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## Fourth- and Fifth-Generation Warfare: Technology and Perceptions

Waseem Ahmad Qureshi

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# Fourth- and Fifth-Generation Warfare: Technology and Perceptions

DR. WASEEM AHMAD QURESHI\*

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## ABSTRACT

*The composition of warfare is changing. There is an increasing transformation in the traditional aspects of waging a war: conventional techniques of warfare are in decline and newer tactics and tools of warfare, such as information warfare, asymmetric warfare, media propaganda, and hybrid warfare, are filling the gap, blurring the lines between combatant and noncombatant, and between wartime and peacetime. The basic framework of modern warfare was elaborated by Carl von Clausewitz in his magnum opus On War. He defined modern warfare between states as*

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*“a duel on larger scale,” and explained its purpose as “a continuation of politics by other means,” with its core elements of “rationality of the state, probability in military command, and rage of the population.” Building on Clausewitz’s work, William S. Lind distinguished between four generations of warfare since the Peace of Westphalia in 1648, each generation having its own way of fighting war. This Article intends to explore Lind’s fourth-generation warfare and Daniel H. Abbott’s fifth-generation warfare. It provides different interpretations of fourth-generation warfare (4GW) by several scholars. First, it explains that 4GW is asymmetric warfare fought by nonstate actors and by nonstate cultural groups, where asymmetric warfare and shadow wars are waged by nonstate actors and mercenaries for the political interests of aggressive states. Then, it provides additional interpretations of 4GW, which is often understood as fighting on a moral level employing light infantry. By contrast, other scholars believe that 4GW is fought with the tools of information and technology using cyberspace. Afterwards, this Article explores how to fight 4GW and how it is being fought. The Article also investigates Abbott’s fifth-generation warfare, a war of perceptions, and explains how to fight 5GW and how it is being fought. Furthermore, this Article explains how technological progression is used as a tool of modern warfare.*

#### INTRODUCTION

The composition of warfare is changing. The traditional aspects of waging a war are evolving: conventional techniques of warfare are in decline, and newer tactics and tools of warfare, such as information warfare, asymmetric warfare, media propaganda warfare, and hybrid warfare, are filling the gap, consequently blurring the lines between combatant and noncombatant, and between wartime and peacetime.<sup>1</sup> The basic framework of modern warfare was elaborated by Carl von Clausewitz in his magnum opus *On War*.<sup>2</sup> He defined modern warfare between states as “a duel on larger scale,” and explained its purpose as “a continuation of politics by other means,” with core elements of “rationality of the state, probability in military command, and rage of the population.”<sup>3</sup> William S. Lind distinguished between four generations of warfare since the Peace of Westphalia in 1648, each generation representing a way of fighting war.<sup>4</sup> Daniel H. Abbott

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1. ALBERT A. NOFI, RECENT TRENDS IN THINKING ABOUT WARFARE, 87 (2006).

2. See Shane Deichman, *Battling for Perception: Into the 5<sup>th</sup> Generation?*, in THE HANDBOOK OF 5GW 11, 12 (Daniel H. Abbott ed., 2010) (stating that the foundational theories of modern war are described by Carl von Clausewitz’s).

3. *Id.*

4. William S. Lind, *Understanding Fourth Generation Warfare*, MIL. REV. 12, 12–13 (2004).

continued this by propounding fifth-generation warfare as a battle of perceptions.<sup>5</sup>

First-generation warfare, which was fought between 1648 and 1860, introduced the monopoly of a state to wage war.<sup>6</sup> Before that, tribes and businesses could also wage war.<sup>7</sup> First-generation warfare marked the culture of order, with identifiable rules of ranks and military uniforms to counter the increasing disorderliness in the battlefields.<sup>8</sup> This generation of warfare was mainly dominated by mass manpower.<sup>9</sup>

The second generation of warfare was introduced by the French army and it ended with World War I.<sup>10</sup> This generation introduced artillery, airplanes, and heavy gunfire, while preserving the culture of order established during the first generation.<sup>11</sup> Second-generation warfare soldiers were relieved of hand-to-hand combat and obedience guided by rules took precedence over self-initiatives.<sup>12</sup> This generation of warfare was mainly dominated by firepower.<sup>13</sup>

The third generation, maneuver warfare, was a German product and it was used during World War II.<sup>14</sup> This generation of warfare introduced the tactical warfare of surprise, applying the motto “bypassing and undermining” the enemy.<sup>15</sup> In this generation, initiative was preferred to obedience guided by self-discipline.<sup>16</sup> This generation of warfare was mainly dominated by maneuver tactics of warfare.<sup>17</sup>

Fourth-generation warfare (4GW)—which rose to prominence over the last five to six decades—brought the most radical change since the Peace of Westphalia by introducing nonstate actors in warfare and by denying the state a monopoly.<sup>18</sup>

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5. Deichman, *supra* note 2, at 13.

6. Lind, *supra* note 4, at 12.

7. *Id.*

8. *Id.*

9. NOFI, *supra* note 1, at 8.

10. *Id.*

11. NOFI, *supra* note 1, at 9.

12. Lind, *supra* note 4, at 12.

13. NOFI, *supra* note 1, at 8.

14. *Id.*

15. Lind, *supra* note 4, at 13.

16. *Id.*

17. NOFI, *supra* note 1, at 8–9.

18. Lind, *supra* note 4, at 13.

Fifth-generation warfare (5GW) is the battle of perceptions and information.<sup>19</sup> 5GW is also a cultural and moral war, which distorts the perception of the masses to give a manipulated view of the world and politics.<sup>20</sup>

To elaborate on these points, this Article is divided into three sections. Part I explains 4GW. Part I is further divided into five subsections, providing different tools to interpret 4GW. Section A explains that 4GW is asymmetric warfare that involves nonstate actors and culture. Section B builds on asymmetric warfare and shadow wars waged by nonstate actors and mercenaries. Section C argues that 4GW is also fought on a moral level, often using light infantry, whereas Section D establishes that 4GW is fought with the tools of information and technology using cyberspace. Section E explains how to fight in 4GW and how it is being fought. Part 2 explains how technological progress is used as a tool of modern warfare, and Part 3 explores 5GW, explaining how 5GW is a war of perspectives. Section A explains how to fight in 5GW, and how it is currently being fought.

### I. FOURTH-GENERATION WARFARE (4GW)

In the last five to six decades, 4GW has brought “the most radical change [to war] since the Peace of Westphalia” by introducing nonstate actors and by denying the state a monopoly in the game.<sup>21</sup> It has involved very powerful nonstate groups including political parties, criminal cartels terrorists groups such as Al-Qaeda and ISIS, and revolutionary forces with a political fight between cultures and religions.<sup>22</sup> Though for Lind, 4GW is limited to the predominance of nonstate actors and asymmetric warfare tactics,<sup>23</sup> Nofi<sup>24</sup> and Hammes<sup>25</sup> include political, economic, and social strategies of war as a part of 4GW.<sup>26</sup>

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19. Deichman, *supra* note 2, at 11.

20. See Andreas Turunen, *Alternative Media Ecosystem as a Fifth-Generation Warfare Supra-Combination*, in *CYBER SECURITY: POWER AND TECHNOLOGY* 99, 99 (SPRINGER, 2018); see also Deichman, *supra* note 2, at 11.

21. Lind, *supra* note 4, at 13.

22. *Id.*

23. *Id.*

24. NOFI, *supra* note 1, at 8.

25. See Thomas X. Hammes, *4GW: Our Enemies Play to Their Strengths*, *ARMED FORCES J.*, 40, 40–41 (2004); see also, THOMAS X. HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, 2, 208 (2004).

26. NOFI, *supra* note 1, at 8–9.

A. *Asymmetric Fight Involving Nonstate Actors and Cultures*

Fourth-generation warfare is mainly dominated by the asymmetric tactic of using nonstate actors.<sup>27</sup> This generation ended the state monopoly of the use of force and included cultures, tribes, sects, and mercenaries into warfare, going back to pre-Westphalian era warfare.<sup>28</sup> In 4GW, there is no distinction between wartime and peacetime, because nonstate actors use force both during war and in peacetime through asymmetric strategies, using mainly unlawful force and blurring the lines for the lawful use of force by taking refuge behind human shields and by blaming collateral damages on the state.<sup>29</sup> This practice also merges combatants with noncombatants and vice-versa; asymmetric warfare strategies are this generation's default mode,<sup>30</sup> and 4GW lasts a long time.<sup>31</sup> Lind correctly believes that currently there exists no military solution to 4GW<sup>32</sup>; as Michael Howard found, modern warfare strategy is not purely a military undertaking but instead consists of political, social, economic, cultural, and psychological elements and actions.<sup>33</sup>

Protagonists of 4GW have outlined some of the major changes in how to fight war, but they have conveniently overstated some of its characteristics, hindering our basic understanding of what is really occurring on the fourth-generation battlefield.<sup>34</sup> For instance, while Lind believes that fourth-generation nonstate actors are mostly Islamic—targeting American people and the American government<sup>35</sup>—he misses the point that Islamic radicalism and nonstate Islamic radical military organizations, such as Al-Qaeda and Taliban, were introduced by the U.S. in efforts to defeat the USSR in Afghanistan.<sup>36</sup>

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27. See NOFI, *supra* note 1, at 2, 11.

