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What is Hybrid War?

– The Terminology Used to Describe Modern Warfare and
Current Authority under International Law

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WHAT IS HYBRID WAR?

— THE TERMINOLOGY USED TO DESCRIBE MODERN WARFARE AND CURRENT AUTHORITY UNDER INTERNATIONAL LAW

By Dr Nikola R. Hajdin¹

Conventional wars have been fought on a battleground where belligerent forces confront each other. However, international condemnation of violence has prompted the means of warfare to evolve. The meaning of the term “war” has changed over the centuries rendering conventional understandings unsuitable to capture most of the contemporary hostile conflicts. They are better described as “hybrid wars” where the line between regular and irregular warfare is blurred. The purpose of this article is twofold. First, the article aims to provide an overview of the notion of “hybrid war” and introduce the basic terminology that is used to describe contemporary conflicts. Second, the article sets out to identify which methods of warfare are prohibited under international law.

I. INTRODUCTION

Following the political changes in Ukraine in early February 2014, Russia invaded the Crimean Peninsula and formally annexed it.² From that moment, the buzz word “hybrid warfare” became fashionable between diplomats, scholars, and military personnel, but mainly among journalists. Although a common label in the West for Russia’s wrongdoings,³ the concept of hybrid warfare does not have a universally agreed upon definition. This phenomenon, however, has been well known from ancient times until modern history,

¹ The author is a fellow at the Stockholm Centre for International Law and Justice. This paper was written during my master studies at Lund University in 2015 and presented at a conference organized by the Raoul Wallenberg Institute of Human Rights. Since then, I have been using it for lecturing purposes and have now adjusted it for the readers of this journal. The article provides a basic overview of the concept of hybrid war and the applicable international law. I thank Sally Longworth, Roger S. Clark, Elies van Sliedregt, Martin Ratcovich Leopardi, Mark Gibney, Mark Klamberg, Mats Deland, and the editorial staff of this journal for their helpful comments. All mistakes are my own.

² See ‘Putin signs laws on reunification of Republic of Crimea and Sevastopol with Russia’, Russian News Agency (18 March 2014), online: <<http://tass.ru/en/russia/724785>>.

³ M. Fisher, ‘In D.N.C. Hack, Echoes of Russia’s New Approach to Power’ N.Y. Times (25 July 2016), online: <http://www.nytimes.com/2016/07/26/world/europe/russia-dnc-putin-strategy.html?_r=0>.

viz. belligerents have always relied on multiple means, rather than focusing solely on traditional military campaigns, in order to achieve their goals.⁴

Notwithstanding this, the Russia-Ukraine conflict is peculiar and deserves particular attention in international law. Seldom has a situation been more associated with hybrid warfare. Hybrid war methods were traditionally associated with non-state actors that usually resort to, due to their military disadvantage, a variety of violent and non-violent means in order to further their political goals. Moreover, the highly advanced technological achievements that were employed by belligerents in Crimea, together with an array of diplomatic efforts, made this conflict somewhat unique. Some experts suggest that Russia is waging such a hybrid war by means of inciting insurgency, terrorism, and cyber warfare, in order to spark and control the conflict in Ukraine.⁵

These events steered the discussion about the ‘new’ means of warfare and potential military response to hybrid threats. It was the North Atlantic Treaty Organization (NATO) that adopted the term hybrid war for conflicts which include “a mixture of special forces, information campaigns and back-door proxies”.⁶ Linguistically and logically, there is nothing wrong with the term.⁷ Ostensibly, this term was coined to delineate the struggle of different political factions within a single state. It was perceived as a combination of conventional military and irregular armed groups, such as guerrillas, insurgents, and terrorists, with a common political end.⁸ This type of warfare has been attributed to non-state actors and their political struggle against the government they deemed as oppressive. Naturally, non-governmental groups fighting against oppressive governments have fewer military options at their disposal, and thus they rely on ingenuity rather than face-to-face battle against a state force much more powerful than them.

4 For historical examples of different means employed in wars, see W. Murray and P.R. Mansoor (eds.), *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present* (2012).

5 See W. Pyung-Kyun, ‘The Russian Hybrid War in the Ukraine Crisis: Some Characteristics and Implications’ (2015) 27 *The Korean Journal of Defense Analysis* 383, at 383. The term “terrorism” does not belong in the discourse on the Russia-Ukraine conflict for a number of legal and political reasons.

6 See NATO, ‘Hybrid War – Hybrid Response’, online: <<http://www.nato.int/docu/review/2014/Russia-Ukraine-Nato-crisis/Russia-Ukraine-crisis-war/EN/index.htm>>.

7 The term “hybrid” denotes a notion resulting from a combination of two or more different elements.

8 See P.R. Mansoor, ‘Introduction: Hybrid Warfare in History’ in W. Murray and P.R. Mansoor (eds.), *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present* (2012) 1, at 2.

