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GREY ZONE WARFARE & INT. ORDER

AN EXAMINATION ON THE ROLE OF INTERNATIONAL LAW

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Summary

In line with the master's programme in International Security and Law, this thesis seeks to contribute to the literature on the cross-section between international law and security studies.

The thesis thus asks the question of how the international liberal rules-based order is being challenged by grey zone warfare through its use of international law. This thesis seeks to address, is both the motivations for why states chose to engage in grey zone warfare, what happens to international law when grey zone warfare is used, and what the implications of the impact on international law, might be for the international liberal rules-based order.

Based on a case study of China, Russia, and Iran, this thesis will thus account for how national goals and perceptions of war and warfare, are contributing factors to why states choose to operate outside the confines of a war/peace dichotomy. More closely, it is examined how this gap is further widened by China's use of lawfare in the South China Sea, Russia's use of information warfare in Ukraine, and Iran's proxy war in Yemen, using a legal analysis. Finally, the study addresses the implications of the liberal rules-based order, if its regulating mechanism is challenged, or disabled entirely. The paper thus concludes that there is a challenge to the international liberal rules-based order, but one that must be studied more closely by scholars and strategists wishing to understand the future of international law and order.

Abbreviations

IAC – International armed conflict

ICC – International Criminal Court

ICJ – International Court of Justice

IHL – International Humanitarian Law

IHRL – International Human Rights Law

NIAC – Non-international armed conflict

PCA – Permanent Court of Arbitration

UN – United Nations

UNC – United Nations Charter

UNCLOS – United Nations Convention on the Law of the Sea

UNSC – United Nations Security Council

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Chapter 1

INTRODUCTION

"Two weeks ago, Russia brought war back to Europe. Russia's unprovoked and unjustified military aggression against Ukraine grossly violates international law and the principles of the UN Charter and undermines European and global security and stability (Council of Europe, 2022)."

Such reads a statement published by the European Council in the wake of Russia's 2022 invasion of Ukraine. The 2022 invasion is a textbook example of war. An increasingly rare occasion in today's world and something already well examined by western scholars and military strategists alike. The statement connects core concepts of security, stability, international law, and war, but it also does something else. By telling the reader, that war has now been brought back to Europe; it establishes that war has otherwise been absent. The statement leads one to think that Europe has moved from a time of peace to a time of war. This binary distinction between war and peace exemplified is pertinent to the Western understanding of war. This thesis examines how grey zone warfare challenges this binary thinking of war through international law. For centuries, states have conducted their activities on the dividing lines between war and peace. More recently, the term grey zone warfare has spread in popularity to address the security challenges policymakers face across the globe due to the gap between war and peace. Because while the conduct might now be new, the world is constantly developing, and unique circumstances and technologies create new opportunities and challenges (Sari, 2018: 2). The idea that peace and war should be divided by a sharp line does not fit reality. States have always competed for power in ways that move beyond conventional warfare (Sari, 2018: 2).

Already in 1625, Hugo Grotius wrote, *"There is no intermediate state be-tween peace and war"* (Sari, 2018: 2). Are we just unlucky to be born in a time of uncertainty and ambiguity, much different from the world Grotius, a founding father of international law, lived in? Likely not. It would be presumptuous to think that Grotius lived in a world of clear distinctions. Therefore, his words must allude to something else. When Grotius stated that peace and war prohibit each other and that nothing inhabited a space between them, he thought of peace and war formally (Sari, 2018: 2). The Western understanding of war and peace is inherently an international legal construction (Sari, 2018: 2f).

The Western construction shows its strength in the textbook example of a war that Russia's invasion of Ukraine exemplifies, but as this thesis endeavours, is challenged by grey zone warfare. Thus, this thesis departs from the belief that international law must play an essential role in understanding how grey zone

warfare affects the West, here treated as the International Liberal Rules-Based Order. The lines separating war from peace might not provide an accurate picture of warfighting, but they are a core element of the international legal system. A system, the International Liberal Rules-Based Order, after the devastation of two World Wars, has cemented its goals of peace and security. Today, just like the statement by the Council of Europe discloses, peace, security, stability, and war are all linked to international law. International law has always provided States with competitive tools to advance their goals. However, today it is challenging to avoid international law, as it has seeped into most areas of human life (Sari, 2020b: 12). The applicability of international law has thus never been of greater importance (Sari, 2020b: 12). Prominent work on Grey Zone Warfare, the International Liberal Rules-Based Order and International Law exists and provides essential knowledge on comprehending each of these variables. However, what seems to be lacking focus in the literature is how the combined effect meets these three factors.

This thesis thus poses the following research question:

> *Why are states using grey zone warfare to target international law, and what are the implications for the international liberal rules-based order?*

The research question is posed to fill the gap in the literature by focusing on grey zone warfare and the International Liberal Rules-Based Order precisely in light of the role of international law. To this aim, a comparative case study of China, Russia and Iran's use of grey zone warfare is utilised. By drawing out tendencies on their understanding of war, the challenges their conduct poses to international law and how this affects the International Liberal Rules-Based Order, this thesis will illustrate the importance of treating these concepts together and how grey zone actors use international law to break down the legal categories that sustain international law, and therethrough challenges the International Liberal Rules-Based Order in enforcing the regulative mechanism, that it has entrusted with enabling peace and security. As Aurel Sari has underlined: "*Grey zone warfare is uncharted territory for lawyers, and for this reason alone, it merits study"* (Sari, 2019: 167). While a law text might not inhibit the ability to stop Russia from invading Ukraine, it is time to look at international law when your opponent starts to employ it as a multiplier of their strength (Sari, 2019: 163).

METHODOLOGY

This thesis adopts a multidisciplinary methodological approach, working within the disciplines of law and political science. It will use a comparative case study method to answer the research question, supported by legal analysis and discussion.

We will utilise a comparative case study to examine three select cases of grey zone warfare. Given the (arguably) small sample size, we have used a non-random selection procedure, informed by our initial readings and research (Bhattacherjee, 2012: 94; Gerring, 2008: 645). For the form of a case study conducted in this paper, this is an important factor, as we cannot generalise our findings unless our cases are said to be relevant and representative of the phenomenon we study. We have thus selected representative cases which showcase common or most likely expressions of the use of grey zone warfare (Clark et al., 2021: 60; Gerring, 2008: 648). This selection serves to provide the most precise picture of the use of this form of warfare, which is typically harder to observe or examine. Since this thesis uses three specific cases, the design can be said to be that of a multiple-case study or collective case study (Clark et al., 2021: 63; McNabb, 2010: 237f). The reason for choosing multiple cases is to provide the analysis with more validity, as the phenomenon can thus be measured across both the actors and methods used and explain the phenomenon across more than the three selected cases (Bhattacherjee, 2012: 35ff; McNabb, 2010: 238). As we however address three different cases with different tools, our comparison will not necessarily rely on direct observations to support our findings. Rather, we will be looking at tendencies (also known as underlying similarities) across the cases, to reach our findings.

Our approach to this thesis has been a mix of deductive and inductive (Alhojailan, 2012: 41; Bhattacherjee, 2012: 3f). Our knowledge is the foundation upon which we have conducted our preliminary research, helping us develop a skeleton upon which we have built this paper (Clark et al., 2019: 271). Despite not conforming completely to any qualitative analysis approach, we argue that this thesis could fit under the thematic analysis approach. The thematic analysis approach allows for both predetermined themes as well as emerging themes to co-exist. It consists of a six-stage process; familiarisation, initial coding, identifying themes, reviewing themes, defining themes, and evidencing themes (Alhojailan, 2012: 41f; Clark et al., 2019: 280). In this thesis, it has taken the form of first examining relevant documents and other material, followed by intuitive coding, where we compared our readings and extracted relevant themes and concepts. Based on this, we selected our cases and further examined specific sub-themes from the cases. Finally, we ended up with a coherent narrative where we could bring together cases, literature, and theory. Of course, this process has not been linear but iterative, weaving between the inductive and deductive process, as is often the case with this approach (Bhattacherjee, 2012: 4f; Clark et al., 2019: 281). However, as mentioned, our approach has also been impacted by the fact that this thesis has two authors, meaning that the sections have often

been at different stages throughout the progress and that we have relied more on the iterative process to find compromises and solutions to problems.

Given that our area of interest is already challenging to observe, the authors have not been able to gather data ourselves in these cases. Instead, we have relied on documents as our data source (Clark et al., 2021: 520). Here we have used a combination of official documents from States, private sources, mass media, digital media, as well as academic texts (Clark et al., 2021: 506-510). We have thus sought to provide ourselves and our analyses with varied knowledge to avoid significant bias or lack of legitimacy. By ensuring that we include documents stemming from national sources (either government or local media), we have attempted to present viewpoints beyond those of the West and general academia. Concerning these documents, a note should be made that some are in other languages than English. These sources have necessitated translations which have primarily been conducted by one of this thesis' authors. They have been cross-checked with other sources or translators to obtain higher credibility to avoid wrongful translations. However, as with most translations, the authors are aware misinterpretations might have occurred.

Finally, on a practical note, since this thesis is multidisciplinary, the form of referencing used is reflective of this fact. The authors have chosen to adopt in-text referencing for all sources, including sources of international law. The first time a legal source is referred to in the text, the full reference will be written, but subsequent references will utilise the short form, as indicated in the first reference. If the legal instrument, and any potential specifics of it, is already stated within the body of the text, we will not add a formal reference to it, unless it is the first time it is mentioned.

Thesis Structure

This thesis is divided into six chapters, which each seek to answer the research question, or clarify the framework of the paper.

This chapter, **chapter 1** has served as an introduction to the thesis and presented its methodology. Here, the reader has been introduced to the relevancy of the topic, and the primary components examined in the thesis. The method section has accounted for the method of comparative case study, and considerations related to the creation of our thesis.

Chapter 2 sets out the definitions of our central concepts, grey zone warfare and international liberal rules-based order, through literature reviews of the two. We will here define what this paper means by the terms respectively. The chapter also addresses the theory utilised in this thesis, the English School Theory.

Our analysis starts in **chapter 3,** where we will seek to examine *why* states engage in grey zone warfare, and how this relates to challenging international law. We will first account for the understandings of war according to China, Russia, and Iran respectively, followed by an account of their military strategies.

In chapter 4 we seek to examine the uses of grey zone warfare tools in practice, to understand more specifically *what* parts of international law is being targeted. We examine the case of China's use of lawfare in the South China Sea, the use of information warfare by Russia in Ukraine, and Iran's proxy warfare in Yemen. From these three we will draw out tendencies, that we will use in the next chapter of the thesis.

Chapter 5 will thus build upon the previous two chapters, to answer *what effect* grey zone warfare has on international law and the Order. First it will thus address what grey zone warfare means for international law by comparing the tendencies uncovered in chapter 4. It will then use the observations on the implications for international law, to examine what effect these implications could have on the Order.

Our final chapter, **chapter 6,** will discuss what it could mean for the future of both international law and the Order that it is being challenged by grey zone warfare. It further sets out a direction for further research, and finally, concludes on the findings of thesis, answering the research question posed initially.

Chapter 2

GREY ZONE WARFARE

In the following section, we seek to define what is meant in this thesis by the concept "grey zone warfare". First, we strive to give a brief account of what is meant by war, followed by examining the constitutive elements of grey zone warfare, its tools, and their use. Finally, a debate on the academic applicability and use of the concept. This section thus serves to act both as a literature review on grey zone warfare as well as determine the definition used in this thesis.

War and Peace

The dominant perception of war today comes from General Carl von Clausewitz. According to him, war is "*an act of violence intended to compel our opponent to fulfil our will"* (Clausewitz, 1874). He argues that violence can be understood as the physical force used to achieve the disarmament of the enemy (Clausewitz, 1874). According to Clausewitz, the character of war is constantly changing, but the nature of war is constant, as *"war is a mere continuation of policy by other means"* (Clausewitz, 1874). Frank G. Hoffman, the father of the concept of grey zone warfare, agrees with Clausewitz, confirming his continued relevance and argues that despite the impact of globalisation on the character of war, current wars are still consistent with the theory of Clausewitz (Hoffman, 2007: 11). John Keegan, a known opponent of Clausewitz, disagrees with the notion that war is a continuation of policy (Keegan, 1993: 2). Instead, he believes that war comes from instinct and that we have created laws and institutions to reign in the instinct for violence (Keegan, 1993: 2f). He also argues that Western culture is based upon the premise of accepting a lawful bearing of arms, even if the ideal is pacifism (Keegan, 1993: 3f). As opposed to Clausewitz, he stated that war should be seen as an expression of culture rather than politics (Keegan, 1993: 11). According to Western definitions, war and peace have traditionally been understood as a binary distinction, often in line with the Clausewitzian theory of war (Hoffman, 2018: 32; Theussen & Jakobsen, 2021). However, it can be argued that each community have their own characteristic form of war and that it is simply the European one that dominates our current definition (Kaldor, 1999: 14). According to Clausewitz, war is "*the threat and use of organised military force in pursuit of political objectives involving two or more actors*" (Theussen & Jakobsen, 2021: 163). This has led to an (arguable) over-emphasising conventional wars between states and has been one of the shortcomings in many national strategies and international debates on war (Hoffman, 2018: 31,34).

Grey Zone Warfare

From academic literature, it is clear that "Grey Zone Warfare" is a contested concept (Hoffman, 2018; Jordan, 2020; Mazarr, 2015). The problem seems to be an academic disagreement on what current warfare looks like, how it challenges the conception of war, and whether it can even be encompassed by one single term. Thus, several different terms have been suggested to describe the new battlespace and form of fighting experienced today. Among these are "new wars" (Kaldor, 1999; Münkler, 2005), "asymmetric warfare" (Martinovic, 2016), "unconventional warfare" (Banasik, 2016), "new generation warfare" (Gerasimov, 2016), "hybrid warfare" (Hoffman, 2018), and many more (Kapusta, 2015; Mazarr, 2015; Theussen & Jakobsen, 2021; Weissmann, 2019). Worth noting however, is a point from Mary Kaldor, that these wars are not entirely new, but elements of the can be traced back to the Cold War (and perhaps even earlier), whereas some elements are newer in nature (Kaldor, 1999: 2f). Yet, as this section seeks to argue, these concepts all attempt to describe the same phenomenon: how current wars are being fought in the space between war and peace. It will also argue that methods that are not easily visible or countered are being used to do so. Thus, this conceptual confusion highlights that the problem is not how to define it academically but to make sure that the definition is useful in practice (Meyers, 2016:8).

Beneath the threshold of war, more violent than peace

To understand the concept of grey zone warfare, we must understand why it is contentious and poses challenges to academics and policymakers alike. The first problem that grey zone warfare encounters is its placement between traditional understandings of peace and war. Despite disagreements as to what emerging warfare is, most scholars agree that this new form of war is characterised by its lack of ability to be addressed by the normative framework of war (Hoffman, 2018; Theussen & Jakobsen, 2021). This results from conflicts no longer amounting to war but instead falling between the blurred continuum between war and peace (Gerasimov, 2016; Hoffman, 2018; Mazarr, 2015; Theussen & Jakobsen, 2021; Weissmann, 2019).

What grey zone warfare exploits, and what the Western understanding fails to grasp, is the second problem of the grey zone - that warfare can fall beneath the threshold of war but still amount to threats to the peace (Hoffman, 2018: 31; Munoz Mosquera & Bachmann, 2016: 26; Theussen & Jakobsen, 2021:167,175). Determining how a conflict is falling below the threshold of war can be defined by how war is measured and aligns with the doctrines around war. Starting with how we measure war, a well-known quantitative approach is to measure the number of combat deaths. This is a measure employed by the Uppsala Conflict Data Program, which sets the criteria for armed conflicts at 25 deaths per year, and war when the deaths reach 1.000 (Jordan, 2020:2; Theussen & Jakobsen, 2021:166). The doctrinal challenges, which will be discussed at greater length later in this paper, tie themselves to the legal problems of defining the grey zone, the use of force in the grey zone, and how

laws apply to a form of conflict that falls outside the scope of conventional war (Hoffman, 2007:7; Theussen & Jakobsen, 2021:167; Weissmann, 2019:18).

A prominent explanation for why grey zone warfare falls beneath the threshold of war can be found in the strategies and methods used. Strategies can also be understood as the motivation behind using the grey zone as a battlespace, and methods can be understood as the tools employed in the grey zone. Starting thus with the reasons behind the use of grey zone warfare, it is worth mentioning its inherent ambiguity and how weak actors use it to weaken stronger opponents. This ambiguity serves as a defining component of grey zone warfare, used by actors to deter opponents from responding to the various acts of grey zone warfare (Mazarr, 2015:1f,61; Theussen & Jakobsen, 2021:173). According to scholars, this ambiguity can be understood as the result of the grey zone between war and peace, as well as from the confusion about attributing the use or threat of force and other grey zone tools (Banasik, 2016:41; Kapusta, 2015:22; Reichborn-Kjennerud & Cullen, 2016:2). The tools of grey zone warfare, which will be elaborated upon later in this section, are characterised by their gradualist approach (Jordan, 2020:5; Munoz Mosquera & Bachmann, 2016:26) and their untraditional and mostly nonmilitary tools (Mazarr, 2015:55). For weaker actors, grey zone warfare thus offers a way to affect, influence, or weaken the enemy at a lower cost as they rarely have to engage in conventional fighting themselves, and can avoid most counter-responses, as they fall below the threshold of war or are not detected in time for a response (Braun, 2019:2; Martinovic, 2016:7f; Mazarr, 2015:58).

The approaches of grey zone warfare

As mentioned above, the grey zone is characterised by a gradualist approach, which is characterised by its long-term perspective, where tools are employed gradually to achieve the goals of the aggressor, posing a severe threat to victim states (Jordan, 2020:4f; Mazarr, 2015:33; Munoz Mosquera & Bachmann, 2016:26). Unlike conventional wars that are often shorter, grey zone conflicts adopt an approach that sees them gradually weakening their adversaries to achieve the desired results. This does not mean that grey zone conflicts cannot become war, but rather that the purpose and intent of employing grey zone warfare usually, but not always, is to avoid that happening (Kapusta, 2015:25; Mazarr, 2015:58). This approach does not guarantee success or a lack of response, but it is often the best chance for weak actors to fight a greater enemy (Jordan, 2020:4; Mazarr, 2015:55). Several authors say that two gradual tactics are usually employed in grey zone conflict: salami-slicing and faits accompli (Jordan, 2020; Mazarr, 2015; Munoz Mosquera & Bachmann, 2016).

The salami-slicing strategy describes a gradual approach by which an actor attempts to, little by little, chip away at the adversary, allowing for a gradual weakening of the opponent, culminating in the aggressor being able to reach their goals (Jordan, 2020:13f; Mazarr, 2015:2; Munoz Mosquera & Bachmann, 2016:26f). Faits accompli, on the other hand, is a strategy by which the aggressor seeks to

achieve their goals by acting quickly to avoid pushback (Jordan, 2020:13; Mazarr, 2015:36f; Munoz Mosquera & Bachmann, 2016:27). This approach relies on the fact that the attacked state will instead want to relinquish a small gain than respond and risk a large conflict (Jordan, 2020:13; Mazarr, 2015:37; Munoz Mosquera & Bachmann, 2016:27). These strategies can be seen as opposites, but both pursue the same goal of a gradual erosion of the adversary. The combined result of several instances of using these strategies constitutes grey zone warfare. A single act of this kind can thus not constitute grey zone warfare, even if it is conducted in the grey zone, but must be part of a more extensive series of malicious acts against an adversary.

Tools of the grey zone

Addressing then how these strategies are acted upon, we must examine the tools of the grey zone. First, some general observations will be presented, followed by a few noteworthy tools that have been given more attention by policymakers, academics, and grey zone actors alike. What distinguishes grey zone tools from conventional tools of war is the minimal role of covert military or conventional use of force in contrast to the great role of unconventional methods (Lawson, 2021:66; Mazarr, 2015:2; Meyers, 2016:12; Reichborn-Kjennerud & Cullen, 2016:3f). The tools of the grey zone are thus what help create the grey zone by blurring the distinctions between methods and understandings of war and by using unconventional methods that are not as easily countered (Braun, 2019:4; Hoffman, 2009:37f; Mazarr, 2015:67; Meyers, 2016:13). These unconventional methods are varied and have different means of operations, seeking to influence a target in different ways. This is evident from the different means employed by actors. Javier Jordan thus argues that most actions fall under the following categories; political disruption, influence operations, economic coercion, cyberattacks, intelligence activities, coercive military deterrence, faits accomplis and erosion tactics, and proxy wars (Jordan, 2020). Variations of these can be found among other scholars, showing a consensus that these are the most commonly used means of action (Braun, 2019:4; Meyers, 2016:12f; Reichborn-Kjennerud & Cullen, 2016:2).

The different grey zone warfare tools are described in brief below, alongside examples of their use:

- *Political Disruption:* The political dimension of operations, attempting to disrupt domestic politics. (Jordan, 2020:10). It targets decisions and policymakers rather than the military (Reichborn-Kjennerud & Cullen, 2016:3f). Examples are supporting anti-establishment actors and media operations.

