1
Introduction

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1. The context: persistent competition

Over the past two decades, great power competition has entered a more intense and openly antagonistic phase. This development is one of the great strategic challenges that liberal democracies are facing, alongside others such as climate change. How they manage this challenge will determine not only the political future of individual nations but also the shape of the international order in years to come.

Great power competition is not a new feature of the international system. Contestation is endemic in international relations. In the modern era, periods of relative stability marked by moderate forms of competition for power, influence, and prosperity were repeatedly interspersed with bouts of more intense rivalry and war, such as the Napoleonic Wars at the start of the nineteenth century, often followed by periods of institution-building and other efforts at peaceful ordering, such as the creation of the League of Nations after World War I. Great power competition is constant, but its intensity ebbs and flows.

The end of the Cold War gave rise to a sense of optimism that the geopolitical and ideological rivalry of that era would make way for a gradual convergence around liberal and democratic values. Most famously, Francis Fukuyama proclaimed that history itself would come to an end with the universalization of Western-style liberal democracy.[1] More recently, a long line of authors have argued that this optimism was misplaced. In the words of Robert Kagan, the unique geopolitical circumstances of the 1990s were not the beginning of some fundamental transformation in international relations, but merely a temporary 'pause in the endless competition of nations and peoples'.[2] Today, that pause has come to an end.

The National Security Strategy of the United States published by the Biden Administration in October 2022 identifies two overarching challenges that define the present strategic environment.[3] The first is geopolitical competition.

[1] Francis Fukuyama, *The End of History and the Last Man* (Free Press 1992).
[2] Robert Kagan, *The Return of History and the End of Dreams* (Knopf 2008) 11.
[3] The White House, *National Security Strategy* (2022) 6.

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Democracies and autocracies are engaged in a contest to shape the international order of the future. As a result, the risk of conflict among major powers has increased, while space for cooperation on issues of shared concern has diminished. According to the National Security Strategy, the most pressing challenges are presented by nations that combine authoritarian governance at home with revisionist foreign policy goals abroad, a combination that leads them to subvert democratic processes in other countries, leverage technology for coercive effect, and promote an illiberal model of international order.[4] The Strategy points to Russia and China as the main competitors, though it is quick to underline that these two nations present different types of difficulties. While Russia 'poses an immediate threat to the free and open international system', as shown by its war of aggression against Ukraine, the People's Republic of China 'is the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective'.[5] The second overarching strategic challenge are a set of transnational challenges playing out against the backdrop of great power rivalry. They include climate change, food insecurity, terrorism, communicable diseases, energy shortages, and inflation. As the National Security Strategy underlines, these transnational challenges are not secondary in importance but lie at the heart of national and international security.[6] Solving them requires close international cooperation, yet such cooperation will be more difficult to realize in an environment of heightened geopolitical competition.

The *Integrated Review of Security, Defence, Development and Foreign Policy* published by the British Government in March 2021 strikes a similar note.[7] It identifies four trends that will be of particular significance over the next decade as the nature and distribution of global power is changing.[8] First, the *Integrated Review* forecasts that by 2030, the world will have moved further towards multipolarity, with the geopolitical and economic centre of gravity shifting towards the Indo-Pacific. While Russia will remain the most acute direct threat to the United Kingdom, China's increasing power, stature, and assertiveness will have turned it into the most significant geopolitical factor on the global stage.[9] Second, this more multipolar world will be characterized by a growing contest to shape the international environment. In particular, democratic and autocratic States will be locked into systemic competition to shape global governance structures. Third, the pace of technological change will quicken, with advances in science

[4] Ibid. 8.
[5] Ibid.
[6] Ibid. 6.
[7] United Kingdom Government, *Global Britain in a Competitive Age: The Integrated Review of Security, Defence, Development and Foreign Policy* (Cabinet Office 2021).
[8] Ibid. 24.
[9] Ibid. 62–63.

