (2013, 17), "Stuxnet was an extraordinarily sophisticated, multi-step attack that employed at least four separate, previously unknown vulnerabilities in Microsoft operating systems." As a result, researchers believed that the US and Israel was behind Stuxnet because it was so sophisticated that no one thought an individual or an organization could pull it off (Nakashima and Warrick, 2012).

Is it possible to think of this as a war waging? As mentioned above, the UN Charter does not cover specifically this type of attack as a cause of war, let alone cover it as an act of aggression.[24] While conventionally such an attack is not treated under Article 51 Article 2(4)[25] of the UN Charter, the changing circumstances have contested the conventional approaches. Meaning-in-use of *jus ad bellum* and *jus in bello* might cover cyberspace as a result of these contestations. While the attack on Estonia was not perceived as a war at the time and scholars mainly thought cyberattacks and cyberwar were not brutal enough to be war situations, examples like the cases of Georgia and Stuxnet have raised as challenges.

Accordingly, the 2010 Report of the UN Secretary-General about Developments in the Field of Information and Telecommunications in the Context of International Security stated that:

> The primary international concept is that of international law. There is considerable debate, particularly at cyber conferences, about the applicability of existing international law to cyberspace. The United Kingdom has examined this issue, and our view is that the existing principles of international law, on both the use of force and the law of armed conflict, provide an appropriate framework within which to identify and analyse the use of cyberspace in the context of hostilities.

[24] UN General Assembly Resolution 3314 defines aggression as follows: 'Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:
(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,
(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
(c) The blockade of the ports or coasts of a State by the armed forces of another State;
(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.'

[25] The article reads as follows: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Especially after Stuxnet the UN reports tried to maintain peace in cyberspace with the UN Charter, international humanitarian law, and norms. Consequently, in 2013 the UN Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security stated in its paragraphs 16 and 19 that:

> The application of norms derived from existing international law relevant to the use of Information and Communication Technologies (ICTs) by States is an essential measure to reduce risks to international peace, security and stability. Common understandings on how such norms shall apply to State behaviour and the use of ICTs by States requires further study. Given the unique attributes of ICTs, additional norms could be developed over time. […]
>
> International law, and in particular the Charter of the United Nations, is applicable and is essential to maintaining peace and stability and promoting an open, secure, peaceful and accessible ICT environment.

Finally, in 2015, the UN emphasized the importance of norms in cyberspace in its Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security. Paragraph 10 of this report stated:

> Norms reflect the expectations of the international community, set standards for responsible State behaviour and allow the international community to assess the activities and intentions of States. Norms can help to prevent conflict in the ICT environment and contribute to its peaceful use to enable the full realization of ICTs to increase global social and economic development.

These reports indicate that *jus ad bellum* and *jus in bello* are legitimate tools and their meaning-in-use in new wars might gain strength with new developments. Accordingly, the ICRC's humanitarian agenda in 2018 will cover cyberspace in order to broaden these norms' meanings in new wars. The ICRC (2018) mentioned cyber threats in its agenda:

> Cyber attacks are a looming challenge. Think of the humanitarian consequences of air traffic control systems, oil pipeline systems, or nuclear plants being hacked.
>
> The ICRC is urging governments and companies to deal with the humanitarian impact of conflict in the virtual world, and to address critical questions: what's a security incident vs. an act of war? How does proportionality apply? How can virtual attacks distinguish between civilian objects and military objectives?

> The fundamental rules of IHL apply to cyber warfare and other new technologies, but we must also consider stronger, more tailor-made rules to protect civilians from conflict's future frontlines.

All in all, these new policies and cyberwar experiences, as well as reactions (contestations) toward these developments proved that the norms first constructed on grounds of Clausewitz's ideas and Dunant's contestation are seen as legitimate tools in cyberspace. Protecting humanity in wars is still preserving the universal meaning-in-use of these norms. The argument, therefore, is that *jus ad bellum*'s and *jus in bello*'s meanings-in-use could be considered as universal because these studied contestations show that the legitimacy gap has been closing with NATO and the UN Resolutions following the cases of Estonia, Georgia, and Stuxnet in new wars.