- *Influence Operations:* Influence operations consist of building narratives that benefit the aggressor and delegitimise the opponent. This element contains strategic communications and

media operations, such as disinformation and propaganda, often amplified through social media (Hoffman, 2018:33; Lawson, 2021:62; Meyers, 2016:12).

- *Economic Coercion:* As the name suggests, economic coercion allows an actor to adjust the levers of finance, to put political pressure on an adversary (Jordan, 2020:11; Meyers, 2016:12). This can be done through sanctions and regulating sales or implementing targeted taxation.

- *Cyber-attacks:* Cyber-attacks are often the most common method associated with grey zone warfare, cyber-attacks are conducted on the virtual battlefield and can target the opponent's digital infrastructure (Jordan, 2020:12; Lawson, 2021:66). The aim is to destabilise critical infrastructure or disrupt digital operations (Meyers, 2016:12). These operations are characterised by their digital nature and cover all attacks in the digital sphere, even cyber espionage. Moreover, these attacks are tough to attribute to an actor, making them ambiguous (Jordan, 2020).
- *Intelligence Activities:* Intelligence has always been key to winning wars and plays a significant role in grey zone warfare. They often take on an aggressive edge and are often covert. Examples are espionage (physical or cyber) or covert intelligence operations targeting media or politics.

- *Coercive Military Deterrence:* Covering the threat of use of force, this tool covers the ambiguity that occurs when actors present their military actions to deter adversaries from acting (Jordan, 2020:9,13). An example of such is the mention of nuclear weapons, or demonstration of missile capabilities, to show adversaries that actors are capable of fighting back if attacked (Meyers, 2016:12).

- *Faits Accomplis and Erosion Tactics:* As mentioned above, these strategies are employed to quickly achieve gains or avoid detection by the adversary. As methods, they can often be seen in the occupation of territories, or militarisation of areas, although they can also take other shapes (Jordan, 2020:13f).

- *Proxy Wars:* Another often discussed method of grey zone warfare is proxy wars. The concept covers fighting by a third party on behalf of an adversary, the use of special forces, and sponsoring or supporting actors waging war in another state (Braun, 2019:3; Hoffman, 2018:38; Jordan, 2020:14; Meyers, 2016:13). It is sometimes associated with sponsoring terrorism (Braun, 2019:3; Hoffman, 2018:38). It can cover everything from financial sponsorship to the use of private military companies in a foreign state.

Despite this very extensive overview of methods used in grey zone warfare, there is an additional concept that Jordan fails to account for in his classifications but should still be included in a list of grey zone methods – the concept of *lawfare*. Despite discussion as to whether lawfare is inherently malicious (Kittrie, 2016:7), this paper adopts the most commonly used definition of lawfare as set out by Charles J. Dunlap, namely that it is a strategy that uses (or abuses) law as a substitute for conventional military means to achieve an objective (Dunlap, 2008:146). This definition allows for understanding the concept of lawfare as a neutral term, which gives it a broader scope of application. Many of these methods of grey zone warfare can be elaborated further upon and are often also addressed by themselves due to the great complexity of their use, effect, and motives. This paper will also address some of these methods through real-life examples of their usage, while others will not be addressed again.

Debating the concept "grey zone warfare"

As the section above shows, grey zone warfare is not a simple concept and is not easily described. Before determining the definition used in this paper, it would thus be amiss not to mention the great debates around the concept. However, the one thing scholars can seemingly agree on is precisely the fact that grey zone warfare is a difficult concept to understand and conceptualise (Banasik, 2016:41; Hoffman, 2018:36; Jordan, 2020:1; Mazarr, 2015:45; Meyers, 2016:15; Munoz Mosquera & Bachmann, 2016:25; Reichborn-Kjennerud & Cullen, 2016:4; Weissmann, 2019:18).

The first debate that needs to be addressed regarding the concept is the various terms used to describe it. As mentioned at the beginning of this section, there are many ways to describe what we will be terming grey zone warfare. This might seem like a minor problem but has become one of the central critiques of grey zone warfare. Critics argue that it lacks conceptual clarity, encompasses too many concepts, is not truly new, and therefore cannot supply new knowledge to the study of wars (Braun, 2019:8; Hoffman, 2018:36; Jordan, 2020:1; Lawson, 2021:61; Reichborn-Kjennerud & Cullen, 2016:4; Weissmann, 2019:19). Many of these critiques have been raised in connection to the concept of hybrid warfare. Still, as this paper initially set out, hybrid warfare can be seen as part of grey zone warfare. Arguments against the lack of clarity of the concept of hybrid warfare, can therefore also be levelled against the grey zone warfare concept. For this paper to argue that hybrid warfare is a subsidiary of grey zone warfare, the debate of the concept has been assessed. It will be presented below before presenting the final operationalisation of the concept.

As has also been addressed earlier in this section, the main problem with conceptualising the phenomenon we describe as grey zone warfare stems from the lack of understanding of war, peace, and the gap between the two (Hoffman, 2007:7, 2018:39; Kapusta, 2015:22; Meyers, 2016:15; Reichborn-Kjennerud & Cullen, 2016:1; Schadlow, 2014; Theussen & Jakobsen, 2021:161ff; Weissmann, 2019:18). As the concept's premise is challenged, it is no surprise that the concept itself is also debated.

As we have alluded to previously, the primary debate concerns itself with the term or concept used to describe the form of warfare conducted today.

Frank G. Hoffman, the originator of the concept of grey zone warfare, focuses on institutional and military approaches to the concept and argues that some interpretations of hybrid warfare are closer to grey zone warfare than intended (Hoffman, 2018). He argues that grey zone warfare is more indirect and less violent than hybrid warfare, which is characterised by violence (Hoffman, 2018:39). Despite the concepts being closely related, their level of violence and directness dictate their categorisation as either grey zone or hybrid warfare. Michael J. Mazarr continues this line of thinking, arguing that hybrid warfare is a concept broad enough to encompass grey zone strategies but often sits in a different place on the spectrum of conflict (Mazarr, 2015:2f,45). Where hybrid warfare is more specific and "classical" in its conduct according to him, the grey zone becomes an umbrella term that can only describe tactics and strategies employed by actors (Mazarr, 2015). He states that hybrid wars are wars in a Clausewitz sense, whereas grey zone strategies are looser and less violent (Mazarr, 2015:47). He thus argues that the concept of the grey zone is separate from hybrid warfare, and the two should not be understood in the same way (Mazarr, 2015).

These arguments are contested by Javier Jordan, who argues that grey zone warfare is the terrain for hybrid warfare and that hybrid warfare contains the strategies. Methods used in grey zone warfare, and that hybrid warfare is thus part of the grey zone (Jordan, 2020:3). This is supported by David Carment and Dani Belo, who, like Hoffman and Mazarr, recognise that hybrid warfare is a separate concept from grey zone warfare and see hybrid warfare as a subset of grey zone warfare (Carment & Belo, 2018:1). Carment and Belo distinguish between the strategies of grey zone warfare and hybrid warfare operations (Carment & Belo, 2018:2). They argue that grey zone warfare is characterised by falling below the threshold of the use of force, whereas hybrid warfare can cross this threshold. These authors show that hybrid and grey zone warfare are often linked and can be understood similarly, albeit with the level of violence being the critical determinant for when actions are characterised as which concept. Having addressed most of the central elements of what constitutes grey zone conflicts, we now seek to conceptualise how this concept will be understood in this paper. As the previous paragraphs have shown, there is some disagreement on this. We will thus seek to summarise the academic findings to create a description of the grey zone that considers some of the elements described earlier and the existing descriptions.

Our definition of grey zone warfare

This paper has chosen not to adopt the term hybrid warfare to allow for the strategies and motivations of the actors to be the focal point of our analysis. As the discussion above showed, hybrid and grey zone warfare are often separated by their use of force. As this paper attempts to investigate many of the legal issues that arise from actions falling below the threshold of the use of force, we thus elect to work with

a concept that allows for a greater exploration of this. At the same time, we agree with Carment, Belo, and Jordan, that hybrid warfare at times becomes a tool for grey zone actors, and thus we do not exclude actions that might cross this threshold.

Current definitions of grey zone warfare are vast and varied and therefore require some examination before the definition used in this paper can be constructed. Frank G. Hoffman proposed a definition in 2018 that defined grey zone tactics as "*covert or illegal activities of nontraditional statecraft that are below the threshold of armed, organised violence (...) as part of an integrated design to achieve strategic advantage"* (Hoffman, 2018:36). This then does not cover grey zone warfare but only its tactics. As Hoffman also mentioned, a reason for this is that some argue that grey zone warfare is characterised by its ambiguity but *can* contain the use of force or aggression (Hoffman, 2018:35f). Mazarr also points out that grey zone warfare is more than just its tools and argues that it consists of three elements; measured revisionism, strategic gradualism, and unconventional tools (Mazarr, 2015:51). What is also essential for him to highlight is that grey zone warfare is not war, and although it might be politics by other means, as argued by Clausewitz, it blurs the divide between peace and war to become a distinct form of the use of force (Mazarr, 2015:64). Philip Kapusta offers a third definition of the concept, which has some commonalities with the previous two but is still distinct. Kapusta understands grey zone warfare as competitive interactions among and within actors that fall between the war and peace divide, which exist below the threshold of war, and are characterised by their ambiguity, the opacity of involved parties, and uncertainty about the relevant legal and political frameworks (Kapusta, 2015:20).

Based on these definitions and the considerations posed at the beginning of this section, we outline the following criteria for this paper to determine whether actors engage in grey zone warfare or not:

- Grey zone warfare must contain an element of ambiguity, either to the actors involved, the applicability of the law, or the level of force it can be classified as.

- The approach must be gradualist, and the overall conflict must be long-term.

- It should be characterised by a predominant use of unconventional methods but can include some elements of conventional warfare.

THE INTERNATIONAL LIBERAL RULES-BASED ORDER

When discussing the effects of grey zone warfare on the International Liberal Rules-Based Order (the Order), we must first define what we mean by the term. By itself, the concept of international order has been subject to extensive debate, with everyone from scholars to politicians questioning everything from its character, to its origin and whether international order can even exist (Bull, 2002; Bull & Watson, 1984; Deudney & Ikenberry, 1999; Ikenberry, 2018a, 2018b; Kissinger, 2014; Lascurettes & Poznansky, 2021; Mazarr et al., 2016; Waltz, 1979a, 1993). Adding liberal and rules-based to the concept makes it neither less debated nor easier to define. It should be emphasised that this thesis assumes that the Order does exist, and hence that international order can exist. Thus, we do not debate if international order can exist. We find instead that it does already. However, even among scholars that agree that international order can exist, there is still debate on what criteria need to be present for an international order to occur. The following section will first illustrate the debate on what defines an international order and then move on to what adding liberal and rules-based means for the concept.

International Order

On the most basic level, social orders are patterned or structured relationships among units (Lake et al., 2021:228). Moving that understanding to an international context, we can, for analytical purposes, divide the debate on the meaning and existence of international order into two large groupings. On one side of that spectrum, some authors define international order quite broadly, close to the basic definition of order (Lascurettes & Poznansky, 2021). For Shipping Tang, international order is thus defined at the basic level as "*the degree of predictability (or regularity) of what is going on within a social system"* (Tang, 2016). The same goes for Bentley Allan, who argues that *"international orders are stable patterns of behaviour and relations among states and other international associations"* (Allan, 2018:5). Allan underlines that while there are differences between international orders, they all belong to distinct periods of history with that periods specific mixture of practices (Allan, 2018:5). Cooley and Nexon also understand international order this way and propose that international order could be defined as a "*relatively stable pattern of relations and practices in world politics*" (Cooley & Nexon, 2020). Kyle M. Lascurettes hereto describes international order as *"a pattern of equilibrium-perpetuating behaviour among the units of a system"* (Lascurettes, 2020). For these scholars, international order exists when there is some level of regularity in the international system, which leads to some level of predictability within that system (Bain, 2020; Lascurettes & Poznansky, 2021). These scholars have the common understanding that international order exists when it perpetuates a certain logic of 'orderliness' in international relations in contradiction to chaos, leading to a degree of predictability in the international system (Trachtenberg, 2006:207). We can thus, for analytical purposes, describe this group of authors

as understanding international order as a pattern of regularity. This allows us to then look at another grouping of scholars, who view the definitions presented above as too generic and instead define international order with more attributes.

For the other group, international order only exists when limits are placed on states conduct through the regularity, and relations among them are controlled so that *'the sharp edge of politics is dulled'* (Trachtenberg, 2006). In this grouping we find Headley Bull, who describes that when we speak of order as opposed to disorder, we have in mind "*not just any pattern or methodical arrangement among social phenomena, but a pattern of a particular sort"* (Bull, 2002:3). Bull describes how even though one might see a pattern in how a group of men are fighting a given war, war is disorderly, and this scenario cannot make up an order. From this point of view, international order is a pattern that leads to a particular result by promoting specific goals or values (Bull, 2002:3f). Similarly to Bull, John Ikenberry describes international order as *"governing arrangements among a group of states, including its fundamental rules, principles, and institutions"* (Ikenberry, 2001). Furthermore, Alastair Johnston describes how a wide range of rules, norms, and institutions express the wants and needs of the dominant state, which is used to create specific behaviour (Johnston, 2019). In addition, Michael Mazarr, Miranda Preibe, Andrew Radin and Astrid Stuth Caveallos, in their collective work, also emphasise the role of rules, norms and institutions for understanding international order, but further describe how "*an order is a stable, structured pattern of relationships among states that involves some combination of parts, including emergent norms, rulemaking institutions, and international political organisations or regimes, among other"* (Mazarr et al., 2016). Again, the distinctive element of international order is the settled and structured character that distinguishes it from chaos and randomness via its degree of pattern and structure and the involvement of regulative mechanisms (Mazarr et al., 2016:7f). John J. Mearsheimer also supplements the debate with his understanding of international order. Similarly to Ikenberry and Mazarr, he finds that international order is a structured group of international institutions that oversees and administrates how states interact (Mearsheimer, 2019:9). Common to this group of scholars is thus that they all require a degree of shared norms, institutions, and relationships to be present. They believe that this commonality creates the stability and pattern needed to create an international order (Trachtenberg, 2006:208). International order is then not only a pattern of regularity but also, in itself, a regulative pattern.

In the most general sense of international order, the term refers to established patterns of relationships that create an orderliness that has become institutionalised to a certain degree. We also see that such a rudimentary definition makes up the core of both groupings' definitions of international order. While there is thus disagreement among the scholars as to what is required before one can talk about 'an international order', there is agreement on its core – some degree of predictability and stability is a condition for an international order. This makes the order *'ordered'* (Lascurettes & Poznansky, 2021:3). Void of these fundamental attributes, we do not have an international order. However, many scholars

do not find this basic definition to be enough for an international order to exist. For them, the institutionalisation – the institutions, norms, and practices, need to have a specific effect to mediate the anarchy and instability of politics.

Building on an allegory presented by Bull of how a *"row of books on the shelf display order whereas a heap of books on the floor does not,"* we can understand the contrast between the two groups of scholars (Bull, 2002:3). Both sets of scholars agree that if we find a cluster of books on the floor, the books are not in order. However, if we arranged the books on a bookshelf, we might be looking at an order. For the first group of scholars, we have an order when the books are organised by a certain pattern creating predictability for the reader wanting to grab their favourite book. Such an ordering could be that every fifth book starts with the letter *A*. However, we have found that for the second group of scholars, that is not enough, as that order is not regulative. The bookshelf can be organised in many ways – by genre, colour, or size, for example. These forms of organisation can provide us with a different degree of organisation in relation to the cluster of books on the floor (Lascurettes & Poznansky, 2021: 1). But it won't make out an order, in the sense of an international order, unless it is organised to achieve a specific outcome (Lascurettes & Poznansky, 2021: 3). Organising by colour won't do much good for the colour blind but it will benefit the reader who wants to make sure they always read the red books first (Lascurettes & Poznansky, 2021: 3). We first have an order, when for example, the organisation of books makes sure that you read the largest book first and the smallest book in the end – regulating and putting some restraints on what the reader reads and how.

Both approaches to defining and understanding international order have their merits. It should, in this context, be underlined that the broader approach makes out an appropriate baseline. An argument could be made that while the phenomena of rules, principles, and institutions are crafted to create specific outcomes and are central to international order, predictability and stable patterns of behaviour can happen without them. However, there can oppositely not be an international order without the predictability and orderliness that the baseline reflects (Trachtenberg, 2006: 208ff). However, as we approach a better understanding of the Order, and the effect grey zone warfare has on it through international law, it will become apparent, that the effect can only be understood by understanding, that the Order is not only a pattern of regularity, but a regulative pattern with gets its features from the way it regulates and distinctive institutions. One will thus not be able to fully comprehend the effect grey zone have, if the Order, is understood simply as a pattern of regularity. From this point of view, an order is not only a pattern but a particular pattern, which then emphasises that focus should be placed on the goals and values the regulating seeks to obtain. Thus, for this thesis, international order is understood as a pattern of regularity, which regulates state behaviour through an ordering mechanism to attain certain ends and values.

Rules-based

As we have now determined what is meant by international order, it is time to look at the concepts of rules-based and liberal. The moniker rules-based is to be understood in the context of the many different approaches' scholars have utilised to describe and understand the dynamics of a specific international order. Since this thesis, specifically are examining, what is meant by rules-based, which is a matter of debating different ordering mechanism, the many other categories will not be examined. However, it should be mentioned that other approaches exist, such as looking at whether an order is global or regional in scope[1], whether an order is thick or thin[2] or issue-specific or general in nature[3] (Lascurettes & Poznansky, 2021). A typology and discussion of different ways to characterise international orders is not the focus or scope of this paper. Instead, we look specifically at the differentiation between organising mechanisms of an international order. We have defined international order as being not just any pattern of regularity but a regulating pattern in itself - it is the order's organising mechanism that creates this regularity. There are three approaches to understanding how an international order is regulated: the position-based approaches of power-balancing and hegemony and the non-position-based rules-based approach.

From the perspective of power-balancing, the regulating behaviour the international order produces are the outcome of great power competition. States focus on their self-interest and seek to optimise the amount of power they can gain in world politics by balancing other states (Mearsheimer, 2001: 49f). This balancing produces the predictability we call the international liberal rules-based order. Balance-of-power theory would thus argue that the Order is a product of states seeking to counter the threat posed by Soviet Russia (Deudney & Ikenberry, 1999: 179). Rules are thus followed when and if they help states balance a greater security threat. The international order is thereby sustained by the constellation of states in the system and how they are positioned in relation to each other. Realists often utilise this understanding, arguing that the lack of an overall decision-maker means that the system is ruled by anarchy, which means that states naturally behave to balance each other (Deudney & Ikenberry, 1999: 184-187).

[1] See for example: Katzenstein, P.J. (2005) A world of regions: Asia and Europe in the American imperium; Wendt, A. (2003). Why a world state is inevitable, 491-542, or Altman, D. (2020). The evolution of territorial conquest after 1945 and the limits of the territorial integrity norm, 490–522

[2] See for example: Goddard, S. E., MacDonald, P. K., & Nexon, D. H. (2019). Repertoires of statecraft: Instruments and logics of power politics, 304–321; Arend, A. C. (1999). Legal rules and international society, or Linklater, A. (1998). The transformation of political community: Ethical foundations for a post-Westphalian age

[3] See for example: Johnston, A. I. (2019). China in a world of orders: Rethinking compliance and challenge in Beijing's international relations, 9–60; Kuo, R. C. (2021). Following the leader: International order, alliance strategies, and emulation, or Fazal T.M (2018). Wars of law: Unintended consequences in the regulation of armed conflict.

Another approach is that of hegemony. Understanding international order, as regulative due to hegemony, entails seeing it as a product of the existence of one hegemonic power, who has accumulated so much power, that the anarchy that otherwise marks the international system, becomes non-existent (Deudney & Ikenberry, 1999: 179). From this point of view the Order, should then be understood as a product of American hegemony since the Second World War. Here the US is understood as having both the ability and the want to compel other states to follow the rules they have established (Deudney & Ikenberry, 1999: 184-187). A hegemonic based order, will lose its power and fade when the hegemon becomes too weak, to hold a unipolar position in the system (Ikenberry, 2018a: 18). Thus, the order, is based upon the strength of the hegemon. Furthermore, the hegemon designs the rules and dynamics of the order in its own image and interest, so when other states emerge and challenges the hegemon's position, they also invertedly challenge these (Mazarr et al., 2016; Mearsheimer, 2019).

Finally, we have the rules-based approach. Whereas power-balancing and hegemony refer to states' position in the system vis-a-vis each other, the rules-based approach finds that international order gets its regulative nature from rules. Between the states in an order are rules that can be both codified and not codified – and which expresses expectations of behaviour regarding international politics that states become institutionalised by and are therefore subject to (Lascurettes & Poznansky, 2021: 7). Thus, states in an international rules-based order are bound by rules (Porter, 2016: 2). From this perspective, many essential features of the Order cannot be explained and would be overlooked by the position-based approaches, as the order is filled with consensual and reciprocal relations, allowing rules to regulate state behaviour (Deudney & Ikenberry, 1999: 179). While the hegemonic United States might have shaped the order and some of its components, the Order is overall a product of years of competition over and development of organising principles and institutions (Ikenberry, 2018a: 22; Lake et al., 2021: 228). The rules are deeply integrated in the order, which provides it with its regulating power and means that it is likely to endure even if, or after, the US loses its power (Ikenberry, 2018a: 22; Lake et al., 2021: 228).

