

Competition short of war – how Russia’s hybrid and grey-zone warfare are a blueprint for China’s global power ambitions

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Introduction

China is set to build an empire where its economic, strategic and security interests in Asia, the Pacific, Europe and the Arctic will be safeguarded for generations to come. Using the concepts of hybrid warfare and grey-zone warfare, this article argues that the implementation of China’s 2015 military strategy of active defence¹ and the territorial objectives in the 2019 Defence White Paper² are being informed by examples of contemporary Russian warfare approaches.

This article compares the present Chinese aggressive foreign policy approach in the South China Sea with the precedents of Russia’s annexation of Crimea and ongoing aggression in the Ukraine. It concludes with a call for decision-makers in Australia and other Western democracies to learn from these lessons in order to counter such hybrid threats.

Hybrid warfare – what’s in a name?

Hybrid war is an evolving and debated notion in international war and conflict studies. It refers to the use of nonconventional methods, such as cyber warfare, as part of a multidomain warfighting approach to disrupt and disable an opponent’s actions without engaging in open hostilities. The concept is almost 20 years old and has its origins in US military approaches to future warfighting. Coined by USMC General Mattis during a trendsetting speech at a US Naval Institute conference in

1 For an English translation of China’s Military Strategy of 2015, see http://eng.mod.gov.cn/Press/2015-05/26/content_4586805.htm (accessed 07/07/2019).

2 For an English translation of the 2019 Defence White Paper, China’s National Defence in the New Era, see http://www.xinhuanet.com/english/2019-07/24/c_138253389.htm

2005—and drawing from work by USMC LTC Dr Frank G Hoffman³ and USMC Colonel Bill Nemeth⁴—it has become a concept that continues to evolve (perhaps beyond its original scope and meaning) and to shape how an adversary's actions are characterised and countered.⁵

Only recognised in military literature since 2007 with Hoffman's seminal work,⁶ the effects and outcomes of hybrid threats are often in the headlines. Russia's military action in both Ukraine and Crimea; the election interference in both the UK and USA since 2016; and the use of social media and online news services (such as Russian TV) as part of a concerted Stratcom/InfoOps approach are all examples that may fall under the umbrella of hybrid warfare, depending on the definition used.

The term hybrid warfare has evolved over the years. Originally, it referred to both state actors and nonstate actors with advanced military capabilities. Then Hoffman, using the Israel–Hezbollah conflict of 2006 as one of his case studies, found Hezbollah, as a nonstate actor, successfully employing a host of different warfighting tactics, technologies and means that were hard for Israel's IDF to respond to. He used the terms 'hybrid threat' and 'hybrid warfare'⁷ to describe these tactics and provided us with this original, early definition:

'Hybrid threats incorporate a full range of different modes of warfare including conventional capabilities, irregular tactics and formations, terrorist acts including indiscriminate violence and coercion, and criminal disorder. Hybrid Wars can be conducted by both states and a variety of nonstate actors [with or without state sponsorship]. These multimodal activities can be conducted by separate units, or even by the same unit, but are generally operationally and tactically directed and coordinated within the main battlespace to achieve synergistic effects in the physical and psychological dimensions of conflict.'⁸

Hoffman's definition started a process by the US, NATO and allies of attempting to define hybrid warfare and threats that continues to date. There are still ongoing discussions among military thinkers and writers in relation to the relative 'novelty

3 Mattis J. & Hoffman, F.G. 'Future Warfare: The Rise of Hybrid Wars', U.S. Naval Institute, Proceedings, November 2005, Vol. 131/11/1,233. <https://www.usni.org/magazines/proceedings/2005/november/future-warfare-rise-hybrid-wars>

4 Nemeth, W. 'Future war and Chechnya: a case for hybrid warfare', Naval Postgraduate School, Monterey, Master Thesis, (2002) at <https://core.ac.uk/download/pdf/36699567.pdf>

5 For a recent reflection on hybrid warfare and its correlation to grey-zone, see Hoffman, F.G. 'Examining Complex Forms of Conflict-Gray Zone and Hybrid Challenges', *Prism* 7, No 4, pp 31–47.

6 Hoffman, F.G. *Conflict in the 21st Century: The Rise of Hybrid Wars* (Arlington, VA: Potomac Institute for Policy Studies, December 2007).

7 See also Hoffman 'Hybrid threats: Reconceptualising the evolving character of modern conflict' (2009) Strategic Forum 240. See also Hoffman 'Hybrid Warfare and challenges' (2009), Joint Forces Quarterly 52.

8 Hoffman, F.G. *Conflict in the 21st Century: The Rise of Hybrid Wars*, p. 8.

of such warfare⁹; its emergence as a concept of warfare within the wider context of 'full spectrum operations';¹⁰ as an element of the continuum of conflict; distinct from grey-zone or political warfare;¹¹ or as an emerging new form of warfare below or blurring the threshold of armed conflict.¹² All of this discussion underlines the lack of a single and shared definition for hybrid warfare.¹³

An elusiveness in definitional consistency continues, mirroring the difficulty in defining which strategies and tactics should be included in hybrid warfare. The definition is flexible at best and tailored to suit the actor's wider purposes. In any case, 'the hybrid notion reflects the porosity between irregular and regular warfare'.¹⁴

