

## Pre-war Rights, Human Legal Protection and International Law

### Abstract

Some condemn the war, and others praise the war, and in the meantime, some consider war harmful, but necessary. The study of the law of war, the definition of war and its structural elements, and measures of armed retaliation are necessary to understand the legal meaning of war. Why war? Are there any interests in the war? Is war a political tool? Is war a symbol of power? Is war a practical way to protect and promote human rights? In international law, war is a method of coercion with the use of force. From the perspective of customary law, war is a phenomenon of social pathology. From a legal point of view, war is defined as a "tool of national policy", a set of armed acts and coercive actions that take place within the framework of relations between countries (two or more countries) and enforces certain rules in all their relations with each other and also with Becomes third countries. The purpose of this study is to analyze and discover the pre-war facts that lead to war and also the ultimate goal is to find a solution to reduce the potential factors of war to protect people. In this article, we intend to address the concept of war and fully state the rights of war. The findings reveal that the media's role and public health communication impact human rights promotion and nations' awareness levels.

**Keywords:** human rights; warrights of war; sources of war law; Geneva Convention 1949human rights treaties.

### Jamshid Arasteh<sup>1\*</sup>

Master of International Law,  
Department of Law, Faculty of Law  
and Political Science, Shiraz  
University, Shiraz, Iran  
Faculty member of Eram Institute of  
Higher Education, Faculty of  
Graphic Design, Shiraz, Iran

### Behnam Rastegari<sup>2</sup>

Ph.D. of International law,  
Department of Law, Faculty of Law  
and Political Science, Shiraz  
University, Shiraz, Iran

\*1:jamshidarasteh@ymail.com/aras  
teh@eram-shiraz.ac.ir  
2:behnam.rastegari.law@gmail.co  
m

### Introduction

What is war? What is the law of war? What are pre-war rights? War is one of the obvious manifestations of "resorting to force". Interestingly, both sides of the war, based on legal sources and principles and procedures, claim their violated rights and find legal justifications. The invading country justifies its attack by citing legal sources, and the country is attacked. Citing the same legal provisions, he claims that his right has been violated. The dictionary of international law terms defines the use of force in both narrow and broad terms. The use of force in the first sense is any act of coercion that cannot be considered military action. But in the second sense, it includes all military measures and operations, including war. War is an exceptional situation, and of course, the rules related to it, called the law of war, are exceptional. As soon as war begins, no matter how it begins, the warring states are no longer subject to the rights of the guarantor of peace but will abide by the rights of war; whether it is customary or contractual rights. Third countries (ie, countries that do not take part in the conflict), whether they respect the law of war or not, do not make their relations with the warring countries subject to the law of peacetime; "Rather, they follow the rights of neutrality." The law of war has always been and is a source of ideological controversy among experts. Disagreement on this point is sometimes so great that it even calls into question its true existence. Some scientists do not accept the law of war cite fundamental reasons, including:

1. War is a crime and crime should not be regulated. The crime must either be punished or prevented from occurring.
2. The law of war is useless law; because its implementation is always delayed by the occurrence of war.

3. The law of war is based on the experiences of past wars and is unenforceable in future wars due to the rapid scientific and technical advances that have taken place during this period.

4. Unless the individual's criminal liability is fully recognized in international law and there is no guarantee of effective enforcement against individual acts violating the law of war, these rights will have virtually no effect on the adversaries who always violate it in the course of hostilities.

5. Although the punishment of post-World War II criminals is of particular importance, it should be considered an exceptional event.

6. The international legislature should preferably devote all its activities to improving and enriching the rights of peace rather than the rights of war.

Despite these objections, it is important to pay attention to the necessity of the law of war; because the facts themselves respond to the opposition. Unfortunately, the war has not completely disappeared from the scene of international life. It is easy to accept that the possibility of war at any moment remains due to the violation of the relevant obligations by each country. Therefore, it is necessary to at least subject the course of the war to legal regulations and limits the risks and damages caused by it as much as possible. On the other hand, there has always been the objection that the laws of war have been and will be violated. "But the study of past wars, including World Wars I and II, creatively proves this claim.

### Literature review

The legal concept of war consists of four basic elements: the organizational element (countries), the material element (exercise of armed power), the spiritual or psychological

element (intent of war), and finally the purposefulness of war (national interests). One of the basic elements of the concept of war is the organizational element, ie "countries". War requires a battle between the armed forces of nations; hence, war is considered a kind of relationship between country and country.