Scholars have spent much time taking one of the above positions and criticising the others. However, by taking a position that bridges the gaps between realism and liberalism, one can find a way out of such debate. While the categories make up significant analytical distinctions, in practice, realist and liberal depictions of the ordering mechanism of international order hardly exclude each other (Mazarr et al., 2016: 11). The international order is more than one thing - it is multi-layered and complex. It is more than simply the will of a powerful state forced upon weaker ones, but power does play a role (Mazarr et al., 2016: 21). The presence of rules that regulate independently does not mean the absence of power that influences (Mazarr et al., 2016: 21). Therefore, this thesis takes the view that the Order is not based on either rules or power – but both. The order is thus founded and borne out of power, but norms, institutions, and rules shape how that power could be and is exercised (Scott, 2020: 5). While legitimacy enhances a state's power, illegitimacy does the opposite, and this means that rules matter,

even as they are violated (Scott, 2020: 5). This thesis does therefore not simply take the view that the Order being termed rules-based means, that it is a product of institutionalised regulating rules alone (Porter, 2016: 2). Instead, the position-based dynamics of power, are to be found in the *liberal* moniker of the Order. A rules-based order can be based on different values and principles and does not come pre-determined by any ideology (Mazarr et al., 2016: 21). The order we are looking at, however, is.

Liberal

At its core, the word liberal entails the equality of human beings, freedom, and self-determination (Lake et al., 2021: 229). It is the term liberal that often meets the most scepticism and controversy when debating the international liberal rules-based order. This debate often centres on a disagreement that such an order can or has existed. However, as described, this thesis assumes that it can and does. To get a solid understanding of the liberal element of the international liberal rules-based order, and thereby what goals and objectives the regulating rules, are trying to achieve history of the development of the Order is an excellent place to start.

The order can be understood as a fusion of two distinct projects. Firstly, the order has its roots in the Peace of Westphalia, with the establishment of the modern state in 1648. Since the seventeenth century (and until the present day), the states of Europe have wrestled with creating and fastening the rules and the institutions that make up the system of sovereign states (Ikenberry, 2018a: 22f). Principles of sovereignty, territorial integrity, and non-intervention were and are core rules and, at this point in history, mirrored the bourgeoning agreement that states were "*the rightful political units of the establishment of legitimate rule"* (Ikenberry, 2018a: 22f). This later developed into other rules, norms and principles of self-determination and non-discrimination, with the years 1713, 1648, 1815, 1919 and 1945 providing significant moments of history where the above-mentioned rules were decided (Ikenberry, 2018a: 22f). Since 1945, the rules and principles first articulated during the Peace of Westphalia have only been developed and tested more. Secondly, the order is rooted in the leadership and power of prominent states, such as the United States, and the United Kingdom, and the rise of liberal democracies of the twentieth century (Kundnani, 2017: 3). While sovereignty and the norms of Westphalia were, in the beginning, a project of Europe, they went global in the twentieth century (Ikenberry, 2018a: 23). This globalisation came about with the two World Wars, illustrating a need for strengthened and more widespread rules, and has provided the order with a global foundation to rest upon. Western analysts often point to the Atlantic Charter,[4] emphasising self-defence, economic prosperity and self-governance, as the standard and founding document of the Order (Ikenberry, 2018a: 24). Furthermore, after the Second World War, the United States and its partners added to these rules' elements of economic openness, multilateralism, cooperation around security and justice, and

[4] A joint declaration between President Franklin D. Roosevelt and Prime Minister Winston Churchill signed in 1941

democratic solidarity (Ikenberry, 2018b: 7). This is only a brief account of the historical roots of the Order, but it illustrates the Order being born with an emphasis on attaining peace and security by preventing conflict, ensuring the quality of human beings and sovereignty and security of States.

Furthermore, we can distinguish between three different branches of liberalism, that collectively creates the components that make up the Order. The different liberalism, each in their own way and to a varying degree contributes to the Orders goals and objectives. The three liberalisms are political, economic, and institutional liberalism (Kundnai 2017; Ikenberry 2018). Economic Liberalism makes up the financial component of the order and refers to elements such as hyper-globalisation, mobility, free trade, market capitalism, and the institutions of Bretton-woods (Lake et al., 2021: 230f). In other words, it can be described as the" *Breaking down of artificial barriers to the flow of goods, services, capital"* (Kundnani, 2017). Economic liberalism contributes to the liberalisation of the world's economics and links the world together by strengthening interdependence, which makes conflict and breach of sovereignty more costly (Deudney & Ikenberry, 1999; Kundnani, 2017; Mazarr et al., 2016). Institutional liberalism is the institutional component of the Order. Institutional liberalism furthers and builds international institutions as cornerstones of the Order's multilateralism. This entails a willingness to give up power and authority to other states in cooperative institutions, such as the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), or the United Nations, to mention a few (Lake et al., 2021: 231f). Institutional liberalism also seeks to further sovereign equality via, among other things, strengthening interdependency and cooperation. Economic liberalism and institutional liberalism make up vital parts of the Order but are not the focus of this thesis. To understand the effect of grey zone warfare on the international liberal-rules-based order through international law final liberalism – political liberalism is of largest interest. Political liberalism is the component of the Order that grounds it in the rule of law and makes out the justice and security components of the Order, thus linking justice and security with international law. The justice component emphasises human rights and, with its footing in the United Nations Charter and the Universal Declaration of Human Rights, and underscores fundamental rights, dignities, freedoms, and universal respect hereof (Charter of the United Nations, 1945 (UNC); Kundnani, 2017: 8; Universal Declaration on Human Rights, 1948). The security component deals with collective security and takes its reference point in the two World Wars (Ikenberry, 2010: 518). Political liberalism thus brings together the notions of equality of states and individuals, which the order ultimo seeks to further. Today states' security is dependent upon the choices made by other states, and the security order taps into this and tries to mitigate it (Ikenberry, 2010: 518). While justice and security and intrinsically linked, this thesis specifically approach international law and the Order from the perspective of grey zone warfare, which is believed to be more closely linked to State security, thus human rights concerns will not be addressed.

ENGLISH SCHOOL THEORY

As our literature review on order has alluded to, how we understand the relations between states is significant for analysing their actions and effects. Realism can explain the occurrence of grey zone warfare and changes in the international system and provide an explanatory factor for why the order is being challenged to begin with. However, it lacks an explanation for the importance of international law. Its focus on power relations also fails to realise the function of law and why states adhere to it. Liberalism, on the other hand, understands international law as more than a result of power but fails to explain the occurrence of grey zone warfare while placing greater weight on the role of institutions, which is not an explanatory factor we seek to examine in this thesis. A more suitable theory for this paper would need to bridge the gaps between these two theories to provide us with a relevant theoretical foundation. English School Theory seems to do just that. The English School Theory finds the middle ground between realism and liberalism, bridging the gaps between agency and structure, morality and power, and theory and history (Dunne, 2008: 268; Jackson & Sørensen, 2016: 130; Murray, 2016: 8). At the same time, English School Theory acknowledges the role international law plays for the order while accounting for other factors, such as power relations and politics, as explanations for state behaviour. As this thesis seeks to explain why states seek out their own goals while still attempting to play within the rules, English School theory offers a unique opportunity for us to address multiple layers of state behaviour as exemplified by grey zone actors, as well as the, making it the most suitable approach for our analysis.

International Society and International Order

English School Theory concerns itself with three elements; international system, world society, and, most significantly, international society (Buzan, 2001: 474f; Dunne, 2008: 271; Murray, 2016: 8f). This does not mean that the three elements are not all relevant, as the English School argues that the existence of all is crucial, but simply that the primary academic and practical examinations revolve around the concept of the international society, which is also the reason for the English School's alternate name "International Society theory" (Buzan, 2001: 475; Dunne, 2008: 270). The international system can be understood as relations between states, international society as the institutionalisation of shared identity and interests among states, and world society as individuals transcending the state system (Bull, 2002: 9-21; Murray, 2016: 8f). In the system, states are connected in a way where they impact each other's behaviour and policies, whereas the society is where they see themselves as bound to each other through shared values and interests (Bull & Watson, 1984: 1; Wight, 1991: 30). The current international system is anarchical, as it relies on the equality of states and therefore has no overarching power (Flockhart, 2016: 18). Based on the characteristics of international society, we align ourselves with an argument

set forth by Trine Flockhart that the international liberal rules-based order, as defined in this thesis, is a great example of international society. Despite this being in contrast to Bull's understanding of the world order being incompatible with competing political organisations, this train of thought allows for a better understanding of historical international orders, the current Order, and orders of the future (Bull, 2002: 135; Flockhart, 2016: 18; Jackson & Sørensen, 2016: 136f). We thus argue that international society, as set out by English School Theory is similar to the Order as defined by this thesis, and the two can thus be seen as expressions of the same phenomenon. Hence, whenever this thesis refers to the Order, it must be understood in the same way as the international society.

As we are looking to understand how grey zone warfare impacts the Order, it is relevant to look at the international system works to better understand how the order is constructed in the current political climate and the role of power for the order. Flockhart here argues that there are four different ways the relationship between international order and international system can appear: a unipolar system, a bipolar system, a multipolar, and a multi-order system (Flockhart, 2016: 18f). The *unipolar* system is assumed to be short-lived, although this is heavily dependent on the stability of the international society – if the society is threatened, so is the system (Flockhart, 2016: 21). Accepting the premise that the Order currently governs the world, it is no surprise that states that do not accept liberal values are rebelling against it. A *bipolar* system is usually characterised by one overall international system but contains two international societies, as was seen during the Cold War (Flockhart, 2016: 20f). As evident here, primary and secondary institutions were not very helpful in constructing a shared society but instead created two separate societies with their own functioning institutions (Flockhart, 2016: 21). A *multipolar* system consists of more than two great powers with global influence, but the international society remains shared (Flockhart, 2016: 20). This means that the system shares primary and secondary institutions. Finally, the *multi-order* system, a framework constructed by Flockhart, offers a fourth and futuristic view of the international system. She argues that the primary dynamics are within and between the orders rather than between the states (Flockhart, 2016: 23). Members of this system are different orders, consisting of more than one state, regardless of geographical proximity. According to this thought, a "Western-Liberal" order or an "EU-led" order could emerge based on a shared identity rather than regionality (Flockhart, 2016: 23f). Some orders may be stronger than others on certain parameters, but this does not lessen their overall impact or place in the multi-order system. This kind of order focuses more on the relational dynamics between different orders, allowing a place for states that act both like and unlike the other states in the order.

State behaviour

English School Theory distinguishes between three ways of seeing relations between states; realism, rationalism, and revolutionism (Wight, 1991: 7). Realism, like the international theory, looks at power

relations between states and anarchy (Wight, 1991: 7f). It thus believes that conflict between states is unavoidable and inherent in relations. Realism implies political stagnation, meaning that world politics remain somewhat the same, independent of time and place (Wight, 1991: 15f). On the other hand, rationalism places importance on the law and views states as legal organisations that act in accordance with diplomatic practise and international law, as relations are governed by rules and their mutual recognition of sovereignty (Wight, 1991: 13ff). People can thus live in anarchical societies, like the current international society, as they act according to rationality and intelligence to maintain their interests. Finally, revolutionists place more importance on individuals than states, arguing that a community of people is more robust than a state (Wight, 1991: 8). The focus on individuals allows for a continuous challenge of the state and the system to achieve the best possible conditions for humanity and the community. As we neither seek to argue that politics remain stagnant nor that individuals are the most important actors, we will adopt a rationalist approach to interstate relations. This allows us to understand international relations as a society of states that cooperate while at the same time taking care of their own interests and protecting their sovereignty (Bull, 2002: 8ff; Dunne, 2008: 272). States are thus the key actors in society, but we also recognise that institutions and organisations play an essential part in international relations (Bull, 2002: 8,22f; Dunne, 2008: 273).

Acting rationally and according to the international order relates to the order's ability to regulate behaviour in conflict. Hedley Bull argues that the order has decreased interstate wars fought (Bull, 2002: 190). However, there has not been a decrease in the number of intrastate wars, nor have states ceased their proxy wars. Bull further argues that wars of the third kind, what this thesis calls grey zone warfare, have increased since the Cold War, despite the presence of an international system, indicating a challenge for the order in regulating this form of warfare. He generally argues that a flaw in the order is the peace/war dichotomy, as peace is not realistic in an anarchical society, and violence will always be present in such a society (Bull, 2002: 44-49). When one form of war decreases, another will simply take its place.

According to Hedley Bull (Bull, 1995: 16-19), promoting and maintaining the international order is the primary point of the anarchical society. According to him, the international order is a pattern of international activities that sustain the goals of the society, which are fourfold; 1) preservation of the international society, 2) upholding the independence of states, maintaining peace, and securing normative foundations of life, 3) keeping promises such as the principle of reciprocity and, 4) recognising the principle of mutual recognition (Bull, 2002: 8, 16-19). To Bull, it is also crucial that we distinguish between different forms of order; order in social life explaining human relations, world order as general human relations, and international order as the order between states in a system (Bull, 2002: 3-21). This paper will concern itself with the international order, which relies on great powers to sustain it. Great powers here are not necessarily to be understood in terms of power but rather in relation to their degree of influence. English School Theory scholars also debate the differing importance of non-

intervention and human rights. Two approaches are at the heart of this divide: the pluralist and solidarist approaches. According to pluralists, sovereignty is an essential principle and should always be upheld (Jackson & Sørensen, 2016: 133). Closely related to the realist understanding of the goals of international society, pluralists believe that the world is based on sovereignty and order and that the presence of anarchy, and constraints international society poses on the system of states, are the primary explanations for the conduct of the pluralist society (Murray, 2016: 9). A solidarist, on the other hand, argues that human rights have primacy, even over sovereignty (Jackson & Sørensen, 2016: 133). This means that they place importance on individuals and norms and how individuals are affected by the actions of the society of states (Murray, 2016: 10).

International Society and International Law

International law plays a crucial role in the English School Theory. Essentially, international law was, alongside history and political theory, a driving factor behind establishing a new theory different from international relations theories such as liberalism and realism (Schmidt, 2020: 491). Thus, in part, international law provided a conceptual basis for understanding the international system as an international society of states tied together via common norms, institutions and rules (Schmidt, 2020: 491). In other words: *"international society exists to the extent that states understand themselves to be related to one another as subjects of common rules"* (Schmidt, 2020: 491). International law is at the heart of these rules, norms, and institutions, and international law is viewed as an important institution of international society (Schmidt, 2020: 491). International law is inherently a framework of norms utilised to maintain an international order, as it is a crucial tool for the effective workings of international society (Wilson, 2009: 168). Thereby, international law has evolved with the aim of contributing to the safeguarding of international order by, for example, easing the unpredictability of state behaviour by regulating it (Schmidt, 2020: 168; Wilson, 2009: 491). International law is thereby utilised to enable sustained regularity and orderliness in the interactions among states (Wilson, 2009: 168f). International law is similar to domestic law – and is equally binding. However, the ability to bind stems from states and other actors viewing the body of norms and the rules they constitute as binding (Wilson, 2009: 167ff).

Characteristically for, the understanding of international law from the perspective of the English School is the emphasis on the norms and values that makes up international law and the legal system it inhabits (Schmidt, 2020: 492). International law is intrinsically tied to the core of how the international society creates and sustains the normative framework it is made up of – by providing regularity, as mentioned earlier and thereby giving states an idea of what to expect (Wilson, 2009: 168). Crucially, international law is understood to always reflect the society it stems from (Wilson, 2009: 168f). From the perspective of the English School, international law should thus be analysed and

understood by evaluating the society it comes from and the norms and rules underpinning it. This is what provides the law with its characteristics and approach to creating predictability, orderliness and other goals (Wilson, 2009: 168f). In English School, international law should always be understood in relation to international society and its norms, goals, and purposes (Schmidt, 2020: 492). However, it should also be underlined that while the law is a union of different rules, there are no universal agreed-upon rules – instead, they have to be created through the society (Wilson, 2009: 169).

The English School approach does not view international law as directly determining behaviour, but the behaviour of states is influenced and shaped by the rules that make up the law, as enshrined in the order. These rules signal appropriate behaviour and provide states with a framework to comprehend and make choices (Wilson, 2009: 171). Hedley Bull has described how international law's central role *"does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it"* (Wilson, 2009: 173). International law thus does not directly determine behaviour. Still, it influences it because states so often find it in their interest to follow it, or at least not overtly break it (Wilson, 2009: 174). English School recognises that international law is thereby a product of both power and norms as the two cannot be separated (Wilson, 2009: 180ff). The relationship is not to be understood as inherently bad but is healthy, as power is central to the law being able to regulate the powers of the system, carry out its task for the international society, and attain established international order (Wilson, 2009: 181f). This works especially well in systems of bipolarity or multipolarity where there is more than one voice and viewpoints that can dominate, and international law thus becomes a tool to ensure that no one culture and set of norms dominates. This means that the norms and rules of a society that international law reflects are at the core, a reflection of the mixture of power – and this happens when powers are in consensus (Wilson, 2009: 181). However, it is more challenged when there is unipolarity, or one dominant power dominates. Unipolarity provides the Unipol with power to shape the norms that produce the rules and the choice to selectively choose what to uphold and what not to (Wilson, 2009: 181-184). Legal systems are seen as impartial to those they exert their influence over to remain effective. Instead, if it is viewed as serving some groups over others, it loses its legitimacy (Wilson, 2009: 181f).

THE FUNCTION OF INTERNATIONAL LAW

Having now established the international law is an important component of the Order, both via its Rules-Based and Liberal components, as well as how English School theory understands international law, this section defines the function of international law, specifically for the Order. To understand, the effect of grey zone warfare on the Order, through international law, it is crucial to understand what function international law has for the Order. Thus far, it has been determined that international order is not just a regulative pattern but a pattern of regularity in which the context of the Order is defined both by rules and power and which works toward an overall end of establishing peace, security and equality of individuals, by regulating state behaviour to avoid conflict and breaches of sovereignty. International law is to be understood as an important element to all these ends. As international law has already been defined in the English School theory Section X of this chapter, it suffices to here reiterate that international law is a product of the society from where it originates and is formed by said society to serve a specific function. The question is, then, what is international law's function for the Order?

First, it should however be described that the part of international law utilised by the Order originates and belongs to the post-1945 legal system (Scott, 2017: 3). Secondly, while international law should be understood as a core part of what makes the Order rules-based, it is not synonymous with the rules-based approach. Instead, international law, must be understood as being a product of and serving both rules-based and liberal components of the Order. To better understand the function of international law to the Order, we can look at its core concepts. These core concepts describe how the law applies and, therefore, will also be telling in respect of what the Order wants to achieve by utilising international law. The concept of sovereignty lies at the core of international law. Since no sovereign state is above another, and there is no other overarching authority in the system, sovereignty became an important way for international law to establish and protect the autonomy and boundaries of each state (Scott, 2017: 3).

However, this also means that since there is no enforcer of international law, international law is instead based on consent**.** From the point of law, only rules that states have consented to via custom, treaties, deeds, and words are binding (Weller et al., 2015). Sovereignty is most clearly established in international law through the United Nations Charter's Articles 2(1) and 2(7). These articles describe how something is inherently domestic and that the United Nations should not intervene in such matters, but also that sovereignty at times can be breached. Sovereignty is thus the starting point for understanding international law and the objectives and values of the Order. The sovereignty of states entails that no one can easily enforce consequences of breaches of international law, and non-compliance is therefore also a feature and issue (Scott, 2017: 3).

Another important principle of international law is the rule of law**.** The pivot of the principle is that everyone is equal before the law. In an international system of law, this often translates into the principle of sovereign equality of states, which brings together the elements of consent, sovereignty, and rule of law (Scott, 2017: 12). According to this fundamental principle, all states are equal under the law, but as they differ in terms of history, resources and political systems, there is little prospect of all states carrying equal weight in international law (Scott, 2017: 13). Nevertheless, the principle of sovereign equality plays an important normative and legitimising role in law, and effects the rules of operation in the system (Scott, 2017: 10). As already alluded to in the history of the Order, the modern system of international law, can best be understood in the context and experience of the two world wars of the early twentieth century (Scott, 2017: 1). Since World War II, international law has evolved, to a point, where it is enmeshed in almost all aspects of international politics (Scott, 2017: 1). In the aftermath of WWI, the Kellog Briand Pact of 1928 was designed, to manage war and its related fallout (Evans, 2018: 21f). However, the Kellog Briand Pact focused on war, and thus allowed States to carry out conduct, that were detrimental to the security and sovereignty of other states, but was not war (Evans, 2018: 21f). After WWII, the United Nations Charter replaced both the League of Nations and the Kellog Briand Pact, and with that established the framework that the Order utilises to regulate state behaviour by protecting sovereignty (Evans, 2018: 21).