28. For an understanding of how the nation-state is in decline, see generally Martin van Creveld, *THE RISE AND DECLINE OF THE STATE* (Cambridge University Press, 1999).

29. See generally Harold A. Gould & Franklin C. Spinney, *Fourth Generation Warfare is Here!*, *SMALL WARS J.* (Oct. 15, 2001), <https://smallwarsjournal.com/documents/4gw.htm> [<https://perma.cc/HFL3-T98X>].

30. *Id.*

31. HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, *supra* note 25, at 2; see also NOFI, *supra* note 1, at 11.

32. See also NOFI, *supra* note 1, at 22, 35.

33. See generally Michael E. Howard, *The Forgotten Dimensions of Strategy*, 57 *FOREIGN AFF.* 974, 975–86 (1979) (discussing the importance of social cohesion in modern warfare strategy by highlighting the dependence on technology and its societal implications).

34. NOFI, *supra* note 1, at 61.

35. Lind, *supra* note 4, at 14.

36. See generally STEVE COLL, *GHOST WARS: THE SECRET HISTORY OF THE CIA, AFGHANISTAN, AND BIN LADEN, FROM THE SOVIET INVASION TO SEPTEMBER 10, 2001* 16–

Likewise, the U.S. supported the rebels against Qaddafi in Libya,<sup>37</sup> the U.S. supported nonstate actors in Nicaragua,<sup>38</sup> and the U.S. continues to support and employ nonstate actors, rebels, and mercenaries against the disciplined forces of the Syrian government and the Assad regime.<sup>39</sup> The U.S. also currently fuels rebel forces in states like Venezuela<sup>40</sup> to appease American political efforts through this very fourth-generation tactic of warfare. While proponents of 4GW focus on the threat posed by nonstate actors' insurgencies and rebellions against the U.S., they conveniently choose a small sample set that suits their narrative,<sup>41</sup> and they disregard the fact that the U.S. has always supported nonstate actor insurgencies and rebellions all over the world to encourage regime change and to serve political interests<sup>42</sup>—resulting in civil and long-term wars, in destabilizing regions, and in disturbing the peace and security of the world.

In fact, 4GW mainly evolved as a proxy war to circumvent the legal prohibition on the use of force by Article 2(4) of the UN Charter.<sup>43</sup> By employing nonstate actors, states wage political and military warfare against a host state without being identified as the perpetrator.<sup>44</sup> In 4GW, during civil wars in a host state, aggressive states provide nonstate actors in the host state with arms, artillery, and political support.<sup>45</sup> This Article argues that mercenaries and rebel groups are also part of 4GW, as they are routinely employed by aggressive states and are provided with all sorts of political and arms support in the battlefield. Mercenaries and rebel groups are also

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17 (Penguin Books 2004); *see also* FERRUKH MIR, *HALF TRUTH: PEACE IN AFGHANISTAN IS KEY TO GLOBAL PEACE* 402 (iUniverse, 2011).

37. Micah Zenko, *The Big Lie About the Libyan War*, FOREIGN POL'Y (Mar. 22, 2016), <https://foreignpolicy.com/2016/03/22/libya-and-the-myth-of-humanitarian-intervention/>, [https://perma.cc/DN3X-3XPH].

38. *See generally* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 392 (June 27).

39. Angela Dewan, *US Envoy Nikki Haley Says Syria Regime Change Is Inevitable*, CNN (Apr. 10, 2017), <https://www.cnn.com/2017/04/09/middleeast/syria-missile-strike-chemical-attack-aftermath/index.html> [https://perma.cc/WUY8-CG8G]; *see also* Syria's Civil War Explained from the Beginning, ALJAZEERA (Apr. 14, 2018), <https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html> [https://perma.cc/QPK7-G2RC].

40. PRESSTV, *US Sponsoring Regime Change in Venezuela: Analyst* (Mar. 12, 2019), <https://www.presstv.com/Detail/2019/03/12/590877/US-Venezuela-Preston-Interview-Regime-Change> [https://perma.cc/D3FC-R54Z].

41. *See* NOFI, *supra* note 1, at 61.

42. *See generally* COLL, *supra* note 36; *see also* Mir *supra* note 36; Zenko, *supra* note 37; Nicar. v. U.S., Judgment, 1986 I.C.J. Rep. 14, ¶ 392; Dewan, *supra* note 39.

43. AMY E. ECKERT, *OUTSOURCING WAR: THE JUST WAR TRADITION IN THE AGE OF MILITARY PRIVATIZATION* 50–51 (Cornell Univ. Press, 2015).

44. Csér Orsolya, *Asymmetric Warfare - The Siege of Fallujah*, U. OF DEFENCE IN BRNO ECON. & MGMT. J. 60, 61 (2015).

45. Dewan, *supra* note 39; *see also* Syria's Civil War Explained from the Beginning, *supra* note 39.

routinely employed away from the battlefield during peacetime, in populated cities among civilians, to serve political interests such as regime changes, to start a civil or international war, to initiate an intervention in a host state, to destabilize a region, to fight an enemy government, and to serve the political, monetary, and strategic interests of aggressive states.

### *B. Mercenaries and Shadow Wars*

Countries employ asymmetric and irregular conflict structures by employing nonstate actors and mercenaries<sup>46</sup> to participate in conflicts that circumvent the responsibility of war, the laws of wars, and international humanitarian laws.<sup>47</sup> For instance, a party to a conflict employing nonstate actors does not have to assess the necessary use of force, and that party can exploit the situation by using as much force as desired.<sup>48</sup> Asymmetric warfare is defined “as something done to military forces to undermine their conventional military strength.”<sup>49</sup> In practical terms, aggressive states use mercenaries to fight a target’s military forces.<sup>50</sup> The U.S. War College Library has produced a well-researched bibliography on the subject of irregular warfare by asymmetric means.<sup>51</sup> Asymmetric warfare furthers the political objectives of an aggressor to force its will on the target using unconventional means (including, but not limited to, the use of weapons of mass destruction, partisan raids, the use of non-traditional and inexpensive material, and suicide attacks).<sup>52</sup> While the use of private armies and mercenaries is nothing new, their use as a proxy (instead of the aggressive state being a party to the war) provides an example of irregular and asymmetric warfare; so does the use of cyberwarfare.<sup>53</sup> Superpowers undertaking warfare with proxies (i.e. by

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46. ECKERT, *supra* note 43, at 58.

47. Robin Geiß, *Asymmetric Conflict Structures*, 88(864) INT’L REV. OF THE RED CROSS 757–59 (2006).

48. *Id.*

49. M. R. Sudhir, *Asymmetric War: A Conceptual Understanding*, CLAWS J. 58 (2008).

50. *See id.*

51. *See generally* U.S. ARMY WAR COLLEGE LIBRARY, *IRREGULAR WARFARE: A SELECTED BIBLIOGRAPHY* (2009).

52. Orsolya, *supra* note 44, at 60–61.

53. See Andrew Mumford, *Proxy Warfare and the Future of Conflict*, 158 THE RUSI J., 40, 4–45 (2013), for an explanation of asymmetric warfare, *id.*, and a definition of “cyberwarfare” as an arms-length mode of proxy war-fighting that emerged from society’s contemporary reliance on computer networks, its difficulties of tracing the origin on the attacks, a high degree of anonymity, attractive low costs, and the possibility of creating



employing nonstate actors) serve their geopolitical and geostrategic interests, which can also give rise to cyberwarfare<sup>54</sup> and hybrid warfare.<sup>55</sup> Similarly, jihadists and terrorist organizations further their cause through propaganda in cyberspace.<sup>56</sup> Propaganda has long been a tool of rebellion and of insurgent warfare.<sup>57</sup> Insurgency and guerilla warfare in Iraq, such as the siege of Fallujah, is a prime example of propaganda and asymmetric warfare in action.<sup>58</sup> Asymmetric warfare is an euphemism encompassing aggressors using nonstate actors to target vulnerable states, which produce disproportionate effects while avoiding direct engagement.<sup>59</sup> Overall, the use of mercenaries, nonstate actors, private military actors, criminal cartels, terrorist groups, organized groups, and outsourced modern warfare is growing, challenging the fundamental values of the world order.<sup>60</sup>

The U.S. employs mercenaries to fight its wars, because renting an army is cheaper than owning one.<sup>61</sup> Fifty percent of U.S. armed forces in Iraq and seventy percent of U.S. armed forces in Afghanistan were or are contracted.<sup>62</sup> These mercenaries are tasked with “raising armies and engaging in combat.”<sup>63</sup> Employing mercenaries now support multimillion-dollar corporations.<sup>64</sup> For instance, Erik Prince, founder of the corporation Blackwater (now merged

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infrastructural damage to a foreign country of a kind that surrogate armies cannot achieve, *id.* at 43.

54. *Id.* at 45.

55. See generally FRANK G. HOFFMAN, *CONFLICT IN THE TWENTY-FIRST CENTURY: THE RISE OF HYBRID WARS* (2007); see also Mumford, *supra* note 53.