CONCLUSION

By constructing a background on the changing concept of warfare, *jus ad bellum, jus in bello* and their relationships with each other, this thesis aimed to reveal the implications of the transforming concept of warfare on these norms. The first chapter of this thesis examined the norms of war, and their interrelation with each other and diagnosed the reasons that new wars pose threats to these norms. For the purposes of this thesis, it was vital to differentiate *jus ad bellum* from *jus in bello* to avoid moral hierarchy among combatants and to preserve the traditional meaning-in-use of these norms. In this vein, the second chapter examined the changing concept of warfare, and tried to establish the meanings-in-use of the norms of *jus ad bellum* and *jus in bello* until WWII. Consequently, it showed the essence of war conventions in light of Clausewitz's thoughts and Dunant's contestation. For Clausewitz, unlimited use of violence is an undesired outcome. Therefore, proportionality and limited war are the most important features for him and traditional meaning-in-use for war norms. Accordingly, Chapter has revealed the importance of obstructing the escalation to extremes, hatred and enmity in war situations. Such an analysis provided for a better understanding of the contestations toward war norms in the era of new wars.

Afterwards, in Chapter 3, a central topic for new wars, namely the US' policy of war on terror vis-à-vis the EU's approach was examined. Regarding terrorism, it has been concluded that the US' war on terror policy was a contestation toward war norms because of its classifications of combatants. It was the preventive war/pre-emptive strike strategy, unjust combatant classification and terrorism as a war concept that created this contestation. Because of these features of the war on terror policy of the US, self-defense norm and combatant-noncombatant distinction has been contested by the US. As a result, the EU created its own policy of fight against terrorism. Therefore, it was also observed that the EU tried to reverse this trend with its policy of the "fight against terrorism". The EU saw terrorism issue as a criminal one and acted by targeting its root causes and seeking a solution through with economic, humanitarian, political and judicial means. Such a policy arguably shows that *jus ad bellum* and *jus in bello*'s meanings-in-use constructed on Clausewitz's and Dunant's ideas are still applicable.

Consequently, the EU's policy was accepted as part of an endeavor to fill the legitimacy gap for these norms.

Finally, Chapter 4 revealed the unique characteristics of cyberspace and cyber wars. It showed that the six features of the cyberspace are the reasons why states such as Russia and Israel contested *jus ad bellum* and *jus in bello*. These six components were: Complexity, fast-evolving structure, anonymous character, an ungovernable nature, a tendency to produce asymmetric warfare, and cheap cyber weapons. Accordingly, Russia and Israel used these features as a weakness of cyberspace and created a contestation to *jus ad bellum* and *jus in bello* norm. The contestations toward war norms created in cyberspace through the cases of Estonia, Georgia and Stuxnet. The case studies showed that Russia's first action toward Estonia was not perceived as a cyber war. Hence, Russia's alleged cyberwar against Georgia and Israel's alleged actions in the cyberspace came to be perceived as potential threats to international community and peace. First, NATO accepted such threat perception with the Georgian War, which brought cyber defense under the umbrella of collective defense with the Wales Summit Declaration Issued by the Heads of State and Government. Afterwards, the UN also emphasized the important role of norms in cyberspace with its declarations in 2013 and 2015. These documents emphasized the importance of international norms in cyberspace and their effect on maintaining peace and stability and promoting an open, secure, peaceful and accessible ICT environment. As a result, the meanings-in-use of the *jus ad bellum* and *jus in bello* norms expanded to cyberspace. Therefore, it can be argued that norms that were first constructed to diminish unnecessary suffering in traditional wars are seen as legitimate in cyber wars. NATO and the UN's declarations help to fill the legitimacy gap of these norms with regard to the cyberspace.