Connecting the findings from the understanding of the Order, and English School theory as presented, with these conclusions, international law can thus be said to serve the function of providing the Order with a regulatory framework, through which they can uphold the principles of sovereignty and sovereign equality, with the goal of attaining peace, security and predictability, and thus the ability to create orderliness. It is a necessity in an anarchical world to safeguard, the peace, security, and justice, that war, and the breach of sovereignty, impose upon international society (Evans, 2018: 28). This can clearly be viewed, from Article 1 of the UN Charter, which describes the purpose of the UN to be maintaining international peace and security, preventing, and removing threats to peace and justice, settling international disputes and be a harmonizing factor, for such actions, among other things (UNC, 1945: art.1). All of this goes to the same end, protecting the state. In the International Court of Justice's Nuclear Advisory Opinion, the Court concluded that it could not exclude that the use of nuclear weapons could be lawful in extreme cases of self-defence, and thereby placed the states survival and benefits to it as the central objective (Evans, 2018: 28; Legality of the Threat of the Use of Nuclear Weapons, Advisory Opinion (Nuclear Weapons Advisory Opinion), ICJ Reports 1996, paras 96, 101). What the Order, is thus ultimo using law for is to delimit and regulate the way other states exercise their powers, by applying international law to foster peace and security.

Chapter 3

GREY ZONE ACTORS' UNDERSTANDING OF WAR

To understand why this paper seeks to explain the effect of grey zone warfare on the international liberal rules-based order, we must first address why states utilise grey zone warfare to interact with international law. This section will thus seek to examine why China, Russia, and Iran are using grey zone warfare to obtain their goals and how this is an expression of a challenge to international law and its normative interpretations. We will first address each nation's national ambitions and understandings of war, followed by an account of their perceptions of the relevancy and benefits of the specific tools. Finally, we will examine the similarities and differences between all these factors to reach a conclusion on the tendencies these factors are an expression of.

National strategies and understandings of war

China and War

China is a rising power and has long been seen as a significant actor worldwide. Taking advantage of the financial benefits of the free market, China's economy has long been on a rapid upwards trajectory that only recently has begun to slow down (Acharya, 2017: 272; Paikin, 2021: 414). China's focus on economic prosperity is evident from its Belt and Road Initiative, which intends to create infrastructure spanning Asia and Europe, to foster increased trade between the two regions, leading China to become a centre for prosperity (Paikin et al., 2019: 236). China's economic aspirations are also evident from its actions in the South China Sea, where there are significant economic benefits to gain from expanding its jurisdiction over the Sea.

Perhaps surprisingly, a significant tenet of Chinese ideology is their push for greater inclusion in international organisations. China is asking for greater democracy in international relations, as well as supporting globalisation – likely elements that will lead to greater financial opportunities for China (Acharya, 2017: 275; Paikin, 2021: 415; Sørensen, 2011: 154f). However, China places little weight on individual liberties and rights and instead assigns great importance to state sovereignty and non-interference (Paikin, 2021: 415; Sørensen, 2011: 154; Walt, 2021). Despite enjoying some of the benefits of the current order and globalisation, there are thus significant differences between China and the West, particularly on ideology and war (Acharya, 2017: 275). China hence balances on an ideological cusp between traditionally Westphalian ideas and liberal values as present in the ORDER (Xiang, 2014: 109). According to some scholars, there is also an internal balancing between the goals and ideologies of China. It is argued that financial goals might overrule its principle of non-interference,

leading it to use force to obtain its goals, as it can be argued that it has begun doing in the Asian-Pacific (Acharya, 2017: 278; Lin, 2014: 134).

Finally, an essential difference for China in its understanding of war is its emphasis on non-kinetic warfare. Military strategist Sun Tzu, who is still influential in Chinese military doctrine today, wrote that "*[t]o win one hundred victories in one hundred battles is not the pinnacle of excellence; defeating the enemy without fighting is the pinnacle of excellence"* (Goldenziel, 2020 1091f; Kittrie, 2016: 161). This idea of winning without fighting and moving beyond strictly military means is central to Chinese thinking, and it is within this context China's use of lawfare is best understood. Towards the end of the 1990s, it was decided by Chinese strategists that, considering the development of nuclear weapons, overt military action was not the best method for winning wars (Carment & Belo, 2018: 5). Ultimo, in 2003, the Chinese Communist Party Central Committee and the Chinese Central Military Commission approved the concept of the "Three Warfares"; public opinion/media warfare, psychological warfare, and legal warfare expanding the Chinese perception of warfare beyond the binary (Cheng, 2012: 1; Kittrie, 2016: 162). This is related to future warfare, which is non-contact, non-linear, and non-symmetric, where military operations can also be "quasi-war" -military operations that fall short of war but are not conducted in peacetime (Hoffman, 2018: 33f).

Russia and war

A significant obstacle to understanding how and why Russia conducts warfare comes from a lack of understanding of the Russian notion of the nature of war (Bērziņš, 2020: 355f). The Russian version of war has long considered that the future of warfare would encompass a blurring of war and peace, and as General Gerasimov argues, also understand the rules of war and form of conflict to have changed, becoming more concealed and with a more significant role of non-military means (Gerasimov, 2016: 24; Theussen & Jakobsen, 2021: 168). To properly understand how and why Russia conducts information warfare, we must first understand how its security and foreign policy strategies are different from the West.

In the eyes of Russian President Vladimir Putin, the West – in particular the US – is attempting to undermine Russian power and influence its citizens (Thomas, 2015: 20; Thornton, 2015: 41). This is seen as a threat to the survival of Russia and an attempt at regime change - a fear which has its roots in the collapse of the Soviet Union (Giles, 2016: 37; Lange-Ionatamišvili et al., 2015: 6). There is thus a thinly veiled hostile approach toward the West, particularly the US and NATO, which clouds the ideology of Russia (Flockhart, 2014: 143; Paikin et al., 2019: 233ff; Thomas, 2015: 20; Thornton, 2015: 41). Not being able to control information is thus seen as a threat to Russia and has led to scepticism about the internet, which is seen as a threat to Russia and has led to censorship of social media (Giles,

2016: 38). This fear has made Russia reform its state structures and military approach to increase its global power (Darczewska, 2014: 7; Thornton, 2015: 41).

Russia employs information warfare to establish a multi-polar world and disable the American hegemony (Darczewska, 2014: 7; Lange-Ionatamišvili et al., 2015: 8). As a result of its declining economy and relatively diminished military capacities, Russia has thus been relying on nuclear deterrence and information warfare to remain a powerful (regional) state (Giles, 2016: 52f) (Bērziņš, 2020: 377; Giles, 2016: 3,16; Thornton, 2015: 44). These tactics are part of the military reform, which has changed Russian military strategy by developing a new generation of warfare, where information warfare is the focus (Thornton, 2015: 40). This change is a result of Russian studies of Western warfare and the evolution of domestic strategies (Bērziņš, 2020: 356,370; Darczewska, 2014: 7; Lange-Ionatamišvili et al., 2015: 6; Thornton, 2015: 42). Despite mainly being understood as a new strategy, some authors argue that this new generation reflects continued principles that have now been updated (Giles, 2016: 3). The new Russian military approach now places more importance on the integration between military and non-military measures and the integration of multiple methods and tools - an aspect they have refined, much to the surprise of the West (Bērziņš, 2020: 359; Giles, 2016: 46; Thornton, 2015: 42).

Iran and War

Iran has shaped their foreign policy according to its view of itself in relation to other states. Moulded by a long history of greatness and resilience, it is now marred by its inability to regain the power it once had (Ehteshami, 2002: 284f; McInnis, 2015: 1). It is attempting to obtain the role of the greatest regional power, building on its reputation as an important regional player following its role as an interlocutor between Europe and Asia during the Cold War (McInnis, 2015: 1f; Ehteshami, 2002: 287; Samuel, 2012: 283).

Iranian foreign policy also relies heavily on the principles of sovereignty and territorial integrity (Colleau, 2017: 91,106; Rad, 2006). Ayatollah Khamenei points out that the hostilities Iran is met with from the West and claims that these are not due to Iranian actions but due to the efforts of the US (Rad, 2006). Iran here sees itself as justified in using proxy warfare to counter its adversaries' perceived use of proxies (Eisenstadt, 2021: 83). Understanding Iran's foreign policy, the conception of war, and military strategy, thus relies on understanding the geopolitical factors (Samuel, 2012: 284f).

Looking at the principles of the Iranian constitution also offers insight into the guiding principles of their foreign policy. General themes of these principles are; defending and protecting Muslims and the unity of Islam across the world, protecting states from and avoiding actions that lead to domination by other foreign states, refraining from interfering in the national affairs of other states,

and maintaining peaceful relations with non-combatant states (Rad, 2006). From these, it is evident that Islam is a leading factor in foreign policy decisions. There is, however, also an apparent hostility towards “dominating” states – often allies of the US, Israel, or Saudi Arabia. While Iran does not have a clear geographical bias, it has a clear policy of opposing those they deem to be its enemies and those they see as colonisers or hostile superpowers (Rad, 2006). This follows a fear of outside intervention in Iranian internal matters and leads Iran to take more significant political and military risks, as its government believes it is fighting for survival and sovereignty (Eisenstadt, 2021: 79). On the matter of non-interference, Iran’s policies are thus slightly contradictory. On the one hand, it argues that the West should keep out of Iran and refrain from interfering with national matters while also heralding Islamic brotherhood as a valid ground for meddling in other states (Rad, 2006).

Another significant value in Iranian foreign policy is the concept of political independence. According to Khamenei, this means that Iran is ready to take independent positions, despite the opinions of the international community. One such example is Palestinian independence, which Iran recognises as a State and supports its fight for sovereignty but does not recognise Israel, standing in contrast to the rest of the world (Rad, 2006; Zweiri, 2016: 7). This thus proves that Iran does not necessarily see itself as bound by international opinion-making but is content to follow its own beliefs and values and act only according to those.

The tools of the grey zone, according to its users

As the above analysis has shown, states do not engage in warfare for just any reason. Often, they pursue a specific goal or try to protect themselves from threats (or perceived threats). How they choose to do this can be seen as a reflection or extension of their military doctrine and foreign policies, and here, grey zone warfare is no exception. Having determined that grey zone warfare offers each state a tool to better fight their battles against stronger adversaries, states still possess different strengths and capabilities that would make one tool better suited for the state. As we have alluded to in the previous section, China’s policies are closely linked to legal warfare (lawfare, as we call it in this thesis), Russia has directly integrated information warfare as a central part of its military strategy, and Iran claims a right to support Muslims abroad in their struggles against domination, effectively justifying proxy warfare as a tool in their military toolbox. We will now seek to examine what the different tools are and how they can be seen as reflections of the military strategies of each state.

China and Lawfare

The term lawfare first became popular in international scholarship in 2001. However, both the concept and its use began much earlier. Arguably, the origins of lawfare in China must be understood in the

context of the idea of *winning without fighting,* dating back to Sun Tzu, and within the context of China's understanding of the law (Hermez, 2020: 564). Law has had a different function in Chinese culture than in the West. Confucianism emphasised morality and ethics as the proper basis for managing society (Cheng, 2012: 3). No strong tradition which held the law as a means of constraining authority itself ever developed in China. In the broadest sense, Chinese society viewed the law from an instrumental perspective—as a means by which authority could control the population rather than a control extended over authority. For China, international law is both a tool to promote international cooperation and reach national policy goals such as military ones (Hsiao, 2016: 21).

Via the adoption of the three warfare strategy, China has explicitly granted lawfare a central place in their strategy (Kittrie, 2016: 161;14f). In 1999, strategists from China's People's Liberation Army (PLA) argued that modern warfare would no longer be defined by military means – instead, society would be the battlefield (Goldenziel, 2020: 1091f). They saw international law as an alternative approach to avoid a direct military confrontation with China's opponents (Hermez, 2020: 564). Ever since the adoption of the three warfares, lawfare has been a critical focus of the PLA (Hermez, 2020: 563-565). This is evident from various writings of the PLA, which describe and analyse how states utilise the law to dominate and constrain their opponents and how the law of armed conflict can be used as a weapon to achieve national objectives (Kittrie, 2016: 162). This is the concept of lawfare.

The concept of lawfare

Since its inception, the concept of lawfare has been subject to various interpretations, highlighting its essential role. This thesis makes two assumptions regarding the definition. Firstly, Charles J. Dunlap's definition is utilised. The definition describes lawfare as "*The strategy of using — or misusing — law as a substitute for traditional military means to achieve an operational objective*" (Dunlap, 2008: 146). Secondly, the term lawfare is used synonymously with the term falu zhan, which has been translated into legal warfare, but used interchangeably with lawfare by Chinese think-tanks and can thus be seen as iterations of the same concept (Hermez, 2020: 566; Kittrie, 2016: 162). Employing Dunlap's understanding of lawfare means that we don't assume lawfare only has negative implications but is value-neutral – this allows for broader use of the term and a better understanding of the effect on international law (Hermez, 2020: 565). Law is, as a result of this, seen as a weapon that can be used for both good and bad, and law at its most basic includes *"arguing that one's own side is obeying the law, criticizing the other side for violating the law, and making arguments for one's own side in cases where there are also violations of the law"* (Cheng, 2012: 1). By using this understanding of lawfare, the term can be extended to cover contexts and situations that are not armed conflicts (Hermez, 2020: 565; Kittrie, 2016: 162f). Generally, lawfare is to be understood as an instrumentalisation of law to achieve security objectives (Rousseau, 2017: 7). There are, however, multiple sub-categories of this

instrumentalisation. This thesis specifically utilises the categories of instrumental lawfare and information lawfare to illustrate the effect lawfare has on international law. Kittrie defines Instrumental lawfare as the *"use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action."*, whereas information lawfare is the use of law to control the narrative of a conflict (Goldenziel, 2020: 1099f; Kittrie, 2016: 11).

Russia and Information Warfare

Russia has quickly embraced the fact that information infrastructures offer an unparalleled ability to communicate and access information in the global information society, making societies, states, and the people who inhabit them dependent on the information infrastructure (Nitu, 2011: 48). The new developments create opportunities and avenues for states and non-state actors to attack each other through information warfare (Nitu, 2011: 48). In the West, information warfare is conducted during hostilities and describes a limited form of operations. On the other hand, the Russian understanding believes that it is a broader term that describes actions that are not limited to hostilities but rather are continuous. However, its use differs slightly between peacetime and hostilities (Giles, 2016: 4,6,11). It thus covers most hostile actions involving information and sees these actions as critical tools to win future conflicts and wars (Giles, 2016: 4).

With the broad Russian understanding of information, warfare comes a revised primary target, meaning that the primary goal of Russian warfare is now to change minds to influence political leadership and opinions, rather than direct destruction of the enemy, and it can therefore also be conducted in peacetimes (Giles, 2016: 10f; Thornton, 2015: 43). To do so, Russian information warfare mixes military and non-military uses of both cyberspace and information space (Bērziņš, 2020: 359; Darczewska, 2014: 12). Using information warfare instead of relying on conventional warfare has human and financial benefits and significantly reduces the likelihood of retribution (Thornton, 2015: 44). This is significant to Russia, as they recognise their military weakness compared to the US and NATO and hence wish to fight on a battlefield with the most considerable advantage (Bērziņš, 2020: 377; Giles, 2016: 3,16; Thornton, 2015: 44).

Despite using the term "information warfare," it is essential to note that this Russian perception also includes activities in cyberspace. The divide between cyber and information warfare is seen as artificial by Russia. It is only used to describe foreign activities and how they occur in either a cyber domain or in real life (Giles, 2016: 7). With regards to how Russia separates cyber and information domains domestically, they employ the terms "information-psychological warfare", which seeks to continuously affect the population and armed force, and "information-technology warfare", which is conducted during hostilities to affect technical systems (Giles, 2016: 9; Jonsson, 2019: 343-349). Cyber and

information operations are often intertwined and cannot easily be distinguished or separated, and cyber operations are often facilitators for more comprehensive information campaigns (Giles, 2016: 49ff).

The concept of Information Warfare

As described in the section on grey zone warfare, we understand cyber-operations as attacks conducted on the virtual battlefield, often targeting digital infrastructure (Jordan, 2020: 12; Lawson, 2021: 66). The aim is to destabilise critical infrastructure or disrupt digital operations (Meyers, 2016: 12). These operations are thus characterised by their digital nature and cover all attacks in the digital sphere, even cyber espionage. These attacks are tough to attribute to an actor, making them highly ambiguous (Jordan, 2020). On the other hand, influence operations consist of building narratives that benefit the aggressor and delegitimise the opponent, which often includes strategic communications and media operations, such as disinformation and propaganda, often amplified through social media (Hoffman, 2018: 33; Lawson, 2021: 62; Meyers, 2016: 12).

These forms of operations play out in the digital sphere and utilise information and communications technology. This aligns with the Russian understanding of the concept as encompassing both influence operations and cyber operations – as noted, the divide is not seen as beneficial but artificial by Russia. Cyber operations are thus understood within the concept of "information-technology warfare" and influence operations under "information-psychological warfare" (Giles, 2016: 7).

Iran and Proxy Warfare

By using proxies and other grey zone tools, nations such as Iran are offered a chance to achieve their goals at little cost of their own by fighting outside their territory and decreasing the financial costs and risks associated with open conflict (Eisenstadt, 2021: 79; Serhal, 2022). With the Iranian Revolution in 1979 and the subsequent change in foreign policy, Iran thus invested heavily in developing a Middle Eastern proxy network to help expand its influence in the region (Eisenstadt, 2021b: 78; Hollingshead, 2018: 31; Serhal, 2022). The use of proxies is part of a three-element strategy, consisting of a guerrilla navy, long-range precision weapons, and foreign proxies – with cyber operations as a future fourth element (Eisenstadt, 2021: 81). By using proxies, Iran can increase its influence on populations across the region and project its power onto its adversaries or enemies, making retribution harder (Serhal, 2022). The use of proxies also enables Iran to create confusion about its involvement and responsibility for its actions. It emerges from a belief that it is justified in doing so, as its adversaries are also conducting proxy warfare against them (Eisenstadt, 2021: 83). Iran's reasoning behind supporting these proxies is based on a constitutional and ideological sense of responsibility, seeking to promote Iranian and Islamic values (Serhal, 2022).

The concept of Proxy Warfare

As described in the section on grey zone warfare, proxy warfare is often seen as covering third parties' utilisation of a group to engage in hostilities (Braun, 2019: 3; Hoffman, 2018: 38; Jordan, 2020: 14; Meyers. It can also cover the use of special forces, private military companies, sponsoring terrorism, or actors that are already waging war in or on a foreign state (Fox, 2021: 2ff; Mumford, 2013: 42). What exactly constitutes a proxy can thus be hard to determine, as they often take the form of existing factions with their agendas or conflicts who accept being used as a weapon by a state (Fox, 2021: 3; Mumford, 2013: 40). Relying on support being seen as indirect engagement, states can support their proxies through everything from financial sponsorship to the use of private military companies in a foreign state (Hughes, 2014: 524; Mumford, 2013: 40). By design, the utilisation of proxies is covert and creates ambiguity and uncertainty. They exploit limitations in traditional understandings and conduct of war while being less costly than conventional military engagements (Eisenstadt, 2021a: 12; Mumford, 2013: 40f).

It can be argued that states use proxies to achieve one of three goals; in relation to a coercive campaign, to disrupt another state or to spark a transformation in the victim state (Hughes, 2014: 523f). The goal is often coloured by the strategies and policies of the actor employing the help of the proxy. Still, it depends on the ideologies and strategies of the proxies, as there can be differing opinions on the practicalities of attacks or the strategy employed (Fox, 2021: 4). While the end goal of using a proxy might vary slightly, the use of the tool itself seeks to create confusion about the responsible party and who victims should be seeking protection from.

Why the grey zone, and what does it do?

The previous section has sought to demonstrate that politics are not easily separated from the conduct of states. Politics and military strategies are expressions of the states' goals and can help us understand state behaviour. It allows us to go beyond the surface of their actions and examine how conflicts are often part of a larger plan to achieve a particular result. Analysing the political motivations and strategies behind the use of grey zone warfare might also help us better understand why states use this form of warfare to challenge international law as set out by the international liberal rules-based order, which this paper seeks to examine.

Before we address the similarities and differences between the strategies of China, Russia, and Iran, it is essential to note that all three states share an authoritarian form of government. Since this thesis has no interest in looking at the specifics of authoritarianism, it suffices to say that we see authoritarianism in opposition to democracy. We instead seek to examine how and why these states have a similar goal of challenging international law when their ambitions and military strategies seemingly differ.

Different but similar?

On the surface, it may seem like China, Russia, and Iran have different reasons for their actions and will thus produce different outcomes. However, we argue that they are actually similar in their perceptions of war, although they express this differently.