This view is particularly expressed by Jean-Jacques Rousseau in *The Social Contract* (1762):

War is by no means a human-to-human relationship; rather, it is the relationship of the country with the country in which individuals, not as human beings or even as citizens, but as citizens and defenders, have become enemies with each other only by chance, resulting in civil war, at least until the issue of "recognition" As it did not occur as war, war is not in the specific sense of the word. The 1949 Geneva Conventions and their Additional Protocols of 1977 accepted the application of certain humanitarian law rules of war to civil wars in the territory of the Contracting States. The other element of war is the material element, and that is the exercise of power or armed violence. In other words. War is always accompanied by armed operations and actions carried out by the armed forces of hostile countries and under their command, authority, and responsibility. "Without the use of force, war has no legal meaning. The term "Cold War", which refers to the various states of ideological conflict between East and West after World War II, lacks the meaning of war. International law does not specify the extent to which coercive armed operations must be considered a war; but in general and legally, the war begins when there is an effective and real use of weapons. A ceasefire is the end of a military operation, not the end of the war itself. The definitive end of a war is when there is a peace treaty between the adversaries. The third element of war is spiritual or psychological, and that is the definite will of one of the warring parties; because war has no meaning without intention. At the Hague Conferences (1907), the signatory states of the treaties considered it explicit to declare their will to go to war. According to the third treaty on the commencement of hostilities, dated October 18, 1907, war legally begins when the prior explicit notice is deemed to be an unconditional declaration of war. The fourth element of war is to know the direction and end of the war. That is, the country that started the war has a definite and final goal that it is always seeking to pursue and achieve. This goal is usually to impose or accept a political point of view, or more simply a national goal. The aggressor country claims that the war it started was based on "national interests." But what "national interests" are and on what basis is one of the topics of political science and beyond the scope of this article.

Proponents of the objective law school, including Georges Cell, have used the same element of definition to describe war as "the use of material force to change the system of

government in the international community." However, when war lacks a national character and is no longer seen as a "tool of national politics," it no longer has its meaning. Suppose a military operation known as a "police operation" provided for in the statutes of some international organizations, including the United Nations, cannot be called a war.

### **The sources of war law**

The sources of war law are not generally separate from the sources of international law; In particular, sources such as custom, general legal principles, and international treaties also have a special place in the law of war.

- A. Custom: Since friendly and peaceful relations or, conversely, hostile and non-peaceful relations have existed alternately between nations, the law of war, like diplomatic and consular rights, has a long history that is generally customary. Takes root. Thus, the custom has a very important and fundamental place in the law of war. The sources of custom are numerous and varied; For example, even in documents addressed by governments and addressed to their armed forces, a rich and abundant customary source can be considered.
- B. General legal principles: "In the law of war, general legal principles are less valued than other sources; So that the rights of war are usually mistakenly considered only "customs and laws of war"; but in fact, general legal principles play an almost as important role in the law of war as in the law of peace. On the other hand, customs and contracts related to the state of war are always based on general legal principles. "One of these principles is the principle of good faith, which forms the basis of international relations and is the basis of the law of war."
- C. International treaties: Contracts are one of the main sources of war law and most of these rights are in the form of contract law. Such international agreements can be listed in chronological order, as follows:
  - Declaration of Paris dated 16 April 1856 on naval war (boycott of piracy, immunity of property of enemy nationals transported by neutral ships, as well as naval siege).
  - The Geneva Convention of 22 August 1864 on the Protection of the Wounded, the Sick, and the Medical Staff.
  - The Declaration of St. Petersburg, dated August 29, 1868, on the prohibition of the use of certain weapons.
  - The Brussels Declaration of 1874, which for the first time defined the difference between the military and the civilian.
  - The 1899 and 1907 Hague Treaties. The Treaties of The Hague, dated July 29, 1899, contain two treaties on the law of war: the Treaty on the Laws and Customs of the Land and; the Treaty relating to the extension of the 1864 Geneva Convention (above) to naval wars. But the Hague Treaties of 18 October 1907 contained thirteen treaties, except for the

following three treaties relating to the laws and regulations of land and naval warfare: a treaty restricting the use of military force to collect claims; Contract related to the start of disputes; Treaty relating to the Amendment to the 1899 Hague Treaties.

-The 1904 Hague Convention on the Neutrality of Hospital Ships.

-Geneva Convention of 6 July 1906 on the Protection of the Sick and Wounded of War.