Contemporary hostile conflicts raise different challenges to international law. The purpose of this article is to introduce the terminology of hybrid warfare and examine the potential application of legal norms embodied in the Charter of the United Nations (UN Charter; the Charter). While many rules of international law may apply to hybrid warfare, this paper is restricted to the *jus ad bellum* and its account of modern warfare. The article is structured as follows. Section II provides a brief overview of the evolution of warfare and lays out some of the features of contemporary conflicts. It argues that while the essence of war remains the same—conveying political will violently—the shape and form of the means has changed and become seemingly less violent. Section III suggests some terminological clarifications and suggests a definition of hybrid warfare. Section IV first gives an overview of the legal framework for countering hybrid threats and second analyses the types of warfare prohibited under international law. Lastly, Section V concludes the discussion on the law and terminology of hybrid warfare.

II. WAGING WARS IN THE ERA OF MODERN TECHNOLOGY

In the primitive wars of the 19th and 20th centuries it was common for just two sides to fight. Two centuries, two blocks of allies. Now four coalitions collided. Not two against two, or three against one. All against all.⁹

The great wars of the past usually implied incursions of a state's military in the territory of another state. This phenomenon is best captured by the notion "conventional war" or simply "war".¹⁰ A prototypical conventional war implies two belligerents resorting primarily to the kinetic use of force. It always includes means of armed forces, either as being actively used or threatened with.¹¹ In the recent wars, however, aside from the overt armed force, states usually rely heavily on other assets prior to or together with military formations

9 Moscow's political advisor Vladislav Surkov put the matter adroitly, see P. Pomerantsev, 'How Putin Is Reinventing Warfare', *Foreign Policy* (5 May 2014), online: <<http://foreignpolicy.com/2014/05/05/how-putin-is-reinventing-warfare/>>.

10 What is "war" is not easy to explain. Say, a state declares war against drug cartels. Also, one can use legitimately, even in legal texts, the term war to describe the tension in American pop culture between the so-called East and West Side. Part of this essay attempts to describe what is captured by the term "war" in the contemporary sense. In this article, however, the term war will be understood from the lenses of an international lawyer. That is, to put it crudely, hostile conflicts between subjects of international law.

11 A concise and comprehensive definition of war could be found in the *Black's Law Dictionary*. Accordingly, war is defined as "[h]ostile conflict by means of armed forces, carried on between countries, states, or rulers, or sometimes between parties within the same country...[it] may also exist without armed conflict." *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS, at 1816.

for the sake of coercion, without prior declaration of war.¹² The advent of asymmetric warfare—which is generally understood as a “conflict between two unequal adversaries where the weaker opponent uses unconventional or indirect methods to exploit the superior opponent’s vulnerabilities”¹³—hallmarked the second half of the 20th century. This type of warfare is deployed more often, some experts seem to suggest,¹⁴ in order to level off the opponent’s strength in arms by using different political, economical, informational, technological and ecological campaigns in non-violent form.

With technological and civilizational advancements, waging wars became a more complex and confusing enterprise that morphed into a seemingly unfamiliar shape where the outer lines of warfare are not always easy to draw. However, the essence remained true to conventional wars.¹⁵ War is always an act of compelling an enemy to obey a certain political will.¹⁶ The next few paragraphs illustrate the common characteristics that can be discerned from analyzing the contemporary hostile conflicts.

Contemporary conflicts almost never start with an overt armed attack, that is, kinetic use of force. Before engaging in an armed attack, the aggressive state embarks upon a non-military campaign (as part of the preparatory phase) towards the targeted victim-state which it wishes to compel. It may launch a disinformation campaign in order to camouflage aggressive intentions to catch its victim unaware.¹⁷ Prior to this “new-generation” warfare,¹⁸ a strategy is developed with a view on the information, psychology, and ideology of the enemy, in order to create a military, political and economic foundation prior to the armed attack. Massive propaganda efforts are deployed in accordance with the distributed attack to incite disaffection among the population of a targeted country, but also to divide public opinion worldwide.¹⁹ There are

12 Potentially, understanding “coercion” in the context of hybrid war represents the core of the issue from the legal perspective.

13 S.R. Reeves and R.E. Barnsby, ‘The New Griffin of War: Hybrid International Armed Conflicts’ (2013) 34 *Harvard International Review* 16, at 16.

14 See S.G. Chekinov and S.A. Bogdanov, ‘The Nature and Content of a New-Generation War’ (2013) *Military Thought* 12, 16.

15 See Mansoor, *supra* note 8, at 1.

16 C. von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (Princeton University Press, 1976) at 83.

17 See Chekinov and Bogdanov, *supra* note 14, at 18.

18 This term comes from writings of the Russian Ministry of Defense. Chekinov and Bogdanov captured the essence of this concept by referring to it as warfare in an age of high-tech wars where goals are achieved only by information superiority. For further comments, see Chekinov and Bogdanov, *supra* note 14, at 12–23.

19 Chekinov and Bogdanov, *supra* note 14, at 19.

different levels where modern conflicts occur—spanning from tactical dimensions to operational to strategic dimensions—whereby narratives within the political framework play an important role in the struggle for prevalence.²⁰ Conspicuously, information warfare is an inevitable feature of today's hostile conflicts.²¹ It has two contours: the “informational-psychological” that concerns the battle of wills and the “information-technical”. The latter represents a part of the global struggle for technological prevalence that could indeed be a huge asset in waging wars.²² The importance of the former lies particularly in the “battle of narratives” that has been held before, during and after armed conflict. Winning the battle of narratives provides a moral high-ground and brings the population in favor of an aggressive state, thus persuading them of the righteousness of the cause.