56. Charlie Winter & Haid Haid, *Jihadist Propaganda, Offline: Strategic Communications in Modern Warfare*, MIDDLE E. INST. POL’Y PAPER 1 (June 2018); see also Reuven Firestone, “Jihadism” as a New Religious Movement, in *THE CAMBRIDGE COMPANION TO THE NEW RELIGIOUS MOVEMENTS* 263 (Olav Hammer & Mikael Rothstein eds., 2012) (defining “jihadism” as a term that has been constructed in Western languages to describe militant Islamic movements rooted in political Islam and perceived as existentially threatening to the West).

57. Winter & Haid, *supra* note 56.

58. See Orsolya, *supra* note 44, at 60–61.

59. Ajey Lele, *Asymmetric Warfare: A State vs Non-State Conflict*, OASIS, 20, 98 (2014).

60. Winston P. Nagan & Craig Hammer, *The Rise of Outsourcing in Modern Warfare: Sovereign Power, Private Military Actors, and the Constitutive Process*, 60(2) *ME. L. REV.* 281, 429 (2008).

61. SEAN MCFATE, *THE NEW RULES OF WAR: VICTORY IN THE AGE OF DURABLE DISORDER* 125 (HarperCollins Publishers, 2019).

62. *Id.* at 128.

63. See *id.*

64. SEAN MCFATE, *THE MODERN MERCENARY: PRIVATE ARMIES AND WHAT THEY MEAN FOR WORLD ORDER* 80–81 (Oxford Univ. Press, 2014); see also Brian Wang, *US spent \$250 billion on contractors from 2007-2017 and may [sic] adopt Blackwater 2.0 plan*, NEXTBIGFUTURE (Jul. 17, 2017), <https://www.nextbigfuture.com/2017/07/us-spent-250-billion-on-contractors-from-2007-2017-andmay-adopt-blackwater-2-0-plan.html> [<https://perma.cc/Z746-ZQCC>].

into Constellis Holdings), encouraged the U.S. to replace all American troops in Afghanistan with mercenaries and suggested the U.S. do that for all its future wars.<sup>65</sup> Sean McFate expects that eighty to ninety percent of combatants in future U.S. wars will be mercenary combatants.<sup>66</sup> Exploited mineral resources of host states (such as the oil reserves of Iraq) pay the wages for these mercenaries.<sup>67</sup> However, 1.8 to 4.5 times more mercenaries die in combat than do their military counterparts,<sup>68</sup> and the lack of proper training, equipment, resources, and political backing could explain these differences in casualties. About twenty-five percent of American-employed mercenaries met criteria for PTSD, forty-seven percent met criteria for alcohol misuse, and eighteen percent met criteria for depression.<sup>69</sup> The data on the total casualties of mercenaries is not always kept current by employers, and companies tend to underreport these figures.<sup>70</sup> Keeping a contractual army is about 10 percent to 50 percent cheaper than keeping a traditional army, depending on the situation.<sup>71</sup> Moreover, keeping a mercenary army is free after the contract has ended, or before a contract starts, which is much cheaper than keeping an official army.<sup>72</sup> The U.S. Department of Defense spent about 250 billion dollars on mercenary contracts from 2007 to 2017.<sup>73</sup> For instance, the U.S. employs private military contractors, “including Blackwater, Triple Canopy, and DynCorp.”<sup>74</sup> Around the world mercenaries and private contractors are currently employed in the wars in Syria,<sup>75</sup> Yemen, Nigeria, Libya, and Ukraine.<sup>76</sup> These war-profiteering contractors do not fight with conventional means of wars, and they can

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65. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 129.

66. *Id.*

67. *Id.* at 156–57.

68. *Id.* at 130.

69. *Id.*

70. To learn about how mercenaries operating in Iraq lacked basic facilities such as medical care, see PAUL AMAR, *GLOBAL SOUTH TO THE RESCUE: EMERGING HUMANITARIAN SUPERPOWERS AND GLOBALIZING RESCUE INDUSTRIES*, 46 (Routledge, 2014); *see also* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 130.

71. *See* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 131.

72. *Id.*

73. Wang, *supra* note 64.

74. *See* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 131.

75. *See generally* TONY CARTALUCCI & NILE BOWIE, *SUBVERTING SYRIA: HOW CIA CONTRA GANGS AND NGOs MANUFACTURE, MISLABEL AND MARKET MASS MURDER* (Progressive Press, 2012).

76. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 133.

easily outgun and outpace the opposition's militaries.<sup>77</sup> Terrorists also hire mercenaries, as groups like Malhama Tactical only work for jihadi extremists.<sup>78</sup>

Similarly to the U.S., Arab countries, Russia, NGOs,<sup>79</sup> and multinational companies also employ paid mercenaries and private security contractors.<sup>80</sup> For example, the United Arab Emirates used contracted mercenaries in Yemen against the Houthi rebels.<sup>81</sup> Likewise, Aegis Defense Services and Triple Canopy advertised their services to NGOs, and the European Interagency Security Forum and InterAction provide guidelines to their member organizations about how to hire paid guns.<sup>82</sup> Comparably, mineral and oil extraction companies like Freeport-McMoRan hired Triple Canopy for protection in Indonesia; and China National Petroleum Corporation hired DeWe Security to protect its assets in South Sudan.<sup>83</sup>

Weak governments with high mineral resources are prime targets for mercenary takeovers, this is the case of Venezuela, Liberia, and Congo for instance.<sup>84</sup> Mercenaries are capable of taking over a state by hijacking separatist movements, staging coups d'état, declaring themselves presidents—like the Houthis did in Yemen.<sup>85</sup> Mercenaries fuel rebellions and acquire mineral resources like oil and gas, which they later sell on the black market through shell companies to generate income and profit.<sup>86</sup> Additionally, the deep state—the intelligence, judiciary, and military establishment—has

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77. MCFATE, *THE MODERN MERCENARY*, *supra* note 64, at 166; *see also* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 132–33.

78. *See* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 135.

79. *Id.* at 136.

80. *Id.*

81. Zvi Bar'el, *Yemen's War Is a Mercenary Heaven. Are Israelis Reaping the Profits?: The Privatization of the War in Yemen Has Entered a New Stage*, HAARETZ (Feb. 17, 2019), <https://www.haaretz.com/premium-yemen-s-war-is-a-mercenary-heaven-are-israelis-reaping-the-profits-1.6938348> [<https://perma.cc/SV7D-YAK5>]; *see also* ERITREA, *UAE Deploys Mercenaries in Yemen*, THE ECONOMIST (Nov. 30, 2015), <http://country.eiu.com/article.aspx?articleid=733721457&Country=Eritrea&topic=Politics&subtopic=Forecast&subsubtopic=International+relations> [<https://perma.cc/7KG9-97UR>]; Tom Stevenson, *Saudi's Coalition in Yemen: Militias and Mercenaries Backed by Western Firepower*, MIDDLE EAST EYE (Mar. 28, 2019), <https://www.middleeasteye.net/news/saudis-coalition-yemen-militias-and-mercenaries-backed-western-firepower> [<https://perma.cc/4ZW9-TTZ4>].

82. *See* MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 131.

83. *See id.*

84. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 156–57.

85. *Bearing the Brunt of War in Yemen: International Law Violations and their Impact on the Civilian Population*, INTERNATIONAL COMMISSION OF JURISTS 3 (July 2018), <http://www.icj.org/wp-content/uploads/2018/09/Yemen-War-impact-on-populations-Advocacy-Analysis-Brief-2018-ENG.pdf> [<https://perma.cc/8EZE-JGNU>]; *see also* MCFATE, *supra* note 61, at 156–57.

86. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 136.

gone rogue and works against the interests of its own state.<sup>87</sup> In doing so, mercenaries are empowered to fashion coups and rebellions in a host state.<sup>88</sup>

International law prohibits states from using force to fuel rebellions, insurgencies, or to otherwise push nonstate actors into conflict.<sup>89</sup> The landmark *Nicaragua* case held that aggression and use of force include supplying arms and financial support to insurgents and rebels working against the state.<sup>90</sup> Interpreting *Nicaragua*, this Article argues that an aggressor state can be held accountable for the unlawful use of force and intervention in the host state if it can be established that the nonstate actors are under the direct control of the aggressor.<sup>91</sup> Therefore, in the mercenary world of hired guns, the rule is to leave no fingerprints (i.e. to ensure that nothing connects the events to the state-aggressor).<sup>92</sup> Aggressive states circumvent the prohibition on using force by employing hired guns to do the “dirty work” and to leave no fingerprints. Consequently, the aggressor avoids liability by avoiding direct engagement,<sup>93</sup> thus circumventing international law prohibiting using force.<sup>94</sup> Proponents of the use of nonstate actors as mercenaries in conflicts argue that legality is irrelevant because international policing and judicial system are virtually nonexistent.<sup>95</sup>

The biggest issue with circumvention is that nonstate actors and mercenaries are indistinguishable from terrorists. Terrorists use force against the state to create terror for political purposes.<sup>96</sup> Likewise, mercenaries use force against the state and against its people for the political interests of the aggressors, often to gain financial or political power.<sup>97</sup> Both uses of force create chaos and compromise the peace and security of the region.<sup>98</sup> Furthermore, a successful coup to change the regime often creates a political vacuum, which leaves an opportunity to be filled by terrorists.<sup>99</sup> Therefore,

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87. *See id.*

88. *Id.* at 156–57.

89. *Id.*

90. *Nicar. v. U.S.*, 1986 I.C.J. 14, ¶ 139.