NATO developments

After being coined by General Mattis in 2005, Hoffman's 2007 widely cited definition of hybrid threats then found its way into the 2010 Capstone Concept¹⁵ used by NATO in its 'Countering Hybrid Threat' (CHT) experiment. This defined hybrid threats as threats 'posed by adversaries with the ability to simultaneously employ conventional and non-conventional means adaptively in pursuit of their objectives'.¹⁶ It also enunciated the need for a comprehensive approach 'to adapt its strategy, structure and capabilities accordingly... to deliver an effective response'. In 2011, NATO predicted that states may increasingly wage non-conventional attacks as '[hybrid threats] can be largely non-attributable, and are therefore suitable for situations where more overt action is ruled out for any number of reasons'.¹⁷

9 As recent as 2017, Hybrid Warfare was regarded as relative novelty in the *MCDC Countering Hybrid Warfare Project: Understanding Hybrid Warfare*, (2017), p 3.

10 *Ibid*, describing Hybrid Warfare as the 'synchronized use of multiple instruments of power tailored to specific vulnerabilities across the full spectrum of societal functions to achieve synergistic effects'.

11 Hoffman, F.G. 'Examining Complex Forms of Conflict', (n 5), p.32.

12 NATO StratCom COE, *Hybrid Threats—A Strategic Communications Perspective*, Report 2019, p.8.

13 Bachmann, S. & Munoz Mosquera, A. 'Hybrid Warfare as Lawfare: Towards a Comprehensive Legal Approach' in E. Cusumano & M. Corbe (eds) *A Civil-Military Response to Hybrid Threats*, Palgrave Macmillan, Cham (2018), p.63.

14 Tenenbaum, E. 'La piège de la guerre hybride' (2015), *Focus stratégique* n. 63, p.5.

15 NATO – Supreme Allied Commander Transformation Headquarters, 'Military Contribution to Countering Hybrid Threats Capstone Concept', <www.act.nato.int/the-countering-hybrid-threats-concept-development-experiment>, 22 February 2017; see also S Bachmann, 'Hybrid Threats, cyber warfare and NATO's comprehensive approach for countering 21st century threats – mapping the new frontier of global risk and security management', (2011) 88 *Amicus Curiae* 24.

16 NATO ACT, BI-SC Input to a new NATO Capstone Concept for the Military Contribution to Countering Hybrid Threats, <http://www.act.nato.int/images/stories/events/2010/20100826_bi-sc_cht.pdf> 22 February 2017.; also in Bachmann, S. & Gunneriusson, H. 'Hybrid Wars: The 21st Century's New Threats to Global Peace and Security', *Scientia Militaria, South African Journal of Military Studies*, Vol 43, No. 1, 2015, p.79.

17 Bachmann, S. & Mosquera, A. (n 13) and also referring to S. Bachmann & J. Sanden 'Countering hybrid eco-threats to global security under international law: The need for a comprehensive legal approach', *Liverpool Law Review* 33, 2013, 261.

Hybrid threats were defined as multimodal, low intensity, as well as kinetic and non-kinetic threats to international peace and security.¹⁸ These include asymmetric conflict scenarios, global terrorism, piracy, transnational organised crime, demographic challenges, resource security, retrenchment from globalisation and the proliferation of weapons of mass destruction.¹⁹

In 2011, NATO's Headquarters Supreme Allied Command Transformation conducted an experiment aimed at 'Assessing Emerging Security Challenges in the Globalised Environment' (Countering Hybrid Threats or CHT). Among the outcomes of CHT, one finds the argument that hybrid threats faced by NATO and its partners require a so-called comprehensive approach of a wide spectrum of kinetic and non-kinetic responses to such threats from military and non-military actors alike. Essential to NATO's CHT conclusion was the hypothesis that such a comprehensive response will have to be a multidimensional response by a partnership of state and nonstate actors, such as international and non-governmental organisations, as well as private firms.²⁰

In 2012, and regardless of the tangible results of the CHT and the existence of NATO's Capstone Concept of 2010, NATO decided to discontinue its work on the subject, while urging NATO member states and associated NATO Centres of Excellence to continue working on CHT.²¹ It became clear that this decision had been made prematurely when NATO chose the term hybrid warfare to describe the 2014 Crimean annexation and the intensifying Russian aggression in Eastern Ukraine.²² NATO's Wales Summit Declaration of September 2014 provides a reference to hybrid warfare and its components:

We will ensure that NATO is able to effectively address the specific challenges posed by hybrid warfare threats, where a wide range of overt and covert military, paramilitary and civilian measures are employed in a highly integrated design. It is essential that the Alliance possesses the necessary tools and procedures required to deter and respond effectively to hybrid warfare threats, and the capabilities to reinforce national forces.²³

18 On the subject, Bachmann, S. & Sanden, J. 'Countering Hybrid Eco-threats to Global Security Under International Law: The Need for an Comprehensive Legal Approach', 33 (3) *Liverpool Law Review* 263.

19 See 'Updated List of Tasks for the Implementation of the Comprehensive Approach Action Plan and the Lisbon Summit Decisions on the Comprehensive Approach', dated 4 March 2011, p. 1-10, paragraph 1 cited in S. Bachmann & H. Gunneriusson, 'Russia's Hybrid Warfare in the East: Using the Information Sphere As Integral to Hybrid Warfare', *Georgetown Journal of International Affairs: International Engagement on Cyber V* (2015): 204.