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and technology becoming more critical to the functioning of economies and societies, to reshaping political systems and to driving cooperation and competition between States. Finally, the world will continue to face transnational challenges, such as poverty, instability, and migration driven by climate change and biodiversity loss, or the continued threats posed by terrorism and organized criminality. An update of the *Integrated Review* published in March 2023 notes that these trends have accelerated, leading to the growing prospect that the international security environment will deteriorate further in the near future.[10] Specifically, the update declares that systemic competition is now the 'dominant geopolitical trend and the main driver of the deteriorating security environment', fuelled by a growing convergence among authoritarian States that challenge 'the basic conditions for an open, stable and peaceful international order, working together to undermine the international system or remake it in their image'.[11]

The National Security Strategy of the United States and the updated *Integrated Review* of the United Kingdom tell a similar story: rivalry among democratic and authoritarian systems, in particular between the United States and a resurgent China, coupled with mutually reinforcing transnational challenges that are compounding wider global instability, are the main strategic challenges of our time.

Russia's war of aggression against Ukraine demonstrates that resort to force as an instrument of national power remains an option for States engaged in geopolitical competition. Conventional war has not disappeared. In fact, Russia's war poses a risk of wider escalation. Similarly, while China's leadership might prefer to achieve its strategic aims without engaging in direct military confrontation with the United States, neither small-scale incidents nor large-scale escalation, principally over Taiwan, can be ruled out. The risk of miscalculation and escalation also looms large in relation to other actors, such as Iran and North Korea. High-intensity warfare among major military powers cannot, therefore, be discounted.[12] Deterrence through force, and if deterrence fails, the ability to prevail in actual conflict, must therefore be an integral part of the posture adopted by democracies in an age of persistent competition.

However, absent wider escalation leading to direct military confrontation between the principal powers, geopolitical competition today mostly takes the form of contestation below the threshold of armed conflict, using instruments and methods short of open war to gain an advantage.[13] This form of competition

[10] United Kingdom Government, *Integrated Review Refresh 2023: Responding to a More Contested and Volatile World* (Cabinet Office 2023) 8.

[11] Ibid.

[12] See Colin S. Gray, *Another Bloody Century: Future Warfare* (Weidenfeld and Nicolson 2005).

[13] Patrick Porter, 'Advice for a Dark Age: Managing Great Power Competition' (2019) 42 The Washington Quarterly 7, 11.

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is characterized by several features. First, it extends across virtually all domains and comes in many different guises. Technological and social changes have rendered modern societies more interdependent and interconnected. These changes have also opened them up more readily to foreign interference.[14] Most functional and thematic areas of modern life, including the political sphere, culture, the economy, information, critical infrastructure, and cyberspace, are vulnerable to acts of disruption and subversion. Accordingly, in recent years, we have witnessed hostile actors operating across various domains to employ a broad range of measures against liberal democracies in pursuit of their strategic interests, including the use of diplomatic pressure, trade, proxies, tourism, economic espionage, military exercises, cyber operations, disinformation, direct investment, leveraging diasporas, exploiting social and political divisions, and fostering financial and other dependencies.[15]

Second, competition short of war varies in its severity and aggressiveness. Russia, China, and other actors engage in acts that may be described as *normal* competitive engagements, such as expanding their influence abroad or developing their military capabilities. Such activities may be harmful to the interests of liberal democracies, but they do not contradict their core principles and thus do not differ materially from the kind of measures they may resort to themselves. However, autocratic competitors also engage in acts that are *transgressive*, that is acts that violate established rules and expectations of conduct or which are otherwise incompatible with the values of open societies, such as serious human rights violations, coercive interference, or exorbitant territorial and other jurisdictional claims.[16] By adjusting the volume, nature, and pattern of their actions, strategic competitors are able to vary the pace of contestation. At the top end, they pursue goals that are decidedly hostile in nature, such as fanning social and political discord, undermining trust in democratic institutions and processes, and shaping the environment for potential future military engagements.

Third, the renewed intensity of geopolitical competition has blurred the line between war and peace.[17] Even though contestation on the whole remains below the threshold of open conflict, some of the actions, instruments, and methods involved do entail military capabilities and resort to violence. Examples include the Salisbury poisoning incident, which the United Kingdom declared to be an unlawful use of force by Russia in contravention of the United Nations Charter,[18]

[14] Mark Leonard, *The Age of Unpeace: How Connectivity Causes Conflict* (Bantam Press 2021).