People's perception is a significant feature of contemporary conflicts. War-time propaganda, which may be defined as “communication to shape attitudes and behavior for political purposes,”²³ is a venerable tradition with roots that can be traced back to the ancient world. State- and non-state-sponsored propaganda deserves special attention as belligerents can avail themselves of the new technological tools, which can transmit information instantly.²⁴ Consequently, the outcome of modern conflicts will depend largely on winning the information and psychological war, which has the purpose of accomplishing superiority in weaponry while at the same time depressing the adversary's armed forces and population.²⁵ Winning the so-called information war is likely the very essence of future conflicts.²⁶

Another important tool of modern warfare is corruption, which can be used for maintaining political influence, both domestically and internationally. By using corruption in its own country, the government holds the state's elite close and allows them to conclude corrupt deals to profit more than they would in usual circumstances. Thus, when the support of the elite is needed,

20 See Mansoor, *supra* note 8, at 3.

21 For a broader discussion on this point see O. Jonsson and R. Seely, ‘Russian Full-Spectrum Conflict: An Appraisal After Ukraine’ (2015) 28 *The Journal of Slavic Military Studies* 1, at 12–15.

22 The Gulf War represents a good example of how an army with technological superiority could easily crush its opponent who happens to be of numerical advantage in weapons log come of age; See Chekinov and Bogdanov, *supra* note 14, at 15.

23 M. Klamberg, ‘Legal Indeterminacy in the Modern Battlefield - Exploiting Thresholds, Fault-Lines and Gaps’, in J.D. Ohlin (ed.), *Research Handbook on Remote Warfare* (2017) 186, at 193.

24 See Mansoor, *supra* note 8, at 9.

25 See Chekinov and Bogdanov, *supra* note 14.

26 See Chekinov and Bogdanov, *supra* note 14, at 13.

the government can count on it. By deploying corruption beyond its territorial borders, a state aptly divides international society and gains broad international support.²⁷

Andras Racz put the matter more pragmatically as he analyzed the Russia-Ukraine conflict. He relies on the term hybrid warfare and suggests three phases of modern wars.²⁸ According to Racz, the essence of the first phase (*preparatory phase*) is to map out political, economic, and social weaknesses and vulnerabilities of the target country and thereafter develop a system for materializing the aggressor state's advantage.²⁹ In the second phase (*attack phase*), the invading country launches a full-scale armed attack.³⁰ Alongside military operations, there are numerous nonviolent campaigns in order to disseminate fear and dissatisfaction with the central government of the victim country, thus diminishing the resistance potential. The final phase (*stabilization phase*) is a stabilization point where an aggressive state seeks to consolidate the results of the hybrid war.³¹ In order to maintain the people's support, a conquering state ought to stabilize and secure invaded territory, *viz.* aggressive forces must rebuild or restore security, local government, and essential elements of the economy.³²

To sum up, waging wars comprise both the physical and non-physical dimensions. The former represents the battle between confronted armies, while the latter captures the struggle for support and control over the population in the combat zone, within national borders and internationally. From the observations above, it does not seem that the nature of warfare has altered dramatically in recent years. A combination of symmetric and asymmetric warfare still represents the gist of the 21st century conflicts. Proliferation of technological solutions has made possible for rapid dissemination of different information and propaganda, and therefore people's opinion has become more

27 For a boarder discussion see P. Pomerantsev and M. Weiss, 'The Menace of Unreality: How the Kremlin Weaponizes Information, Culture and Money' (2014) Institute of Modern Russia 22–23, online: <http://www.interpretermag.com/wp-content/uploads/2014/11/The_Menace_of_Unreality_Final.pdf>.

28 Each phase has three sections (nine in total). See A. Racz, 'Russia's Hybrid War in Ukraine' (2015) The Finnish Institute of International Affairs 57–67, online: <http://www.fiaa.fi/en/publication/514/russia_s_hybrid_war_in_ukraine/>.

29 See A. Racz, 'Russia's Hybrid War in Ukraine' (2015) The Finnish Institute of International Affairs 58, online: <http://www.fiaa.fi/en/publication/514/russia_s_hybrid_war_in_ukraine/>.

30 See A. Racz, 'Russia's Hybrid War in Ukraine' (2015) The Finnish Institute of International Affairs 60, online: <http://www.fiaa.fi/en/publication/514/russia_s_hybrid_war_in_ukraine/>.

31 See A. Racz, 'Russia's Hybrid War in Ukraine' (2015) The Finnish Institute of International Affairs 64, online: <http://www.fiaa.fi/en/publication/514/russia_s_hybrid_war_in_ukraine/>.

32 See J.J. McCuen, 'Hybrid Wars' (2008) 88 *Military Review* 107, at 108.

susceptible to manipulation than it used to be in the era of “pen and paper”. Nonetheless, aggressive states have always struggled prior and after the use of armed force to convey their political will. Whereas the context for struggle remained the same—that is, conveying one’s political will—what differs is the shape and form of the means that are being employed due to technological advances.