-1909 London Declaration on Naval War. This declaration was not ratified by the countries, but today it is considered a very complete manifestation of maritime custom.

-The Washington Treaty of February 6, 1922, on the Maritime Arms Limitation. Limiting the number of warships and not using submarines.

-Geneva Protocol of 17 June 1925 on the Prohibition of the Use of Suffocating, Toxic or Similar Gases and Microbial Substances.

-The Geneva Convention of 27 July 1929 on the Treatment of the Wounded or Sick and the Fate of Prisoners of War.

-1930 London Protocol on Naval Warfare.

-Agreement dated 1935 in the field of protection of historical monuments and scientific and artistic centers during the war.

-London Protocol of 6 November 1936 on the prohibition of attack on merchant ships by submarines.

-The Washington Treaty of February 6, 1922, on the Maritime Arms Limitation. Limiting the number of warships and not using submarines.

-Geneva Protocol of 17 June 1925 on the Prohibition of the Use of Suffocating, Toxic or Similar Gases and Microbial Substances.

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-Agreement dated 1935 in the field of protection of historical monuments and scientific and artistic centers during the war.

-London Protocol of 6 November 1936 on the prohibition of attack on merchant ships by submarines.

-The Geneva Conventions of August 12, 1949, include four treaties, three of which are revisions to previous treaties, and the fourth of which provides for innovation in contract law. These treaties include:

*A- Pact related to improving the fate of the wounded and sick of the Armed Forces during the camp. This treaty replaced the Geneva Conventions of 1864, 1906, and 1929.*

*B- The treaty related to improving the fate of the wounded, sick, and drowned of the armed forces at sea. This treaty replaced one of the 1907 Hague treaties in this field.*

*C- The treaty related to the treatment of prisoners of war. This treaty replaced the Geneva Convention of 27 July 1929.*

**Convention on the Protection of Civilian Persons in Time of War.**

Today, the four Geneva Conventions are the most important international instruments on the law of war, which by 1980 were ratified or acceded to by 128 countries.

-The Hague Agreement of 14 May 1954 on the Preservation of Cultural Heritage in Time of War.

-1977 Geneva Protocols. On June 10, 1977, following years of efforts by the International Committee of the Red Cross, two protocols were adopted as Additional Protocols to the 1949 Geneva Conventions. The first is the Protocol on International Armed Conflict and the second is the Protocol on Non-International Armed Conflict. These protocols have been ratified by 17 countries until 1981.

-Treaty of 10 April 1981 on the Prohibition or Restriction on the Use of Certain Classic Weapons, which could result in irreparable damage or uncertain effects. The treaty follows three protocols on nuclear radiation in the human body, the use of mines and booby traps, and the use of incendiary weapons. The treaty has not yet been implemented.

***Nuclear Non-Proliferation Treaty:***

- The Moscow Agreement of 5 August 1963 on the Prohibition of Nuclear Weapons Testing in the Atmosphere, Overseas and Submarines.

- The agreement dated January 27, 1967, on the principles governing the activities of countries in the exploration and exploitation of extraterrestrial space, the moon, and other celestial spheres.

- The Treaty of 1 July 1968 on the Non-Proliferation of Nuclear Weapons.

- The Treaty of 11 February 1971 on the Prohibition of the Deployment of Nuclear Weapons and Other Weapons of Mass Destruction on the Floors and Submarines of the Seas and Oceans.

- The agreement dated 10 April 1972 on the prohibition of the manufacture, production, and stockpiling of microbial or toxic weapons and the destruction of existing stockpiles.

-Treaty of May 26, 1972, on the tightening of Strategic Nuclear Weapons (known as Salt 1)

- Vladik Vestak Agreement of 24 November 1974 on the Nuclear Non-Proliferation of Nuclear Weapons.

- Agreement dated May 18, 1977, in the field of prohibition of the use of climatic weapons.-11-

- Agreement of 18 July 1979 on the Restriction of Strategic Nuclear Weapons (known as Salt 2).

### **Aims and Objectives**

The certain objectives of this study are: analyzing the governmental obligation on fundamental principles of human rights during the time of crisis and war; finding out the role of international law documents to inform people's right to the highest attainable standard of security; and trying to show the complementarity function of the legal texts between states

policy and human rights. Texts are used to answer these arguments, focusing on the survey and evaluating published papers.