[15] For a comprehensive list of tactics employed by the People's Republic of China, see Bonny Lin et al, *Competition in the Gray Zone: Countering China's Coercion against U.S. Allies and Partners in the Indo-Pacific* (RAND 2022) 135–38, table 8.1.

[16] This distinction is inspired by the one drawn between benign, normal, and transgressive activities in Christopher Paul et al, *A Guide to Extreme Competition with China* (RAND 2021) v–vi.

[17] We leave aside, for now, the question of how clear that line was to begin with.

[18] Theresa May, Prime Minister, 'Statement on the Salisbury Incident' (12 March 2018) <https://www.gov.uk/government/speeches/pm-commons-statement-on-salisbury-incid

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and China's reliance on naval and paranaval assets to assert its claims in the South China Sea.[19] There is widespread concern that revisionist States are using measures short of war to achieve strategic outcomes typically pursued through military action and that such measures could be a prelude to war. Indeed, in Ukraine, the great powers are already engaged in indirect conflict through proxy warfare. Relations between them can therefore no longer be described as entirely peaceful, given the persistence, intensity, and hostile character of their rivalry. In an environment where anything can be 'weaponized' and everything has turned into some form of 'warfare',[20] a clear line between war and peace is difficult to draw.

2. The role and relevance of international law

The present age of geopolitical competition may be more intense and openly antagonistic, but it is not an era of lawlessness. On the contrary, international law remains centre stage.

Rules of international law serve as a normative framework within which strategic rivals compete with each other. The rules formulate binding expectations and standards of behaviour, distinguishing permissible forms of competition from impermissible ones. Legal institutions provide venues for States to assert opposing claims, while legal processes offer avenues for redress. Clearly, whether these rules, institutions, and processes are sufficiently robust to contain geopolitical competition within acceptable boundaries and to mitigate its adverse effects is a matter of ongoing concern. The challenges are formidable.

Many rules and principles of international law that were developed in the pre-digital era do not fit activities designed to exploit the increased interconnectedness of modern societies very well. Although there is broad agreement that international law applies in novel domains such as cyberspace,[21] there is continued disagreement over how exactly the relevant rules should apply. Faced with the prospect of significant harm, some States are extending

ent-response-14-march-2018> accessed 30 May 2023. See Stephen Lewis, 'Salisbury, Novichok and International Law on the Use of Force' (2018) 163 RUSI Journal 10.

[19] Andrew Sven Erickson and Ryan D. Martinson (eds), *China's Maritime Gray Zone Operations* (Naval Institute Press 2019).

[20] Mark Galeotti, *The Weaponisation of Everything: A Field Guide to the New Way of War* (Yale University Press 2022).

[21] E.g. Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security, 'Report' (14 July 2021), UN Doc. A/76/135, para 69; Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security, 'Final Substantive Report' (10 March 2021), UN Doc. A/AC.290/2021/CRP.2, para 34.

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the established principles in new directions, for example, by suggesting that cyber operations causing 'widespread economic effects and destabilisation' may amount to the use of force in violation of Article 2(4) of the United Nations Charter.[22] Similarly, there is disagreement about what types of activities the principle of non-intervention prohibits, with mounting support to extend its scope to disruptive interference and to acts that deprive a State of its freedom of control, in other words its decision-making capacity, over matters falling within its reserved domain of domestic jurisdiction.[23]

At the top end of the spectrum, the prohibition of the use of force demands that strategic competition should be carried out through peaceful means. Russia's war of aggression against Ukraine has manifestly and gravely violated that prohibition.[24] In the eyes of many commentators, Russia's invasion presents one of the most serious challenges to the international order established after World War II, since it repudiates a norm at its very core: the prohibition of forcible annexation of foreign territory.[25] Others have questioned this assessment, arguing that Russian aggression cannot be distinguished decisively from Western violations, in particular the use of force against Iraq in 2003, since the level of lawlessness and the severity of the harm they have caused is comparable.[26] In any event, the rules governing the use of force were not in a good shape even before Russia's invasion. A substantial number of States have adopted expansive interpretations of the right of self-defence over the last two decades to justify the flexible use of force on a more limited scale, progressively undermining the prohibition to use force at the borderline between war and peace.[27]