III. THE TERMINOLOGY OF HYBRID WARFARE

From the second half of the 20th century, conveying political will in a violent matter became less fashionable in the international community. Pål Wrange explains this shift towards non-violent means: “there are also non-military threats from actors who have found that war [in its conventional sense] is less useful as ‘politics by other means’; the price in terms of human and material destruction is too high even for the winner, and the international legal and political denunciation of violence has also made it more difficult to gain legitimacy for changes brought about by force.”³³ But, how exactly do these “non-military threats” manifest themselves in reality? Are they part of the so-called hybrid war? Drawing from the literature, the remainder of this section attempts to capture the terminology that is used to describe hybrid warfare.

As mentioned in the beginning of this article, waging war in different forms—military, political, information, irregular, etc.—has been omnipresent during each and every hostile conflict.³⁴ Adversaries resort to one form or a combination of two or more. Section II above illustrates through a number of examples how wars are waged in the era of modern technology. In doctrine, three terms are commonly used to describe this social phenomenon: compound, hybrid, and non-linear wars.

Compound wars denote the combination of regular and irregular (or guerrilla) force acting in concert and pursuing the same military goal.³⁵ Deploying irregular forces features in almost all wars. Pursuing the same goal, regular and irregular forces often collaborate in a rather haphazard manner. However, when there is a significant level of strategic coordination between the two, we can speak in terms of compound war.³⁶

33 P. Wrange, ‘Protecting Which Peace for Whom against What? A Conceptual Analysis of Collective Security’, in C.M. Baillet and K.M. Larsen (eds.), (2015) *Promoting Peace Through International Law* 85, at 103.

34 See Murray and Mansoor *supra* note 4.

35 T. Huber, ‘Compound Warfare: A Conceptual Framework’ in T. Huber (ed.), *Compound Warfare: That Fatal Knot* (2002) I, at 1.

36 F. Hoffman, ‘Hybrid Warfare and Challenges’, (2009) *Joint Force Quarterly* 34, at 36.

In a similar vein, the term hybrid war conflates regular and irregular violent warfare.³⁷ Regular military forces are directed towards the enemy's conventional military units, whereas irregular forces are usually aimed to achieve control over the population.³⁸ An example of hybrid war is the 2006 conflict between Israel and Hezbollah. Hezbollah is a non-state actor, political party and militant group from Lebanon. Against Israel, Hezbollah used an array of different methods of warfare including those of guerilla tactics.³⁹

There is, however, a difference when compared with compound warfare. The concept of compound wars refers to synergy of different forces at the strategic level. It does not capture the operational and tactical fusion of the full range of methods and modes of conflict as the concept of hybrid war does.⁴⁰ While compound wars may include the covert deployment of irregular forces, the complexity of means is far greater in hybrid warfare.

The concept of “non-linear” warfare is close to hybrid war. According to Peter Pomerantsev, the term non-linear war is more apt than hybrid war as it circumscribes most features of the latest conflicts. His perception of contemporary conflicts can be illustrated by the following example: State A has a certain political will in invading State B; therefore, State A summons other entities—namely, other states, non-state actors, media, etc.—with a common political purpose; likewise, State B does or ought to do the same.⁴¹ By the same token, in answering the inquiry of the core features of the Russian approach in the Crimean Peninsula, Mark Galeotti averred the following:

I like to use the term non-linear warfare, in part because it means nearly nothing, and doesn't come with the intellectual baggage of a term like hybrid warfare which, after all, it is a term that was designed to discuss how insurgents fight modern armies. We don't have yet a proper vocabulary. The key thing is to realize the extent to which we all need to return to the essential—almost Clausewitzian—notion of war. In this context, war is a political instrument. War is one means of making the other side do what you want it to do, such as simply to remain part of your sphere of influence. What this approach is really about, in a way, is about placing kinetic military operations

37 See R. de Wijk, 'Hybrid Conflict and the Changing Nature of Actors', in J. Lindely-French and Y. Boyer (eds.), (2012) *The Oxford Handbook of War* 358.

38 See Pyung-Kyun, *supra* note 5, at 385.

39 See F. Hoffman, 'Conflicts in the 21st Century: The Rise of Hybrid Wars', (2007) *Potomac Institute for Policy Studies* at 35–38.

40 See Hoffman, *supra* note 36, at 36–37.

41 See Pomerantsev, *supra* note 9.

back in the toolbox. For a long time we thought [of] them as entirely separate: diplomacy and politics on the one hand and warfare in the other. In some ways, warfare happens when the other things fail. What this doctrine is saying is no, let's just appreciate that in fact we are talking about a whole spectrum of capabilities that can range from soft power suasion, to economic pressure, to increasingly tough diplomatic lines to a whole gradation of military operations that can range from sending 10 people into blocking a bridge, to sending a hundred people to help foment a local insurrection, to sending 10.000 people in a full-scale war. These instruments can and should be used together rather than as entirely separate pieces.⁴²