From our examination of China, we found that they place great emphasis on non-kinetic warfare and the ability to fight outside of conventional military means ("winning without fighting") by using tools such as lawfare (Goldenziel, 2020: 1091f; Hermez, 2020: 564; Kittrie, 2016: 161). This bleeds into the three warfares idea, recognising that there is more than just a war/peace dichotomy and that war must be fought beyond conventional military use (Cheng, 2012: 1; Kittrie, 2016: 162). Fighting outside conventional warfare also plays a role in the doctrine of Russia, which has expressed a perceived importance of integrating both military and non-military means into a joint campaign aimed at gaining an advantage over the enemy, and emerging victorious (Bērziņš, 2020: 359; Giles, 2016: 46; Thornton, 2015: 42). Iran's military doctrine also reflects much of this thinking. Focusing its efforts on areas where it has solid military capabilities (the navy and long-range weapons) as well as areas with a less direct military dimension (cyberspace and foreign proxies), Iran also seeks to adjust its thinking to a "newer" form of warfare which does not only operate through overt military actions (Eisenstadt, 2021: 81). Just like Iran, which has adapted its military doctrine to suit the tools it sees best fit to protect its interests while allowing it to avoid response from other states, Russia has embraced information warfare and the control of information, which, in contrast to in the West, is not a tool limited to active hostilities, to exploit the gap between war and peace (Giles, 2016: 4ff,11).

Where China, Russia, and Iran can thus agree that war is a broader term which cannot easily be understood as a binary, international law relies on the binary system as put forth by the Order. The order and international law are still bound by a strict divide between war and peace, as is evident from several of the laws and institutions created by it.[5] Therefore, the use of grey zone warfare has been an "easy" tool in the toolbox of these authoritarian states. It fits their understanding of war, and subsequent military doctrines, while hindering legal countermeasures by others. As long as there is a strict legal categorisation of war, states who understand war differently will be able to exploit the different interpretations to their advantage.

In our examination of the grey zone tools and why states choose the tool, we thus found that when China decides to use lawfare, it is not random, but because it allows it to remain on good terms with its economic partners while still allowing China to expand its borders, gaining more financial benefits in the process. For Russia, information warfare is a natural extension of their control domestically over the population and dissemination of information. Thus, extending this control beyond their borders proves that Russia still has power over former Soviet nations and is still a significant regional power.

[5] The UN and its subsequent laws are a great example.

The benefit Iran is trying to seek is also in line with its goals of political independence and non-interference, as it can extend its support to ideological battles abroad while protecting itself from interference or involvement in its own state.

For all three states and all three grey zone tools, international law becomes a critical puzzle piece in expressing their unhappiness with the current legal norms and understandings that underpin the legal regime. Just as with the war/peace division, the easiest way to target the law is by targeting what it does – create a common set of rules that help regulate state behaviour. What this means for law, more generally, needs to be examined. As this section has thus shown, each state seeks a different goal but wishes to obtain them in the same way. Much like they all conclude that grey zone warfare is the best way to fight, their goals and ambitions can be realised through a shared understanding of war and sovereignty that is different from that of the Order. Whether a state is chasing economic prosperity, power, or non-interference, they all believe that the way to do this is through a change in the most important legal principles and how they are interpreted. We thus see a tendency for states utilising grey zone warfare to have a differing view on war from the Order, which translates into a differing perception of the legal categories of war. It can also be inferred that states' goals in challenging the legal categories are to obtain more sovereignty or a changed understanding hereof. This section has thus sought to explain why we see states willing to challenge the Order through international law. Therefore, in this thesis, we argue that states are aware of the gaps and seek to challenge them to maximise their interest. This will continue to happen as long as the gaps exist and thus requires further examination of the implications to understand how it affects the Order.

What the exploitation of these legal gaps then means, more specifically to the law, will be addressed in the following sections. We will try to determine the effect of challenging legal categories for the regulative power of the law – the function of international law.

Chapter 4

THE CONDUCT OF GREY ZONE WARFARE

The following chapter is comprised of three separate legal analyses of the grey zone warfare conducted by China, Russia, and Iran, respectively. The chapter is thus structured in three separate sections; first, *China in The Grey zone:* Chinese Lawfare in the South China Sea; secondly*, Russia in the Grey zone*: Russian information warfare in Ukraine; thirdly, *Iran in the Grey zone:* Iranian proxy warfare in Yemen. These cases are selected based on the criteria set out in chapter 2 where we defined grey zone warfare as requiring traits of ambiguity, gradual evolution, and characterised by a predominantly unconventional method of warfare. The three selected cases all utilise tools accounted for in the section on grey zone warfare, but the tools will be described more in-depth in this Chapter and understood concerning the actor using them. The three sections take their departure in Chapter 3 and its exploration of China, Russia, and Iran's understanding of war and how the use of their respective grey zone warfare tool fits herewith. Accounting how China, Russia, and Iran understand warfare is meant to serve as a foundation for better comprehending the conduct that the three following sections will analyse.

Each section applies different areas of international law, selected based on a combination of factors. Firstly, our understanding of the legal field of relevance to the specific grey zone tool. Secondly, as the aim of this thesis is to examine how grey zone warfare affects the international liberal rules-based order, the chosen areas of international law are based upon the statute that is significant for the Order's ability to regulate state behaviour to reach their objectives of peace, stability, and security – specifically law, designed to regulate states from interfering with other states sovereignty. The following sections will thus deal with three ways the international liberal-rules-based order uses international law to restrict states from interfering with sovereignty. As such, the section on China deals with lawfare in relation to the Law of the Sea, dispute settlement and interpretations of international law. The section on Russia deals with information warfare concerning the Jus ad Bellum. While the section on Iran deals with Proxy warfare regarding state responsibility and International Humanitarian Law.

China in the Grey Zone: Lawfare in the South China Sea

The following section will examine the use of lawfare by China in the South China Sea. Actors not limited to China are using lawfare as a part of their efforts to exploit the gap between war and peace by using measures short of war (Rousseau, 2017: 5). The section will illustrate how China's use of lawfare in the South China Sea affects international law as a part of China's strategy to justify denying access,

utilisation, and navigation through the area. It will not address the critiques of the concept of lawfare, although we understand that they exist (Rousseau, 2017: 9).

The Context of China in the South China Sea

The South China Sea stretches from Singapore and the Strait of Malacca to the Taiwan Strait and covers roughly 3.5 million square kilometers. It consists of over 200 islands, banks, reefs, atolls, and shoals and is bordered by China, Taiwan, Brunei, Malaysia, the Philippines, Singapore, Indonesia, and Viet Nam (Hsiao, 2016: 2). While estimates vary, approximately one-third of the world's commerce transits through the South China Sea, amounting to more than $3.37 trillion in trade each year. The Sea holds vast amounts of oil and gas reserves. It is also home to about 12% of its fishing stocks (Goldenziel, 2020: 1102f). The strategic value of the South China Sea has long been recognised. However, it has gone through several phases of escalating tensions, resulting from controversies over maritime territory, boundary delimitation, resources, and access to the sea due to its importance (Hsiao, 2016: 2).

From the perspective of lawfare and focusing on Chinese claims and actions in the South China Sea, Chinese claims of a *'nine-dash line'* are relevant to outline. China first used the nine-dash-line argument in international fora in 2009, when Vietnam and Malaysia issued a joint submission to the Commission on the Limits of the Continental Shelf (CLCS) (Hsiao, 2016: 6). China immediately filed objections against both submissions, in which they reaffirmed China's: *"Indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof"*(Hsiao, 2016: 6). China attached to its communications a map of the nine-dash line and described its position as well-known internationally. The map shows a line that comes very close to the coastlines of its various neighbours, and it was China's first presentation of the nine-dash line argument in an international forum (Guilfoyle, 2019: 8; Hsiao, 2016: 7). However, the line's origin is open to contestation (Guilfoyle, 2019: 10). Within the line, the dispute encompasses contested claims to various maritime features and an ambitious Chinese campaign of land reclamation and sovereignty. In an important article in the American Journal of International Law in 2013, the prominent Chinese law of the sea lawyers, Zhinguo Gao and Bing Bing Jia acknowledged that China had never defined the legal entitlements it was asserting within the nine-dash line. This is significant as the law dictates that it cannot be opposed if a claim has not been articulated. Under such conditions, it is difficult to argue that other states have not objected (Guilfoyle, 2019: 10). Nonetheless, it has been hypothesized by Chinese scholars, that the nine-dash line represented a claim to sovereignty over all maritime features within it, as well as all rights under the United Nations Convention on the Law of the Sea (UNCLOS) attached to those features, and moreover *'historic rights … in respect of fishing, navigation, and exploration and exploitation of resources"*

(Guilfoyle, 2019:10). As presented above, the South China Sea is of great importance, and thus the legal status of its features has tremendous implications (Goldenziel, 2020: 1104).

The South China Sea Arbitration Case

The following section will focus on The South China Sea Arbitration – The Republic of Philippines v. The People's Republic of China (South China Arbitration)(Permanent Court of Arbitration, 2016). The section will illustrate how China, from the very start to the end of the arbitration, utilized instrumental lawfare and informational lawfare and the effects on international law. On January 22, 2013, the Philippines instigated a compulsory arbitration process against China under Article 287 and Annex VII of the UNCLOS concerning Chinese claims and actions in South China, specifically the West Philippine Sea and issues of maritime jurisdiction (Permanent Court of Arbitration, 2016). The Philippines alleged that China had violated the UNCLOS, to which China is a party (UN General Assembly, *United Nations Convention on the Law of the Sea* (UNCLOS), 10 December 1982). In the initial Notification and Statement of Claim, the Philippines argued that Chinese claims of sovereign rights within the nine-dash line did not follow its good faith obligation as a party to the UNCLOS under Article 300 (Guilfoyle, 2019: 11). Furthermore, China's claims and conduct within the nine-dash line also unlawfully interfered with the Philippines' exercise of rights within its Exclusive Economic Zone and continental shelf (Hsiao, 2016: 9). In this regard, it should be mentioned that China's participation was compulsory as a party to UNCLOS (Goldenziel, 2020: 1110; Hsiao, 2016: 9; UNCLOS, 1982: Section 2).

Instrumental Lawfare and the argument of lack of jurisdiction

China used various lawfare strategies to handle the South China Sea Arbitration process, one of these being the use of instrumental lawfare. This strategy argued that the Permanent Court of Arbitration (PCA) had no subject matter jurisdiction. On December 7th 2014, China's Ministry of Foreign Affairs released a paper called *Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines* (Position Paper), which denounced the arbitration of the PCA (Government of the People's Republic of China, 2014). Additionally, Xu Hong, the Director-General of China's Foreign Ministry's Department of Treaty and Law, asserted that China had published the Position Paper as a product of general confusion as to its position and claims that China was acting in contradiction to international law (Goldenziel, 2020: 1111). Xu argued that the Position Paper "*debunks the Philippines' groundless assertions and projects China's image as a defender and promoter of the international rule of law"* (Government of the People's Republic of China, 2014: para 2). Hence, China argued that the PCA did not have jurisdiction over the Philippines' claims. More broadly, since the PCA would *"have to determine, directly or indirectly, the sovereignty over both the maritime features in question and other maritime features in the South China Sea,"* the decision would

be invalid under Section 298 of UNCLOS itself (Goldenziel, 2020: 1111f; Government of the People's Republic of China, 2014: paras 59,74). The Position Paper considers China's most exhaustive legal argument against the South China Sea Arbitration initiation and the PCA's subject matter jurisdiction (Hsiao, 2016: 26).

Specifically, China argued that the PCA could not decide on China's maritime claims in the South China Sea before questions of sovereignty had been agreed upon – which was outside the scope of the PCA's jurisdiction (Goldenziel, 2020: 1112; Government of the People's Republic of China, 2014: para 59). China thus claimed that the core issue was territorial sovereignty, which the UNCLOS does not cover, and thus the UNCLOS provided no springboard for the Arbitration process (Hsiao, 2016: 26). Furthermore, China noted that the Philippines' claims were focused on maritime delimitation, and China had in 2006 asserted that it would not accept the compulsory settlement procedure of UNCLOS under which maritime delimitation issues belonged (Goldenziel, 2020: 1112; Government of the People's Republic of China, 2014: paras 64,72). Thereby, China found that it would not be bound to accept the PCA's decision according to international law (Government of the People's Republic of China, 2014: para 75). China's arguments and conduct illustrate a fear of the international and domestic outcome of a judgment not to its favour. To avoid losing legitimacy, China turned to the instrumental use of the law to both prove its arguments and discredit those of the PCA and the Philippines (Goldenziel, 2020: 1112; Government of the People's Republic of China, 2014: paras 64,72). Part of this necessitated undermining the South China Sea Arbitration Process, eroding dispute settlement and the Philippines' right to due process and justice, and the general application of international law.

Looking more into China's core argument of the PCA's lack of jurisdiction, this was based explicitly on the view that the case dealt with sovereignty over maritime features and historic title claims, which both were outside the scope of the UNCLOS (Guilfoyle, 2019: 12). The PCA's tribunal rejected China's claims that the Arbitration could not move forward before claims of sovereignty had been settled on the technicality that the Philippines had initiated a case surrounding *the correct legal characterization of maritime features,* not a determination of sovereignty. Furthermore, the PCA did find it could not determine sovereignty as UNCLOS does not cover sovereignty but deals with states' use of the sea and the following rights and responsibilities hereto (Goldenziel, 2020: 1112f; *South China Sea Arbitration (Philippines v China),* Award, Case no. 2013-19, Permanent Court of Arbitration Arbitral Tribunal, 12 July 2016; UNCLOS 1982). However, since sovereignty was not the matter of the case, this did not hinder the South China Sea from moving on from the jurisdictional phase to the merits phase . Hereto, the PCA found that while it did not per se have the jurisdiction to decide on historical titles. There was a scale where this specifically pertained to complete sovereignty claims, not lesser claims (Guilfoyle, 2019: 12). Therefore, the PCA found that it did have jurisdiction over the subject matter of the South China Sea Arbitration, as historic rights had just been claimed over relevant water, and the Philippines had not contended that water inside of the nine-dash line was one large territorial sea (Guilfoyle, 2019:

12). Ultimo, these conclusions were equal to a finding that the nine-dash line had no real footing in international law (Guilfoyle, 2019: 12).

China rejected this and continued to use instrumental lawfare to deter and distort the PCA's finding, even after it had rendered its final award. One of the ways China did this was via the Chinese Society of International Law (CSIL). After the final award, the CSIL published a study titled *The South China Sea Arbitration Awards: A Critical Study* (the Critical Study), which analysed the award and provided a clear Chinese legal perspective hereon (Chinese Society of International Law, 2018). The CSIL noted that their work was carried out under the guidance and overview of China's Foreign Ministry to support China's diplomatic work regarding the South China Sea Arbitration and the efforts to reveal and rebut the unlawful practice of the temporary arbitration tribunal under the PCA (Hermez, 2020: 571). Thereby, the CSIL's document can be viewed as the work of China. In their rebuttal of the PCA's findings, the Critical Study utilized the *Legality of Use of Force (Yugoslavia v. Belgium)* case to argue that as the International Court of Justice decided that all of Yugoslavia's thirteen submissions were: *"'directed, in essence, against the bombing of the territory of the Federal Republic of Yugoslavia, (...) the subject matter of the dispute is 'the legality of those bombings as such, taken as a whole"* (Chinese Society of International Law, 2018: 284f; Hermez, 2020:575*; Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, Order of 2 June 1999, ICJ. Reports 1999, p. 124.).

However, the phrases the CSIL quote are from two different paragraphs of the International Court of Justice's decision, and choosing to connect them this way, show an apparent effort to distort the correct findings of the Court and demonstrates incorrect or, at best doubtful presentation of case law (Chinese Society of International Law, 2018: para 98). Furthermore, even if the CSIL's approach to connecting the findings was standard or accepted, the argument still does not hold. The *Legality of Use of Force (Yugoslavia v. Belgium)* case is vastly different from the South China Sea Arbitration and does not deal with the same subject matter. The *Legality of Use of Force (Yugoslavia v. Belgium)* examined whether multiple analogous acts over a certain period could be viewed as one principal act of use of force. However, the South China Sea Arbitration dealt with rights and obligations under the law of the sea – which cannot be grouped as one overall right.

Furthermore, dispute fragmentation was not why the ICJ had found it lacked jurisdiction (Hermez, 2020: 575f). Taken together, China's lawfare campaign reveals its misuse of the law. Arguments on the lack of jurisdiction, the creation of doubt about the legitimacy of the Philippines claims, and the lawfulness of the PCA's treatment of said claims don't live up to or follow the standard legal practice of good faith. However, it does create mistrust in the law, allowing China to reach their operational objective, and painting the nine-dash-line claims as legitimate and their opposition as illegitimate (Hermez, 2020: 576f). China is cleverly presenting and fighting for its interpretation of the law, aiming to secure and legitimize its activities and presence in the South China Sea area (Hermez,

2020: 576f). By doing so, the good faith application[6] of the laws and customs of warfare is eroded. While interpretation can be questioned, it is difficult to debunk outright. Words impact, especially when coated with legal connotations and supposedly convey legal rights and obligations. When such words and arguments challenge the respect for both the utilization and the enforcement of international law as China does, legal disputes erode the trust in international law and distort what is lawful from what is not (Newton, 2010: 255,273). Overall, China's instrumental lawfare served to discredit and undermine the South China Sea Arbitration process setting up China as the perceived winner, even in the case of a loss (Newton, 2010: 255,273).

Information Lawfare and discrediting the process and shaping public opinion

Another way China approached the South China Sea Arbitration was by employing informational lawfare to supplement the instrumental lawfare. Informational lawfare aimed to underpin China's delegitimization of the PCA and the Philippines' claims. However, whereas the instrumental lawfare was aimed at the PCA, the informational lawfare was aimed at anyone and everyone and was meant to set a general tone of distrust towards the process, and present China as the legitimate actor, regardless of the PCA's findings. Therefore, throughout the entire process, China adopted a so-called Four No's position of *"No acceptance, no participation, no recognition and no implementation"* (Hsiao, 2016: 24). This included refusing to partake in the arbitration within a month of the Philippines filing their claim. This was the first time that any State party to the UNCLOS had denied participating in an arbitration process stemming from the UNCLOS's compulsory jurisdiction proceedings (Hsiao, 2016: 24). China presented the Philippines with a Note Verbale stating China was rejecting and returning the Philippines' notification and claims. Thus, from the very beginning of the South China Sea Arbitration, China made a solid effort to deny the legitimacy of the arbitration process by framing it as in violation of UNCLOS (*Philippines v China,* Award, 2016: paras. 97,102). The argument China used was, first of all, that the Philippines had defied the agreed consensus between the Association of Southeast Asian Nations (ASEAN), as expressed in its Declaration of Conduct of 2002, on how to undertake disagreements via negotiation between the State parties involved, as opposed to other fora for dispute settlement.

Furthermore, China argued that the Philippines' claims were full of *"serious errors in fact and law and false accusations against China"* (Hsiao, 2016: 24f). Moreover, China utilized their embassy in the Philippines to disseminate a message painting the Philippines' initiation of the case as both wilful and exploitation of the process of international law (Hsiao, 2016: 25). China further argued that the Philippines' claims, at their core, we're a media campaign against China, intending to deny China its

[6] Interpreting international law in good faith means that states do not interpret the law in a manner that goes against its object and purpose of it.

rightful sovereign claims (Hsiao, 2016: 25). This was all a part of China's informational lawfare, controlling the international and national perception of the process. At least via legal arguments and the clever utilization of interpretation creates doubt about what the law said.

China chose not to participate in the jurisdictional phase of the South China Sea Arbitration, choosing to argue that the PCA had none solely. This was interesting since China could have decided to drop out of the process at any point. However, this can be seen as a deliberate choice, as China was likely concerned it would lose both the judgment and merits phase. Therefore, it chose a strategy of discrediting the process overall instead of trying to participate and win (Goldenziel, 2020: 1111). In a similar vein to the instrumental lawfare utilized by China, China's informational lawfare thus gave rise to mistrust in the Arbitration process. It made it challenging to determine lawful from unlawful, which can erode the very foundation of international law, as China has captured the forum for legal debate to further their strategic interest (Newton, 2010: 275). China increased their informational lawfare tactics in the months leading up to the PCA's final judgment. On an almost daily basis, China wrote pieces of condemnation of the South China Sea Arbitration process in English and Chinese media. These pieces were written by everyone from the Chinese Fisheries Association to Chinese academics and lawyers who made high-level international appearances to criticize the arbitration. (Goldenziel, 2020: 1115).

Furthermore, top Chinese ministers were often vocal about their disapproval of the process and its lack of legitimacy. China also worked to gather the support of other States for its position (Goldenziel, 2020: 1115). China was generally taking all opportunities to paint the process in a negative light. Thus, a couple of weeks before the final decision was decreed, China attempted to challenge the legitimacy of the arbitration yet again. This time, it was due to the President of the International Tribunal on the Law of the Sea (ITLOS), a Japanese judge, has selected two of the judges on the tribunal, as China had foregone that opportunity (Goldenziel, 2020: 1115). China used this to argue that since China was in a quarrel with Japan over the territory in the East China Sea, a Japanese judge's appointment of arbitrators could not be viewed as impartial. However, while China could dismiss the arbitration process, it could not stop it. The final award, mainly in support of the Philippines, was delivered by the Arbitration Tribunal in July 2016 (Goldenziel, 2020: 1115f; Hsiao, 2016: 9; *Philippines v China,* Award, 2016).