In summary, this thesis aimed to reveal why, how, and by whom contestations took place to international norms of *jus ad bellum* and *jus in bello*. Consequently, this thesis aimed to reveal the legitimacy gap of *jus ad bellum* and *jus in bello* norm in the war against terrorism and cyberspace. Contestations of the US, Russia and Israel have created a tendency that caused new classifications and meanings of these norms under international law. On the other hand, the EU's policy of fight against terrorism and the

UN, NATO and ICRC's reports and declarations emphasized the importance of these norms' traditional meanings-in-use. Therefore, contestations created new windows of opportunities that strengthen these norms' traditional meanings in the new wars era. The legitimacy gap between fundamental norms and regulations have been diminishing in new wars after these contestations. By stressing the importance of contestation process on norms (*jus ad bellum* and *jus in bello*) meanings-in-use in new wars, this thesis has aspired to conduct further research in this topic.

Given the fact that the concept of new wars is vague, and norms are open to contestation, the problematic issue of *jus ad bellum* and *jus in bello* in new wars will remain as a core subject of research in the following years. Especially, transnational terrorism and new technologies (for media and war) draw attention from international law literature. In this vein, this thesis has drawn attention towards an underexplored area of the IR literature with the aim to contribute to further discussion.

BIBLIOGRAPHY

Aldrich, G. H. (1991, January). Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions. *The American Journal of International Law*, *85*(1), 1-20.

Alexander, A. (2016). The "Good War": Preparations for a War against Civilians. *Law, Culture and the Humanities*, *26*(2), 1-26.

Allenby, B.R. (2014). Are New Technologies Undermining the Laws of War? *Bulletin of the Atomic Scientists*, *70*(1), 21-31.

Alliez, E. and Negri, A. (2003). Peace and War. *Theory, Culture & Society*, *20*(2), 109-118.

Amoureux, J.L., and Steele, B.J. (2014). Competence and Just War. *International Relations*, *28*(1), 67-87.

Andonyan, A. (1999). Balkan Savaşı. Aras Yayınları, İstanbul.

Babou, C.A. (2010, November). Decolonization or National Liberation: Debationg the End of British Colonial Rule in Africa. *The Annals of the American Academy of Political and Social Science*, *632*, 41-54.

Baker-Beall, C. (2014). The evolution of the European Union's "fight against terrorism" discourse: Constructing the terrorist "other". *Cooperation and Conflict*, *49*(2), 212-238.

Barnard-Wills, D. and Ashenden, D. (2012). Virtual Space: Cyber War, Cyber Terror, and Risk. *Space and Culture*, *15*(2), 110-123.

Bassiouni, C.M. (2008). The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors. *The Journal of Criminal Law and Criminology*, *98*(3), 711-810.

Beard, J.M. (2009, July). Laws and War in the Virtual Era. *The American Journal of International Law*, *103*(3), 409-445.

Bellamy, A.J. (2012). Massacres and Morality: Mass Killing in an Age of Civilian Immunity. *Human Rights Quarterly*, *34*(4), 927-958.

Beyer, A.C. (2010). Counterterrorism and International Power Relations: The EU, ASEAN and Hegemonic Global Governance. *Tauris Academic Studies*, New York.

Bogaerts, E. and Raben, R. (2012). Beyond Empire and Nations. Leiden, Brill.

Bohman, J. (2012). *Jus Post Bellum* as a Deliberative Process: Transnationalising Peace-Building. *Irish Journal of Sociology*, *20*(2), 10-27.

Bossong, R. (2012). Peer reviews in the fight against terrorism: A hidden dimension of European security governance. *Cooperation and Conflict*, *47*(4), 519-538

Boucher, D. (2011). The Just War Tradition and Its Modern Legacy: *Jus ad Bellum* and *Jus in Bello*. *European Journal of Political Theory*, *11*(2), 92-111.