[22] Norway, in United Nations General Assembly, 'Official Compendium of Voluntary National Contributions on the Subject of How International Law Applies to the Use of Information and Communications Technologies by States submitted by Participating Governmental Experts in the Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security established pursuant to General Assembly Resolution 73/266' (13 July 2021), UN Doc. A/76/136, 70.

[23] E.g. Australia, in ibid. 5; United Kingdom Attorney General, 'International Law in Future Frontiers' (19 May 2022) <https://www.gov.uk/government/speeches/international-law-in-future-frontiers> accessed 30 May 2023.

[24] United Nations General Assembly, 'Resolution ES-11/1' (18 March 2022) ('*Deplores in the strongest terms* the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter').

[25] Ingrid Brunk and Monica Hakimi, 'Russia, Ukraine, and the Future World Order' (2022) 116 American Journal of International Law 687.

[26] E.g. Alejandro Chehtman, 'Unpacking the Comparison between Ukraine and Iraq' (*CIL Dialogues*, 20 March 2023) <https://cil.nus.edu.sg/blogs/unpacking-the-comparison-between-ukraine-and-iraq/> accessed 30 May 2023; Srinivas Burra, 'Russian Invasion of Ukraine Is Not an Exception or Rupture but a Continuity' (*Cambridge Core Blog*, 22 February 2023) <https://www.cambridge.org/core/blog/2023/02/22/russian-invasion-of-ukraine-is-not-an-exception-or-rupture-but-a-continuity/> accessed 30 May 2023.

[27] E.g. see Christian Henderson, 'The 25 February 2021 Military Strikes and the "Armed Attack" Requirement of Self-Defence: from "*Sina qua Non*" to the Point of Vanishing?' (2022) 9 Journal on the Use of Force and International Law 55.

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Overall, there is much uncertainty and normative drift in the international legal system, compounded by its underlying structural deficiencies, including its weak institutions and enforcement mechanisms. Yet the rules of international law serve not only as guardrails for geopolitical competition, however deficient and weak. They also embody substantive values and goals. These are important to both democratic and autocratic powers.

The hallmark of liberal democracies is a commitment to what is often described as a 'thick' or 'substantive' understanding of the rule of law. Not only should the exercise of public authority and social life more generally be governed by rules that are equally applicable to all, but such laws must carry the democratically expressed consent of the population and respect fundamental rights and freedoms. This commitment to the rule of law, and associated principles such as good governance, political pluralism, and human rights, is widely seen as the normative lifeblood which sustains the political vitality and moral strength of liberal democracies.

By contrast, such a thick understanding of the rule of law is an anathema to autocratic governments: a genuine commitment to respect democracy, political pluralism, and human rights, as these notions are understood and for the most part practiced in the West, is incompatible with regime survival. Russia and China consequently promote State-centric principles of international law at the expense of human rights. For example, their Declaration on the Promotion of International Law of 2016 champions the principles of sovereign equality and non-intervention in the internal or external affairs of States, without mentioning human rights once.[28] More recently, Russia and China have adopted a different approach by seeking to appropriate the meaning of 'democracy' in a joint statement issued on the eve of the full-scale invasion of Ukraine.[29] In a thinly veiled reference to the West, the statement expresses Russian and Chinese opposition to 'interference in the internal affairs of sovereign states under the pretext of protecting democracy and human rights'.[30] Declaring democracy to be 'a universal human value, rather than a privilege of a limited number of States', the text goes on to proclaim the freedom of each nation to 'choose such forms and methods of implementing democracy that would best suit its particular state, based on its social and political system, its historical background, traditions and unique cultural characteristics'.[31]

[28] Ministry of Foreign Affairs of the Russian Federation, 'The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law' (25 June 2016) <https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201608/t20160801_679466.html> accessed 30 May 2023.