20 See NATO ACT, 'NATO countering the Hybrid Threat', <http://www.act.nato.int/nato-countering-the-hybrid-threat>, 22 February 2017.

21 Bachmann, S. & Mosquera, A. (n 13), 62

22 NATO *Wales Summit Declaration*, par 13 Sept 2015, at http://www.nato.int/cps/fr/natohq/official_texts_112964.htm?selectedLocale=en. (07/07/2019).

23 *Ibid.*

This declaration, together with subsequent publications and announcements by NATO²⁴ seems to indicate the Alliance's awareness of the need to prepare for hybrid warfare. On 1 December 2015, NATO Secretary General Jens Stoltenberg and then European Union High Representative for Foreign Affairs and Security Policy, Federica Mogherini, announced the launching of a new hybrid warfare program and a new NATO hybrid warfare strategy. This led to the adoption and development of a so-called Readiness Action Plan (RAP) to respond to new threats, including hybrid warfare.²⁵

The grey-zone

Discussions of hybrid warfare often focus on the effective and simultaneous employment of a range of activities to achieve a desired effect, including less obvious and asymmetric challenges such as economic manipulation, disinformation and insurrection.²⁶ Conventional force, or threat of use of conventional force, remains a feature of hybrid warfare, but conduct of these combined and harmonised activities primarily remains below the threshold of what we might consider armed conflict.

Hence, a key feature of a hybrid threat is not only the combination of these activities, but their conduct below the threshold of war, or in the grey-zone. Such measures might be considered to be short of war due to the ambiguity of international law, the ambiguity of actions and attribution or because the impact of the activities does not justify a response.²⁷

This is what is new in hybrid warfare as compared to earlier eras when nation states had comparatively well-defined concepts of red lines, minimising the amount of influence waged in the grey-zone. Cyber warfare and disinformation are more readily undertaken in this grey-zone, with responses limited due to the ambiguities mentioned above. Even insurrection, which has always been a factor in proxy wars, arguably now is facilitated more effectively and covertly through modern forms of propaganda and influence in the information domain.

Hicks seeks to characterise the grey-zone as having five common elements: bounded thresholds, veiled intentionality towards a security objective, multidimensional tools, use of (dis)information, and blurriness between public and private domains.

24 See Davis, J.A. 'Continued Evolution of Hybrid Threats – The Russian Hybrid Threat Construct and the Need for Innovation', http://www.jwc.nato.int/images/stories/threeswords/CONTINUED_EVOLUTION_OF_HYBRID_THREATS.pdf ((07/07/2019))

25 Mosquera, A. & Bachmann, S. 'Understanding Lawfare in a Hybrid Warfare Context', 37 NATO Legal Gazette (2016), 26.

26 Monaghan, A. 'The War in Russia's Hybrid Warfare', *Parameters* 45(4) Winter 2015-16 https://ssi.armywarcollege.edu/pubs/parameters/issues/winter_2015-16/9_monaghan.pdf

27 Dowse A. and Bachmann S., What is hybrid warfare and what is meant by the grey-zone, <https://theconversation.com/explainer-what-is-hybrid-warfare-and-what-is-meant-by-the-grey-zone-118841>

She has also sought to consolidate definitions into this excellent summary of grey-zone challenges

An effort or series of efforts intended to advance one's security objectives at the expense of a rival using means beyond those associated with routine statecraft and below means associated with direct military conflict between rivals. In engaging in a gray zone approach, an actor seeks to avoid crossing a threshold that results in open war.²⁸

The best exemplar of grey-zone tactics has been in Eastern Ukraine, where Russia has encouraged separatists and conducted an information campaign that has remained under the threshold of war. This conflict is such a good example that, confusingly, many refer to the physical area in Eastern Ukraine as the grey-zone²⁹.

Russian aggression against Ukraine and the exploitation of Western weaknesses

What started off as an example of hybrid warfare, with the illegal occupation of Crimea by Russia's Little Green Men in March 2014 and then illegal annexation, later turned into a de facto war of aggression, which has been waged in Eastern Ukraine since 2014. This is a fact that Western politicians are unlikely to acknowledge³⁰ as doing so would have significant consequences. The Nuremberg Principles of 1950,³¹ the International Criminal Court's new (leadership) crime of aggression under the Rome Statute³² and the prohibition of the use of force in international relations under the UN Charter³³ would all have to be addressed if the West was to label and condemn correctly what has been happening in Ukraine.

Having said that, it becomes clear that the present mechanisms and guardians of international law are limited in how to respond to a reality where such violations of international law are committed by one of the five permanent members of the UN Security Council. Russia (like the other permanent UN Security Council member states) has multiple venues and methods to block or delay efforts to create a coordinated international response. For example, Russia could utilise its veto power in

28 Hicks K. et al, *By Other Means*, CSIS report, July 2019, <https://www.csis.org/analysis/other-means-part-i-campaigning-gray-zone>

29 Rettman, A., 'Russia's grey war in Ukraine prompts fatigue', <https://euobserver.com/foreign/144084>

30 See eg Gunneriusson, H. and Bachmann, S. 'Western Denial and Russian Control - How Russia's National Security Strategy threatens a Western-based approach to Global Security, the Rule of Law and Globalization' *Polish Political Science Yearbook* vol. 46 (1) (2017), 9–29

31 *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal of 1950* at http://legal.un.org/ilc/texts/instruments/english/draft_articles/7_1_1950.pdf.