Be that as it may, modern warfare implies mainly non-kinetic means, such as cyber and influence operations.⁴³ Even though there is no universally accepted definition, the term hybrid war is commonly used in literature to describe these conflicts. The term hybrid war suggests hostile conflict between two or more subjects of international law, where one (or all of them) resorts to a broad array of different means in conveying political will. In hybrid warfare, a foe could be defined as “any adversary that simultaneously employs a tailored mix of conventional weapons, irregular tactics, terrorism, and criminal behavior in the same time and battle space to obtain their political objectives.”⁴⁴ A hybrid threat, on the other hand, is one posed by “any current or potential adversary, including state, non-state and terrorists, with the ability, whether demonstrated or likely, to simultaneously employ conventional and non-conventional means adaptively, in pursuit of their objectives.”⁴⁵ This encompasses both state and non-state actors.⁴⁶ A belligerent who is waging hybrid war has the goal to extend the conventional war and include the population, and, by broadening the conflict both in time and in space, hybrid forces are likely to amplify their shortcomings to achieve conventional military victory. Deficiencies may be a weaker army, obsolete technology, or

42 See Interview by O. Manea with M. Galeotti, *Small Wars Journal*, online: <<http://smallwarsjournal.com/jrnl/art/hybrid-war-as-a-war-on-governance>>.

43 See D. Cantwell, ‘Hybrid Warfare: Aggression and Coercion in the Gray Zone’ 14 ASIL Blog, online: <<https://www.asil.org/insights/volume/21/issue/14/hybrid-warfare-aggression-and-coercion-gray-zone>>.

44 F. Hoffman, ‘On Not-So-New Warfare: Political Warfare vs Hybrid Threats’, *War on the Rocks* (28 July 2014), online: <<http://warontherocks.com/2014/07/on-not-so-new-warfare-political-warfare-vs-hybrid-threats/>>.

45 This definition was approved by the NATO Military Working Group (Strategic Planning & Concepts), February 2010.

46 See Hoffman, *supra* note 44.

the lack of international support. Accordingly, the main goal of irregular forces is to maintain the control over the people to accomplish victory in war, which would otherwise not be possible.⁴⁷ Or, in another key, the purpose of waging a hybrid war and including a broad spectrum of people in a fight is nothing more than achieving the conventional military victory that could hardly be done by using merely conventional means.⁴⁸

A backward glance is now in order. The linguistic definition of war goes as follows: “state of armed conflict between different countries or different groups within a country.”⁴⁹ In this conventional approach the existence of armed violence is a constitutive element. Waging hybrid warfare, on the other hand, does not necessarily imply the kinetic use of force; yet it could be as effective in terms of coercion. Consequently, whereby the notion of war traditionally denotes the use of armed force, the term hybrid war ought to be understood as a concept capturing all means of conveying political will that are as effective as the use of armed force in terms of coercion.

IV. CONTEMPORARY AUTHORITY ON HYBRID WARFARE

A. JUS AD BELLUM AND JUS IN BELLO – AN OVERVIEW

Conventionally, the existence of armed violence is a constitutive element of war. Waging hybrid warfare, on the other hand, does not necessarily imply the kinetic use of force; yet it could be as effective in terms of coercion. Therefore, understanding the tension between hybrid warfare and international law remains essential to countering these types of threats.⁵⁰

In international law, there are two bodies of law governing what is conventionally understood as war: *jus ad bellum*, which refers to “use of force” or “armed attack” instead of “war”, and *jus in bello*, which uses “armed conflict”.⁵¹ *Jus ad bellum* and *jus in bello* both purport to legally restrain

47 See Mansoor, *supra* note 8, at 9.

48 cf. McCuen, *supra* note 32, at 107. McCuen suggests that in the context of modern warfare we should supersede conventional terms of “victory” or “defeat” with “success” or “failure”, and the end state sought ought to be “secure improved normalcy” rather than “defeat the enemy forces” or “overthrow the enemy regime”.

49 See Oxford Dictionary, online: <<http://www.oxforddictionaries.com/definition/english/war>>.

50 See Cantwell, *supra* note 43.

51 See P. Wrangle, ‘Does Who Matter? Legal Authority and the Use of Military Violence’, (2017) 2 *Ethics & International Affairs* 191, at 193. Wrangle suggests that the United Nations Charter (hereafter: UN Charter) replaces “war” with “use of force” or “armed attack”, while the Geneva Conventions opt for “armed conflict”. He maintains that while “war” is still used in e.g. international ethics, a more precise legal term is “armed conflict”.

international violence.⁵² *Jus ad bellum*, or the law on use of force, stipulates the prohibition of the use of force by states, with the two notable exceptions⁵³—the right to self-defense and authorization or mandate by the United Nations (UN) Security Council.⁵⁴ In this vein, *jus ad bellum* rules provide for the use of force as long as it is deemed as lawful, as opposed to wrongful.⁵⁵ Notwithstanding, the purpose of the law on use of force is to preserve peaceful relations between states by spelling out stringent conditions for the instances of use of force which, however, ought to occur after nonviolent compelling measures,⁵⁶ e.g. diplomacy, economic or political pressure, or counter-measures.⁵⁷

The prohibition of use of force applies to member states of the UN pursuant to Article 2(4) of the UN Charter.⁵⁸ Furthermore, it extends additionally to non-member states and to the acts of non-state actors by virtue of customary international law.⁵⁹ However, the prohibition applies to the latter only if those acts are attributable to a state according to the law of state responsibility. If they are not attributable to a particular state, non-state actors could be responsible domestically or internationally, but not under the label of the prohibition of use of force.⁶⁰

52 See C. Greenwood, 'The Relationship between *Jus ad Bellum* and *Jus in Bello*', (1983) 9 *Review of International Studies* 221, at 232.