Some of the prominent articles have dealt with this subject matter but most of them have been written from personal opinions or superficial perceptions of the subject. That is the reason why this text looks forward to the human rights issues in the time of war from an observational view on objective examples such as international treaties. Likewise, the article illustrates a background for coming time studies and academicians to work on this issue at the later period. Unfortunately, the 1947 peace treaties also approved these measures; but at the same time, it forced countries that had lost the war to return confiscated Allied property, and even invited neutral countries (Switzerland, Sweden, and Spain) to accept the rules.

Despite the general practice of the countries in the last two wars, today it is not possible to cite such illegal actions and ignore the private property of the enemy citizens and confiscate their property located in the territory of the hostile party. The 1907 Hague Regulations and the 1949 Geneva Convention relating to the Protection of Civilian Persons in Time of War and its Additional Protocol No. 1977 in this regard give the necessary legal value. The purpose of this study is to analyze and discover the pre-war facts that lead to war and also the ultimate goal is to find a solution to reduce the potential factors of war or reduce the negative effects of war on people. The methods used in this research is descriptive-analytical in which tries to explain and describe the subject by collecting data available in published texts, internet sources and scientific researches. This article was conducted in a qualitative way by observing the previous researches and principles of international law.

## **Discussion**

War is the result of lawlessness? Is this lawlessness the result of the absence of law or the result of not paying attention to the laws or the result of not following them? Why, despite all these different laws and legal requirements and the judiciary, is there still war? What are the factors and institutions involved in creating the war? Why, while organizations and governments are the cause of war, do people pay for it? Can a war that results from a violation of human rights have rights?

Some argue that the law of war is an exceptional right versus the right to prevent war and that it includes the rules that govern wartime, in addition to the fact that hostile countries in their hostile relations with each other and with neutral countries, shall observe and observe those rules, and their persons and property located in the territory of the adversary shall be safe from any aggression and shall be subject to legal protection..

The law of war prevention has evolved more than the law of war in its specific sense. However, the question may be asked whether war has positive effects. Which does not fit in this article and I will discuss it in detail in another article. The outbreak of war not only has fundamental effects on the relations of hostile countries but also on third countries; This means that immediately after the outbreak of war, neutral rights prevail over the situation of third countries.

One of the basic manifestations of friendly and peaceful relations between countries is diplomatic and consular relations; but war, which is an inevitable manifestation of hostile and non-peaceful relations between countries, cannot be reconciled with diplomatic and consular relations. As a result, as soon as war breaks out, diplomatic and consular relations between hostile countries are automatically severed. According to Article 45 of the 1961 Vienna Convention on Diplomatic Relations, each of the warring parties may, before the end of the mission, accept a third country that is accepted and accepted by the host country (usually a neutral country) and defends its national interests and nationals. And introduce it to the competent authorities of the enemy country. This third country is called a "sponsor" or "protector of interests".

### *Confiscation and confiscation of enemy state property*

Enemy public or state property located in the territory of a hostile country will be subject to confiscation, except for civilian buildings where the enemy's diplomatic and consular staff and their property are sealed immediately after the end of the mission (Article 46). To 48 of the 1907 Hague Convention).

### *Expulsion of citizens of the enemy country*

Until 1949, a hostile country could expel the other side's nationals and repatriate them. During the last two world wars, the detention and detention of enemy citizens in concentration camps, especially concentration camps, was very common; But since 1949 it has been subject to very strict contractual rules, resulting in a very significant limitation on the decision-making power of countries. (Geneva Convention 1949)

### *Status of international contracts*

"One of the reasons for the termination of international agreements, in addition to termination, suspension, withdrawal, and 3, is war; because there is a kind of inconsistency and conflict between the war and the existence of international agreements. Treaties are the manifestation of peaceful relations between countries; while war breaks these ties and usually ends their lives by force and implication.

### *Effects of war on ordinary people of the enemy*

The emergence of a state of war will inevitably hurt the enemy. This damage either affects them personally, affects their economic activity, or destroys their property.

### *Enemy civilians*

Prior to 1949, while the military was covered by the Geneva Conventions, civilians were deprived of any legal protection; especially during the two world wars, in practice, it was observed that the enemy civilians were the target of any kind of aggression. Unfortunately, in the past, peace treaties also endorsed such actions; however, with the conclusion of the Geneva Convention of 12 August 1949 on the Protection of Civilian Persons in Time of War, enemy nationals were subjected to severe legal protection as individuals, earning the title of "Protected Person".