32 Statute of the ICC, (U.N. Doc. A/CONF.183/9*), Art 5 bis; full text is available at <http://legal.un.org/icc/statute/romefra.htm>.

33 UN Charter Art 2 (4), prohibition of the use of force.

the United Nations Security Council, regardless of the prohibition of the use of force in Article 2 (4) of the UN Charter.

The International Court of Justice (ICJ) in The Hague, the principal judicial organ of the UN, is built on the fact that only states can be parties to cases and jurisdiction is dependent on consent.³⁴ The International Criminal Court (ICC) can only exercise its jurisdiction over member states or, as an exception, through referral by the UN Security Council. Neither Russia nor China are member states (and for that matter the USA has not ratified its membership) and a referral by the UN Security Council is unlikely given that the states in question hold veto powers.³⁵

The last resort would be to approach the European Court of Human Rights with an application regarding Russian violations of rights granted under the European Convention on Human Rights of 1950. This would be possible strictly speaking but would not deter Russian aggression in the long-run. Any ruling by the Court would likely only lead to Russia being required to pay financial remedies (something Russia and Turkey, as Europe's worst human rights offenders, have been willing to pay) without any prospect of such a judgement effectively being capable of forcing Russia to reverse its aggressive policies against Ukraine.

The West's only weapon is the imposition of sanctions, something which has taken place in the form of so-called targeted sanction against individual Russians close to the Kremlin. Unless the West is willing to target Russia's prime hybrid warfare weapon—the energy sector—these sanctions won't bite. The adoption of such sanctions against Russia's energy sector, a cornerstone of its national economy and bedrock of any armament spending, would have a detrimental effect on Russia's abilities but this is unlikely to happen any time soon, as long as Western Europe's, often self-imposed, energy dependency on Russia continues.

The amount of natural gas exported from Russia to Europe is at an all-time high. It shows little sign of slowing down despite political concerns from the European Union (EU). Soon, Russian natural gas exports to Europe will increase further with the impending completion of Nordstream 2 in the Baltic Sea. This massive project, with the support of German politicians, has been enabled despite the fact that presently active Baltic pipelines are yet to reach full capacity. Germany, the economic engine of Europe, has made itself dependent on Russian energy,³⁶ just as it is scaling down

34 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, at <https://www.icj-cij.org/en/case/70/judgments> and *Israeli Wall Advisory Opinion* (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory), at <https://www.icj-cij.org/en/case/131> (07/07/2019).

35 See for an overview, Bachmann, S. 'Malaysia Airlines Flight MH17: the day Russia became a state sponsor of Terrorism', 99 *Amicus Curiae* 2014

36 *DW*, 'Nord-Stream 2 Pipeline row highlights Germany's energy dependence on Russia', <https://www.dw.com/en/nord-stream-2-pipeline-row-highlights-germanys-energy-dependence-on-russia/a-47344788> (05/07/2019).

its own energy production of domestic coal and nuclear energy.³⁷ In this context, it is noteworthy that Germany's unilateral decision to leave nuclear technology by 2024 has exacerbated this dependency and vulnerability.³⁸ It has significantly weakened any potential economic countermeasures at domestic and EU level by states which are opposing Russian meddling and grey-zone activities against NATO and EU states, thus effectively questioning both unity and transatlantic security cooperation in the years to come.³⁹

China's territorial ambitions as a 'hybrid threat'?

China has participated in more territorial disputes than any other state since the end of the Second World War.⁴⁰ Many of these disputes could be considered expansionism, with the exception of Taiwan, which has remained a reunification objective of the People's Republic of China (PRC) since 1949. The disputes include land border claims and counter-claims, such as with India, and arguments with Hong Kong over its separate legal system are also increasingly a source of tension. However, the primary focus of Chinese expansionism tends to be in the maritime environment with disputes over the Paracel and Spratly Islands in the South China Sea and the Senkaku Islands in the East China Sea.

The Chinese maritime disputes especially in the South China Sea are complex, involving multiple overlapping claims with other regional states but also with other stakeholders who seek peaceful resolution of claims and assurance of freedom of navigation. The establishment of military facilities on the islands, in breach of a ruling of its claim by The Hague, exacerbated the situation, leading US and other navies to conduct regular freedom of navigation exercises through the South China Sea.

In addition to China's ambitions associated with territory in its direct proximity, China has developed a strategy for its future economy with the Belt and Road Initiative. Critics of this strategy assert that the associated infrastructure elements of the initiative are essentially an alternative means of securing key overseas territory, or a

37 *Ibid.*

38 See Gunneriusson, H. and Bachmann, S. (n 19), H Gunneriusson, 'Russia and China's ongoing "hybrid warfare" – When does it cross the line?' <https://limacharlienews.com/national-security/russia-china-hybrid-warfare/> (05/07/2019).

39 See De Maio, G. 'Nord Stream 2: a failed test for EU Unity and transatlantic coordination', <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2019/4/20/nord-stream-2-a-failed-test-for-eu-unity-and-transatlantic-coordination> (05/07/2019).