91. *Id.*

92. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 115.

93. Lele, *supra* note 59, at 98.

94. Geiß, *supra* note 47.

95. MCFATE, *THE NEW RULES OF WAR*, *supra* note 61, at 139.

96. *See, e.g.*, Winter & Haid, *supra* note 56, at 2–3.

97. *See id.*

98. *See id.*

99. Jonathan Marcus, *Yemen Crises: Power Vacuum Puts Future into Peril*, BBC (Jan. 28, 2015), <https://www.bbc.com/news/world-middle-east-31002679> [<https://perma.cc/9UBR-SMBL>]; Alex Kane, *Terrorism Inevitably Fills Northern Ireland's Power Vacuum*,

arming and supporting mercenaries in a host state can increase and support terrorism in the host state. In fact, most arms sent by aggressors to the hired guns on the battlefield end up in the hands of terrorist organizations.<sup>100</sup> But it seems as if the aggressor does not care, as long as these techniques serve its political or financial interests. Under the international law of force, a host state is prohibited from arming and supporting rebels, insurgents, and mercenaries in aggression or force against another state.<sup>101</sup> Yet, powerful and aggressive states continue to disregard international law by using this tactic and by admitting to doing so.<sup>102</sup> This is evidenced in several Middle Eastern countries where rebels, insurgents, and mercenaries are routinely supported by aggressive states—exploiting the natural resources of weak governments and indirectly benefitting war-profiteering businesses.<sup>103</sup>

### *C. A Battle on Moral Level and Light Infantry*

The revolution in 4GW is an evolution of moral, social, and political spheres; it is a crisis of state legitimacy.<sup>104</sup> Nonstate combatants feel they owe more allegiance to their ideological, religious, and tribal affinities than they do to their state.<sup>105</sup> Lind explains that people who were not willing to fight for their state are now fighting for religious beliefs, and tribal bravery.<sup>106</sup> Lind's generalization of the guerilla war in Iraq misses a well-known point—most of the nonstate actors in the Middle East are fighting to defend their sovereignty against unlawful Western interventions and they are often fighting for the survival of their people and families.<sup>107</sup> For many scholars, 4GW is a war at the moral, physical, and mental levels.<sup>108</sup>

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THE IRISH TIMES (July 16, 2018, 5:39 PM), <https://www.irishtimes.com/opinion/terrorism-inevitably-fills-northern-ireland-s-power-vacuum-1.3565748> [<https://perma.cc/WRP7-D4H7>]; Nada Bakos, *Terrorist Group Fills Power Vacuum Among Syria Rebels*, CNN (Jan. 10, 2013, 10:44 AM), <https://www.cnn.com/2013/01/09/opinion/bakos-syria-al-qaeda/index.html> [<https://perma.cc/6SJ5-4USA>]; Vladimir Putin, *Middle East Power Vacuum Filled by Terrorists*, CNBC (Sept. 28, 2015, 11:50 AM), <https://www.cnbc.com/video/2015/09/28/middle-east-power-vacuum-filled-by-terrorists-putin.html> [<https://perma.cc/L66Y-U9S8>].

100. Brian Castner, *Exclusive: Tracing Isis' Weapons Supply Chain Back to the US*, WIRED (Dec. 12, 2017, 6:00 AM), <https://www.wired.com/story/terror-industrial-complex-isis-munitions-supply-chain/?verso=true> [<https://perma.cc/ECZ2-5RKZ>].

101. *Nicar. v. U.S.*, Judgment, 1986 I.C.J. Rep. 14, ¶¶ 14, 97, 101, 181.

102. Dewan, *supra* note 39.

103. *See, e.g., id.*

104. WILLIAM S. LIND & LT. COL. GREGORY A. THIELE, 4TH GENERATION WARFARE HANDBOOK 5 (Vox Day ed., 2015).

105. *Id.*

106. *Id.* at 5–6.

107. *See, e.g., Zenko, supra* note 37.

108. *See LIND & THIELE, supra* note 104, at 10–11.

Light infantry in Fourth-Generation Warfare operates at three levels: the strategic level, the tactical level, and the operational level.<sup>109</sup> At the strategic level, “. . . victories are accomplished through the superior use of all available networks to directly defeat the will of the enemy leaders.”<sup>110</sup> For example, the action of a single enlisted Marine may have a strategic effect.<sup>111</sup> At the tactical level, “[a] Fourth-Generation conflict will usually have many different independent power centers not only at the grand strategic level but down all the way to the tactical level. The game of connection and isolation will be central to tactics and operational art as well as to strategy and grand strategy. It [is] . . . important to ensure that [what happens] at the tactical level does not alienate independent power centers . . . need[ed] to connect . . . at the operational or strategic levels.”<sup>112</sup> Similarly, it is crucial to “. . . not to isolate . . . from independent power centers [needed] to connect to tomorrow.”<sup>113</sup> Nevertheless, “what succeeds on the tactical level can easily be counter-productive at the operational and, especially, strategic levels.”<sup>114</sup> Finally, at the operational level, campaigns must structure tactical events toward that goal.<sup>115</sup> However, fourth-generation warfare can be difficult to operationalize because “. . . operational art is the art of focusing tactical actions on enemy strategic centers of gravity, operational art becomes difficult or even impossible in such situations.”<sup>116</sup>

Lind noted that the Afghan Mujahideen defeated the Soviets despite the Soviets having superior technology because the Mujahideen center of gravity was God and the Mujahideen had several independent power centers.<sup>117</sup> In such a situation, massive firepower used in de-escalation models ensures instant and easy victory, but inevitably results in a moral defeat.<sup>118</sup> As a result, the proponents of 4GW acknowledge that even a physical and mental victory

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109. See HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, *supra* note 25, at 207–08.

110. HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, *supra* note 25, at 208.

111. *DRAFT: FMFM-1A, Fourth Generation War, Imperial & Royal Austro-Hungarian Marine Corps* 9 (Aug. 2009).

112. *Id.* at 12.

113. *Id.*

114. *Id.* at 10.

115. HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, *supra* note 25, at 215.

116. *DRAFT: FMFM-1A*, *supra* note 111, at 11.

117. LIND & THIELE, *4TH GENERATION WARFARE HANDBOOK*, *supra* note 104, at 10–11.

118. *See id.* at 51–52.

in this warfare still constitutes a moral defeat,<sup>119</sup> and moral defeat is more decisive than physical defeat,<sup>120</sup> thus, such warfare (4GW) is morally wrong. For instance, heavy firepower enables aggressors to physically defeat a host state, but collateral damage to the civilians in populated areas constitutes a moral defeat.<sup>121</sup> 4GW proponents mainly refer to the use of force by the U.S. and by Israel against Muslims in weaker states, such as in Palestine.<sup>122</sup> Despair is a common trait among 4GW proponents about the moral defeat: they admit to losing this morality argument,<sup>123</sup> but still intend to continue 4GW. For instance, Martin V. Crevelde expressed that the moral victory is unmanageable for the aggressors via conventional means—referring directly to the conflict between Palestine and Israel, he noted that

[t]he problem is that you cannot prove yourself against someone who is much weaker than yourself, they are in a lose-lose situation. If you are strong and fighting the weak, then if you kill your opponent then you are a scoundrel. . . if you let him kill you, then you are an idiot. So here is a dilemma which others have suffered before us, and for which as far as I can see there is simply no escape.<sup>124</sup>

Crevelde expressed that he is inclined to winning this warfare—even if the moral justification makes it complicated—by ignoring the legality and ethics of war, and particularly by ignoring the illegal occupation.<sup>125</sup> Therefore, while the powerful aggressive states do possess the firepower and tactics to win a war, they lack the moral justifications to fight it.<sup>126</sup> This perception is mainly an ontological perspective of political aggressors, while entirely missing out on politics or the law of using force. Similarly, Lind gives the example of U.S. dominance and of the conquest of Iraq: while the U.S. scored a technical victory by using firepower and by showing its military superiority with advanced technology, the U.S. aggression against innocent civilians, the humanitarian violations resulting as collateral damages, and the U.S. torture in Abu Gharib prison illustrate a moral defeat, outweighed by honor, pride, and the civilian population’s right to self-defense.<sup>127</sup> Lind recommends that the U.S. capture terrorists, rather than kill them, to appear morally right.<sup>128</sup> He also urges the U.S. to move operating bases inside

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119. *See id.* at 11.

120. *See* NOFI, *supra* note 1, at 22.

121. *Id.*

122. *Id.*

123. *See* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at

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124. NOFI, *supra* note 1, at 23.

125. *Id.*

126. *Id.* at 11–12.

127. *See* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at

12.