Branche, R. (2007). Torture of Terrorists? Use of Torture in a "War Against Terrorism": Justifications, Methods and Effects: The Case of France in Algeria, 1954-1962. *International Review of the Red Cross*, 89(867), 543-560

Brenner, J.F. (2013). Eyes wide shut: The growing threat of cyber attacks on industrial control systems. *Bulletin of Atomic Scientists*, *69*(5), 15-20.

Brooks, R.E. (2005). Failed States, or the State as Failure. *The University of Chicago Law Review*, 72(4), 1159-1196.

Burke, J. (2015, January 20). Africa embassy bombings: attacks that propelled Bin Laden into the limelight. *The Guardian*, Retrieved 7 March, 2018, from https://www.theguardian.com/world/2015/jan/20/africa-embassy-bombings-osama-bin-laden-kenya-tanzania-al-qaida.

Callahan, K., Melvin J. D. and Alshfski D. (2006). War Narratives: Framing Our Understanding of the War on Terror. *Public Administration Review*, *66*(4), 554-568.

Cassese, A. (1981). The Status of Rebels under the 1977 Geneva Protocol on Non-International Armed Conflicts. *The International and Comparative Law Quarterly*, *30*(2) (April), 416-439.

Cavelty, M.D. and Manuer V. (2010). The Routledge Handbook of Security Studies. New York, Routledge.

Charmatz, J.P., and Wit, H.M. (1953). Repatriation of Prisoners of War and the 1949 Geneva Convention. *The Yale Law Journal*, *62*(3) (February), 391-415.

Chatterjee, D. (2015). Deciding on Preventive War: Amartya Sen's Idea of Justice. *Philosophy and Social Criticism*, *41*(1), 69-76.

Choi, S-W. (2010). Fighting Terrorism through the Rule of Law. *Journal of Conflict Resolution*, *54*(6), 940-966.

Choucri, N. and Goldsmith D. (2012). Lost in Cyberspace: Harnessing the Internet, International Relations, and Global Security. *Bulletin of the Atomic Scientists*, *68*(2), 70-77.

CNN (2017). 1998 US Embassies in Africa Bombings Fast Facts. Retrieved April 12, 2018, from https://edition.cnn.com/2013/10/06/world/africa/africa-embassy-bombings-fast-facts/index.html

CNN (2018). Spain Train Bombings Fast Facts. Retrieved April 12, 2018, from https://edition.cnn.com/2013/11/04/world/europe/spain-train-bombings-fast-facts/index.html

Couchri, N. (2000). Cyber Politics in International Relations: Context, Connectivity and Content. Cambridge, MIT Press.

Clausewitz, C.V. (1997). On War. London, Wordsworth Editions Limited.

Daniel III, J.F. and Smith, B.A. (2015). Burke and Clausewitz on the Limitation of War. *Journal of International Political Theory, 11*(3), 313-330.

Deibert, R. (2011). Tracking the Emerging Arms Race in Cyberspace. *Bulletin of the Atomic Scientist*, *67*(1), 1-8.

Dolan, C.J. (2005). Waging War Against Iraq: *Jus ad Bellum* Considerations. *Politics and Ethnics Review*, *1*(2), 158-176.

Doswald-Beck, L. (1987). The Civilian in the Crossfire. *Journal of Peace Research*, *24*(3) (September), 251-262.

Draper, K. (2013). Why a War Without a Name May Need One: Policy-Based Application of International Humanitarian Law in the Algerian War. *Texas International Law Journal*, 48(3), 575-603.

Drumbl, A.M. (2002). Judging the 11 September Terrorist Attack. *Human Rights Quarterly*, *24*(2), 323-360.

Duncan, J.S.P. (2013). Russia, the West and the 2007-2008 Electoral Cycle: Did the Kremlin Really Fear a Coloured Revolution? *Europe-Asia Studies*, *64*(1), 1-25.

Ebert, H. and Maurer T. (2013). Contested Cyberspace and Rising Powers. *Third World Quarterly*, *34*(6), 1054-1074.

Echevarria II, A.J. (1995-1996. War, Politics, and RMA- The Legacy of Clausewitz. *JFQ, 10* (Winter), 76-80.