[29] President of Russia, 'Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development' (4 February 2022) <http://www.en.kremlin.ru/supplement/5770> accessed 30 May 2023.

[30] Ibid.

[31] Ibid.

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These examples underline that international law is not beyond the reach of geopolitical competition. It is not a set of rules that stands above the tumble of great power politics, attempting to constrain it with greater or lesser success. Rather, it is an integral part of that rivalry. States are invested in international law because it defines the terms of their competition. The rules of international law reflect value preferences and choices about political objectives. They provide principled justifications for policy action. They are a source of legitimacy and, equally, a means for delegitimizing competitors. Both the National Security Strategy of the United States and the *Integrated Review* of the United Kingdom recognize the need for democracies to proactively shape the future international order, including its rules, institutions, norms, and standards, in order to ensure that it reflects democratic values and is conducive to their interests, rather than those of autocratic regimes.[32] To adapt a famous line from Carl von Clausewitz,[33] law is a continuation of politics with other means. What this means is that international law is an instrument of geopolitical competition, a domain in which that competition takes place, and an object of strategic contestation all at the same time.[34]

We recall these points not because they have not been made before, but because they have certain implications worth spelling out. The position of the law in the contemporary strategic environment cannot be reduced to the simplistic image of law-observing status quo powers seeking to conserve the international order in its current form against an onslaught by revisionist lawbreakers. Support for the status quo and revisionism are relative notions. Neither is absolute, but a matter of degree and comparisons.[35] For example, while certain standards core to the identity of liberal democracies, such as respect for human rights, form part of the existing body of international law, other principles, such as a democratic form of government that is politically pluralist, subject to checks and balances, served by an independent media, and respects civil liberties, are not. Strengthening democracy around the world, which is one of the goals formulated in the National Security Strategy,[36] is not necessarily a status quo policy. Both democracies and autocracies defend the status quo in some areas and pursue revisionist objectives in others.

The binary image of status quo versus revisionist powers also ignores the fact that Western nations have stretched the boundaries of international legality

[32] E.g. see The White House (n 3) 8–9, 11, 32; United Kingdom Government (n 7) 12, 28, 35, 45.
[33] Carl von Clausewitz, *On War* (Princeton University Press 1976) 87.
[34] In more detail, see Aurel Sari, *Hybrid Threats and the Law: Building Legal Resilience*, Hybrid CoE Research Report 3 (The European Centre of Excellence for Countering Hybrid Threats 2021) 12–17.
[35] *Cf.* Michael J. Mazarr, *Mastering the Gray Zone: Understanding a Changing Era of Conflict* (Strategic Studies Institute and US Army War College 2015) 16–24.
[36] A goal set by The White House (n 3) 8.

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and, at times, overstepped them. Some of those breaches may be less severe than Russia's invasion of Ukraine and the justifications offered for them may chime more readily with universal values than those advanced by Moscow for its actions.[37] Nevertheless, Western transgressions fuel accusations of double standards, making it more difficult for democracies to build broad coalitions against autocratic regimes. This is not lost on the update to the United Kingdom's *Integrated Review*, it seems, which warns that systemic competition cannot be reduced to 'democracy versus autocracy' but is a more complex phenomenon that requires working with 'countries to protect our shared higher interest in an open and stable international order, accepting that we may not share all of the same values and national interests'.[38]

Accordingly, strategic competition in the legal domain is not a confrontation between those who favour rules and those who prefer a world without them. What is at stake is not a choice between a legal order and one without law, but the shape, content, and operation of the rules that make up that order. Portraying this as a fight for a rules-based international order is not overly helpful. This is so partly because it is open to question whether international order is really *based* on rules.[39] This overstates the importance of the law if it is meant to suggest that rules are the single most important source of order. More importantly for our purposes, the idea that autocratic regimes threaten the very survival of the international legal system, as has been suggested at times,[40] misrepresents the nature of the challenge: the risk that liberal democracies are facing is not a lawless world, but one in which key norms of coexistence are weakened and where the prevailing rules and institutions reflect authoritarian preferences and interests.