40 Fravel, M.T. 'International Relations Theory and China's Rise: Assessing China's Potential for Territorial Expansion', *International Studies Review*, Vol. 12, Issue 4, December 2010, 505–532 <https://doi.org/10.1111/j.1468-2486.2010.00958.x> <https://academic.oup.com/isr/article/12/4/505/1854189>.

new form of colonialism.⁴¹ An obvious example of this strategy is China's effective acquisition of the port of Hambantota in Sri Lanka.⁴²

China's approach to its territorial claims is one in which changes are implemented incrementally and thereafter become the new normal. Occupation of South China Sea islands is an example, in which China's 2019 Defence White Paper characterises international freedom of navigation as 'countries from outside the region... illegally entering China's territorial waters... undermining China's national security'.⁴³

In a 2010 article, Fravel asserted that China was unlikely to resort to armed conflict or even aggressive expansionism in pursuing their territorial claims.⁴⁴ However, since that publication, we have seen examples in the East and South China Seas in which aggression has been clear, with challenges between military platforms and with conflict often narrowly averted.

Despite these tensions and occasional incidents, China's conduct of expansionism in the South China Sea primarily has been in the grey-zone, in that each step has been calculated to achieve objectives without crossing a threshold of warfare. However, can we consider it to be hybrid warfare? That is, has the posturing of forces been complemented by other activities to achieve their goals? Hoffman regards China as being 'well organized to conduct operations short of military conflict'⁴⁵ utilising three forms of nonwarfare, namely noncontact (fei jierong), nonlinear (fei xianshi) and nonsymmetric (fei duicheng).⁴⁶

Such influence activities are widely suspected to be behind the Philippines government's softening of their stance against China in relation to the South China Seas dispute.⁴⁷ Such influence may be overtly undertaken through incentives such as Belt and Road Initiative agreements, although there is evidence that such initiatives can have a covert element and take advantage of corrupt regimes.⁴⁸

41 Greer, T. 'One Belt, One Road, One Big Mistake', *Foreign Policy*, 6 December 2018, <https://foreignpolicy.com/2018/12/06/bri-china-belt-road-initiative-blunder/> (07/07/2019).

42 Abi-Habib, M. 'How China got Sri Lanka to cough up a port', *NY Times*, 25 June 2018, <https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html> (07/07/2019).

43 'China's National Defence in the New Era', http://www.xinhuanet.com/english/2019-07/24/c_138253389.htm

44 Fravel, (n 40)

45 Hoffman, F.G. 'Examining Complex Forms of Conflict', (n 5), p 33

46 Ibid.

47 Corr, A., 'Duterte's China ties, allegations of corruption, and the Philippine election', <https://www.ucanews.com/news/dutertes-china-ties-allegations-of-corruption-and-the-philippine-election/85085>

48 Doig, W. 'The Belt and Road Initiative Is a Corruption Bonanza', *Foreign Policy*, 15 January, 2019, <https://foreignpolicy.com/2019/01/15/the-belt-and-road-initiative-is-a-corruption-bonanza/>

Influence can extend to attempted corruption of Western politicians to advocate for Chinese policies over the dispute.⁴⁹ China more broadly exerts influence through a combination of political warfare activities, including mobilisation of diasporas, tasking of students, financial assistance to individuals and institutions, economic manipulation and large-scale cyber and other information operations.⁵⁰

Hybrid Lawfare – exploiting the legal grey-zone of modern conflict

Hybrid warfare is an open concept with different elements. Lawfare, for example, is a new aspect of non-kinetic conflict aiming at ‘using law as a weapon to manipulate legal paradigms’.⁵¹

Lawfare is being used by Russia and China (in the context of the South China Sea as discussed in this article) both within and outside the scope of traditional armed conflict. For Russia the use of lawfare is ‘a continuation of its policy of using every tool at its disposal to achieve its political and geo-strategic goals’⁵² and a ‘force multiplier’ to meet its political, military and legal objectives, as highlighted in its Military Doctrine of 2014 and its National Security Strategy of 2015.

Both China and Russia have been active in the use and abuse of the rule of law in order to either prepare military action or to justify it after completion of the mission. Russian justification of the occupation and then subsequent annexation of Crimea is an example of the latter; while the Chinese justification for its claims over the South China Sea is an example of the preparation of a legal basis for the potential use of force in self-defence when protecting own sovereign rights and (island-) territory.

Lawfare in conjunction with hybrid warfare ‘provides a layer of “fake” legitimacy, or at least reduces the erosion of apparent legitimacy, due to the nonattributable aspects inherent in hybrid warfare while using “easy” hybrid warfare methods’.⁵³

Lawfare can be used as a method of hybrid warfare or influence operations.⁵⁴

US writer, Kittrie came up with the following test:

- (1) the actor uses law to create the same or similar effects as those traditionally sought from conventional kinetic military actions—including impacting the key

49 Remeikis, A. ‘Sam Dastyari quits as Labor senator over China connections’, *The Guardian*, 12 December 2017, <https://www.theguardian.com/australia-news/2017/dec/12/sam-dastyari-quits-labor-senator-china-connections>

50 Mahnken, Babbage and Yoshihara, ‘Countering Comprehensive Coercion’, CSBA, May 2018, https://csbaonline.org/uploads/documents/Countering_Comprehensive_Coercion,_May_2018.pdf

51 Dunlap, C. ‘Lawfare Today: A Perspective’, *YALE Journal of International Affairs* (Winter 2008), 146.

52 Bachmann, S. & Mosquera, A. (n 13), 62.

53 Mosquera, A. & Bachmann, S. (n 16), at 27.

54 *Ibid.*

armed forces decision-making and capabilities of the target; and (2) one of the actor's motivations is to weaken or destroy an adversary against which the lawfare is being deployed.⁵⁵

Russia's use of lawfare in Ukraine thus exploits both (1) the undefined definition of the conflict as aggression and (2) the unwillingness of the international community to label it as such. And, it maintains uncertainty through a strategic (dis)information campaign which keeps the nature of the conflict open, so it is unclear whether it is international armed conflict, non-international armed conflict or civil unrest.⁵⁶ Here clear parallels regarding China's actions in the South China Sea can be drawn.