128. *See id.* at 14–15.

villages—putting the lives of U.S. soldiers at a higher risk—to protect civilians and to acquire the moral support of the host population.<sup>129</sup> Lind also suggests that the U.S. should use less power and be less involved overall—it should operate by raids and punitive expeditions rather than by occupying an area or a state- while blending in with the local population, bribing local politicians and attacking people in shadows, thus adopting the Mafia model by leaving no fingerprints behind.<sup>130</sup> Moreover, light infantry missions<sup>131</sup> should be preferred to reduce collateral damages, thus allowing the infrastructure of civilian government to continue to work peacefully.<sup>132</sup> The U.S. still lacks the tactical repertoire and foot mobility of true light infantry.<sup>133</sup> Therefore, it should train its light infantry and focus on the areas of flexibility, free-play training, weapons proficiency, stealth and stalking, survival training, physical fitness, demolitions, land navigation, surveillance, medical training, and arms' support.<sup>134</sup> Lind also suggests that the U.S. use the local press to fight 4GW, and he recommends the use of both defensive and offensive press tactics.<sup>135</sup> As a defensive tactic, the U.S. should control the press by not airing any negative news and by striving to build a positive image.<sup>136</sup> As an offensive tactic, the U.S. should use openness to build the credibility of news channels, and use it for deception only when absolutely necessary, like a last silver bullet.<sup>137</sup>

On the other hand, Nofi criticizes 4GW and explains that the moral defeat of the U.S. and of the other aggressive states mainly results from the shortcomings of political leadership to define appropriate objectives and cogent, legal reasons for undertaking such warfare against any other state.<sup>138</sup> As a consequence, leaders fail to acquire mass population support for open-ended missions.<sup>139</sup> Thus, morally or legally prohibited warfare cannot

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129. *Id.*

130. *See id.* at 14–15, 44, 49.

131. *DRAFT: FMFM-2 Light Infantry, Imperial and Royal Austro-Hungarian Marine Corps* 6 (Sept. 2008).

132. *See* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at 47, 112.

133. *See id.* at 47.

134. *See generally* *DRAFT: FMFM-2 Light Infantry*, *supra* note 131; *see* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at 93–100.

135. *See* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at 59–60.

136. *See id.*

137. *See id.*

138. *See* NOFI, *supra* note 1, at 57.

139. *Id.*



achieve moral victory because the simple morality of war is not justified.<sup>140</sup> Nofi properly analyze that the powerful nonstate actors pose no imminent or tangible threat to the U.S.<sup>141</sup> In fact, it is quite the opposite: the U.S. has skillfully employed more nonconventional fourth-generation asymmetric<sup>142</sup> warfare, on most of the continents in the world, than any other country.<sup>143</sup>

#### *D. Information and Technology*

Growing globalization and technological developments have also backed more visible and dangerous platforms for nonstate actors, nonstate actors that in the near past were unmanageable.<sup>144</sup> Therefore, exploring the tactics employed by belligerent states in this 4GW to defend themselves against these aggressions is necessary. In describing global guerillas, John Robb explains how nonstate actors employ technology, globalization, vulnerability, and media ad networks as tools to fight 4GW.<sup>145</sup> Robb also argues that 4GW is a war that takes place in the moral sphere, with the intentions to destroy the moral bonds of a cohesion.<sup>146</sup>

Some scholars consider 4GW to be primarily based upon the technological advancement of information.<sup>147</sup> However, some criticize that view, and explain that information warfare, the use intelligence, counterintelligence, propaganda, and deception are not new.<sup>148</sup> These tools have been used as tools of aggressive warfare in the past, and continue to be used that way.<sup>149</sup>

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140. *See id.*

141. *See id.* at 23.

142. For examples on U.S. expenditure on mercenary contractors used in other states, see Wang, *supra* note 64.

143. *See generally* NOFI, *supra* note 1.

144. *Id.* at 3.

145. John Robb, *4GW*, GLOBAL GUERRILLAS (May 8, 2004), [https://globalguerillas.typepad.com/globalguerillas/2004/05/4gw\\_fourth\\_gene.html](https://globalguerillas.typepad.com/globalguerillas/2004/05/4gw_fourth_gene.html) [<https://perma.cc/2XZY-3NTQ>].

146. *Id.*

147. *See* NOFI, *supra* note 1, at 87.

148. Fred Fuller, *New Order Threat Analysis: A Literature Survey*, MARINE CORPS GAZETTE 46 (1997) (explaining that “[a]s with 4GW, the proponents of information-age warfare sometimes play fast and loose with historical evidence. The Tofflers, among the principle proponents of information-age warfare, have little credibility among historians and political scientists. A search of nearly a hundred journals in history, foreign affairs, and political science reveals virtually no references to either of these works, and only two reviews, which is hardly complimentary. Of War and Anti-War, one reviewer said, this book seems better in the generalities than in the specifics.”); *see also* NOFI, *supra* note 1, at 62.

149. *See generally* JAMES F. DUNNIGAN & ALBERT A. NOFI, VICTORY AND DECEIT: DECEPTION AND TRICKERY AT WAR (Author’s Choice, 2001); MICHAEL I. HANDEL, MASTERS OF WAR: CLASSICAL STRATEGIC THOUGHT (Frank Cass, 2001); CLIO GOES SPYING: EIGHT ESSAYS ON THE HISTORY OF INTELLIGENCE (Wilhelm Agrell & Bo Huldt eds., Univ. Lund, 1983); GUY HARTCUP, CAMOUFLAGE: A HISTORY OF CONCEALMENT AND DECEPTION IN WAR (David & Charles, 1979); FRANK SANTI RUSSELL, INFORMATION GATHERING IN CLASSICAL GREECE (Univ. Mich. Press 1999); ROSE MARY SHELDON, INTELLIGENCE ACTIVITIES IN

For instance, Nofi explains that Hitler, Napoleon, Alexander, and Caesar all manipulated public perceptions and information, and they worked to convince the opinion that they only served the good of the people and of the world while unleashing devastation and destruction on massive scales at the same time.<sup>150</sup> While other authors consider wars of perception to be 5GW, due to increased technology of cyberspace, media and social media presence, and due to the noticeability of these tactics of deception and propaganda,<sup>151</sup> Nofi argues that the only change is the advancement of technology: deceptive and manipulative tactics of perception remain the same.<sup>152</sup> For instance, Caesar and Alexander exploited public relations messages, Napoleon manipulated mass media prints, and Hitler influenced radio broadcasts.<sup>153</sup> Current technological advancements (easier access to media blogs and Internet) make propaganda and the manipulation of facts more easily accessible while also expanding the consequence of information warfare operations by rendering massive damaging effects.<sup>154</sup>

It is thus essential to know the enemy and yourself to face all challenges and engagements. On information warfare, Sun Tzu states “it is said that one who knows the enemy and knows himself will not be endangered in a hundred engagements. One who does not know the enemy but knows himself will sometimes be victorious, sometimes meet with defeat. One who knows neither the enemy nor himself will invariably be defeated.”<sup>155</sup> Therefore, a race for information dominance among the superpowers of the world takes place, with an incentive to act faster, smarter, and better.<sup>156</sup> To

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ANCIENT ROME: TRUST IN THE GODS, BUT VERIFY (Frank Cass, 2005); *see also* NOFI, *supra* note 1, at 62.

150. 2 MIRIAM LICHTHEIM, *ANCIENT EGYPTIAN LITERATURE: THE NEW KINGDOM*, 60–72 (Univ. Cal. Press 1976) (2006); *NAPOLÉON ON NAPOLÉON: AN AUTOBIOGRAPHY OF THE EMPEROR* (Somerset de Chair ed., 1992); *see also* NOFI, *supra* note 1, at 63.

151. Deichman, *supra* note 2, at 12.

152. NOFI, *supra* note 1, at 63.

153. *See id.*

154. *See id.* at 64.

155. *See* RALPH D. SAWYER, *THE SEVEN MILITARY CLASSICS OF ANCIENT CHINA*, 162 (WESTVIEW PRESS, 1993) (discussing Sun Tzu’s *Art of War*); *see also* DAVID S. ALBERTS ET AL., *UNDERSTANDING INFORMATION AGE WARFARE*, 35 (Command and Control Research Program, Publ’n Series, 2001) (quoting Sun Tzu “Know the enemy and know yourself; in a hundred battles you will never know peril. When you are ignorant of the enemy but know yourself, your chances of winning or losing are equal. If ignorant of both your enemy and yourself, you are certain in every battle to be in peril.”); *see* Nofi, *supra* note 1, at 64.

156. *See* NOFI, *supra* note 1, at 64–65.

that end, the major tools of data collection include mass surveillance, tapping phones, social media counts, and bugging smartphones.<sup>157</sup>

### *E. Fighting 4GW*

From an American perspective and from 4GW proponents' perspective, there is no escape from Islamist terrorists and nonstate actors who want to dominate the world through restoring the Caliphate and forcibly converting all non-Muslims to Islam.<sup>158</sup> There is no way to fight them, because these nonstate actors have no vulnerabilities, no territorial base, and no center of gravity to hold them.<sup>159</sup> Killing even the most influential leaders such as Osama bin Laden does not ensure the death of an Islamist movement.<sup>160</sup> In this generation of warfare, from the American perspective, enemies are indeed radical Islamist actors such as Al-Qaeda, Daesh, ISIS, Hamas, and Hezbollah.<sup>161</sup> They execute global terrorist operations against the U.S. sovereign territory by carrying acts like the 9/11 events, by employing asymmetrical warfare and by blurring the differences between wartime and peacetime, and between combatant and noncombatant.<sup>162</sup> However, academics like Nofi disagree and argue that these nonstate actors do not pose any existential or imminent threat to the U.S. or to the Western world.<sup>163</sup> The main "movers and shakers" of such radical movements are mainly seeking material or political benefits, such as acquiring or gaining territorial control, political presence, and monetary benefits.<sup>164</sup> This Article contends that most nonstate actors are mercenaries working on behalf of other states serving their interests or sometimes changing the regime.

