

## Short Exposé

# The Transformation of War and International Law

## War and International Law in Technological and Sociopolitical Change

The modern form of war, which is based on the division into government, army and people, could become obsolete in the future if the state's claimed monopoly on the use of force is increasingly undermined. The emergence of *low intensity conflicts* (Martin van Creveld) could undermine entire states and substitute the state with other warring organizations. As a result, there is growing doubt as to whether modern states will be able to successfully combat semi-state organizations or private warfare groups in the medium term.

This worst-case scenario – at least from the perspective of the Western community of states – of the "denationalization" or "erosion of state sovereignty," which has also been labeled "privatized violence" (Herfried Münkler), is already contrasted by concrete counter-designs, which emphasizes the need for the transformation of international law – as it is obviously demanded by the current National Security Strategy of the United States of America – due to the transformation of war. However, the National Security Strategy primarily assumes that the international legalization in the form of international law must be pushed back in favor of unilateral action. At the same time, this entails great risks and uncertainties for the actors of the global economy.

On the other hand, the concepts of the world state theory, which follow on from Immanuel Kant's *Zum ewigen Frieden* (On Perpetual Peace), prove to be an opposing design. In particular, the demand for a world-state structure (Otfried Höffe) follows on from the existing international law as a reaction and calls for its consistent further development. While this direction also advocates the demand for a transformation of the state as well as of international law, it adheres to the Kantian design of a world order based on civility and law, which coincides with the sense of reality of sober "statesmen and merchants" and outlines the architectonics of a new normative conception of international law. Its goal is thus to increase legalization at the world level.

International law is undoubtedly a variable. Consequently, like all social achievements, it is subject to changes over time, trying to accommodate the new challenges. Insight into the ways in which international law might adapt to the transformation of war due to new technologies as well as sociopolitical change can probably be gained by reviewing the interrelationships between the transformation of war and the transformation of international law since the Peace of Westphalia.

In the past, technological development has changed international law to the same extent as economic, social and military strategic changes. At the same time, in a kind of inversion, international law has repeatedly influenced the further development of technologies, social structures and international economic integration. economic interdependence. The prevailing ideas about who may wage war against whom and for what purposes, under what circumstances, and by what means have always reflected the culture, structure, and warring institutions of the society in question.

For example, in World War I, the advent of submarine warfare inevitably changed the international legal convention of warfare for naval warfare. The submarines could not simply

surface and pick up shipwrecked enemy marines, as had previously been enshrined in the wartime convention, because doing so would have put them at too much risk, both because they were only lightly armed on deck and could be rammed relatively easily, and because there would not have been enough room aboard the submarines for the shipwrecked naval personnel of enemy warships.

This example shows that the reappraisal of technological, economic and socio-political caesuras and their effects on the transformation of both war and war as well as international law would be desirable, especially today, in order to understand the interplay between international law and warfare after the unique global political unique attacks of September 11 or the new kind of warfare we see these days in the Ukraine war. Even though technical innovations that have a bearing on defense technology, such as nanotechnology, biotechnology, information technology, telecommunications and microelectronics, or emerging cyberterrorism, will continue to play a major role for the military in the future, it will not be exclusively the weapons systems, especially the heavy artillery, missiles and aircraft, that will assume decisive importance. These are nowhere near accurate enough to greatly intimidate an enemy that is highly dispersed or indistinguishable from the civilian environment or mixed with friendly forces. War is therefore likely to occur less and less in the open field.

It is therefore important, both for the survival of today's Western form of government and life and for economic and sociopolitical achievements and their legal protection worldwide, to understand the significance of technological and sociopolitical change on warfare as well as on international law. Analogies in the history of ideas of the interplay of the transformation of war and international law might help us to sharpen our senses, to think of alternatives, and to extrapolate into the future.

*Ulrich Arnswald*