In sum, law is integral to geopolitical competition and matters because rules, strategic considerations, great power interests, and ordering are finely interwoven.

[37] The missile strikes by France, the United Kingdom, and the United States against chemical weapons facilities in Syria in April 2018 are a case in point. For an analysis suggesting that the incident was transformative in formulating or consolidating customary international law, see Michael P. Scharf, 'Striking a Grotian Moment: How the Syrian Airstrikes Changed International Law Relating to Humanitarian Intervention' (2019) 19 Chicago Journal of International Law 586. For a less enthusiastic assessment, see Agata Kleczkowska, 'The Illegality of Humanitarian Intervention: The Case of the UK's Legal Position Concerning the 2018 Strikes in Syria' (2020) 35 Utrecht Journal of International and European Law 35.

[38] United Kingdom Government (n 10) 9.

[39] Patrick Porter, *The False Promise of Liberal Order: Nostalgia, Delusion and the Rise of Trump* (Polity Press 2020) 83.

[40] Joseph R. Biden Jr., 'What America Will and Will Not Do in Ukraine', The New York Times (New York, 31 May 2022) <https://www.nytimes.com/2022/05/31/opinion/biden-ukraine-strategy.html> accessed 30 May 2023.

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3. Why hybrid threats and grey zone conflict?

In the West, hostile tactics below the threshold of war have been widely described with the help of two concepts: hybrid threats and grey zone conflict. The North Atlantic Treaty Organization (NATO) has defined hybrid threats as 'activities that aim to create ambiguity and blur the lines between peace, crisis, and conflict'[41] by employing 'a broad, complex, and adaptive combination of conventional and non-conventional means, and overt and covert military, paramilitary, and civilian measures [. . .] in a highly integrated design'.[42] Meanwhile, the grey zone has been described as 'a conceptual space between peace and war, occurring when actors purposefully use single or multiple elements of power to achieve political-security objectives with activities that are typically ambiguous or cloud attribution and exceed the threshold of ordinary competition, yet intentionally fall below the level of large-scale direct military conflict'.[43]

Both concepts draw attention to the fact that today, strategic competition is in large measure carried out below the threshold of conventional armed conflict and involves integrated action across multiple domains. Whereas the notion of hybrid threats emphasizes the complementary use of different instruments of statecraft, the grey zone concept underlines the ambiguous character of competition and its aggressive quality that nevertheless falls short of war. Beyond this, the meaning of neither concept is settled.

While the unsettled meaning of the hybrid threats and grey zone notions is one factor that explains their success in recent years,[44] it is also one of the main objections that has been directed against them. Both terms have been repeatedly criticized for being fundamentally vague and ambiguous. To some, this imprecision has rendered them 'catch-all' phrases without any distinct analytical value,[45] buzzwords 'that can mean almost anything,'[46] as reflected in their inconsistent use in strategic discourse.[47] Others have gone further, suggesting that these terms should be eliminated from the strategic lexicon as they 'cause more harm

[41] Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council, 11 July 2018, para 21.

[42] Warsaw Summit Communiqué Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council, 9 July 2016, para 72.

[43] Department of Defense Strategic Multi-Layer Assessment, 'Grey Zone Effort Update', September 2016.

[44] See Chiara Libiseller, ' "Hybrid Warfare" as an Academic Fashion' (2023) 46 Journal of Strategic Studies 858.

[45] Hew Strachan, *The Direction of War: Contemporary Strategy in Historical Perspective* (CUP 2013) 82.

[46] Ilmari Käihkö, 'The Evolution of Hybrid Warfare: Implications for Strategy and the Military Profession' (2021) 51 Parameters 115, 126.

[47] Silvie Janičatová and Petra Mlejnková, 'The Ambiguity of Hybrid Warfare: A Qualitative Content Analysis of the United Kingdom's Political–Military Discourse on Russia's Hostile Activities' (2021) 42 Contemporary Security Policy 312.

