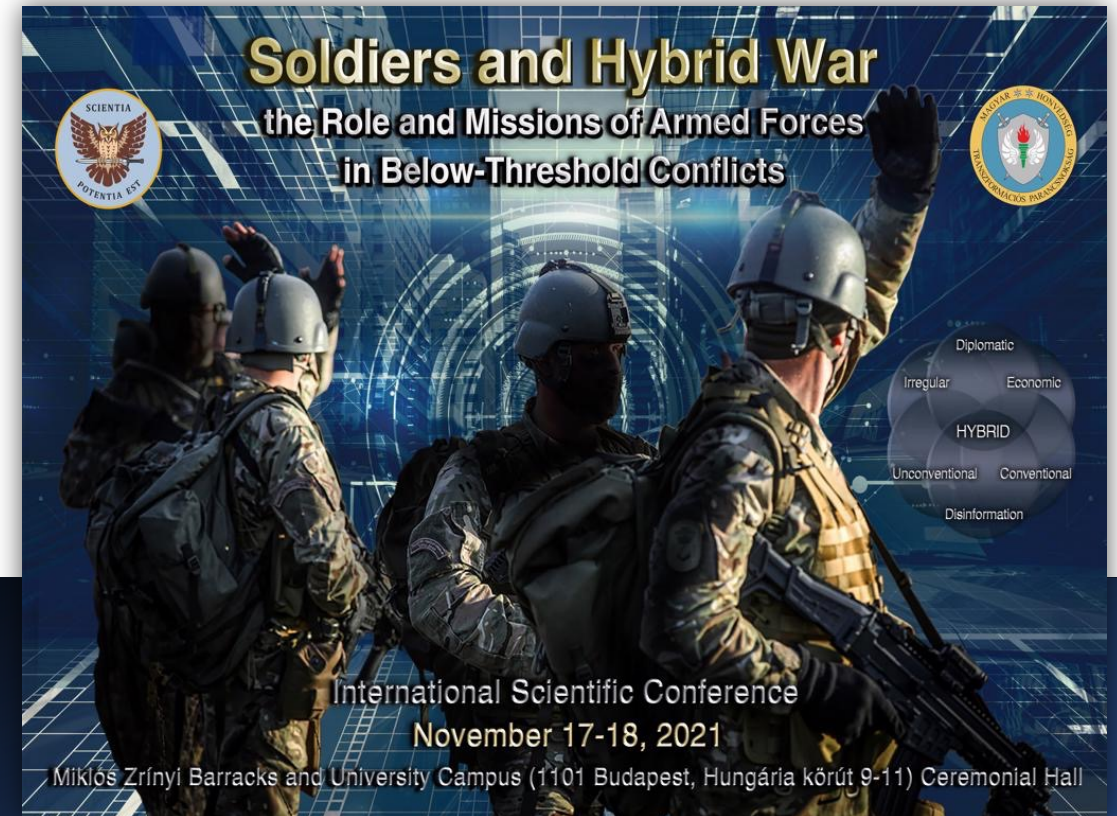


# Hybrid Warfare: Above or Below the Threshold of Armed Conflict?

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Panel 1: The Hybrid War Theory, November 17, 2021, 10:35-11:55 CET (GMT/UTC +1)



*The nature of  
war is  
constant  
change.*

Sun Tzu

# International Humanitarian Law

## Law of War

### Scope and purpose of the study

This study aims to shed light on the consistency of the emerging doctrine on hybrid warfare with current international (humanitarian) law and its possible application.