China and Russia's use of the 'weaponisation' of the maritime environment as grey-zone tactics or consolidation of a hybrid warfare based approach

We are now turning to the example for such a lawfare approach: the so-called weaponising of the maritime environment through terraforming as part of a multifaceted security strategy. China's Defence Minister, Wei Fenghe, argued in 2018 that, 'The islands in the South China Sea have long been China's territory. They're the legacy of our ancestors and we can't afford to lose a single inch of them'.⁵⁷

Officially, China claims that its overall intention was to use the extension of its territorial waters peacefully and to serve solely its commercial needs. This is doubtful, given that China has actively weaponised the claimed territories. Sumihiko Kawamura, a former rear admiral and commander of Japan's Maritime Self-Defence Force's antisubmarine air wing, suspects that China wants to use the South China Sea as leverage against the US Pacific security projection. Kawamura believes Beijing is trying to turn the South China Sea into 'a safe haven' for its nuclear-powered submarines, which are armed with ballistic missiles that can reach the United States.⁵⁸

In this context, it is worthwhile to note that China did lose its case for claiming the SCS waters in a 2015 case brought before the UN Permanent Court of Arbitration by one of the affected states, the Philippines. China therefore failed spectacularly with its attempt to successfully use lawfare by manipulating the provisions of the United Nations Convention on the Law of the Sea to argue own sovereign rights (like

55 *Ibid*, citing Kittrie, O. *Lawfare: Law as a Weapon of War* (Oxford University Press, Oxford, 2015), 8.

56 *Ibid*.

57 *Lima Charlie News*, <https://limacharlienews.com/national-security/freedom-of-navigation-south-china-sea/> (07/07/2019).

58 *Japantimes*, <https://www.japantimes.co.jp/news/2012/11/07/national/beijings-senkaku-goal-sub-safe-haven-in-south-china-sea/#.XO1-4RZKjIU> (07/07/2019).

exclusive economic and fishing rights) over the majority of the SCS waterways.⁵⁹ China later decided to ignore the ruling and to consolidate its illegal position further by illegally maintaining, and even expanding, so-called Exclusive Economic Zones in the disputed SCS waters.⁶⁰ This consolidation manifests itself in Chinese below the threshold grey-zone tactics like policing its falsely claimed territorial waters around artificially built islands, interference in air-traffic and challenging US and allied navies in their rightful freedom of seas navigation patrols, to name just a few examples.⁶¹ China has created, like Russia in respect to the illegally annexed Crimea, a fait accompli.

In Russia's case, immediately following the annexation of Crimea in 2014, Russia began the planning and construction of the Crimean Bridge over the Kerch Strait in Ukraine to support its territorial claims. The project was successfully completed in May 2018 as the so-called Unification Bridge and was followed subsequently by Russian military action to ensure regional observance of the new status quo.⁶² Russian naval units attacked and boarded three Ukrainian vessels in autumn 2018 for having allegedly violated Russian territorial waters when passing through the Kerch Strait.⁶³ What became known as the 'Kerch Strait' incident was followed by the effective closure of a part of the Sea of Azov waterway whenever Russia decided to conduct live fire naval exercise,⁶⁴ thus violating Ukrainian territorial waters, as the annexation of Crimea was and continues to be regarded as illegal.⁶⁵

Russia's actions can be seen as consolidation action of its gains from its successful hybrid warfare campaign against the Ukrainian state when seizing Crimea. With the annexation complete and little to fear in terms of military action or meaningful sanctions, Russia can now resort to the use of traditional hard power in consolidating and protecting its position.

Both China and Russia have provided examples of how territorial gains made through hybrid warfare and grey-zone tactics can be weaponised further to serve wider national security aims and ambitions by warranting the question of how to respond in an effective manner.

59 *The New York Times*, 'Tribunal Rejects Beijing's Claims in South China Sea' <https://www.nytimes.com/2016/07/13/world/asia/south-china-sea-hague-ruling-philippines.html> ((07/07/2019). For the actual ruling, see the original judgment at <https://pca-cpa.org/en/cases/7/>

60 <https://www.lawfareblog.com/countering-chinas-actions-south-china-sea> (07/07/2019).