China immediately distributed two proclamations in response. First of all, the Foreign Minister at the time, Lu Kang, called the Tribunal's decision "*null and void"* and argued that "*the Philippines and the Arbitral Tribunal have abused relevant procedures, misrepresented the law and obstinately forced [sic] ahead with the arbitration, and as a result, have severely violated the legitimate rights that China enjoys as a State Party to the UNCLOS."* (Hsiao, 2016: 26). Kang also declared that the decision was simply a collection of errors made by the Arbitral Tribunal, which ultimately rendered the process unlawful and unjust. This continued effort delegitimises the process and controls the narrative through legal argumentation, even after a decision. This puts into question the function of the law of the sea, while

illustrating how there is a real danger that the media can be taken advantage of or tricked, into covering up actual violations of international law, through phoney accusations and a false representation of international law (Hsiao, 2016: 26; Newton, 2010: 256). Secondly, China's ambassador to the United States, Cui Tiankai, contested the South China Sea Arbitration judgement and argued that it "*undermine[s] the authority and effectiveness of international law.*" (Embassy of the People's Republic of China in the United States America, 2016; Goldenziel, 2020: 1118f). Thus, China employed informational lawfare from beginning to end, and even after the final decision was made on the South China Sea Arbitration, to shape the narrative surrounding the arbitration in support of China's instrumental lawfare, but also to make sure that no matter the outcome China could still be perceived the legitimate actor.

An Archipelago Customary Law Right

Another example of Chinese lawfare in the South China Sea arose after the South China Sea Arbitration Case had ended. To back up their sovereignty claims, China utilized instrumental lawfare to promote a customary international law right of outlying archipelagos and a novel interpretation of UNCLOS. In other words, in the years after the South China Sea Arbitration ended, China turned away from mentioning the nine-dash line as the basis for sovereignty claims, which had been more or less rejected during the arbitration process, and instead geared up arguments of historical rights (Goldenziel, 2020: 1128f). These historic rights, according to China, provide them with a request to utilize large areas of the South China Sea and are now China's basis for exploiting resources within the Economic Exclusive Zones of Vietnam, the Philippines, and Indonesia, as well as the backbone of opposing other States' use of oil and gas within the waters of these historical rights (Goldenziel, 2020: 1128f). Furthermore, China utilized the claims of historic rights to underline a critical new legal claim called the Four Sha claim (Goldenziel, 2020: 1128; Ku & Mirasola, 2017). With the Four Sha claim, China claims to have a historic sovereign right, dating back to 1992, over the islands in the South China Sea (Goldenziel, 2020: 1128; Ku & Mirasola, 2017). Specifically, the central point of the argument is the claim that the Spratly Islands make up an 'outlying archipelago' that produces substantial maritime zones for China (Chinese Society of International Law, 2018: para 67). Furthermore, the case is made that three other archipelagos must be considered as one unit – the Prata Islands (Dongsha Qundao); Paracel Islands (Xisha Qundao); and Macclesfield Bank and Scarborough Shoal (Zhongsha Qundao)(Chinese Society of International Law, 2018: 67; Goldenziel, 2020: 1128f).

The importance of China's argumentation and customary international law rights claims is found in UNCLOS, allowing archipelagic states to pencil out straight baselines to encircle their islands (Guilfoyle, 2019: 14; UNCLOS, 1982: art.7). Since baselines are used to determine Exclusive Economic Zones, this can expand a zone while creating closed-off archipelagic waters. Using the language and wording of UNCLOS, China has then painted straight baselines around the islands to

increase its claims of territory. However, this argument is in juxtaposition to and violation of UNCLOS Article 47, which holds that an archipelagic baseline can only be drawn if they *"enclose a state's main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1*" (Goldenziel, 2020: 1128f). This means that even the enormous total landmass features China is referring to could be determined as islands. However, they would still not meet the definitions required for archipelago status.

Nonetheless, China has based their lawfare activities on the argument to continue its objectives of expanding sovereignty in the South China Sea (Goldenziel, 2020: 1128f). China has thus turned to use UNCLOS language and re-interpreting UNCLOS articles, based on a claim of an old customary law right, to make its position more commonly accepted internationally and appear legitimate (Goldenziel, 2020: 1128f). Nonetheless, UNCLOS does not allow continental and island states just to assert themselves as archipelagic states. From that declaration, they have the right to draw straight baselines and attain rights over the waters that such status otherwise provides (Guilfoyle, 2019: 14; UNCLOS 1982,art.7).

The parallel customary international law right of outlying archipelagos was first claimed by CSIL, but such practice is not commonly accepted by the UNCLOS (Chinese Society of International Law, 2018: para 574). This makes China's instrumental lawfare tactics clear. Contrary to good faith interpretation, China interprets international law to provide them with the maximal amount of sovereign rights and then announces that its claims are founded in international law (Goldenziel, 2020: 1129). Furthermore, the Spratley Island comprises 140 maritime features, with only 40 of those consistently above water and 13 of them being under 1.7km^2 of landmass (Guilfoyle, 2019: 14; Ku & Mirasola, 2017). This means that even if you look beyond the legal definitions, China's claims do not match the actual state of the island (Guilfoyle, 2019: 14; Ku & Mirasola, 2017). The instrumental lawfare strategy employed by China is thus to claim an international customary law right of outlying archipelagos. This right is not covered by UNCLOS but is presented with UNCLOS terminology to claim ownership over large areas of the South China Sea (Guilfoyle, 2019: 14; Ku & Mirasola, 2017). The way China interprets UNCLOS to fit their objective of acquiring territory does not follow the standards of the Vienna Convention on the Law of Treaties (Kittrie, 2016: 166; Rousseau, 2017: 15f; United Nations, 1969, *Vienna Convention on the Law of Treaties*).

Instead, China is using measured erroneous interpretation to create a change in the customary law of the sea. Leaving such conduct unchallenged could provide China with a more robust basis for its argument since customary international law is the product of state practice and opinion Juris – and can thus be changed over time. By employing international law, China can thus widen and strengthen its control of the South China Sea without ever moving into direct force – it can win without fighting (Kittrie, 2016: 166; Rousseau, 2017: 15f). China's arguments do not hold up to scrutiny. Instead, they

are clear examples of lawfare. Thus, it does not matter that China's arguments fail under examination. China's experts know that their argumentation has no solid foundation in UNCLOS. They have based their claims on asserting a customary international law right (Chinese Society of International Law, 2018: paras 573-588; Hermez, 2020: 574ff). Thus, China is using the ambiguity of customary international law to sustain their claims and gain support for its interpretation of the law of the sea, as opposed to the one enshrined in UNCLOS (Hermez, 2020: 573ff). China is thus employing instrumental lawfare to attain its objectives by eroding good faith application of interpretation and trust in international law. Thereby China creates a precedent for misapplication of international law and clouds that which is lawful from that which is not (Hermez, 2020: 572; Newton, 2010: 2).

Challenging the applicability and process of Law

From the analysis of China's lawfare in the south China Sea, it is evident that China utilises lawfare to advance their territorial claims, to the detriment of international law. Throughout the analysis, it has been examined how China has employed different modes of lawfare during the South China Sea Arbitration process with the Philippines and how China has chosen a strategy of undermining the entire process instead of participating as otherwise prescribed by their obligations to the UNCLOS. Specifically, China has used both instrumental lawfare and informational lawfare to paint the Arbitration Process as wilful, abusive, and without ground in international law, arguing that the PCA had no jurisdiction over the subject matter. Furthermore, China has used the ambiguous nature of customary international law to wrap its claims in legal terminology without the correct process of the law. Thus, China has utilised international law to make the South China Sea a battleground for legal argumentation and acquire legitimacy for its interpretation of international law and sovereign rights. Thus, it has presented itself as a protector and promoter of international law. All in all, China has, by using legal argumentation, ambiguity, misrepresentation of the law and bad faith interpretation, used international law to shield the violations it is supposed to uncover. This indicates that China's grey zone warfare, through lawfare, has specifically targeted *the application and process of law*.

Russia in the Grey Zone: Information Warfare against Ukraine

This section seeks to address how Russia conducts information warfare in connection with the annexation of Crimea in 2014 and how this affects international law. We will manage events leading up to and directly following the annexation. We will not address the current invasion or recent developments in the Russo-Ukraine war. The Russo-Ukraine war started with the build-up to the subsequent annexation of Crimea in 2014. The annexation of Crimea can be seen as the culmination of the form grey zone warfare campaign led by Russia, which started with information warfare and ended in a military intervention (Thornton, 2015: 42). The actions in Ukraine can thus be seen as a great

example of the different phases of information warfare Russia is conducting, which has led to a significant erosion of the Ukrainian government (Connell & Vogler, 2017: 20; Thornton, 2015: 42).

The analysis below assumes that illegal acts are attributable to states. State attribution is a significant area, and while it is relevant for information warfare, it will not be addressed in this section. Instead, it will be utilized in *Iran and grey zone warfare: Utilization of proxies.* Instead, the section below utilizes the jus ad Bellum, the law on the recourse to war, as its analytical framework, first by analysing whether information-psychological warfare can amount to the use of force, then by analysing whether information-technological warfare can warrant self-defense in response. Furthermore, those activities are looked at independently, not as part of a war.

The Context of Russia in Ukraine

According to Russia, keeping the former Soviet countries under its influence is important as they share the same history. It further proves that Russia still has significant influence over the West in some world regions (Lange-Ionatamišvili et al., 2015: 7). Of particular importance to Russia is to prevent Ukraine (and Belarus) from joining NATO and the EU. In the eyes of Russia, they are doing their duty in dragging Ukraine away from the allure of the West. Still, in reality, they have simply suspended it in the middle of the power struggle between Russia and the West (Darczewska, 2014: 20f). The Eastern Partnership Summit that took place in 2013 in Vilnius signalled Ukraine's interest in the EU, triggered the Euromaidan protests and was seen as a red flag for Russia, becoming the catalyst that led to the annexation of Crimea (Lange-Ionatamišvili et al., 2015: 7; Stinissen & Geers, 2015: 125). A central reason Russia gained control of Crimea and continued destabilising Ukraine was that Russia successfully gathered support from the area's Russian-speaking citizens (Darczewska, 2014: 6). Some have labelled the tactics used to achieve this as Russia waging an information warfare blitzkrieg in Ukraine (Thornton, 2015: 40). The annexation of Crimea started on February 22nd, 2014, but there has long been an anti-Ukrainian information bias from Russia, which was simply upscaled at the time of the annexation (Bērziņš, 2020: 371; Darczewska, 2014: 20). The primary goal was to destabilize Ukraine by pressuring the government and citizens to adopt Russia-friendly policies and ideas, influencing domestic public opinion, and making the Ukrainian government appear weak (Darczewska, 2014: 6).

Information Psychological Warfare & The Use of Force

Information psychological warfare has been a core part of Russia's strategy in Ukraine, and it is established that it can have a significant impact on an opponent. However, while psychological information warfare has always been around and is not something new, the technological development

of the 21st century has worked as a force multiplier, allowing information psychological warfare to become only more potent. In fact, because of the steadfast development of technology, the internet and mobile devices have increased the use of social media, which has become one of the main ways to spread information today. Therefore, the question is not whether information warfare can hurt another country or be effective in doing so, but whether such information warfare on its own, absent of armed conflict, merits the use of force.

The law on the use of force is rooted in the United Nations Charter (*Charter of the United Nations*, 24 October 1945 (UNC)). The prohibition on the use of force, also known as Article 2(4), is a keystone provision of the Charter and states that:

> *"[a]ll Members [of the United Nations] shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations."*

The prohibition on the use of force is beyond being enshrined in the UNC. It is considered customary international law and a jus cogens norm, meaning it cannot be derogated or deviated from (Kiessling, 2021: 131). The prohibition was confirmed as customary law and a jus cogens norm by the International Court of Justice in the Corfu Channel Case and a jus cogens norm[7] in the Nicaragua Case (*Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), Merits*, International Court of Justice (ICJ), 27 June 1986; *Corfu Channel Case (United Kingdom v. Albania), Assessment of Compensation*, 15 XII 49, International Court of Justice (ICJ), 15 December 1949; Evans, 2018: 603; Gray, 2012: 10; Wood & Lubell, 2018: 3). If Russian information warfare operations amount to the use of force or an armed attack (as we will examine below), these actions will be governed by this principle. Before moving on to what is meant by the *use of force,* it should be mentioned that the prohibition is not absolute, and both self-defence (see below) and Security Council Action can still be taken.[8]

The creators of the UNC aimed at it being sternly restrictive on the use of force. However, with the rise of modern technology, not everything that can cause severe harm and damage might be categorized as force (Nitu, 2011: 50). Being able to use mass media to spread information in Crimea and Ukraine was significant for the success of the annexation. It lent credibility to the Russian government and its actions (Darczewska, 2014: 5). It is crucial for Russia, with the information warfare waged in Ukraine, to attempt to convince audiences that their actions are legitimate and that they have a territorial claim over Crimea (Thomas, 2015: 10). Social media is one such venue where Russia has found it can easily impact Ukrainians and convince them of their legitimacy. There is a significant overlap between Russian-controlled media and Ukrainian social media, and many Ukrainians use Russian social media such as

[7] Jus cogens norms are norms that cannot be derogated from and are fundamental rules as they are respected as such.
[8] Albeit Security Council action against a veto-holding state is unlikely.

VKontakte. In addition, news outlets such as Russia Today obtain information (Jaitner & Mattsson, 2015: 44). Controlling the media narrative, both online and in conventional media, is crucial for domestic support, influencing Ukrainians, and confusing the West (Bachmann & Gunneriusson, 2015: 202f). Promoting legitimacy internationally is also key to Russia. One such tactic is framing the annexation as a matter of self-determination. As previously mentioned, convincing the population that their host government is mistreating them and that Russia could do a better job is the basis upon which Russian intervention is requested and justified (Thomas, 2015: 22). Thus, Russia justifies its actions to protect its civilians – a lawful act under international law (Stinissen & Geers, 2015: 127).

The UNC and the concept of the Use of Force are meant to create and sustain peace. However, the Charter's language and reference to ideas like 'threats to the peace' 'armed force' 'settlement of international disputes through peaceful means", and "refraining from the threat or use of force' can only play a role in information warfare, if that attack is 'war', 'force', 'unpeaceful'. We must thus ask whether information psychological warfare is the use of force? (Greenberg et al., 1998: 17). The question is that even if Russia's information psychological warfare is effective and has a significant impact on Ukraine – can it be handled by the prohibition on the use of force?

The UNC does not define what is to be understood by the *use of force,* and international courts and other bodies have stayed away from defining the prohibition outright as well (Nitu, 2011: 49f). This opens up questions on whether information warfare could amount to the use of force and creates uncertainty about what is explicitly prohibited (Schmitt & Wall, 2014: 357). It is precisely a lack of definition and clarity that Russia used information warfare as a grey zone tool. However, looking at the travaux preparatories concerning the prohibition, it seems more evident that the Charter was focused on banning armed force (Schmitt & Wall, 2014: 357). Thus Article 2(4) is generally accepted as referring to the utilization or threatening of *armed and physical* force against another state – or banning of causing physical damage to another State (Kiessling, 2021: 131; Stephens, 2020: 4). It is thus evident that armed invasions, bombs, and bullets – or any use of a kinetic weapon against another State, violates Article 2(4), just as it is not apparent that information psychological warfare does so (Stephens, 2020: 4). In fact, during the negotiation process of the UNC, suggestions to have economic measures and psychological coercion included in the force were not accepted (Stephens, 2020: 4). In a similar vein, academics have found that political pressure does not amount to the use of force (Stephens, 2020: 4).

This interpretation was confirmed in the examples appearing in the Friendly Relations Declaration, which also clarifies that the prohibition of force extends to indirect force, such as arming rebel groups (Wood & Lubell, 2018: 4). So, it could be said that conventionally states have understood, within the meaning of 2(4), 'force' to be connected to 'armed'. This was done because 2(4) and the prohibition align with the United Nations' purpose of maintaining international peace and security. The distinction reflects the acts most likely to interfere with that (Nitu, 2011: 49f). However, times have

changed since 1945, and the development of technology has enabled the destructiveness of psychological information warfare.

For example, we can look at how Russia turned the Russian-speaking population of Ukraine against their government by framing them as Nazis (Thomas, 2015: 16). Russia also used the social media platform VKontakte to gather intelligence on and limit pro-Ukrainian groups (Jonsson, 2019: 343). Since Russia owns most media in the country itself, it can easier control the narratives and adjust the messaging to undermine the West and its conceptions of human rights and democracy (Jonsson, 2019: 345). This leads to domestic hostility against the West, and greater support for the Russian government, effectively creating a separate Russian reality (Jonsson, 2019: 343ff). It can also be argued that Russia is successfully managing to impact Western public opinion, as evident from the actions of the UN Security Council. In February 2015, a resolution called for an end to all fighting in Ukraine, despite Russia arguably being the primary aggressor (UN Security Council, *Security Council resolution 2202 (2015) [on the Package of Measures for the Implementation of the Minsk Agreements (12 Feb. 2015)]*, 17 February 2015, S/RES/2202 (2015)). Instead of the Security Council pointing fingers at Russia or aiming their appeal at a principal aggressor, the resolution seems to appoint equal weight to both sides of the conflict. This is in the interest of Russia, as it affords them greater support and a better basis for protecting their actions and shows that they managed to remove themselves from the direct scrutiny of the West (Bachmann & Gunneriusson, 2015: 203). And as it appears, they are also managing to remove themselves from breaking the law in terms of the prohibition on the use of force. Taking a deeper look at the threshold for the use of force, we find that while there have been claims of a de minimis threshold, there is no conclusive evidence to support either this or the contrary view (*Nicaragua v USA,* Merits, 1986: paras. 191,195; Wood & Lubell, 2018: 5). The debate about the threshold is also related to whether it can be measured in terms of scale and effects and reflects the distinction between the "use of force" and "armed attack" (Gray, 2012: 13; Wood & Lubell, 2018: 6). Scale and effect are measurements identified and used by the International Court of Justice in the Nicaragua case to distinguish armed attacks from actions falling below the threshold and grave forms of the use of force from less grave uses of force. Therefore, there is debate on whether it can be used to identify what use of force is (*Nicaragua v USA,* Merits, 1986: para. 191).

While it is not blatantly clear whether that information psychological warfare and Russia's conduct of influencing, propaganda, and spreading disinformation to the people of Ukraine, could amount to the use of force, it does seem improbable (Stephens, 2020: 4). In situations where the information psychological warfare was conducted in a way where it overtly called for and manipulated people into organizing into armed groups and taking up violent conduct against another state, information psychological warfare could amount to the use of force. But these are not the examples we have seen in Ukraine, as it would require some targeted messaging and specific factors present for this to be the

case in terms of an Article 2(4) violation (Stephens, 2020: 4f). It thereby seems clear that physical force has been the primary way of understanding the use of force. However, the International Court of Justice did decide in the Nicaragua Case that the US-led training and arming of Nicaraguan rebels was a use of force in violation of 2(4), illustrating the possibility that acts not directly inferring physical damage can constitute the use of force (*Nicaragua v USA,* Merits, 1986: para.228; Stephens, 2020: 4).

This is not strictly amounting to armed force against another state, however. This determination is especially challenging since technology developments have opened up new spheres of competition and allowed states to attack each other in new ways. These "attacks" have a different impact than what we usually equate with the use of force and create new targets of attack (Greenberg et al., 1998: iii). Article 2(4) states that the understanding might not be sufficient as technology develops and information warfare is increasingly employed. It will only challenge the legal categories established to a more significant degree than now (Greenberg et al., 1998: iii).

It has become more challenging to identify a weapon and what could cause severe damage to a State and its inhabitants (Brooks, 2018: 3). Furthermore, blurring the spread of information adds to the "fog of information war", which increases polarization between the recipients of the information (Bachmann & Gunneriusson, 2015: 201; Jaitner & Mattsson, 2015: 46). This was part of the strategy in Crimea, designed to span non-military and military actions in a flow of information warfare, making it hard for the Ukrainian government to respond (Jaitner, 2015: 91). Generally, a problem with examining information warfare, even in the context of the Russo-Ukraine war, is a lack of visibility of these actions (Giles, 2016: 39). Russia also deliberately uses this to its advantage by leaking information to foreign publics through proxies or like-minded parties and state media (Akimenko & Giles, 2020: 71). Overall, it is not clear that information psychological warfare can qualify as the use of force. The issue appears to be tied into the dimension of the use of force requiring physical destruction, and thus the uncertainty of whether anything less than physical harm could be a breach of the use of force (Nitu, 2011: 51). It is a fact that while information warfare clearly can cause damage and be a significant factor for harm – that damage is intangible on its own, which creates challenges, sows doubt, and makes it questionable at best if information warfare is legitimate under the use of force framework (Rousseau, 2017: 16). International law is unclear on intangible damage, and therefore it is challenging to regulate Russia's information psychological warfare (Qureshi, 2020: 927).