Echevarria II, A.J. (2007). On the Clausewitz of the Cold War Reconsidering the Primacy of policy in On War. *Armed Forces & Society*, *34*(1) (October), 90-108.

Eriksson, J. and Giacomello, G. (2006). The Information Revolution, Security, and International Relations: (IR)relevant Theory? *International Political Science Review*, *27*(3), 221-244.

Fabre, C. (2015). Nigel Biggar's Just War: Reflections on *Jus ad Bellum*. *Studies in Christian Ethnics*, *28*(3), 292-297.

Farwell, J.P. and Rohozinski, R. (2011). Stuxnet and the Future of Cyber War. *Survival*, *53*(1), 23-40

Fildes, J. (2010, September 23). Stuxnet worm "targeted high-value Iranian assets". *BBC News*, Retrieved November 15, 2018, from http://www.bbc.com/news/ technology-11388018.

Finlay, C.J. (2010). Terrorism Resistance, and the Idea of "Unlawful Combatancy". *Ethics & International Affairs*, *24*(1), 91-104.

Finnemore, M., and Sikkink, K. (1998, Autumn). International Norm Dynamics and Political Change. *International Organization*, *52*(4), 887-917.

Galicki, Z. (2005). International Law and Terrorism. *American Behavioral Scientist*, *48*(6), 743-757.

Gambone, M.D. Kurt G.P. (2012). Small Wars. Knoxville, University of Tennessee Press.

Gartzke, E. (2013). The Myth of Cyber war: Bringing War in Cyberspace Back Down to Earth. *International Security*, *38*(2), 41-73

Gentry C.E., and Eckert, A.E. (2014). The Future of Just War. Athens, University of Georgia Press.

Giles, K. (2012). Russia's Public Stance on Cyberspace Issues. *4th International Conference on Cyber Conflict*, 63-75.

Giles, K. (2012b). Russian Cyber Security: Concepts and Current Activity, REP Rountable Summary, *Conflict Studies Research Centre*, 1-3.

Goldstone, R.J. (2002, Winter). International Law and Justice and America's War on Terrorism. *Social Research: An International Quarterly*, *69*(4), 1049-1058.

Gregory, D. (2011). The Everywhere War. *The Geographical Journal*, *177*(3), 238-250.

Guillaume, G. (2004). Terrorism and International Law. *The International and Comparative Law Quarterly*, *53*(3), 537-548.

Guillaume, X., Andersen, R.S. and Vuori, J.A. (2016). Paint It Black: Colours and Social Meaning of the Battlefield. *European Journal of International Relations*, *22*(1), 49-71.

Guzzini, S. (2005). The Concept of Power: A Constructivist Analysis. *Millennium Journal of International Studies*, *33*(3), 495-521.

Haas, de M. (2009). NATO-Russia Relations after the Georgian Conflict. *Atlantisch Perspectiefrre*, *33*(7), 4-9.

Hajjar, L. (2006). International Humanitarian Law and "Wars on Terror": A Comparative Analyses of Israeli and American Doctrines and Policies. *Journal of Palestine Studies*, *36*(1), 21-42.

Herberg-Rothe, A. (2009). Clausewitz's "Wondrous Trinity" as a Coordinate System of War and Violent Conflict. *International Journal of Conflict and Violence*, *3*(2), 204-219.

Himes, K.R. (2010). The United States at War: Taking Stock. *Theological Studies*, *71*, 190-209.

Houweling, H.W., and Siccama, J.G. (1988, March). The Risk of Compulsory Escalation. *Journal of Peace Research, 25*(1), 43-56.

Howe, B. (2006). Normative War-Fighting and the New World Order. *Politics and Ethnics Review*, *2*(1), 38-61.

Hülsse, R. and Spencer A. (2008). The Metaphor of Terror: Terrorism Studies and Constructivist Turn. *Security Dialogue*, *39*(6), 571-592.