53 These two are the "notable exceptions". Others are *ad hoc* consent to the use of force, provisions of the Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3) and other provisions in treaties permitting the use of force. See S.T. Helmersen, 'The Prohibition of the Use of Force as *Jus Cogens*: Explaining Apparent Derogations', (2014) 61 *Netherlands International Law Review* 167, at 168.

54 See Arts. 2(4), 42 and 51 UN Charter.

55 An international wrongful act of a state exists when an action is attributable to the state and constitutes a breach of an international obligation. See Art. 2 Responsibility of States for Internationally Wrongful Acts, GA Res. 56/83, 12 December 2001; corrected by document A/56/49(Vol.I)/Corr.4 (hereafter: Articles on State Responsibility).

56 See Art. I UN Charter: "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

57 Regarding the countermeasures, see P. III Ch. III Articles on State Responsibility.

58 The UN Charter is also applicable to non-kinetic conduct, although it was envisaged for kinetic actions. See P.R. Dev, "'Use of Force'" and "'Armed Attack'" Thresholds in Cyber Conflict: The Looming Definitional Gaps and the Growing Need for Formal U.N. Response', (2015) 50 *Texas International Law Journal* 379, at 385.

59 Customary international law prohibits the "threat of the use" and "use" of force respectively. See *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment*, [1986] ICJ Reports (hereafter: *Nicaragua judgment*) 89–92, paras. 188–192.

60 See M.N. Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare* (2013), at 43–44.

On the other hand, *jus in bello* articulates the possibility of military and other armed actors to legally resort to force and target objects and individuals. Also called the law of armed conflict or international humanitarian law (IHL), *jus in bello* always applies when there is an armed conflict irrespective of whether it is characterized as lawful or wrongful. IHL has the purpose to alleviate harm and minimize unnecessary sufferings during an armed conflict, and thus curtail casualties that follow the effectively accomplished legitimate military aim. To this end, whenever actions amount to an armed attack, rules of IHL are to be applied in that situation.

The prohibition of use of force is under the realm of *jus ad bellum*. It bears stressing that the terms “use of force” and “armed attack” have different connotation and normative purposes. Whilst the existence of an armed attack invokes the right to self-defense,⁶¹ not every use of force constitutes an armed attack and thus provides for a legal ground for self-defense.⁶² In the latter case, an aggressive state would be in breach of Article 2(4) UN Charter and customary international law and therefore responsible pursuant to the rules of state responsibility.⁶³ The law of state responsibility refers to the state that commits an internationally wrongful act as a “responsible state”, whereas the victim state is labeled as an “injured state”.

B. WHAT MAKES PROHIBITION OF WARFARE?

Now that we moved from the term “war” to “use of force” and “armed attack” it remains to be seen which types of hybrid warfare are prohibited under international law. The key is to identify coercive acts and subject them to the use of force regime under international law. In such an endeavor, one should be wary that aggressive states and other entities are swiftly starting to use “lawfare” as a tool of waging wars—strategic manipulation of law with the guise of self-defense or protection of human rights.⁶⁴ States are well aware that not all coercive methods are wrongful. For instance, it is widely accepted that the prohibition of use of force is not breached if the force is of a political or economic character, irrespective of the element of coercion.⁶⁵ The drafters of the UN Charter focused on the armed violence between states and already

61 Art. 51 UN Charter: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”.

62 See A. Randelzhofer & G. Nolte, ‘Article 51’ in B. Simma et al. (eds.), *The Charter of the United Nations – A Commentary* (2012) 1397, at 1401.

63 Arts. 1–3 Articles on State Responsibility.

64 See Reeves & Barnsby, *supra* note 13, at 17.

65 See Schmitt, *supra* note 60, at 46.

in 1945 rejected the idea that economic coercion would amount to the use of force.⁶⁶ However, as explained above, there is a discernible tendency towards nonviolent warfare prior, during, and after kinetic use of force. Consequently, the Security Council acknowledged in 1992 that non-military “sources of instability” had become threats to peace and security.⁶⁷

As explained in the previous section, contemporary conflicts include a broad array of different methods rather than what has been traditionally deployed in wars. Their special character reflects on the indirect impact they render, which sometimes blur the line between combatants and noncombatants, and sometimes those actions are difficult to attribute to a particular state or entity.⁶⁸ This raises the question of whether all methods of warfare are prohibited in international law.