From the Middle Eastern or from the Pakistani perspective, things change dramatically because countries such as Afghanistan, Libya, Iraq, Yemen, and Pakistan are the most impacted victims of 4GW conducted by the asymmetric use of nonstate actor force, including terrorists.<sup>165</sup> If the enemy's

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157. See generally Ewen Macaskill & Gabriel Dance, *NSA Files: Decoded*, THE GUARDIAN (Nov. 1, 2013), <https://www.theguardian.com/world/interactive/2013/nov/01/snowden-nsa-files-surveillance-revelations-decoded#section/2> [

To get a detailed explanation of how technological surveillance is used by intelligence agencies, see the works of Edward Snowden on the U.S.'s National Security Agency.

158. Cf. Sherifa Zuhur, *A Hundred Osamas: Islamist Threats and the Future of Counterinsurgency*, STRATEGIC STUD. INST., U.S. ARMY WAR C. 17 (2005); see also NOFI, *supra* note 1, at 85.

159. See generally NOFI, *supra* note 1.

160. See NOFI, *supra* note 1, at 81–87.

161. *Id.*

162. See HAMMES, *THE SLING AND THE STONE: ON WAR IN THE 21ST CENTURY*, *supra* note 25, at 151–52; NOFI, *supra* note 1, at 81–87.

163. See NOFI, *supra* note 1, at 81–87.

164. *Id.*

165. *Id.*

ultimate goal is to convert non-Muslims to Islam and to restore the Caliphate,<sup>166</sup> then it does not make sense that radical Islamists carry their terrorist attacks in Muslim-majority countries, which already follow Sharia laws. Why are these terrorist attacks targeting mosques (the holiest place in Islam, considered to be the home of God)? Why do these attacks target innocent Muslim children in schools? What is their main purpose? Attacks on Western military forces in the Middle East maybe fight against foreign intervention in the Muslim world, but what about when these groups target their own governments or innocent Muslim people in Islamic countries? These attacks categorically work against the interests of Islam. In these situations, the ideological perspectives of nonstate actors' attacks does not help to understand the events, whereas the materialistic<sup>167</sup> viewpoint provide some explanation. In fact, most definitions of terrorism define terrorist attacks as political in nature.<sup>168</sup> And the example of paid mercenaries, armed and monetary support provided by aggressive states to serve political interests and regime change, relates and applies to situations in Middle Eastern countries and in particular to the engagement of nonstate actors operating in Pakistan. The rebellion in Nicaragua was fueled and armed by the U.S. against the government.<sup>169</sup> The rebellion in Syria is explicitly supported with finance and arms by the U.S. in hopes of changing the Assad regime.<sup>170</sup> Similarly, the rebellion in Libya was fueled by Western allies against the Qaddafi regime.<sup>171</sup> The International Court of Justice in the landmark *Nicaragua* case categorically established that armed support to rebels in other states amounts to aggression and constitutes an armed attack against the sovereignty of a host state.<sup>172</sup> The employment of information warfare and the manipulation of facts was also employed in the propaganda against Saddam Hussein, where he was accused of possessing what turned out to be nonexistent weapons of mass destruction, to justify the illegal intervention in Iraq.<sup>173</sup> In the

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166. Cf. Sherifa Zuhur, *supra* note 158; see NOFI, *supra* note 1, at 84–85.

167. See NOFI, *supra* note 1, at 83.

168. See generally ALEX P. SCHMID, *THE ROUTLEDGE HANDBOOK OF TERRORISM RESEARCH* (N.Y. and London: Routledge, 2011).

169. See generally *Nicar. v. U.S.*, 1986 I.C.J. Rep. 14.

170. See Dewan, *supra* note 39.

171. Zenko, *supra* note 37.

172. See generally *Nicar. v. U.S.*, 1986 I.C.J. Rep. 14.

173. See generally SHELDON RAMPTON & JOHN STAUBER, *WEAPONS OF MASS DECEPTION: THE USES OF PROPAGANDA IN BUSH'S WAR ON IRAQ* (Penguin Publishing Group 2003).

meantime, the “baby killers” slogan used against the Assad regime<sup>174</sup> and against Saddam Hussein<sup>175</sup> has remained the same. Consequently, this Article contends that developed nations employ information warfare and asymmetric warfare against weaker countries, for their political and monetary benefit. In 4GW the aggressor “turns its state enemies inward against themselves on the moral level, making the political calculations of the mental level irrelevant.”<sup>176</sup> Therefore, it is crucial for Pakistan to be able to understand these fourth- and fifth-generation warfare tactics to better defend its territories from unlawful intervention, propaganda, misinformation, and from exploitation by the media, as well as from nonstate actors’ attacks. Nofi correctly noted that all these new ages of warfare have basic political interests and motivations, involving military resources, cultural understandings, soft power (information operations), nonstate actors, facile communications, and likes of ubiquitous media.<sup>177</sup>

One efficient way to fight these asymmetric tactics and terrorism through nonstate actors is to criminalize them and their activities instead of engaging in state-to-state warfare, which makes it difficult to deal with prisoner of wars,<sup>178</sup> or to establish that the actors are illegal combatants to whom the law of war does not apply.<sup>179</sup> Several European countries and Japan have successfully fought rebellions, insurgencies, and terrorism by criminalizing these activities, coupled with the action of specialized law enforcement agencies with high intelligence and military involvement. Concurrently, the laws of these nations support military involvement to enforce laws.<sup>180</sup> An instructive example of such military/paramilitary intelligent operations by rangers against terrorism is Operation Zarb-e-Azb, which successfully decreased terrorism in Pakistan.<sup>181</sup> Likewise, paramilitary police forces can be trained

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174. *UK Newspaper Exposes Sybaritic Life of Baby-Killer Assad and His British-Born Wife*, KASHMIR NARRATOR (Apr. 18, 2018, 3:41 PM), <http://kashmirnarrator.com/uk-newspaper-exposes-sybaritic-life-of-baby-killer-assad-and-his-british-born-wife/> [https://perma.cc/AE2T-ATZK]; see also *Why the Syrian Regime is Killing Babies*, CNN (Aug. 16, 2012, 2:20 PM), <https://www.cnn.com/2012/05/31/opinion/ghitis-syria-killing-children/index.html> [https://perma.cc/2JNM-93A9].

175. Lou Marano, *Propaganda: Remember the Kuwaiti Babies?*, UPI (Feb. 26, 2002, 12:38 PM) [https://www.upi.com/Odd\\_News/2002/02/26/Propaganda-Remember-the-Kuwaiti-babies/60841014745117/](https://www.upi.com/Odd_News/2002/02/26/Propaganda-Remember-the-Kuwaiti-babies/60841014745117/) [https://perma.cc/55GX-NNEE]; see also TAREQ Y. ISMAEL & ANDREW RIPPIN, *ISLAM IN THE EYES OF THE WEST: IMAGES AND REALITIES IN AN AGE OF TERROR* 36–37 (Tareq Y. Ismael & Andrew Rippin eds., 2010).

176. Chad Kohalyk, *5GW as Netwar 2.0* in *THE HANDBOOK OF 5GW* 30, 41 (Daniel H. Abbott ed., 2010).

177. See NOFI, *supra* note 1, at 88–89.

178. *Id.* at 91 n.149.

179. *Id.* at 91 n.150.

180. See *id.* at 91.

181. Ankita Dutta & Anubha Rastogi, *Rising of Pakistan’s Army*, *INDIA’S NAT’L. SEC. ANN. REV.* 2015-16, 230, 237 (Satish Kumar ed.) (2017).

psychologically, politically, and socially to fight an insurgent menace.<sup>182</sup> For example, Italy used paramilitary police forces in the 1970s and 1980s to restore stability against insurgents.<sup>183</sup> By contrast, the U.S. through the Posse Comitatus Act of 1878 proscribed the use of military forces to enforce law in the country.<sup>184</sup> However, the increase in terrorist activities in Europe and Pakistan suggests that no system is foolproof.<sup>185</sup> Therefore, fighting 4GW requires not only DIME but also DIMEFILCH involvement and capabilities: DIMEFILCH employs “diplomatic, information, military, economic, financial, intelligence, law enforcement, cultural and humanitarian capabilities.”<sup>186</sup> DIMEFILCH is basically a term to describe the “war effort” while employing the full spectrum of all resources.<sup>187</sup> Victory in this type of warfare can be marked by the restoration of stability in the country, the resolution to an internal conflict, the end of a civil war, or a peace agreement.<sup>188</sup> But are these capabilities enough to resolve ideological or political 4GW against nonstate actors, who are often paid mercenaries or just agents of chaos, designed to destabilize a region for political or financial long-term gains? The answer is that all the resources combined with special military operations targeting powerful individuals in the National Security Agency leadership can positively diminish the enemy’s capabilities and can reduce the threat of stability. In fighting this sort of warfare, it is important to first understand the motives of nonstate actors, and then to understand the political interests of the enemy in employing nonstate actors. These two factors can be divergent, because most of the time the agents of chaos are just pawns in the hands of a real enemy, where the agents may not even know they are controlled by propaganda. This is true for most insurgencies, where the general population takes part in the rebellion and insurgencies, not knowing that they are being manipulated by propaganda. This war of perception, or the information warfare through media and social media, will be discussed in the next section, where changes of perceptions and propaganda are used as a tool to fight 5GW. By contrast, in 4GW, nonstate actors (such as terrorist organizations) are the real point of concern, not the general public taking

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182. See JOHN T. FISHEL & MAX G. MANWARING, UNCOMFORTABLE WARS REVISITED 154–55 (Univ. of Oklahoma Press: Norman 2006).