Jaggar, M.A. (2003). Responding to the Evil of Terrorism. *Hypatia*, *18*(1), 175-182.

James D.K. (2009). Terrorism and Globalization. In Baylis, J. and Smith S. (ed.) The Globalization of World Politics: An Introduction to International Relations (pp. 366-380). Oxford, Oxford University Press.

Jaques, F. (2006). The Decolonization of French-Speaking Territories in Africa as Reflected in the South African Press a Case Study of Algeria and the Belgian Congo. *Journal of European Studies*, *36*(1), 31-41.

Kalshoven, F. (1991, October). State Responsibility for Warlike Acts of the Armed Forces: From Article 3 of Hague Convention IV of 1907 to Article 91 of Additional Protocol I of 1977 and Beyond. *The International and Comparative Law Quarterly*, *40*(4), 827-858.

Kello, L. (2013). The Meaning of the Cyber Revolution: Perils to Theory and Statecraft. *International Security*, *38*(2), 7-40.

Kelsey, J.T.G. (2008). Hacking into International Humanitarian Law: The Principles of Distinction and Neutrality in the Age of Cyber Warfare. *Michigan Law Review*, *106*(7), 1421-1451.

Kemp, M.A. (2008). Re-readings of the Algerian War During the US "War on Terror": Between Recognition and Denial. *Journal of European Studies*, 38(2), 157-175.

Keohane, O.R. and Nye Jr, J.S. (2000). Globalization: What's New? What's Not? (And So What?). *Foreign Policy*, *118* (Spring), 104-119.

Kim, J. (2011, October). Law of War 2.0: Cyberwar and the Limits of the UN Charter. *Global Policy*, *2*(3), 322-328.

Kinsella, H.M. (2011, March). The Image before the Weapon. Ithaca, New York, *Cornell University Press*.

Kirby, M.D. (2005). Terrorism: The International Response of the Courts. *Indiana Journal of Global Legal Studies*, *12*(1), 313-344.

Kissinger, H. (1969). The Vietnam Negotiations. *Foreign Affairs*, 48(2), 210-217.

Krafft, A. (1951). The Present Position of the Red Cross Geneva Conventions. *Transactions of the Grotius Society*, *37*, 131-147.

Kumar, R. (2014). Iraq War 2003 and the Issue of Pre-emptive and Preventive Self-Defence: Implications for the United Nations. *India Quarterly*, *70*(2), 123-137.

International Committee of the Red Cross (ICRC). (2018). *7 issues that will shape the humanitarian agenda in 2018.* Retrieved on 20 February 2018 from https://www.icrc.org/en/document/7-issues-will-shape-humanitarian-agenda-2018.

Lantis, J.S. (2006). Strategic Culture: From Clausewitz to Constructivism. *SAIC*, 3-31.

Lebow, R.N. (1988, Spring). Clausewitz and Nuclear Crisis Stability. *Political Science Quarterly*, *103*(1), 81-110.

Leebaw, B. (2014, Summer). Justice, Charity, or Alibi?: Humanitarianism, Human Rights, and "Humanity Law". *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, *5*(2), 261-276.

Lynn, W.J. (2010), "Defending a New Domain" *Foreign Affairs*, *89*(5), 97-108.

Mack, M. (2008). Increasing Respect for International Humanitarian Law in Non-International Armed Conflict. *ICRC*, 1-32.

Malici, A. (2009). Rogue States: Enemies of Our Own Making. *Psicologia Politica*, *39*(1), 39-54.

Manners, I. (2002). Normative Power Europe: A Contradiction in Terms. *JCMS*, *40*(2), 235-258.

Marinucci, D. (2013). *Advances in Cyber Security*. New York, Fordham University Press.

Mcmahan, J. (2004). Ethics of Killing in War. *Ethics*, *114*(4), 693-733.

McMahan, J. (2010, Fall). The Just Distribution of Harm Between Combatants and Noncombatants. *Philosophy & Public Affairs*, *38*(4), 342-379.