61 <https://thediplomat.com/2019/03/chinas-next-phase-of-militarization-in-the-south-china-sea/> (07/07/2019)

62 *Reuters*, <https://www.reuters.com/article/us-apps-ukraine-commentary/commentary-in-azov-sea-putin-plays-a-deadly-ukraine-game-idUSKCN1NV2JY> ((07/07/2019))

63 IISS, <https://www.iiss.org/publications/strategic-comments/2018/the-kerch-strait-incident>, (07/07/2019)

64 <https://empr.media/opinion/analytcs/russia-hybrid-activities-on-the-azov-coast-of-ukraine/> (07/07/2019)

65 See EU statement, https://eeas.europa.eu/delegations/ukraine/41530/international-law-crimea-ukraine_en, (07/07/2019).

Russian warfighting stratagems as dangerous precedent

The question arises of what is new in Russian warfare since 2008. Among a host of features of the new war some are indeed noteworthy:

the non-declaration of war, the use of armed civilians, non-contact clashes like the blockade of military installations by 'protestors', the use of asymmetric and indirect methods, simultaneous battle on land, air, sea, and in the informational space, and the management of troops in a unified informational sphere.⁶⁶

The authors have written extensively about hybrid warfare and its Russian equivalent as reflexive control⁶⁷ and nonlinear warfare. Russian Hybrid Warfare has become known as the so-called 'Gerasimov' doctrine⁶⁸— though while Western military authors (including us) continue to use this reference, it is at least questionable if General Gerasimov actually intended to have his thoughts and reflections on evolving Russian military operational approaches be regarded as a military 'doctrine' in a strict sense.⁶⁹ So, while the existence of such a doctrine is debatable, the overall success of contemporary Russian warfighting is not, and the term hybrid warfare is a good characterisation of Russia's contemporary aggressive foreign policy.

The actual consequences of Russia's hybrid warfare are far-reaching. Russia's foreign policy (and also China's) of assertive nationalist posturing, meddling in internal affairs, political warfare, and hybrid warfare disrupt the Western narrative of globalisation, rule of law, democracy and interconnectivity. This creates an untenable situation where the West is responding to ad hoc threats in an increasingly less assertive way instead of defining and implementing a joint foreign policy that would deter such an adversary.

Russia's version of hybrid warfare, whether we refer to it as Gerasimov's doctrine, Russian Hybrid Warfare or reflexive control, has been successful. Firstly, Russia proved successfully 'that this warfare not only includes nonstate actors but also states'.⁷⁰ Secondly, it proved the effectiveness of this form of warfare because Russia's departure from its reliance on kinetic resources also reduced the need for using conventional military power in a conventional sense, which benefits the 'weaker' opponent. And thirdly, hybrid warfare as part of a wider information-operation and lawfare approach provided false legitimacy due to attribution questions and the potential for denial by the target state for political reasons. This Russian success

66 Bachmann, S. & Gunneriusson, H. 'Hybrid Wars: The 21st Century's New Threats to Global Peace and Security' (n 16), 88.

67 *Militaire Spectator*, <https://www.militairespectator.nl/thema/strategie-operaties/artikel/reflexive-control>, (07/07/2019).

68 Monaghan, A. (n 17) for a detailed discussion of the origins and the nature of the Gerasimov Doctrine, 65-67.

69 *Ibid*, at 66 for some more background of this debate.

70 Bachmann, S. & Mosquera, A. (n 13), 64

with hybrid warfare is what China seems to be emulating in respect to its current territorial expansion: the use of 'little blue men', information operations, economic and diplomatic pressure and lawfare (which albeit failed).

Countering hybrid and grey-zone warfare

Western nations have viewed China's rise and territorial expansion (defined initially by the Nine-Dash Line but with implications further afield) with very much a conventional mindset. Exemplified by the United States, the West's conventional thinking has given primacy in its countering strategy to military capability and posture⁷¹.

However, a strategy that responds to a hybrid threat with a conventional strategy is less likely to succeed. As pointed out by Donnelly and Ratnam:

The military's torpid response has been caused by bureaucratic inertia, the political dominance of traditional weapons and military organizations, the distraction of the post-9/11 wars, and a failure to comprehend the cumulative damage that was occurring and how rapidly modes of warfare were changing.⁷²

A more effective counter may be a coordinated response against each element of the threat, rather than just with military force. One might think of this as warfare's version of Ashby's Law of Requisite Variety.

It is refreshing that the Australian Chief of Defence, General Angus Campbell, recently recognised that the failure to push back on authoritarian states that employ hybrid warfare tactics would result in 'a total mismatch'.⁷³ General Campbell pointed out that Australia and similar democratic nations need to better develop counters to political warfare threats such as disinformation, cyber, IP theft, coercion and propaganda.⁷⁴ He also highlighted the importance of countering grey-zone tactics in the shaping and influencing phases of conflict, rather than when events cross the threshold of war.

It is one thing to identify such a deficiency in national power; another to develop an effective response that overcomes the obstacles highlighted by Donnelly and Ratnam. Having said that, General Campbell is an officer who previously, as Australia's Chief of Army, recognised similar issues in his service and initiated the new doctrine

71 Montgomery and Sayers, 'Addressing America's Operational Shortfall in the Pacific', https://warontherocks.com/2019/06/addressing-americas-operational-shortfall-in-the-pacific/?_rsrc=b3f6de9-c0e6-4a46-bd3f-e069b2a47321

72 Donnelly and Ratnam, 'US is woefully unprepared for cyber-warfare', <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/52560026>

73 Wroe, D. "'Grey-zone' tactics: Australia vulnerable to political warfare, Defence Chief warns", *Sydney Morning Herald*, 13 June 2019, <https://www.smh.com.au/politics/federal/grey-zone-tactics-australia-vulnerable-to-political-warfare-defence-chief-warns-20190613-p51xj6.html>

74 Nicholson, B. 'ADF chief: West faces a new threat from "political warfare"', *The Strategist*, ASPI, 14 June 2019, <https://www.aspistrategist.org.au/adf-chief-west-faces-a-new-threat-from-political-warfare/>

of Accelerated Warfare to bring the Army properly into the 21st Century.⁷⁵ Having said that, the countering strategies have broader national and international perspectives than can be delivered under the military's control, so it will be interesting to observe in the future what changes can be progressed to deal with hybrid threats.