According to the provisions of the Geneva Conventions, civilians residing in the territory of the enemy have the right to leave or leave the foreign land and return to their homeland, and if their application is not accepted, they can refer to the competent local court. In contrast, the government of their place of residence cannot force them to reside in their land.

Foreign nationals will retain the right to work in enemy territory; but they are not obliged to do so, except in the usual way of the natives. The detention and detention of enemy civilians are prohibited unless it is necessary to ensure the security of the country in whose territory they belong, in which case constant monitoring by judicial or executive authorities will be necessary. As a result, their detention will be subject to very strict rules in terms of places of detention, nutrition, clothing, medical care and religious affairs, and so on. On the other hand, the government of their place of residence has no right to treat enemy civilians as prisoners or prisoners of war. Enemy civilians will also retain their right to be civilians throughout the conflict and will have the right to file a lawsuit with the judicial authorities of the local government within the limits of the rules.

#### *Enemy economic activity*

The declaration of war will stop any economic activity between the citizens of hostile countries and will cut off economic exchanges between the two sides. The economic activity of the enemy was not covered by contract law, especially the 1949 Geneva Convention relating to the Protection of Civilian Persons in Time of War, and the matter was referred to customary law. According to customary law, war cuts off private relations between citizens of hostile countries. This rule has two economic aspects: one is the prohibition of trade with the enemy and the other is the cancellation of private contracts of citizens of hostile countries.

#### *Property of enemy citizens*

Until 1914, according to the principle governing the status of the property of the citizens of the countries in the territory of the enemy, the private property of the citizens of the enemy was respected and respected; but public or state property was subject to confiscation. This principle was based on Articles 46 to 48 of the 1907 Hague Convention.

With the outbreak of World War I, this rule was completely ignored and the principle became contrary to it, according to which each of the warring countries could confiscate the private property of the citizens of the warring enemy countries (whether movable or immovable). N.

Between 1914 and 1918, the belligerent countries made very different decisions, almost all of which restricted the private property rights of enemy citizens. The 1919 peace treaties gave legal validity to these erroneous decisions.

Under these treaties, the owners had no right to make any claims or objections to their confiscated property and could not claim their property.

Interestingly, the seizure of property continued long after the end of the conflict, until the Treaty of Berlin of October 20, 1926, ended the practice.

World War II broke out without any changes in the law or the deficiencies in the law of treaties between governments. As a result, most of the adversaries behaved similarly to those of the First World War.

### **Conclusion Drawn from the Study**

Pre-war rights can meet the goals and intentions of both sides of the conflict so that the war does not start. Pre-war rights can be a deterrent to the aggressor country from being attacked and persecuted, and for the aggrieved country, it can be a legal document with a strong enforcement guarantee that the country can achieve its rights. What is certain is that war couldn't be justified under any circumstances. The presence of about 40 sources of international law and the treaty mentioned in this text shows that the attacking countries couldn't find any justification for the attack, of course, the attacked countries. Also, know these sources, should not give an excuse to the invading countries.

A brief look at the basic issues of war law has shown us that war is one of the major manifestations of "use of force" in international relations, which can be defined in international law as follows: war The exercise of armed power by countries against each other Which is subject to their prior explicit declaration, and its purpose is usually to impose the will of the aggressor in the national interest.

In contrast to peace, which is a normal situation, war is an exceptional case; As a result, the law of war is an exception to the law of war prevention. The law of war includes the rules that govern the time of war, and hostile countries must consider and abide by those rules in their hostile relations with each other and with neutral countries.

Although the rules of war law have not improved significantly, the contractual obligations of governments regarding war as a source of war law are not insignificant. Obviously, in counting the sources of war law, sources such as custom and general legal principles cannot be ignored. In any case, the law of war

prevention has evolved more than the law of war in its specific sense.

Finally, in the system of international law today, any war is justified by any state under the pretext of legitimate defense, and legal authorities and international institutions such as the United Nations, especially the Security Council, have largely accepted these justifications. Perhaps revising some legal provisions or adding more effective enforcement guarantees can end the war before it begins and keep the peace. This text is the authors' own original work, which has not been previously published elsewhere, and is not currently being considered for publication elsewhere. As well, this research reflects the authors' own research and analysis in a truthful and complete manner, and properly credits the meaningful contributions of co-authors. Finally, all sources used are properly disclosed, and authors have been personally and actively involved in substantial work leading to the text.

Acknowledgments: Non

Conflict of Interests: Non

Ethical Considerations: Non

Financial Disclosure: Non

Funding/Support: Non

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