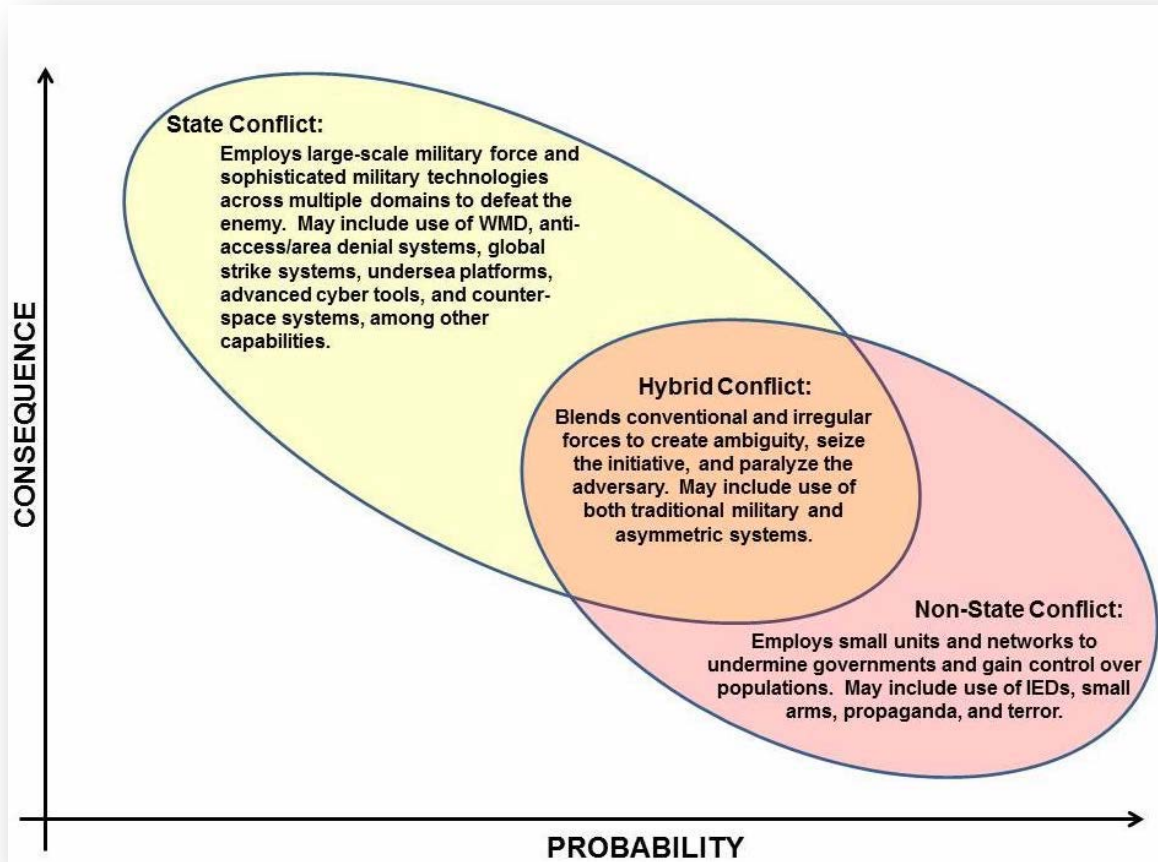
# The law of armed conflict

- The law of war or international (humanitarian) law, i.e. the Geneva and Hague Conventions, is a branch of public international law that sets the acceptable justifications to engage in war (*ius ad bellum*) and the limits to acceptable wartime conduct (*ius in bello*).
- Some principles of customary law became peremptory norms of *ius cogens*, a "formal" source of international law that apply *erga omnes*. Any existing treaty which is in conflict with these norms becomes void and terminates.





# Introduction to the problem



Continuum of Conflict (*The National Military Strategy of the United States of America 2015*)

- The nature of conflict has changed dramatically over the last few decades.
- Hybrid warfare — also known as "grey zone conflict" or "low-intensity conflict" — is a reality that blurs the lines between peace and war. Political and military leaders must be ready to confront and deter it.
- It is questioned whether hybrid warfare should be considered below the threshold of armed conflict and which law applies.

# def·i·ni·tion

/ defə|niSH(ə)n /

*noun*: a statement of the exact meaning of a word.

- Hybrid warfare is the effort to achieve strategic objectives without using significant force.
- There is no common definition of the term and therefore it is correspondingly ambiguous.
- It is an amorphous definition for an amorphous strategy.
- The term is so broad that it includes a set of tactics, techniques, technologies and methods.

# An umbrella concept for comprehensive warfare

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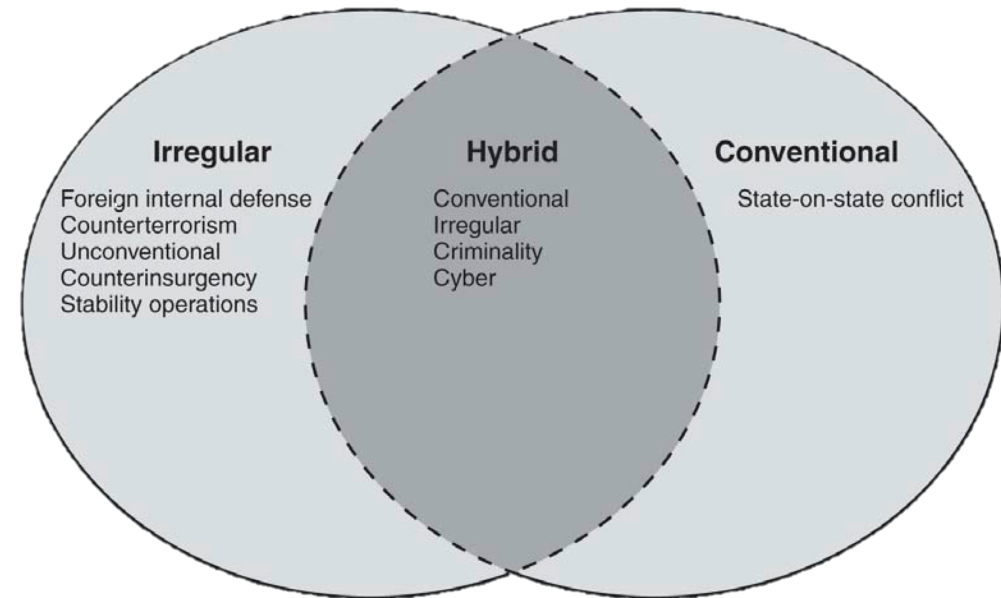
- Hybrid warfare can be considered an umbrella concept, a form of comprehensive warfare, a strategy, not merely a set of tactics and techniques.
- While it is a blend of traditional and irregular tactics, hybrid warfare makes overt and covert use of a wide range of tools: military and civilian, conventional and unconventional — it can also include actual force.