183. *Id.* at 24, 147–61.

184. ALBERT A. NOFI, THE NAVAL MILITIA: A NEGLECTED ASSET? 42 n.97 (2007); see also NOFI, *supra* note 1, at 92.

185. See NOFI, *supra* note 1, at 92.

186. *Id.* at 93 n.155.

187. *Id.* at 93–94.

188. *Id.* at 95–96.

part in a rebellion against the state. In this regard, soft and hard approaches can diminish the support for organizations such as Al-Qaeda.<sup>189</sup> Moreover, an intellectual framework is also necessary to fight 4GW to enable a state to make sense of the relevant facts and events.<sup>190</sup>

## II. TECHNOLOGICAL PROGRESSION AS A TOOL OF WARFARE

In this age of information, obsolete techniques and strategies of warfare such as massed armies and artilleries have become outdated, and they have been replaced by leveraged sophisticated information.<sup>191</sup> New weapons of war are ultra-precise guided conventional ordnance, ubiquitous sensors, and stealth technology,<sup>192</sup> where a few highly technologically advanced fighters suffice to mount large-scale attacks.<sup>193</sup> This change in the conduct of warfare is marked by the introduction of new material tactics in warfare. For instance, improvements in computers and electronics, information, communication, weapons, greater speed, capable sensors, rapid deployment, stealthier technology, fuel efficiency, enormous lethality, space-based systems, biochemical agents, and artificial intelligence this dramatic change in the future of warfare.<sup>194</sup> Michael O'Hanlon further divides the change into four different categories: (1) systems: integration of systems, such as social, political, military, and economic systems; (2) dominance: technology rendering battle space more transparent, dominance is dominated by sophisticated technology; (3) global reach: fast, precision-guided long-range technology; and (4) vulnerabilities: leveraged by nonstate actors.<sup>195</sup> Stealth technology capabilities, along with precision-guided weapons and rapid communication through data transmission systems, allow a state to target critical objectives simultaneously, creating a cascading failure of the enemy's system, compelling the enemy to make a favorable political outcome short of war, and also minimizing bloodshed.<sup>196</sup> Ideally, the populace must be directly involved in understanding the threats posed by identity politics, manipulated perceptions,

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189. See *id.* at 97.

190. For a framework's recommendation, see LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at 4.

191. David S. Alberts et al., *Understanding Information Age Warfare*, DEPARTMENT OF DEFENSE COMMAND AND CONTROL RESEARCH PROGRAM (2001), [http://www.dodccrp.org/files/Alberts\\_UIAW.pdf](http://www.dodccrp.org/files/Alberts_UIAW.pdf) [<https://perma.cc/6S4G-H8CB>].

192. See NOFI, *supra* note 1, at 13.

193. See Alberts et al., *supra* note 191.

194. Gary Chapman, *An Introduction to the RMA, XV Amaldi Conference on Problems in Global Security*, 11–13 (Helsinki, Sept. 2003); see MICHAEL O'HANLON, TECHNOLOGICAL CHANGE AND THE FUTURE OF WARFARE: UNDERSTANDING THE RMA 2–3 (2000).

195. Chapman, *supra* note 194, at 7–10.

196. See David A. Deptula, *Effects-Based Operations: Change in the Nature of Warfare*, AEROSPACE EDUCATION FOUNDATION 11 (2001).

misinformation, and the rise of insurgencies to be able to defy any of these involvements.<sup>197</sup>

### III. FIFTH-GENERATION WARFARE (5GW): A BATTLE OF PERCEPTIONS

Initially, theorists associated with fifth-generation warfare (5GW), such as Abbott,<sup>198</sup> Herring,<sup>199</sup> Safranski,<sup>200</sup> Slog,<sup>201</sup> and Weeks,<sup>202</sup> attempted to define 5GW.<sup>203</sup> A more thorough understanding by Slog defines 5GW as

the secret deliberative manipulation of actors, networks, institutions, states or any [0GW, 1GW] 2GW/3GW/4GW forces to achieve a goal or set of goals across a combination of socioeconomic and political domains while attempting to avoid or minimize the retaliatory offensive or defensive actions/reactions of 2GW, 3GW, 4GW powered actors, networks, institutions, and/ or states.<sup>204</sup>

5GW is the battle of perceptions and information.<sup>205</sup> In 5GW, violence is so discreetly dispersed that the victim is not even aware that it is a victim of war and the victim is not aware that it is losing the war.<sup>206</sup> The secrecy of this warfare makes it the most dangerous warfare generation of all time.<sup>207</sup> This warfare hides in the background, and “the most successful [fifth-generation] wars are wars that are never identified.”<sup>208</sup>

5GW is also a cultural and moral war, which distorts the perception of the masses to give a manipulated view of the world and politics.<sup>209</sup> By contrast,

197. Deichman, *supra* note 2, at 11, 12.

198. Daniel H. Abbott, *A Handbook of 5 GW*, in *THE HANDBOOK OF 5GW* 1, 2 (Daniel H. Abbott ed., 2010).

199. Adam Herring, *Working Definition, V.2.3*, in *THE HANDBOOK OF 5GW* 205, 206 (Daniel H. Abbott ed., 2010).

200. Mark Safranski, *Unto the Fifth Generation War*, in *THE HANDBOOK OF 5GW* 169, 169–73 (Daniel H. Abbott ed., 2010).

201. Purples Slog, *5GW Working Definition, 0.91*, in *THE HANDBOOK OF 5GW* 213, 213 (Daniel H. Abbott ed., 2010).

202. Curtis G. Weeks, *On the Barnettian 5GW*, in *THE HANDBOOK OF 5GW* 207, 207 (Daniel H. Abbott ed., 2010).

203. Stephen Pampinella, *The Construction of 5GW*, in *THE HANDBOOK OF 5GW* 47, 47 (Daniel H. Abbott ed., 2010).

204. Purples Slog, *supra* note 201, at 200.

205. Deichman, *supra* note 2, at 11.

206. Daniel H. Abbott, *The xGW Framework*, in *THE HANDBOOK OF 5GW* 10, 10 (Daniel H. Abbott ed., 2010).

207. *Id.*

208. *Id.*

209. Andreas Turunen, in *CYBER SECURITY: POWER AND TECHNOLOGY*, *supra* note 20, at 99.



4GW has mainly used asymmetric means, such as the use of nonstate actors.<sup>210</sup> Lind's portrayal of 4GW in moral and cultural territory<sup>211</sup> is somewhat similar to Abbott's analysis of 5GW,<sup>212</sup> which departs from the cultural rage of the population as depicted in 4GW, and which considers the perception of the conflict's context as a main focal point of analysis.<sup>213</sup> The 5GW of perception and context combines the "rage of the people" and the "rationality of the state" to form an intended outcome of warfare, rendering military command useless.<sup>214</sup>

5GW exploits cultural icons and religious sentiments to defeat an opponent.<sup>215</sup> Any means of creating political support of the masses is a valid tactic, similar to other military warfare tactics, like the troop surge in Iraq.<sup>216</sup> Abbott argues that an enraged mob, professional soldiers, and other irregular means can constitute destructive forces.<sup>217</sup> According to him, information proliferation in warfare has technologically designed practices of warfare that obviate the requirement of violence<sup>218</sup> and the direct physical involvement of the aggressors; instead, the information through networks and surveillance manipulates and exploits the public's general perceptions.<sup>219</sup> Sun Tzu defines this tactic of altering the perspectives of the world as the "acme of skill [a victory without fighting]."<sup>220</sup> The effectiveness of 5GW depends on its disparity: it does not require any unity in its efforts and instead, the more a warfare is dispersed in its efforts, the more immune and effective it becomes.<sup>221</sup> Wars of perception are 5GW, with information being the weapon, due to increased technology of cyberspace, media, social media, the noticeability of these tactics of deception and propaganda backed by identity construction and misperception, and the power of shaping the will of the adversary.<sup>222</sup> Since the proliferation of information decides the ultimate victory of future wars, centricity is less effective than the absence of weak links.<sup>223</sup> 5GW is the battle between the absolute concentration of power

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210. *Id.* at 100.

211. *See* LIND & THIELE, 4TH GENERATION WARFARE HANDBOOK, *supra* note 104, at 4-5.

212. Deichman, *supra* note 2, at 12.

213. *Id.*

214. *Id.*

215. *Id.* at 13.

216. *See id.* at 14.

217. *Id.*

218. *Id.*

219. *See id.*

220. MARK McNEILLY, SUN TZU AND THE ART OF MODERN WARFARE 15 (Oxford Univ. Press, 2015).

221. Deichman, *supra* note 2, at 15.

222. *Id.* at 19.