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than good and contribute to an increasingly dangerous distortion of the concepts of war, peace, and geopolitical competition'.[48]

These are powerful objections, but they should not be pressed too far. The criticisms are at their most compelling when directed against the use of hybrid threats and grey zone conflict as general theories of war and grand strategy. Their use for these purposes is unpersuasive, as neither hybrid threats nor grey zone conflict describe historically new phenomena,[49] just like hybrid warfare is not an accurate representation of the Russian way of war.[50] However, the criticisms lose much of their force when the two notions are employed in a more modest manner. This involves using them not as full-blown theories of contemporary conflict but as labels that help to describe and bring into sharper focus certain aspects of the changing character of war and geopolitical competition. The two concepts tell us something about the current strategic environment that is worth exploring on its own terms and for that reason they offer a useful analytical lens,[51] even if the tools for that analysis must be drawn from other theories and fields. Their utility thus lies in focusing the inquiry, rather than as replacements of existing strategic theory.[52]

Relying on the hybrid threats and grey zone conflict notions in this more modest manner allows us to engage with the challenges typically associated with these two concepts, while being mindful of their limitations. It is useful to draw two basic distinctions for these purposes.

First, it helps to differentiate between three different framings of hybridity: hybrid *war*, hybrid *warfare threats*, and hybrid *threats*.[53] Hybridity entered the mainstream debates in 2005 in the form of 'hybrid war', a phrase coined by James Mattis and Frank Hoffman, both of the US Marine Corps, to describe the shape of future warfare.[54] According to Mattis and Hoffman, future adversaries were likely to combine diverse forms of violence, including

[48] Donald J. Stoker and Craig Whiteside, 'Blurred Lines: Gray-Zone Conflict and Hybrid War—Two Failures of American Strategic Thinking' (2020) 73 Naval War College Review 13, 13.

[49] For historical background and parallels, see Williamson Murray and Peter R. Mansoor (eds), *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present* (CUP 2012).

[50] Bettina Renz, 'Russia and 'Hybrid Warfare'' (2016) 22 Contemporary Politics 283; Sandor Fabian, 'The Russian Hybrid Warfare Strategy—Neither Russian nor Strategy' (2019) 35 Defense and Security Analysis 308.

[51] Along similar lines, see Devid Betz, 'The Idea of Hybridity', in Ofer Fridman et al (eds), *Hybrid Conflicts and Information Warfare: New Labels, Old Politics* (Lynne Rienner 2019) 9, 24.

[52] *Cf.* Murat Caliskan, 'Hybrid Warfare through the Lens of Strategic Theory' (2019) 35 Defense and Security Analysis 40.

[53] For a more detailed intellectual history, see Ofer Fridman, *Russian "Hybrid Warfare": Resurgence and Politicization* (Hurst 2018).

[54] James N. Mattis and Frank G. Hoffman, 'Future Warfare: The Rise of Hybrid Wars' (2005) 131 Proceedings Magazine 18. For further discussion, see Frank G. Hoffman, *Conflict in the 21st Century: The Rise of Hybrid Warfare* (Potomac Institute for Policy Studies 2007); Frank G. Hoffman, 'Hybrid Threats: Reconceptualizing the Evolving Character of Modern Conflict' [2009] Strategic Forum 1.

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conventional warfighting, terrorism, insurgency, guerrilla tactics, and organized criminality, in order to offset the superior conventional capabilities of the United States. Mattis and Hoffman described this blend of different modalities of violence as 'hybrid war'.

In subsequent years, NATO embraced the idea of hybridity but did so by focusing on hybrid threats posed by adversaries 'with the ability to simultaneously employ conventional and non-conventional means adaptively in pursuit of their objectives'.[55] This extended the notion of hybridity beyond actual warfighting to cover situations of potential violence and the combined use of military and civilian instruments, as exemplified by Russia's annexation of Crimea. In response to Russia's actions, NATO leaders declared themselves ready at their Wales Summit in September 2014 to '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'.[56] Whereas 'hybrid warfare' in its original sense refers to a particular form of armed conflict, NATO's notion of 'hybrid warfare threats' describes the complementary use of military and civilian means in situations of actual conflict or near-conflict.