Information Technological Warfare and Armed Attack

While it was uncertain that information psychological warfare could amount to the use of force, there might be a better chance for that to be the case with information technological warfare. For the sake of analysis, we assume that a cyber-attack can reach the threshold for use of force. A state that has endured such use of force must then assess whether it could respond in kind and invoke the right to self-defence,

which is what we will now examine. To invoke self-defence, the use of force would need to meet the requirements of an armed attack. So, the question is – does it?

Between 2015 and 2016, Russia launched different power-grid attacks on Ukraine, resulting in the loss of electricity for many thousands of Ukrainians. The attacks showed how hackers could interfere with the basis and needs of modern society (Greenberg, 2017). Furthermore, the power-grid attacks illustrate that Russia moves beyond information-psychological warfare into information-technological warfare. In 2015, the malware KillDisk offered access and reconnaissance. BlackEnergy, seeking destruction, found its way into the networks of three of Ukraine's major power companies via phishing e-mails and an infected word attachment (Greenberg, 2017). This resulted in many Ukrainian households, companies, and government facilities finding themselves without power.

Similarly, in 2016, Ukraine was the victim of another power-grid attack which began with attacks on Ukraine's treasury, pension fund, and ministries of infrastructure, defence, and finance (Greenberg, 2017). The circulatory system of the grid had been hit directly this time, holding 200megawatts more electricity than all the stations targeted in 2015 together (Greenberg, 2017). While the blackout only lasted an hour, making the overall fallout minimal, the attack was more complex than in 2015 (Greenberg, 2017). While this is the first situation of hackers displaying preparedness to target critical infrastructure directly, does it allow for self-defence in response? (Greenberg, 2017).

The UN Charter, as described in the section above, prohibits the use of force by one state against the territorial integrity or political independence of another state. However, besides UN Security Council action, States can also use force in self-defence under the UN Charter (Greenberg et al., 1998: 30). This requires us to look further into the definition of "armed attack" and the right to self-defence, which must be understood in Article 51 of the UN Charter. The right to self-defence is crucial to understanding the application of international law to information technical warfare. Self-defence is an action taken under UNC either individually or collectively. It can be described as a lawful reaction to an armed attack against the territorial integrity of a state and thus requires a trans-border element (*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017: 340). An armed attack triggers the right to self-defence (Wood & Lubell, 2018: 5). The requirement of 'armed attack occurring' entails, as the ICJ has stated in its opinion in the case of Nicaragua v. the United States, that *"states do not have a right of armed response to acts which do not constitute an armed attack*" (Greenberg et al., 1998: 30; *Nicaragua v USA,* Merits, 1986: para.211)**.** A crucial issue in many of the self-defence cases examined by the ICJ is thus whether there was an armed attack that justified the use of force in self-defence (Gray, 2012: 14). This is also crucial regarding information warfare because to lawfully exercise the right to self-defence, a state must be able to demonstrate that it has been a victim of an armed attack. There is, however, no definition of an armed attack in the UNC, just as with the use of force (Gray, 2012: 14).

The ICJ adopted General Assembly Resolution 3314 Definition of Aggression Article 3(g) as their definition of aggression in the Military and Paramilitary Activities in and against Nicaragua but has not laid out a more comprehensive definition itself (UN General Assembly, *Definition of Aggression*, 14 December 1974, A/RES/3314; Gray, 2012; *Nicaragua v USA,* Merits, 1986: para.195). It held that not all attacks would constitute an armed attack for Article 51; instead, there must be a differentiation between gravest and less grave uses of force (Greenberg et al., 1998: 30; *Nicaragua v USA,* Merits, 1986: para.191). The ICJ furthermore concluded that when determining whether an act was an armed attack, they could not only consider actions by regular armed forces but also had to look at whether when a state utilized 'armed bands' and carried out very grave acts, it could then be considered an armed attack. Generally, any use of force should be regarded as concerning scale and effects to determine if it amounted to an armed attack (*Nicaragua v USA,* Merits, 1986: para. 196; Schmitt & Wall, 2014: 359). However, assisting the rebels with weapons or logistical support as training was not included in the concept of an armed attack, though it, as we have seen earlier, might be considered a use of force (Schmitt & Wall, 2014: 360).

Moreover, the ICJ has found in the Nicaragua case that economic coercion does not make for an armed attack, nor does it provide sanctuary or support (Greenberg et al., 1998: 30; *Nicaragua v USA,* Merits, 1986: para.205). Moreover, even actions that could be 'destructive physical force' can sometimes be said to not amount to an armed attack. For example, looking at Russia's information-technological warfare against the Ukrainian power grid, we find that this was a series of organized cross-sector attacks that left parts of Ukraine without power, with the aim of "*destabilize(ing) Ukraine and make its government look incompetent and vulnerable"* (Greenberg, 2017). This attack is very impactful on Ukraine, but it does not seem to live up to the definition of an armed attack that the ICJ has set out. Overall, it seems unlikely that with little to no physical harm to personnel and property, computer attacks on networks using malware and viruses could constitute an armed attack and allow for self-defensive action (Greenberg et al., 1998: 30; Kiessling, 2021; 134).

However, it does not mean that it can never happen. To qualify for self-defence, cyber operations just need to cross the threshold of an armed attack (*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017: 340). This interpretation follows the opinion of the ICJ in the Nuclear Weapons Advisory Opinion, where it was determined that the *means* of attack are not crucial for whether something can be seen as such (*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ, 8 July 1996: para.39). According to the Expert Group of the Tallinn Manual, cyberattacks that do not amount to kinetic force can still be armed attacks as weapons are not requirements for armed attacks, but rather, as mentioned previously, the scale and effect of the cyber operation undertaken must be similar to a kinetic attack (*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017: 340).

We now look at an example that has been called the most significant malware attack in history - the NotPetya attack. NotPetya attack occurred in 2017 as part of the Donbas war. The NotPetya attack is, by almost all accounts, described as crossing into cyberwar territory and having significant effects in Ukraine and worldwide (Greenberg, 2018; Salt & Sobchuk, 2021: 10f). The global implications resulted from an initial on Ukraine's financial system, which spread beyond the state's borders (Nakashima, 2018). Some have described it as being the *"equivalent of using a nuclear bomb to achieve a small tactical victory"* (Greenberg, 2018)." Many companies outside Ukraine were hit, such as FedEx and Maersk, and the United States government has assessed that the damage caused is around 10 billion dollars (Greenberg, 2018). To reach their objectives, the hackers employed mocked ransomware coded to erase data, planted on a website they knew the victims would visit, letting it ripple out from there (Nakashima, 2018). NotPetya got its name from the mock ransomware, as it was created to look like ransomware called Petya, and it was *not.* This technique was used to try and convince victims that it was criminal hackers/ a group doing it for money - not a state (Greenberg, 2018). The real aim of the attack was destruction, not ransom, however, and NotPetya spread quickly and broadly, in a way that had not been seen before (Greenberg, 2018). In Ukraine, NotPetya was disrupting computers on a massive scale, leaving the then Minister of infrastructure, Volodymyr Omelyan, to declare that the government had been dead during the attack (Greenberg, 2018).

This is seemingly more destructive than the other examples, but does that make it an armed attack? Looking at this from the criteria of scale and effects and the difference between the use of force and self-defence, what do we then see? Since the United Nations Charter recognizes a right to use power in self-defence should an armed attack occur, it begs the question of all uses of force, an armed attack? (Schmitt & Wall, 2014: 358). First, it should be noted that depending upon the interpretations given to the thresholds of both use of force and armed attack, a fusion of the two or the lack thereof includes risks. The comparatively broad approach often advanced concerning the prohibition of the threat or use of force is understandable in light of the UN Charter's aims to minimize recourse to force (Wood & Lubell, 2018: 5).

On the one hand, if 'force' and 'armed attack' were to be seen as the same, more acts would have to be accepted as 'armed attacks' triggering the right to self-defence – thus widening the circumstances of justifiable reaction leading to higher occurrences of armed conflict (Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations, 2017: 332f; Wood & Lubell, 2018: 6). On the other hand, understanding the gap between the two would also have considerable implications. This could allow states to use force below the threshold of an armed attack, as law-abiding states cannot respond in kind, or it could risk states using force anyway, increasing the chance of conflict escalation (Wood & Lubell, 2018: 6).

The question of a gap between use of force and armed attack, and the subsequent issues, are a product of armed attack having a high threshold to being within the UN framework, as it triggers self-defence (Nasu, 2016: 262f). However, in the Nicaragua judgment, the ICJ found it important to distinguish the gravest forms from the less grave forms of force (Nasu, 2016: 262f; *Nicaragua v USA,* Merits, 1986: paras. 14, 191, 195, 249). In this context, the gravity standard was used to separate armed attacks from the use of force, thus illustrating that a gap is in existence, a gap that can be used by states such as Russia to engage in information-technological information warfare without fearing retaliation (Nasu, 2016: 265).

Thus, it can be argued that measuring the use of force from its scale and effect is especially relevant in cases of cyber operations, as it would ease the comparison between non-kinetic cyber-attacks and the kinetic use of force (*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017: 331). What is also important to note is that the different standards of use of force and armed attack serve the purpose of distinguishing between acts that violate article 2(4) and acts that enable target states to claim self-defence and the legal use of force (*Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, 2017: 337). It is the dilemmas that fallout from a gap, which grey zone actors, such as Russia, utilize to gain an advantage in the grey zone. While situations such as the NotPetya could constitute the use of force, this gap between the use of force and armed attack makes it difficult and unlikely to argue that self-defensive action is warranted in retaliation to computer-based non-kinetic attacks. Thus, states such as Russia balance the line between use of force and armed attack, and even if they likely could have caused further damage, for example, to physical infrastructure, they chose to avoid doing so (Connell & Vogler, 2017: 21). This showcases Russia's unwillingness to act in direct defiance of the scale and effects of the use of force and armed attack while still flexing their cyber-muscles against the Ukrainian government (Connell & Vogler, 2017: 21f). We see that the gap between physical weapons (kinetic, biological, chemical, etc.) and the virtual approach of information technological warfare causes jus ad Bellum to be difficult to apply. This casts doubts about whether jus ad Bellum applies when that threshold is then breached (Nitu, 2011: 49).

Assuming, for analytical purposes, that information-technical warfare could amount to an armed attack, we see that self-defence could still become challenging to carry out in terms of following the law. The right to self-defence originates from the Caroline Case, which sets out a customary international law definition of the right to self-defence. It was a dispute regarding the destruction of an American vessel between the British and the US, concluding with the US Secretary of State emphasizing that the British Government must prove the necessity and proportionality of the defensive action (Wood & Lubell, 2018: 11). In the Nicaragua Case, the ICJ held that 'self-defence would warrant only measures proportional to the armed attack and necessary to respond to it' (*Nicaragua v USA*, 1986, Merits: para.

176). It also underlined that the principles are customary international law (Wood & Lubell, 2018: 11). Self-defence thus needs to adhere to the requirements of necessity and proportionality. Proportionality means that the response must reflect the attack's scope, nature, and gravity. The principle of necessity guards against the use of measures that are excessive and not necessary in response(Wood & Lubell, 2018: 11). Similar to it not being clear that an information operation is equal to an armed attack, it, however also not clear *what* would be a proportionate and necessary way to answer such an attack, especially in the situation where the information attack did not cause or caused minimal physical destruction (Greenberg et al., 1998: 32). In Ukraine, we have seen grid attacks and NotPetya, where computers were used to spread information, crypt websites, interrupt databases, steal information, and deny services for electronic infrastructure. This makes determining proportionality and necessity difficult, requiring a state to carry out the self-defence lawfully.

This might prove difficult. Additionally, it is questionable that without physical destruction, the military response would be proportionate (Greenberg et al., 1998: 32). Not knowing what proportionate self-defence is, or even if self-defence is applicable in the first case, is a challenging situation that could erode the status quo of international law. Ukraine or any victim state could easily find it too difficult to deal with this gap between unlawful use of force and armed attack, leading them to believe that responding is the 'worse of options' (Kiessling, 2021: 123f), and from this conclude, that international law leaves no room for responding to the threats they face (Kiessling, 2021: 162f). With this presented understanding of "armed attack," we see a complication and hindrance of a 'victim states' ability to respond to an information warfare attack via international law (Greenberg et al., 1998: 33).[9]

Challenging when the law becomes applicable

From the analysis of Russia's information warfare in Ukraine, it is evident that Russia utilises information warfare to advance its territorial claims in the area, to the detriment of the applicability of international law. Throughout the analysis, it has been examined how Russia has employed both information psychological and information technological warfare against Ukraine. The section above shows clearly how difficult it is to establish that information warfare can constitute the use of force and armed attack. This is mainly due to t the intangibility of information warfare, making it ambiguous and unclear in what circumstances it could trigger the thresholds of the Jus ad Bellum. Russia can thereby use vague definitions of the Jus ad Bellum to avoid direct war by staying below the thresholds that trigger their activation. The issue is a consequence of the relatively high threshold of use of force and armed attack as enshrined in the UNC. Russia is thus exploiting the determination of thresholds,

[9] The question of forcible countermeasures in response to a use of force falling short of armed attack was left unanswered by the Court in Nicaragua, an omission that has been much criticized.

encroaching on them without crossing them. This indicates that through information warfare, Russia's grey zone warfare specifically targets *when the law is applied* by trying to avoid the triggers that legitimise the application.

Iran in the Grey zone: Proxy warfare & the effect on International Law

The attribution rules link an actor's conduct in violation of international law with a State. Once that link has been established, we can say that a state bears responsibility for that conduct and the consequences (Maddocks, 2021). State responsibility is central in international law as states are the primary holders of international obligations (Crawford, 2013). The critical concepts of state responsibility, attribution, breach of obligations and consequences hereof are generally accepted as applicable to international law (Crawford, 2013; Rudko, 2020). This is especially important since Proxy War is a form of armed conflict and thereby entails, in the least, the most general IHL rules. However, the ICRC commentary on Article 2 of the first Geneva Convention on Wounded and Sick in Armed Forces in the Field underlines this does not include law determining the attribution of actions (ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Commentary on the First Geneva Convention)*, 2nd edition, 2016: para.267). Instead, general rules of international law are used to determine whether such attribution should be utilized (*Commentary on the First Geneva Convention*, 2016: para.267). There are thus two overarching ways of using international law to regulate a state's use of proxies. First of all, by showing that a state has involved itself enough in a conflict for the conflict to turn international or at least internationalized, secondly by attributing the conduct of the actors in a conflict directly to the state. The following sections will illustrate how Iran's proxy warfare affects international law, from the framework of State Responsibility, first, by looking at Conflict Classification issues, then attribution

The Context of Iran in Yemen

The Arab spring was an excellent opportunity for Iranian Revolutionary Guard Corps (the Pasdaran) strategists to promote the ideas of Ayatollah Khomeini abroad (Rezaei & Seliktar, 2020: 209). One example of the outcome of the Arab Spring, and Iranian strategy, can be seen in the Iranian support of the Houthis in Yemen (Terrill, 2014: 429; Zweiri, 2016: 10). This support has been discussed for some time, both amongst the parties involved in the conflict and those looking on from the outside (Salisbury, 2015: 6f; Terrill, 2014: 429f,436; Zweiri, 2016: 5). Yemen has long been marred by instability heightened by external influences (Hollingshead, 2018: 31; Serhal, 2022). Initially, the Houthis were highly critical of the Yemeni government, especially following the government's participation in the war on terror. This scepticism was rejuvenated in 2015 with Houthi rhetoric turning towards criticising

foreign intervention and their critique of government (Rezaei & Seliktar, 2020: 215; Salisbury, 2015: 12). The Iraqi invasion by the US was the spark that radicalised the Houthi movement, which adopted the alternate name of Ansar Allah and started conducting armed resistance in Yemen (Rezaei & Seliktar, 2020: 215; Serhal, 2022). The movement had easy access to weapons from the beginning, making creating a militia an easy feat for the Houthi leaders (Rezaei & Seliktar, 2020: 215f). The Houthis began their rebellion in earnest in 2004, capitalising on a changed political narrative from stronger states (Hollingshead, 2018: 31; Terrill, 2014: 433). Taking advantage of the Houthis' anti-Saudi Arabia stance and their increased power following 2011, Iran uses them as proxies to wage war against Saudi Arabia (Terrill, 2014: 433). Iran seeks to destabilise Yemen further by supporting the Houthis, both directly and through Hezbollah, arguably the best known Iranian proxy (Zweiri, 2016: 7). The support rendered to the Houthis by Iran is the focus of this section, as it explores the effect the use of proxies by Iran has on international law.

Conflict classification

As will become more apparent below, the Houthi rebellion and the civil war in Yemen have had stark humanitarian effects. Among other elements, it has led to the continued destabilisation of Yemen, thousands of deaths, and continued violations of IHL and IHRL. One of the challenges of proxy warfare is that it questions who the actors are and how much a state or actor can be said to be responsible for the actions in the proxy conflict. This is a prevalent debate in the Yemeni conflict, as the involvement of Iran brings into question whether it can be seen as a civil war between insurgents, the Houthis, and the government of Yemen or if this is a simplification the actual conflict.

International humanitarian law (IHL) applies only to international armed conflicts (IAC) and non-international armed conflicts (NIAC) (Crawford & Pert, 2020: 54). The primary regulatory body of IHL is the Geneva and Hague conventions. Except for Additional Protocol II, they apply to IACs, whereas only Common Article 3 of the Geneva Conventions applies to NIACs. The protocols work as additions to the Geneva Conventions, expanding their content and application to IACs (Crawford & Pert, 2020: 16). The reason for Common Article 3 applying to NIACs, is that it stipulates that this form of conflict must be non-international (*Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I)*, Geneva, 12 August 1949: art.3). From its context and this wording, it is evident that a NIAC includes the involvement of at least one NSA, in contrast to an IAC where two or more states are involved (*Commentary on the First Geneva Convention*, 2016: para.393). Despite plenty of arguments that classifications should be introduced that could nuance the IAC/NIAC distinction, only these two exists according to the law and are hence the only two categories discussed here.

When determining the presence of an IAC, there is no threshold according to Common Article 2. But as the International Criminal Tribunal for the Former Yugoslavia's case of Prosectuor v. Tadic (Tadic case) shows, the leading opinion is that there is an IAC when there is "*a resort to armed force between states"* (*Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Tadic case, Decision on Jurisdiction)*, IT-94-1, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 October 1995: para. 70), showcasing that any level of use of force will initiate an IAC. Had Iran attacked Yemen directly, it would be a precise instance of an IAC. NIACs, on the other hand, need to reach a high enough level of intensity and organisation to be classified as such (*Commentary on the First Geneva Convention*, 2016: paras.421-437). According to the ICTY in the Tadic case, NIACs must be composed of protracted armed violence between organised groups or a state and one such group (*Prosecutor v. Delalić et al., Trial Judgment*, ICTY, 16 November 1998, para. 184; *Tadic case, Decision on Jurisdiction,* 1995: para. 70). The wording "protracted armed violence" has been determined by the ICTY to be an element of the criteria for intensity posed for NIACs (*Prosecutor v. Tadić, Trial Judgment*, ICTY, 7 May 1997, paras. 561f). It should not be confused as an additional requirement for the duration of hostilities.

The Houthis began fighting in Yemen in earnest in 2011, building on the momentum from the protests in Saudi Arabia that sparked similar protests in Yemen. During these anti-government protests, the Yemeni president was killed, leading to a crisis which enabled the Houthis to take control of the city of Sana'a in 2014 (Hollingshead, 2018: 31f; Salisbury, 2015: 2; United Against Nuclear Iran, 2022: 42; Zweiri, 2016: 5). The occupation of Sana'a in September 2014 was followed by a coup four months later, which ousted the central government of Yemen (United Against Nuclear Iran, 2020: 42). This was the beginning of the Yemeni civil war, prompting Iran to increase its involvement in the country. In 2016, the Houthis started to target critical Saudi infrastructure and civilian maritime targets in the Bab el-Mandeb Strait (Jones et al., 2021: 4f; United Against Nuclear Iran, 2020: 40f). In the following years, the Houthis used improvements in UAV technology, Iranian munitions, UMVs, and mine warfare in their conflicts, which also spread beyond Saudi Arabia, and to the UAE and other Saudi allies (Jones et al., 2021: 4f). This was done through the help of the Iranians, who had increased their support, supplying now *"anti-tank guided missiles, sea mines, aerial drones, (…) rockets, man-portable air defence systems, high explosives, ballistic missiles, unmanned explosive boats, radar systems, and mining equipment"* (Jones, 2019: 8; Jones et al., 2021: 5). The violence in Yemen has thus both been protracted and, as is evident from the multiple uses of UAVs and missiles, can also be classified as armed. As to the level of organisation, it can be argued that since the Houthis have been able to keep control over Sana'a and perform several attacks against Saudi Arabia, they must have an organised structure that can facilitate this. Arguing thus that the Houthis reach the level of intensity and organisation required, the conflict would seemingly be a NIAC, as the fighting is happening between the state and NSAs. Something that can further confuse the classification of conflicts is when an external

party involves itself in a NIAC. In the case of Yemen, we must ascertain the role Iran is playing in the conflict and whether this can be said to change its classification. Looking at Iran's involvement with the Houthis, how they impact the Houthis' conflict with the Yemeni government, and their conflict with Saudi Arabia can be examined.