223. *Id.*

(aggressor) on one end, and the absence of power on the other, and this battle compels the enemy to achieve the desired outcome without using violence.<sup>224</sup> Information about the desired political world perspective is entrenched through manipulating the culture at the unconscious level, rendering it impossible for the conscious mind to even detect it and heavily influencing the political division to obtain the desired outcomes.<sup>225</sup> Adversaries are powerless to defend themselves against this infiltration of perspectives, and if they understand this change and infiltration, they will often mistake the aggressor's true political motivation with distorted perceptions and with the manipulated information of diplomacy and propaganda.<sup>226</sup> In effective 5GW, the embedded influence of perspective is harmonized with violence.<sup>227</sup> This warfare of perspective makes the fifth generation "an influence, an idea, a thing invulnerable, intangible, without front and back, drifting about like a gas."<sup>228</sup> This is a kind of silent war, a "war where the war and political desires are visible but the combatants and the strategic forms of power used in the war are invisible, [not truly energetic] and lean towards . . . influence."<sup>229</sup> This concept of [silent] war was developed by Kautilya,<sup>230</sup> as explained by Boesche:

[S]ilent war is a kind of fighting that no other thinker I know of has discussed. Silent war is a kind of warfare with another kingdom in which the king and his ministers—and unknowingly, the people—all act publicly as if they were at peace with the opposing kingdom, but all the while secret agents and spies are assassinating important leaders in the other kingdom, creating divisions among key ministers and classes, and spreading propaganda and disinformation. . . . In silent warfare, secrecy is paramount, and . . . the king can prevail only by "maintaining secrecy when striking again and again."<sup>231</sup>

Previously, war aimed at gaining greater visibility of violence and energy, but currently the desired outcome is to influence rather than being visible, with the defeated target not knowing the fact that it is being attacked, how

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224. Andreas Turunen, in *CYBER SECURITY: POWER AND TECHNOLOGY*, *supra* note 20, at 99–100.

225. L. C. Rees, *The End of the Rainbow: Implications of 5 GW for a General Theory of War*, in *THE HANDBOOK OF 5GW* 20, 21–22 (Daniel H. Abbott ed., 2010).

226. *Id.* at 23.

227. *Id.*

228. *Id.* at 25.

229. *Id.* at 27.

230. *Id.*

231. *Id.*

it is being hit or even or that that the enemy exists.<sup>232</sup> In this battle of the minds, a cyberwar is taking place, turning ordinary people into insurgents against their own governments through propaganda and misinformation.<sup>233</sup> This tactic creates leaderless resilience comprised of a phantom cell structure without any headquarters or hierarchical orders; where people within the movement have the same general outlook, the same philosophy, and where they react similarly and target perceived tyrannical state governments.<sup>234</sup> Every independent person has the responsibility of acquiring the skills and intelligence to be able to execute a mission by himself, coordinated by an emergent network, connected through

[o]rgans of information distribution such as newspapers, leaflets, computers, etc., which are widely available to all, keep each person informed of events, allowing for a planned response that will take many variations. No one need issue an order . . . . Those idealist [sic] truly committed to the cause of freedom will act when they feel when the time is ripe, or will take their cue from others who precede them.<sup>235</sup>

According to Beam’s definition, 5GW manipulates the perception of reality of the adversary, stealing the identity of the adversary and the identity of the host in the process, and works on an identity-constructivist framework of international politics.<sup>236</sup>

From a victimized Middle Eastern perspective, within this tactic of silent warfare, aggressive states first try to install a “puppet leader” in the host state if the serving leader is not serving the interest of the established hegemony. Then, if traditional ways of political diplomacy fail, the aggressive state fuels rebel and anti-state insurgent sentiments against the sitting government. Protests start to erupt, often in the name of fighting corruption, fighting increased prices and inflation, dictatorship, or religious sentiments. Jihadists and terrorist organizations use propaganda in cyberspace to further their cause of manufacturing public discourse.<sup>237</sup> Propaganda has long been a tool of rebellion and insurgent warfare.<sup>238</sup> Nonstate actors, agents of chaos, terrorists, foreign infiltrators, and paid mercenaries subsequently use unlawful force against the state and destroy public property by means of nonpeaceful protests.<sup>239</sup> As in a predicted chess game, the state responds by using legal force to disperse these agents in the hope of restoring the peace and the

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232. *Id.* at 28.

233. Kohalyk, *supra* note 176, at 42.

234. *See id.* at 43.

235. *Id.*

236. Pampinella, *supra* note 203, at 48.

237. Winter & Haid, *supra* note 56, at 2.

238. *Id.* at 1.

239. *See id.* at 2–3.

security of the state.<sup>240</sup> Collateral damage result from government actions.<sup>241</sup> Media and social media play a negative role in fueling this rebellion against the targeted government, by dubbing the state a child killer and by criminalizing it because it used force against innocent people while ignoring the fact that the use of force and chaos were created by the agent(s) of chaos in the first place.<sup>242</sup> Media play on building perspectives of people against the government, while portraying a positive character of the next “puppet leader.”<sup>243</sup> The state next loses its public mandate when people start to cheer for the removal of the current government.<sup>244</sup> At the same time, aggressive foreign powers politically support the chosen candidate. If the sitting government refuses to step down, or to kneel down to the regime change agendas of foreign aggressors, a civil war or a guerilla starts in the host state against the government; aggressive foreign states actively and explicitly support the rebels with arms, ammunitions, technology, and political backing to fight the state by targeting the infrastructure and institutions of their own country.<sup>245</sup> Syria and Yemen are recent examples of host states victims of regime change and of the resulting civil wars, where foreign aggressors have openly supported rebels with arms and finance.<sup>246</sup> By contrast, if the sitting government chooses to step down, the rebellion starts to cool, and the aggressor wins a silent war of perception.

#### *A. Fighting 5GW*

Fighting 5GW can be characterized as counterinsurgency.<sup>247</sup> Counterinsurgency liquidates the ideological and ethnic perceptions created by 4GW, breaking the social relationship between nonstate actors/insurgents and the general public.<sup>248</sup> The counterinsurgent must drive societal change, target the cultural values of insurgents and the general population,<sup>249</sup> fight on an intellectual level, and deny insurgents an enemy to fight against,<sup>250</sup>

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240. *See generally id.*  
241. *Id.* at 2–3.  
242. *Id.*  
243. *See id.*  
244. *Id.* at 13.  
245. *Id.* at 13–14.  
246. *Id.*  
247. Pampinella, *supra* note 203, at 51.  
248. *Id.* at 50.  
249. *Id.*  
250. *Id.* at 51.

rendering it impossible for the public and insurgents to identify the counterinsurgents' intentions.<sup>251</sup> These tactics form a nonhostile relationship between counterinsurgents and the people;<sup>252</sup> as a result, it protects civilians' well-being and survival.<sup>253</sup> Counterinsurgency creates a safe space, popular security and cooperative identities.<sup>254</sup> However, paradoxically this counterinsurgent involvement contributes to the dependence of the population on counterinsurgents.<sup>255</sup> Therefore, states must instead resist this neocolonial Raj of imposed perspectives in shaping ideologies in the hopes of resolving all political matters.<sup>256</sup>

#### IV. CONCLUSION

The ways of waging a war are evolving, owing to a decline in the traditional way of waging wars and the emerging globalization and advancement in technology and communication.<sup>257</sup> Therefore, wars through asymmetric means, information, and covert operations are on the rise, with nonstate actors being prominent on the battlefield.<sup>258</sup> A strategy to counter these new generations of warfare is to combine conventional tactics with the new innovative techniques of DIMEFILCH, and to develop a tight coordination among military, diplomatic, judicial, and economic institutions, while also working with foreign counterparts and international institutions.<sup>259</sup> More importantly, we need to change our mindset to be able to counter and understand the newly emerging threats and their asymmetric purposes.<sup>260</sup> It is imperative to know the enemy and to know ourselves, to understand why and how the enemy works, and for what purposes.<sup>261</sup>

Additionally, a loophole exists in the prohibition on the use of force in the UN Charter: following *Nicaragua*, aggression and use of force now include supplying arms and financial support to insurgents, rebels and other nonstate actors working against the state but to be held accountable, it has to established that the nonstate actors are under the direct control of

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251. *Id.*

252. *Id.*

253. *Id.* at 51–52.

254. Curtis G. Weeks, *Kilcullen narratives on Iraq*, in *THE HANDBOOK OF 5GW* 202, 202–03 (Daniel H. Abbott ed., 2010).

255. See Weeks, *On the Barnettian 5GW*, *supra* note 202, at 209–12.

256. Gerhard Knaus & Felix Martin, *Travails of the European Raj*, 14 *JOURNAL OF DEMOCRACY* 72 (2003).

257. See NOFI, *supra* note 1, at 99.

258. Sudhir, *supra* note 49, at 58–60; see also NOFI, *supra* note 1, at 99; Geiß, *supra* note 47, at 757–59.

259. See NOFI, *supra* note 1, at 93.

260. NOFI, *supra* note 1, at 99–100.

261. NOFI, *supra* note 1, at 100–01.

the state-aggressor, which in practice is hard to do. That loophole is exploited by aggressive states when they employ hired guns to do the dirty work of their political will and leave no fingerprints. Thus, the aggressor cannot be held liable: they avoid direct engagement<sup>262</sup> to circumvent the requirements of the international laws of using force.<sup>263</sup>

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262. Lele, *supra* note 59, at 98.

263. Geiß, *supra* note 47, at 757–59.