Mearsheimer, J. (2016). Defining a New Security Architecture for Europe that Bring Russia in from the Cold. *Military Review*, *96*(3), 27-31.

Meisels, T. (2012). In Defense of the Defenseless: The Morality of the Laws of War. *Political Studies*, *60*, 919-935.

Melander, E., Öberg, M. and Hall, J. (2009). Are "New Wars" More Atrocious? Battle Severity, Civilians Killed and Forced Migration Before and After the End of the Cold War. *European Journal of International Relations*, *15*(3), 505-536.

Merom, G. (2004). The Social Origins of the French Capitulation in Algeria. *Armed Forces and Society*, 30(4), 601-628.

Meron, T. (1987, April). The Geneva Conventions as Customary Law. *The American Journal of International Law*, *81*(2), 348-370.

Miller, A.M. (2008). Ordinary Terrorism in Historical Perspective. *Journal for the Study of Radicalism*, *2*(1), 125-154.

Murphy, C.G. (2014). War's Ends. Washington DC., *Georgetown University Press*.

Murray, C. (1984, April). The 1977 Geneva Protocols and Conflict in Southern Africa. *The International and Comparative Law Quarterly*, *33*(2), 462-470.

Nakashima, E. and Warrick J. (2012, June 2). Stuxnet Was Work of US and Israeli Experts Officials Say. *Washington Post*. Retrieved November, 15, 2018 from https://www.washingtonpost.com/world/national-security/stuxnet-was-work-of-us-and-israeli-experts-officials-say/2012/06/01/gJQAlnEy6U_story.html?utm_term=.2e954c4e18a6.

New York Times (2001). A Day of Terror; Bush's Remarks to the Nation on the Terrorist Attacks. Retrieved March 7, 2018, from https://www.nytimes.com/2001/09/12/us/a-day-of-terror-bush-s-remarks-to-the-nation-on-the-terrorist-attacks.html

Nye Jr., J.S. (2013). From Bombs to Bytes: Can our Nuclear History Inform Our Cyber Future? *Bulletin of the Atomic Scientists*, *69*(5), 8-14.

Nye Jr., J.S. and Welch D.A. (2011). *Küresel Çatışmayı ve İşbriliğini Anlamak.* İstanbul, Türkiye İş Bankası Kültür Yayınları.

O'Driscoll, C. (2007). Jean Bethke Elshtain's *Just War Against Terror*: A Tale of Two Cities. *International Relations*, *21*(4), 485-492.

Odermatt, J. (2013). Between Law and Reality: "New Wars" and Internationalised Armed Conflict. *Amsterdam Law Forum*, 5(3), 19-32.

Perret, F. and Bugnion, F. (2011). Between Insurgents and Government: The International Committee of the Red Cross's Action in the Algerian War (1954-1962). *International Review of the Red Cross*, 83(883), 707-742.

Phillips, A. (2010). Transnational Terrorism. Beeson, Mark and Nick Bisley (ed.), Issues in 21st Century World Politics. Basingstoke: *Palgrave Macmillan*, 136-149.

Pictet, J.S. (1951, July). The New Geneva Conventions for the Protection of War Victims. *The American of International Law*, *45*(3), 462-475.

Ratner, S.R. (1998, Spring). International Law: The Trials of Global Norms. *Foreign Policy*, *110*, 65-80.

Ratner, S.R. (2002). *Jus ad Bellum* and *Jus in Bello* after September 11. *The American Journal of International Law*, *96*(4), 905-921.

Ratner, S.R. (2007). Predator and Prey: Seizing and Killing Suspected Terrorists Abroad. *The Journal of Political Philosophy*, *15*(3), 252-275.

Ratner, S.R. (2008, March-April). Geneva Conventions. *Foreign Policy*, *165*, 26-32.

Reid, J. (2003). Foucault on Clausewitz Conceptualizing the Relationship Between War and Power. *Alternatives*, *28*, 1-28.

Reveron, D.S. (2012). Cyberspace and National Security. Washington DC, *Georgetown University Press*.

