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The law on asymmetric warfare / Eyal Benvenisti

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Abstract:	<p>This essay asserts that it is time to recognize that asymmetric warfare is a distinct phenomenon that is, and should be, subject to a distinct set of substantive norms and not only to different modalities of enforcement. Conscious of Toni Pfanner's provocative challenge-"If wars between States are on the way out, perhaps the norms of international law that were devised for them are becoming obsolete as well"-this essay argues that it is in fact already possible to discern new norms for asymmetric warfare, both internal and international. It is further suggested that once we grasp that asymmetric warfare is a very different beast, we will be able to explore the potential for improving the protection of non-combatants by treating the law on asymmetric warfare as distinct from the law applied in traditional symmetric conflicts. Part II begins by noting the changing norms of war and explaining this evolution as a response to the challenge of asymmetric warfare. Part III then explores potential areas in which the law on asymmetric warfare can and should further depart from traditional symmetric warfare law. Part IV concludes with a call to recognize asymmetric warfare as a distinct type of conflict that should be free of the confines of a law that was designed to address the traditional wars of past. Humanity would be better served were this type of warfare to have its own carefully tailored set of norms.</p>
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