This can be illustrated by the following hypothetical example. State A induces State B to do or to restrain from a particular action. In doing so, State A does not initially resort to what has been traditionally understood as use of force, however, it carries out its actions in a manner which clearly puts State A in an advantageous position against State B. For instance, prior to an armed attack, State A installs malware into the defense system of State B, or it incites protests of such intensity that ultimately threatens the peace and security of State B, or State A initiates propaganda towards the population of State B as to gain acceptance of its future actions. Are all these actions prohibited under international law? The answer directly pertains to understanding the three different notions embodied in the UN Charter which has the paramount role in governing conflicts—namely, “armed attack”, “use of force”, and “non-intervention”.⁶⁹

The gravest forms of the use of force are those amounting to an armed attack.⁷⁰ What constitutes an armed attack is not easy to determine. To this end, the International Court of Justice (ICJ) advanced the test of “scale and effects” that ought to be considered when determining what constitutes an armed attack.⁷¹ Examples of what constitutes an armed attack (e.g. invasion by the armed forces, bombardment, etc.) may be found in the Statute of the International

66 It was a Brazilian proposal that economic coercion should amount to the use of force. 6 UNCIO Docs. 334, 609 (1945); Doc. 2, 617(e)(4), 3 UNCIO Docs. 251, 253–254 (1945).

67 S/25696, 30 April 1993.

68 See ‘Cyber Warfare’, Advisory Council on International Affairs, No 77, AIV/No 22, CAVV (2011), at 14 (online: <https://aiv-advies.nl/download/da5c7827-87f5-451a-a7fe-0aacb8d302c3.pdf>).

69 The UN Charter, sometimes perceived as the world constitution. See P. Wrange, *supra* note 33, at 85.

70 See *Nicaragua* judgment, para. 191.

71 See *Nicaragua* judgment, para. 195.

Criminal Court.⁷² This is a very high threshold but it is yet conceivable that a non-kinetic method of warfare, such as a computer network attack, may amount to an armed attack.⁷³

In instances of use of force not constituting an armed attack, the UN Charter does not set out the specific criteria. Conspicuously, it is always an armed attack when acts in question render injury or killing of persons, or, damage or destruction of objects.⁷⁴ In such a scenario, the victim state can either:⁷⁵ (i) lawfully respond by means of resorting to diplomatic protests or economic or political pressure, or (ii) undertake kinetic actions which would in other situations amount to use of force and thus be deemed as unlawful, but in this one they should be regarded as countermeasures.⁷⁶ Otherwise, the victim state may refer the situation to the Security Council, which can resort to force in any case of “threat to the peace, breach of the peace, or act of aggression.”⁷⁷ Some authors argue the prohibition of the use of force only in the context of armed force;⁷⁸ others contend that as long as the consequence of the action is violent as it would be in the ordinary armed attack, there is no reason to differentiate between kinetic and non-kinetic means of warfare.⁷⁹

If an action of lower intensity does not amount to the use of force, that does not mean that it should be treated as lawful under international law. The principle of sovereignty protects states from interference in their domestic business. However, not every interference is prohibited in international law.

72 See Art. 8(bis)(2) ICCSt. Here the terminology is “act of aggression” that entails individual criminal responsibility.

73 For an opinion that a computer network attack (CNA) may amount to an armed attack, see N. Weisbord, ‘Judging Aggression’, (2011) 50 *Colum. J. Transnat’l L.* 82; D. Weissbrodt, ‘Cyber-conflict, Cyber-crime, and Cyber-espionage’, (2013) 22 *Minn. J. Int’l L.* 347, at 369. Conversely, Ambos argues that CNAs could hardly be regarded as armed attacks because, crucially, a CAN could seldom amount to a manifest violation of the UN Charter. See K. Ambos, ‘Individual Criminal Responsibility for the Cyber Aggression’, (2016) 21 *Journal of Conflict & Security Law* 495, at 495–496.

74 See Schmitt, *supra* note 60, at 48.

75 See M.N. Schmitt, ‘“Attack” as a Term of Art in International Law: The Cyber Operations Context’, in C. Czosseck, R. Ottis and K. Ziolkowski (eds.), *4th International Conference on Cyber Conflicts* (2012) 283, at 287.

76 Regarding the countermeasures see P. III Ch. III Articles on Responsibility of States for Internationally Wrongful Acts, GA Res. 56/83, 12 December 2001; corrected by document A/56/49(Vol.I)/Corr.4.

77 Arts 39 and 42 UN Charter.

78 E.g. Klamberg concludes that article 2(4) of the UN Charter is reserved to the context of armed force. see Klamberg, *supra* note 23, at 197.

79 E.g. Y. Dinstein, ‘Compute Network Attacks and Self-Defense’, (2002) 76 *International Law Studies* 99, at 10.

Monitoring activities in another state are not prohibited for instance, though they may constitute acts of espionage. However, if the consequence of placing malware into a state defense system would not reach the threshold of “armed attack” or “use of force”, such action may nevertheless breach sovereignty of that state.⁸⁰ Such actions infringe the principle of non-intervention which is inherent in the principle of the sovereign equality of states laid down in Article 2(1) UN Charter.

The principle of non-intervention is enshrined in Article 2(7) UN Charter.⁸¹ Moreover, the prohibition of intervention is prescribed in a number of treaties.⁸² In the words of the ICJ, this principle constitutes a norm of customary international law.⁸³ According to the UN General Assembly Declaration on the Inadmissibility of Intervention⁸⁴ and Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States,⁸⁵ states are free to choose their political, economic, social, and cultural systems, without interference in any form by another state. States have the duty not to intervene in matters within the domestic jurisdiction of any state or use economic, political or any other type of measures of coercion.