Reynolds, M. (2003, October 11). Cheney Counterattacks War's Critics. *Los Angeles Times*. Retrieved March 21, 2018, from http://articles.latimes.com /2003/oct/11/nation/na-cheney11.

Rosen, D.M. (2007). Child Soldiers, International Humanitarian Law, and the Globalization of Childhood. *American Anthropologist*, *109*(2), 296-306.

Rowe, P. and Meyer, M.A. (1996). The Geneva Conventions (Amendment) Act 1995: A Generally Minimalist Approach. *The International and Comparative Law Quarterly*, *45*(2), 476-484.

Schlichtmann, K. (2003). Japan, Germany and the Idea of the Hague Peace Conferences. *Journal of Peace Research*, *40*(4), 377-394.

Schuurman, B. (2010). Clausewitz and the "New Wars" Scholars. *Parameters*, *40*(1) (Spring), 89-100.

Sciullo, N.J. (2011). The Ghost in the Global War on Terror: Critical Perspectives and Dangerous Implications for National Security and the Law. *Drexel Law Review*, *561*(3), 561-582.

Shadle, M.A. (2011). The Origins of War. Washington, Georgetown University Press.

Shue, H. (1978). Torture. *Philosophy and Public Affairs*, *7*(2), 124-143.

Singer, P.W. and Friedman, A. (2015). *Siber Güvenlik ve Siber Savaş*. Ankara, Buzdağı Yayınevi.

Sloane, R.D. (2007, December). Prologue to a Voluntarist War Convention. *Michigan Law Review*, *106*(3), 443-485.

Stoett, P. and Teitelbaum, P. (1999-2000). The Hague Appeal for Peace Conference. *International Journal*, *45*(1) (Winter) 35-44.

Swaine, J. (2008, 11 August). Georgia: Russia 'conducting cyber war'. *The Telegraph*, Retrieved, November 10, 2018, from, http://www.telegraph.co.uk/news/worldnews/europe/georgia/2539157/Georgia-Russia-conducting-cyber-war.html.

Tikk, E. (2010). Global Cybersecurity-Thinking About the Niche for NATO. *SAIS Review of International Affairs, 30*(2), 105-119.

Townshend, C. (2005). The Oxford History of Modern War. New York, Oxford University Press.

Ulbert, C., Finkenbusch, P., Sondermann, E. and Debiel, T. (2018). Moral Agency and the Politics of Responsibility. New York, Routledge.

Waldman, T. (2010). Politics and War: Clausewitz's Paradoxical Equation. *Parameters, 40*(3) (Autumn), 1-12.

Walt, S. M. (2010). Is the Cyber Threat Overblown? *Foreign Affairs.* Retrieved on May 15, 2016 from http://www.foreignpolicy.com/posts/2010/03/30/is_the_cyber_threat_overblown.

Wheeler, N.J. (2002). Dying for "Enduring Freedom": Accepting Responsibility for Civilian Causalities in the War Against Terrorism. *International Relations, 16*(2), 205-225.

Wiener, A. (2014). A Theory of Contestation. London, Springer.

Wiener, A. (2017). Agency of the Governed in Global International Relations: Access to Norm Validation. *Third World Thematics: A TWQ Journal, (online first)*, 1-17.

Williams, C. (2011, January 21). Stuxnet: Cyber attack on Iran "was carried out by Western powers and Israel". *The Telegraph*, Retrieved November 15, 2018, from https://www.telegraph.co.uk/technology/8274009/Stuxnet-Cyber-attack-on-Iran-was-carried-out-by-Western-powers-and-Israel.html.

Wolff, J. and Zimmermann, L. (2015). Between Banyans and Battle Scenes: Liberal Norms, Contestation, and the Limits of Critique. *Review of International Studies, 42*(3), 1-22.

Yoo, J.C., and Ho, J.C. (2003). The Status of Terrorists. *Virginia Journal of International Law, 44*, 207-228.

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