# The "grey zone" of hybrid warfare

- Hybrid warfare falls within a "grey zone" between peace and war (Schreier, 2015; Gorkowski, 2018; Cordey, 2019).
- Hybrid warfare is low risk, low cost and provides an adversary the opportunity to cloud, throwing doubt on who is responsible for these "grey zone" actions.
- Some hybrid warfare operations are convenient because are located in a twilight zone between peace and war, and therefore they should not trigger a conventional/kinetic military response.



Hybrid Warfare, GAO, Sept. 10, 2010, GAO-10-1036R

# Above or below the threshold of armed conflict?

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- The question is whether hybrid warfare should be considered an armed attack or use of force that, under treaty and customary international law, could trigger a military response or whether it falls below the threshold of damage and destruction resulting from a kinetic attack.
- Some authors (Thomas, 1996; Giles, 2016; Gorkowski, 2018; Theohary, 2018; Marsili, 2021) conclude that hybrid warfare remains below the threshold of conventional war and therefore it does not trigger a military response.

# NATO policy and doctrine

- At the 2014 NATO Summit in Wales, the allies recognized that international law applies in cyberspace and that the impact of cyberattacks could be as harmful as a conventional attack. As a result, cyberdefense was recognized as part of NATO's core task of collective defense.
- At the Warsaw Summit in 2016, the allies took further action to recognize cyberspace as a domain of operations just like the "classic" domains of air, land and sea.
- At the NATO summit held in Brussels in 2021, the allies reaffirmed that a cyber attack could trigger Art. 5 of the Atlantic Charter: "an attack on one is an attack on all".





Defense Secretary Mark T. Esper



## Cyber: above or below the threshold of armed conflict?

- Defense Secretary Mark T. Esper defined **cyber** as "part and parcel of what many call **hybrid war** – a **blurring of the lines between peace and war**" that is "**below the threshold of armed conflict**" (speech at the 2nd National Cybersecurity Summit in National Harbor, Md., Sept. 19, 2019).
- Navy Adm. Charles A. Richard, commander of U.S. Strategic Command, said **cyber** is "**below the threshold of conflict**" (speech at the Space & Missile Defense Symposium in Huntsville, Ala., August 12, 2021).

Navy Adm. Charles A. Richard



# Instrumentalisation of migrants for political purposes: a "hybrid attack" that triggers diplomatic and economic sanctions



In a statement addressing the situation at the border between Poland and Belarus in November 2021, the President of the European Commission, Ursula von der Leyen, held "*the Belarusian authorities responsible for this **hybrid attack***" — not "war" or "warfare" — and called on Member States to approve diplomatic and economic sanctions.

*Statement by President von der Leyen on the situation at the border between Poland and Belarus. Statement/21/5867, November 8, 2021, Washington, DC.*





Orchestrated instrumentalization of human beings for political purposes: a "hybrid operation tactic".

In a joint statement the US and European delegations on the UN Security Council characterized "the orchestrated instrumentalization of human beings...for political purposes by Belarus" as a "**hybrid operation tactic**" — not "war" or "warfare".