Regarding the scope and content of the non-intervention principle, the ICJ held in the *Nicaragua* judgment that “the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States [...] a prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and foreign policy.”⁸⁶ In this vein, intervention is prohibited where the object of coercion is the matter in which states intervened against have exclusive rights by virtue of the principle of sovereignty.⁸⁷ Inter-

80 M.N. Schmitt, “‘Below the Threshold’ Cyber Operations: The Countermeasures Response Option and International Law”, (2014) 54 *Virginia Journal of International Law* 697, at 705.

81 “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

82 See Art. 8 of the Montevideo Convention on the Rights and Duties of States 1933; Art. 15 of the Charter of the Organisation of American States 1948; Art. 8 of the Charter of the League of Arab States 1945; Art. 3 of the Charter of the Organisation of African Unity 1963; Art. 32 of the Charter of Economic Rights and Duties of States 1974.

83 *Nicaragua* judgment, p. 96, para. 202.

84 A/RES/20/2131.

85 A/RES/25/2625.

86 See *Nicaragua* judgment, pp. 97–98, para. 205.

87 See N.M. Shaw, *International Law* (CUP 2014), at 832.

vention implies forcible or dictatorial interference by a state into another state's domestic matters to provoke certain conduct or consequences.⁸⁸ Supplying funds to insurgents is such an example, though it does not constitute a violation of the prohibition of use of force.⁸⁹

Not every interference, however, constitutes intervention. The element of coercion appears to be crucial.⁹⁰ What is coercion in the context of the non-intervention principle is far from clear.⁹¹ To make it even more capricious, as opposed to the prohibition of use of force, it has been suggested that intervention does not necessarily render damages in the victim state.⁹² The notion of coercion may be understood as a factual or normative concept. If taken as a factual concept, non-violent instances of intervention would hardly amount to breaches of the non-intervention principle. On the other hand, if understood as a normative, it opens room for arbitrariness. Therefore, factual circumstances should represent a basis for normative appraisal, whereby acts of intervention would be scrutinized with a view to the overarching *aggressive* policy that sets in motion the coercive acts.

It bears stressing that coercive interference has to have the effect of “depriving the state intervened against of control over the matter in question.”⁹³ In the context of hybrid warfare, if appraised in isolation, a single element of a hybrid warfare, say financing protests against the government at a specific time, may hardly be regarded as a clear example of coercive interference.⁹⁴ Conversely, taken as a part of coordinated interference aimed towards destabilizing the government, such an example stands better chance to be labeled as amounting to the breach of the non-intervention principle.

To sum up, state-sponsored propaganda, using different tools to incite separatist movements, or placing malware into the defense system of a victim-state, are the types of non-armed warfare that are prohibited in international law under certain conditions. Normatively, there is nothing precluding characterization of such methods as uses of force only if the consequences are of the same degree of seriousness as the one caused by the

88 See R. Jennings & A. Watts, *Oppenheim's International Law: Volume I Peace* (OUP 2008), at 430.

89 See *Nicaragua* judgment, para. 228.

90 The ICJ stated that “intervention is wrongful when it uses methods of coercion.” See *Nicaragua* judgment, para. 205.

91 See T.J. Farer, ‘Political and Economic Coercion in Contemporary International Law’, (1985) 79 *AJIL*, 405, at 406.

92 See Schmitt, *supra* note 80, at 705.

93 See Jennings & Watts, *supra* note 88, at 432.

94 See Cantwell, *supra* note 43.

conventional use of armed force. Realistically, this would hardly be the case. Therefore, we are left with the principle of non-intervention as the main legal concept for suppressing hybrid threats in international law. To this end, the injured state may invoke the international responsibility of the responsible state and request cessation and reparations.

V. CONCLUSION

The future of warfare is not easy to predict. Contemporary hostile conflicts conflate both irregular and conventional means of warfare that melt into one hybrid form whereby belligerents aligning to the technological advancements utilize the most effective assets of the two means. They are often called compound, hybrid, or non-linear wars. While there are some differences in nuances between the three, the term hybrid war is commonly used in literature and captures all situations where belligerents resort to mixed warfare that blends conventional military force with the protracted fervor of irregular, non-violent methods. Unlike conventional warfare, waging hybrid war does not necessarily imply the kinetic use of force. However, it could be as effective in terms of coercion.

In international law, there is general consensus that the UN Charter is applicable to non-kinetic conduct, although it was envisaged for kinetic actions. The ICJ rightly held that Articles 2(4) and 51 of the UN Charter, regarding the prohibition of the use of force and right to self-defense, apply to any use of force “regardless of the weapons employed.”⁹⁵ However, realistically, non-violent actions will hardly amount to use of force. Therefore, the focus should be placed on the non-intervention principle whereby different hybrid non-violent actions are to be viewed as parts of an overarching coercive policy. The rub lies in defining the notion of “coercion” in this context. 🙌🙌

⁹⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996*, [1996] ICJ Reports, para. 39.