The third framing of hybridity as 'hybrid threats' is concerned with the synergistic use of non-violent means below the threshold of open hostilities.[57] Since all actors aspire to use the different instruments of statecraft at their disposal in a coherent and complementary manner, the hybrid threat construct relies heavily on its 'threat' element to distinguish the coherent conduct of policy by Western nations from the coherent conduct of policy by other actors. Accordingly, in recent years, the term 'hybrid threats' has been used primarily as a pejorative label to describe the activities undertaken by autocratic regimes to undermine or otherwise harm democratic nations, in particular by targeting their vulnerabilities and influencing their decision-making, within the wider context of geopolitical competition.[58]

Second, hybrid threats and grey zone conflict are both concerned with competition below the threshold of war. However, they address different aspects of the matter and are not synonymous:[59] hybrid threats focus on the malign activities

[55] Supreme Headquarters Allied Powers Europe and Allied Command Transformation, *Bi-SC Input to a New NATO Capstone Concept for the Military Contribution to Countering Hybrid Threats* (2010) 2–3.

[56] Wales Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council, 5 September 2014, Press Release (2014) 120 (5 September 2014) para 13.

[57] European Commission & High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication: Joint Framework on Countering Hybrid Threats - A European Union Response, JOIN(2016) 18 final (6 April 2016) 2.

[58] Andrew Mumford and Pascal Carlucci, 'Hybrid Warfare: The Continuation of Ambiguity by Other Means' (2023) 8 European Journal of International Security 192, 197.

[59] See European Centre of Excellence for Countering Hybrid Threats, 'Hybrid Threats as a Concept', <https://www.hybridcoe.fi/hybrid-threats-as-a-phenomenon/> accessed 30 May 2023.

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and the instruments and tactics they employ, while the grey zone describes a space on the spectrum of conflict where such activities take place. Unlike the three different framings of hybridity, the idea of a grey zone divides the spectrum of conflict into three segments: peace, war, and the grey zone in-between that is neither peace nor war. The difficulty with this tripartite division is that it exchanges the blurred line between war and peace with two uncertain dividing lines: one between peace and the grey zone at the lower end and another one between the grey zone and war at the higher end. Rather than multiply the thresholds in this way, a more fruitful use of the grey zone notion is to conceptualize it as the liminal area on the spectrum of conflict where war and peace gradually blend into each other, with no sharp lines on either side. This approach holds on to the idea that war and peace are different conditions, but suggests that they are divided not by a single line, whether blurred or not, but by a wider zone of grey that combines both peaceful and warlike features at the same time.

Understood in this way, the notions of hybrid threats and grey zone conflict complement each other: hybrid threats refer to actions that combine a range of means and tactics across various domains to target national, societal, and institutional vulnerabilities to achieve incremental strategic gains by harming their targets in ways designed to remain below the level of open armed conflict, but which are more hostile in their character, intent, or objectives than acceptable forms of peaceful competition, and as such blend features that are both peaceful and warlike in a grey zone between war and peace.[60] Clearly, other forms of competitive engagements, from more benign interactions all the way to conventional or even nuclear war, remain available to States. However, hybrid threats and grey zone conflict are useful heuristic devices to shine the spotlight on what is one prominent manifestation of contemporary geopolitical rivalry.

4. The present volume

The purpose of this book is to assess the legal and ethical challenges that hybrid threats and grey zone conflict pose for liberal democracies. Three sets of questions arise in this respect.

The first set of questions revolves around the capacity and suitability of the existing rules and institutions of international law to regulate hybrid threats and grey zone conflicts. Although the use of military force remains a prominent feature of the contemporary security environment, hybrid and grey zone tactics are designed to achieve strategic gains by targeting an adversary without triggering

[60] See also Sean Monaghan, 'Countering Hybrid Warfare: Conceptual Foundations and Implications for Defence Forces' (MCDC Countering Hybrid Warfare Project 2019) 2–3.

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