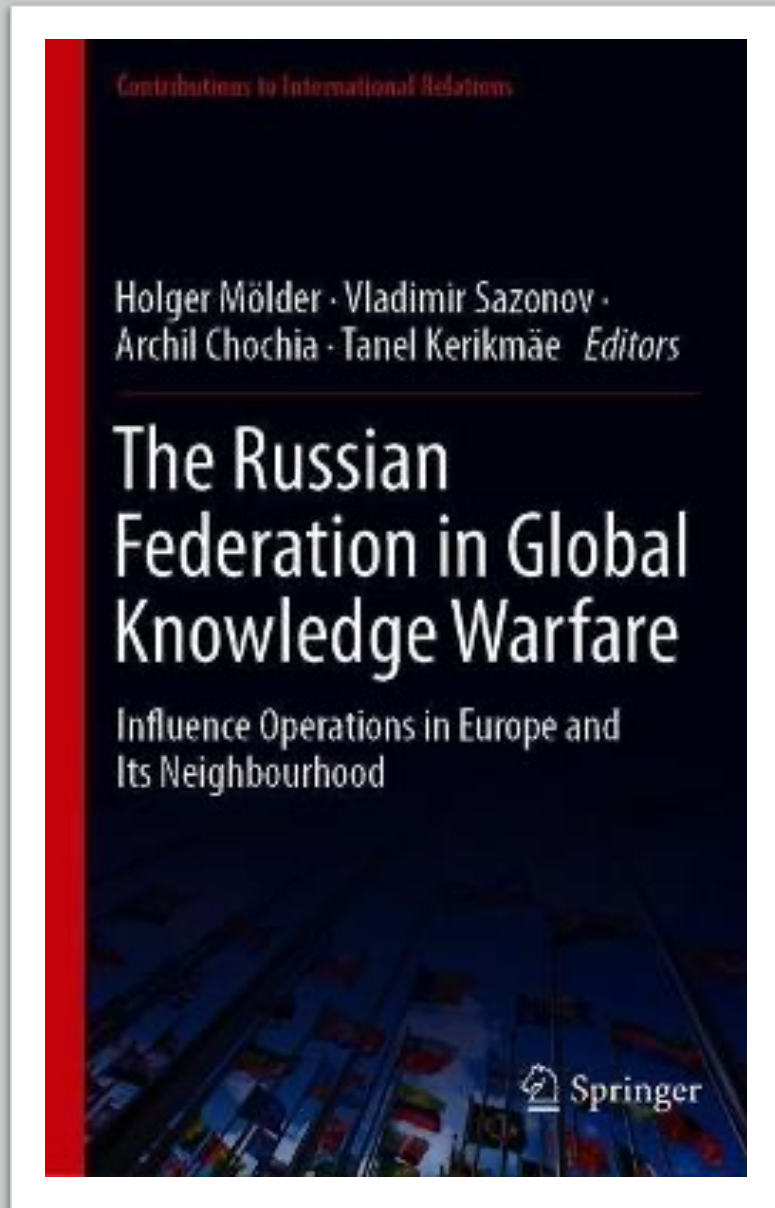
*Joint Statement on the Belarusian Authorities' Activities with Regard to the Instrumentalization of Migrants, United States Mission to the United Nations, New York, NY, November 11, 2021, <https://usun.usmission.gov/joint-statement-on-the-belarusian-authorities-activities-with-regard-to-the-instrumentalization-of-migrants>.*



# Findings and conclusions



- The Geneva and Hague Conventions and the principles of customary law are norms of *ius cogens* that set the acceptable justifications to engage in war (*ius ad bellum*) and apply in armed conflict (*ius in bellum*) – otherwise, it is not an armed conflict and the law of war does not apply.
- Lexicon and terms are essential: hybrid attack/action/operation ≠ war/warfare.
- Hybrid operations that do not include actual force and that fall below the threshold of damage and destruction resulting from a kinetic attack should not be considered an armed attack that could trigger a military response under treaty and customary international law.



## Further reading by the author suggested on this topic

- 2021 – Military Emerging Disruptive Technologies: Compliance with International Law and Ethical Standards. In Ignas Kalpokas (ed.), *Intelligent and Autonomous: Emergent Digital Technologies and the Challenges of Disinformation, Security, and Regulation*, Brill (Series Value Inquiry Book - VIBS). In press.
- 2021 – The Russian Influence Strategy in its Contested Neighbourhood. In Holger Mölder, Vladimir Sazonov, Archil Chochia and Tanel Kerikmäe (eds.) *The Russian Federation in Global Information Warfare. Influence Operations in Europe and Its Neighborhood*, p. 149-172. Cham: Springer (series Contributions to International Relations - CIR). [https://doi.org/10.1007/978-3-030-73955-3\\_8](https://doi.org/10.1007/978-3-030-73955-3_8)
- 2019 – The War on Cyberterrorism, Democracy and Security, 15 (2), 172-199, first published online on 17 July 2018. <https://doi.org/10.1080/17419166.2018.1496826>.

**YOUR  
QUESTION  
TIME**



*“That’s all Folks!”*

**Thanks for your attention**

**La commedia è finita!**



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