As noted by General Campbell, a key step is to recognise hybrid threats and the conduct of grey-zone actions. Babbage⁷⁶ identifies that China's approach, while successful to date, is now encountering serious challenges as regional nations have a clearer appreciation of China's political warfare strategy.

US think tanks have recognised the need to make adjustments. The Center for Strategic and International Studies (CSIS)⁷⁷ highlights the need for a range of reforms, including in intelligence, in the way the US undertakes its own campaigns and frames the narrative, in how it responds to specific events and in keeping up with the cyber domain.

Babbage⁷⁸ has also developed concepts for the US and its allies to be more effective in countering China's hybrid campaign, ranging from asymmetric responses to a series of campaign strategy options. Babbage emphasises the importance of developing human capital in countering hybrid campaigns, developing allied unity and continuing to champion democratic values.

Conclusion: Sino-Russian collusion to end a unipolar world order?

Russia and China have been working hard to end the unipolar order of the US, which has dominated global politics since the end of the Cold War and the implosion of the Soviet Union and the Warsaw Pact in 1991. It has to be acknowledged that a multi-polar world order, with China and Russia competing with the US for global influence and power, is the reality of today's global world affairs. Australia has to recognise this reality in order to not fall into the trap of blindly following the US's present attempts to counter and/or reverse the threats to its waning unipolar status as sole superpower without too much concern regarding its allies.

China and Russia have acted illegally in violation of international law and aggressively in both instances: China in regard to the South China Sea and Russia in regard to Crimea and Ukraine. Both actors seem to have identified the unwillingness and

75 Kuper, S. 'Accelerated warfare and preparing Army for future conflict', <https://www.defenceconnect.com.au/land-amphibious/3219-accelerated-warfare-and-preparing-army-for-future-conflict>

76 Babbage, R., 'Winning without fighting', CSBA report, July 2019, <https://csbaonline.org/research/publications/winning-without-fighting-chinese-and-russian-political-warfare-campaigns-and-how-the-west-can-prevail>

77 Hicks et al, *ibid*.

78 Babbage, R. Stealing a march, CSBA report July 2019, <https://csbaonline.org/research/publications/stealing-a-march-chinese-hybrid-warfare-in-the-indo-pacific-issues-and-options-for-allied-defense-planners>

inability of the West to counter their actions effectively. In Europe, no one wants to risk war over Russia's aggression in Ukraine. In the Asia-Pacific context, ASEAN countries, wedged between the giants India and China, in the South China Sea, are in much the same situation. Neither China nor Russia expect any military response from NATO or an ASEAN country, and so continue to use hybrid warfare and grey-zone tactics to erode further the international systems of comity and the rule of law. This leads to erosion within the affected societies and political systems, as the indecisiveness within the EU to continue with sanctions against Russia highlights.⁷⁹

There is growing Sino-Russian cooperation across nearly all domains and sectors of interest and potential risk for Australia. From economic ties (China is Russia's second largest trading partner) to technical collaborations in respect to the internet of things including 5G infrastructure, and now the explicit expression of the intent to 'develop bilateral cooperation, in the spirit of comprehensive partnership and strategic interaction',⁸⁰ Sino-Russian cooperation increases.

It seems only logical that China is following Russia's successful use of hybrid warfare as 'it reduces the need for using classical military resources, providing them with a shield of plausible deniability'.⁸¹ With the backdrop of Europe's failure to call out Russia for its aggression in Ukraine, Russia's hybrid warfare strategy seems to have worked so far. Arguably, China's strategy in the South China Sea also seems to be working. Terraforming the maritime environment as undertaken by Russia and China is illegal under international law and constitutes the use of force or the threat of such. The fact that Russia and China successfully managed to get away with such illegal and aggressive behaviour is reprehensible and constitutes a clear and present threat to international comity and security.

The threats posed by contemporary adversaries (both state and nonstate actors) in employing hybrid and grey-zone tactics poses an increasing threat to Australia's security and global stability in the years to come; accordingly the identification of such threats and the planning of countermeasures and contingencies to meet these threats is paramount. Whether such an approach is based on a doctrinal approach of hybrid warfare as understood in the NATO and Western context, the use of grey-zone counter-tactics or a yet-to-be developed doctrine is academic, so long as the response is comprehensive and multimodal, drawing from the full spectrum of military and civil resilience.

The authors would like to thank Frank Hoffman for his valuable insight and contributing comments in the development of this article and regarding the evolving notion of hybrid warfare.

79 Lima Charlie News, (n 39)

80 Tass 'Russia, China to develop military cooperation as strategic partners' at <http://tass.com/defense/1063608> and The National Interest, <https://nationalinterest.org/feature/china-and-russia-strategic-alliance-making-38727>.

81 Bachmann, S. & Mosquera, A. (n 13), 64