When a state intervenes militarily, it can change the classification of the conflict. Often, it seems easier to determine when a NIAC shifts to an IAC, as one argument posits that as soon as troops are used in favour of the armed group, in this case in favour of the Houthis, it can be considered a use of force by one State against another. This would thus reach the definition set out in Common Article 2 (*Geneva Convention I*, 1949: art.2; *Tadic case, Appeal Judgement*, IT-94-1-A, ICTY, 15 July 1999: para.84). This argument belongs to the global approach, which is based on the view that having a conflict which contains both an international and non-international conflict is troublesome and artificial and that as soon as the intervention reaches a certain level of intensity, it will impact the original conflict, again making the distinction irrelevant (Meron 1998, 238; Meron 2000, 261). This argument seems to be supported by the ICTY, which found some instances where intervention by an outside state has changed the existing NIAC meaningfully (*Tadic case, Decision on Jurisdiction,* 1995; *The Prosecutor v. Zlatko Aleksovski, Trial Judgment*, *Dissenting Opinion of Judge Rodrigues*, ICTY, 25 June 1999, paras. 18, 22). For the present conflict, this would mean that the Houthis would become part of an IAC and likely be seen as fighting for Iran, allowing them to gain prisoner of war status and combatant immunity. However, this would require proving that Iran used their troops, likely the Pasdaran's, to fight alongside the Houthis. Despite various reports, amongst others from the *Financial Times* and UN Security Council, that the Pasdaran's and Hezbollah had been present in Yemen to train the Houthis and observations of Houthi militia wearing Pasdaran uniforms, no evidence is present that Iran inserted their troops into Yemen (S/2015/125 *Letter dated 20 February 2015 from the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014) addressed to the President of the Security Council*, 2015: 15; Terrill, 2014: 436). An argument that Iran has inserted troops into Yemen would thus seem complicated to prove. It would likely require an additional examination of whether Hezbollah troops can be said to be attributable to Iran – yet another question of state attribution and responsibility for a proxy. Being able to prove that Iran has provided ideological and material support for the Houthis is thus not the same as proving direct military assistance (Terrill, 2014: 429)

Another arguably more supported and common approach is the "mixed approach". This approach stipulates that direct intervention by a foreign state does not automatically make an IAC (Greenwood 1998, 17ff; Zamir 2017, 100-110). Instead, IAC and NIAC can exist side-by-side as separate conflicts between insurgents and state and state and a foreign state. The mixed approach also has significant support from state practice and international courts. In the Nicaragua case, the ICJ determined the existence of both an IAC and NIAC, a finding that the ICTY also reached in the Tadic case (*Nicaragua*

v USA, 1986, Merits: para. 219; *Tadic case, Decision on Jurisdiction,* 1995: paras.72f; *Prosecutor v. Delalić et al., Trial Judgment*, 1998: para. 209). It can be argued that this approach minimises the incentive for NSAs to seek help from outsiders, to obtain the rights granted to them once the conflict is classified as an IAC.[10] In the case of the Houthis, it can be debated whether gaining rights is the primary motivation for them to seek help from Iran. Instead, they share a common ideology and approach toward Saudi Arabia and that the cooperation between the two is more akin to a mutually beneficial relationship. However, this does not mean that the Houthis would not like the added benefit that classification as an IAC would grant them. Despite an (arguable) preference towards the mixed approach, it seems to rule out that intervention can lead to an internationalisation of a NIAC. This is, however, not entirely true. Instead, suppose the non-state group can be said to belong to a State by fulfilling the criteria set out in article 4(a)(2) of the third Geneva Convention (International Committee of the Red Cross, *Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III)*, 12 August 1949). In that case, they could be seen as actors of a State, making the conflict international. However, as the definition of "belonging" can be discussed, this Article is not sufficient to argue when NSAs may become actors of a State and cannot prescribe attribution to any state for the actions of any group. This seems to be the crux of the problem and the primary reason behind Iran's use of the Houthis as a proxy. Hence, to better understand how Iran utilises the Houthis to avoid responsibility under international law, we must closely examine how Iran can be said to exert influence over the Houthis and be responsible for their actions. In many ways, proxy warfare challenges the status quo by utilising the ambiguity that it creates and builds upon. Thus, it becomes incredibly challenging to counteract. This is because it is an indirect form of warfare. Instead of starting a conflict, Iran uses an ongoing conflict in Yemen, and the Houthi forces who share their interests, to reach their goals. In this way, Iran creates uncertainty about their involvement in the conflict, and thus regulating their behaviour becomes difficult.

Attribution: Effective and Overall Control tests

The two control, both being in existence, are a product of the challenges in determining how strong the link between State and conduct must be for that conduct to be attributable (Maddocks, 2021). On the one hand, we are dealing with a conflict situation where humanitarian concerns are partial to less strict rules of attribution to ensure that a State like Iran can be held accountable when they utilise proxies such as the Houthis to violate international law. But, on the other hand, States must be only deemed responsible for conduct that can be determined as theirs (Maddocks, 2021). Generally, there are two different tests of attribution that have often been utilised and referred to effective control and overall control.

[10] Eg. Prisoner of war status, combatant immunity.

The International Law Commission worked for decades on identifying the customary rules of international law that today make up the ICL Draft Articles on State Responsibility – the Articles are still in development. However, the Draft Articles are still to be viewed as a thorough and influential restatement of the applicable law (Maddocks, 2021). Article 8 of the International Law Commissions Draft Articles on State Responsibility is especially relevant in the context of attribution:

> *The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is acting on the instructions of, or under the direction or control of, that State in carrying out the conduct. (*International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, November 2001, Article 8)

Article 8 thus, describes the conditions under which an NSA's actions can be attributed to a State. The concept of control is of specific significance and often leaves room for debate and diverging interpretations (Boon, 2014: 18). For example, attribution means that for Iran' to be provided with the responsibility of the Houthis or Hezbollah, it would have to be proven that Iran exerts control over them. Iran has a close relationship with Hezbollah providing them with money and weapons, helping them build an arsenal and cementing its role as one of the most well-armed terrorist groups globally (Terrill, 2014: 439; United Against Nuclear Iran, 2022: 43) (Zweiri, 2016: 11; Serhal, 2022). Hezbollah, like the Pasdaran, is driven by their opposition towards the West and Israel and their belief in Islam. They both strive to promote Iran's ideological principles and hegemonic interests and can, therefore, often be seen supporting Islamic movements in the region (Serhal, 2022; Terrill, 2014: 439). Both groups, therefore, have close ties to the Houthis and aid them in their rebellion against the Yemeni government, primarily through education and training (Salisbury, 2015: 7; Terrill, 2014: 434-437). But the question is if the close ties and support amount to control? To determine whether the Houthis can be said to be under the control of Iran, we must examine the degree of control they have. Even though Control is a formative part of Article 8, the International Law Commission has not defined the term. The Commission has, however, made the following statement: *"it is a matter for appreciation in each case whether particular conduct was or was not carried out under the control of a State, to such an extent that conduct controlled should be attributed to it"* furthermore evaluations should occur vis the *"full factual circumstances and particular context"* (Boon, 2014: 18; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, November 2001). While there is no single definition of control, work by academics, courts, and organisations can provide a basis for analysis. We now look at two control tests: effective control and overall control.

The effective control test stemmed from the International Court of Justices *Military and Paramilitary Activities in and Against Nicaragua* Case (Nicaragua Case). It was further developed in the Case

concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide - *Bosnia and Herzegovina v Serbia and Montenegro (*Genocide Case*) ((Bosnia and Herzegovina v Serbia and Montenegro),* Merits, ICJ, 26 February 2007). In the Nicaragua Case, the ICJ examined if IHL violations committed by the Contras, a private group in the Nicaraguan civil war, were attributable to the United States (*Nicaragua v USA,* 1986, Merits). The effective control test tackles the level of influence a state needs over an NSA or private actor for said actor's conduct to violate the States obligations under international law (Maddocks, 2021). The ICJ found that accountability could be determined for violations of international law if the US had effective control over the military or para-military operations of the Contras when they committed violations of international law (*Nicaragua v USA*, 1986, Merits: para.115; *The Legal Framework Regulating Proxy Warfare*, 2019). Furthermore, the ICJ determined that if there were evidence of such effective control, only the acts performed under that control would be attributed to the State – any other conduct would not be within the scope of State Responsibility (Maddocks, 2021).

This illustrates how strictness of the test. In the case of Yemen, it would thus need to be proven that Iran's level of influence was and is high enough to warrant it being responsible for the actions of the Houthis. Before 2011 Iranian involvement with the Houthis can be said to be minimal. Even though arguments have been made that Hezbollah started training Houthi troops in 2004, Iran more directly involved itself in 2009 when an Iranian ship was intercepted with weapons experts and anti-tank weapons destined for the Houthis (Terrill, 2014: 429; United Against Nuclear Iran, 2022: 40). But there would not be enough involvement to satisfy the effective control test. The understanding of when and how NSAs' actions could be attributed to a State was elaborated upon in the Genocide Case. Here the ICJ determined that if support, financing, and planning were the only things that a state actor provided an NSA or group, it does not amount to attribution unless there was also a high level of control present over actions violating the law (*The Legal Framework Regulating Proxy Warfare*, 2019: 15)*."*

Furthermore, the court underlined that an actor becomes a de facto State organ being utterly dependent on the State – with the State having strict control over all of the actor's conduct (*Bosnia and Herzegovina v Serbia and Montenegro,* Merits, 2007: paras. 391-394). If it was found that if an actor could qualify as a de facto state organ, then all of its conduct could be treated as actions *by* the state and thus attributable *to* the State (*Bosnia and Herzegovina v Serbia and Montenegro,* Merits, 2007: paras. 391-394); Maddocks, 2021; *The Legal Framework Regulating Proxy Warfare*, 2019: 15). Using this approach means that only if the Houthis displayed complete dependence on Iran and Iran had full control over those actors, they could be said to be a state organ. This is not easy to determine.

The Iranian government has generally tried to blur the scale of their exact involvement with the Houthis. Still, a General in the Pasdaran has stated that Iran sees the actions of Saudi Arabia and the West in Yemen as oppression which conflicts with the Iranian values of supporting the oppressed

Muslims, as is evident from its foreign policy (Jahan News, 2017; Salisbury, 2015: 8; Terrill, 2014: 434). He further proclaimed that Iran was aiding the "legitimate government of Yemen", the Houthis, to stay in power, both through spiritual support and "friendly help", which has at times been wrongfully stopped by its enemies (Jahan News, 2017). The Houthis also admit to receiving spiritual guidance from Iran but rarely acknowledge that any financial or material help has been provided, except for occasional admissions by its troops that they are receiving military training from Iran and the Hezbollah (*Houthi Commander Admits*, 2017; 'Iranian Support Seen Crucial for Yemen's Houthis', 2014; Terrill, 2014: 437; United Against Nuclear Iran, 2022: 43). Thus, Iran is alone in outright denying its involvement, but on the other hand, the actual scope of its participation might also become exaggerated by outside actors (Hollingshead, 2018: 32; Zweiri, 2016: 13). Based on the evidence presented, there thus seems to be little doubt whether Iran is involved in Yemen. However, there is little evidence to support an argument that the Houthis are a "true proxy" of Iran, or a state organ hereof, who share their goals and act according to directions from Iran (Salisbury, 2015: 3). Looking then at the threshold for control over an actor that cannot be said to be a state organ, we see a high threshold:

> *"It is not necessary to show that the persons who performed the acts alleged to have violated international law were in general in a relationship of "complete dependence" on the respondent State; it has to be proved that they acted in accordance with that state's instructions or under its "effective control". It must, however, be shown that this "effective control" was exercised, or that the state's instructions were given, in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations."* (*Bosnia and Herzegovina v Serbia and Montenegro,* Merits, 2007: para.400)

The effective control test thus requires precise instruction or direction of the actions conducted that violated the law. Therefore, a direct link needs to be established between the support rendered by Iran and specific activities in violation of the law by an actor, which requires a high amount of evidence; for example, orders and instructions were given (Boon, 2014: 7,18).

In the Nicaragua case, the Court found that the violations committed by the Contras in their conflict with the Nicaraguan government could not be attributed to the United States. Despite the United States having financed, organised, trained, armed, and supplied the Contras, they did not wield effective control over the contras, and thus attribution did not apply (*Nicaragua v USA,* 1986, Merits: paras.114ff). The issue the ICJ underlined was that Nicaragua was unsuccessful in showing a direct link between the support that the United States had provided, and the illegal actions carried out by the contras (*Nicaragua v USA,* 1986, Merits: para.116). In the case of Yemen, it would require that a direct link between the Houthis' conduct and Iran's support hereof could be proven. The challenge is that, despite seemingly clear evidence of Iran's involvement in Yemen, there is a distinct lack of detailed sources on

the actual extent of Iran's actions and aid in Yemen towards the Houthis (Hollingshead, 2018: 32; Salisbury, 2015: 7; Terrill, 2014: 429). Nevertheless, the UN and Western states, such as the US, point to a clear responsibility of Iran and the Hezbollah for providing the Houthis with weapons and training (Hollingshead, 2018: 32; Terrill, 2014: 429,439). Starting in 2012 and 2013, it was observed that there were small but reoccurring transfers of material from Iran to its allies in the Middle East, in particular Yemen (United Against Nuclear Iran, 2020: 41f).

In 2015 the Houthis continued to receive weapons from Iran, receiving between 160-180 tonnes of weapons and military equipment, just in March (United Against Nuclear Iran, 2020: 42). The UN Panel of Experts on Yemen have also reported that short-range missiles used by the Houthis against Saudi Arabia were derived from similar Iranian missiles that the Iranians themselves provided the parts for (United Nations Security Council, *Letter Dated 26 January 2018 from the Panel of Experts on Yemen Mandated by Security Council Resolution 2342 (2017) Addressed to the President of the Security Council*: 137). Due to the already large number of weapons in Yemen, it can be argued whether the actual transfer of weapons has been of much help to the Houthis, aside from the missiles that were not already available to them (Salisbury, 2015: 12; Terrill, 2014: 436). Regardless of arguments made that the Houthis could not have organised and fought to the extent that they have without the involvement of Iran and Hezbollah, as previously mentioned, there is not enough evidence to support that the Houthis act on behalf of the Iranian government, yet again making the effective control test hard to apply (Salisbury, 2015: 12). As Iran utilises the Houthis and tries to reach its anti-Saudi objectives through indirect force, it can avoid confrontation, allowing it to deny involvement, create ambiguity and sow doubts about its role, possibly enough for the response to be too difficult or costly (Eisenstadt, 2021: 78,82).

Another way to determine State responsibility comes from the ICTY and is termed the overall control test. It is a product of the debate among international tribunals and scholars on whether the conduct of NSAs can be attributed to a third-party state – if it has overall control over that actor, as opposed to effective control as described above. In the Tadic case, the ICTY examined Tadic's criminal responsibility for crimes done by the Bosnian-Serb army. To do this, the ICTY needed first to determine the type of armed conflict and then determine the applicable law. First, the tribunal had to establish a connection between the army (VRS) and a third state (Rudko, 2020: 36). And in this process, an overall control test was utilised – as the ICTY found that the conduct of an NSA was attributable to a state if said state had overall control over the NSA (*Tadic case, Appeal Judgement*, 1999: para.131). The critical question thus becomes, what does overall control include, and how does it differ from the effective control test utilized by the ICJ, by which attribution would be difficult to establish for the Houthi's actions to Iran. The ICTY specifically defined the overall control test as control over coordination and general planning of a third party's activity and thus wrote: "*it must be proved that the State wields overall control over the group, not only by equipping and financing the group but also by*

coordinating or helping in the general planning of its military activity" (*Tadic case, Appeal Judgement*, 1999: para.131).

Thus, in some ways, the overall control test lowers the threshold of control required for attribution of responsibility and can be said to necessitate a lower level of direction and planning on the part of the supporting State. Attribution and assertation of accountability are thus not to be established via linking unlawful actions to support as with effective control, but by showing support beyond financial, military or training, including elements such as coordination and helping in the planning of activities (Rudko, 2020: 37). When this has been proven, we can then find that the actions of a non-state actor are attributable to the supporting State and that the non-state actor can be seen as a de facto state organ of the supportive state (Rudko, 2020: 37). Also, if said State has not provided instructions regarding the carrying out the unlawful actions as required by the effective control test (Rudko, 2020: 37; *Tadic case, Appeal Judgement*, 1999: paras.130-145). However, even this would be difficult to prove. Training carried out often happens through other proxies, such as Hezbollah, and you have the same attribution problems.

Furthermore, this test has met significant critique. The ICJ disagreed with the ICTY's overall control test and found that the overall control test could not be utilised to attribute responsibility for the conduct of non-state-actors to states, as it was developed to decide the character of a conflict (see above section on Conflict Classification) (*Bosnia and Herzegovina v Serbia and Montenegro,* Merits, 2007: para.404 Rudko, 2020: 36; *The Legal Framework Regulating Proxy Warfare*, 2019: 15). The ICJ specifically found that the responsibility as constructed by the test was too broad. The ICJ argued that the test introduced in the *Tadić Appeal Judgment* extended the scope of State Responsibility. It went beyond the fundamental principle of State responsibility, where a state is only responsible for its conduct. The ICTY had stretched to 'far' what would qualify as the states' conduct (*Bosnia and Herzegovina v Serbia and Montenegro,* Merits, 2007: para.406; Rudko, 2020: 38). Whether one of these tests is applicable is not unchallenged and creates ambiguity on its own. And this challenge is exploited and utilised by Iran. Using indirect means such as foreign proxies in Yemen and operations on foreign soil creates ambiguity and avoids decisive engagement with the enemy. Using proxies is precisely designed to distance oneself from a conflict both for political reasons and to avoid legal ramifications – this is quite difficult to meet for a 'victim state'. Furthermore, the utilisation of proxies is not that covert – instead, States have an approximate idea about who the supporter is – almost like an official covert relationship. Clandestineness is not required for the supporting State to avoid culpability, as the threshold for attribution is quite strict and difficult to prove - and while it might be illegal to breach rules of sovereignty and non-intervention – Iran can, by using the Houthis as proxies, circumvent that (Kiessling, 2021: 123; McInnis 2015).

Challenging what law is applicable and who it applies to

From the analysis of Iran's proxy warfare in Yemen, it is evident that Iran has utilized proxy warfare to destabilize the region, to the detriment of the applicability of international law. Throughout the analysis, it has been examined how Iran's proxy warfare makes it difficult to determine if the Yemeni conflict is an IAC or a NIAC, which challenges applying the correct rules under the Jus in Bello. Furthermore, by clouding the extent and nature of its involvement, Iran can avoid determining attribution and thereby circumvent state responsibility for the action of the proxies it backs. Proxies provide a cover for Iran, which wishes to avoid being characterized as a party to the conflict, but still wants to achieve its goals. Proxy warfare can thereby circumvent the traditional limitations placed on conventional warfare. The question was not that something unlawful was happening, but who the involved parties were, and thus what law applies to them. This indicates that through proxy warfare, Iran's use of grey zone warfare targets *what law is applicable and to whom it applies.*

Chapter 5

GREY ZONE WARFARE AND INTERNATIONAL LAW

The following section will combine the analysis of China, Russia and Iran's understanding of war, goals and aims, and how their respective use of Lawfare, Information Warfare and Proxy war challenge international law. Broader tendencies will thus be extracted and examined to illustrate how grey zone warfare affects the international liberal rules-based order through international law. Firstly, it will be explained how the three cases show how grey zone warfare impedes the laws' applicability. This leads to a section demonstrating these applicability issues to be variations of the same problem. Namely, that grey zone warfare challenges the legal categories that sustain international law. Lastly, and concluding the analytical section of this thesis, it will be illustrated how all of this combines into a challenge for international law to carry out its function for the Order.

Before we move on, it should be clarified that the authors of this thesis are aware that international law is not being challenged by China, Russia, and Iran alone. Many of the Order's core actors themselves challenge international law. In many ways, the United States, since 9/11, have remained just compliant enough with international law to avoid opposition while trying to evade the restrictions of international law (Brooks, 2018: 9). Even as the US and other actors create international law in their image, they have still made and withdrawn from it (Krisch, 2005: 385). However, the implications of the Order's central actors themselves, avoiding or eroding international law, are not within the scope of this thesis. Furthermore, the focus is on how non-liberal states seek to interact with the order through grey zone warfare with their agenda and values.

The conduct of China, Russia and Iran can cause two types of challenges. Firstly, a specific challenge to the erosion of international law. Second, a systemic challenge being the inability of the International Liberal Rules-Based Order to use international law to regulate state behaviour and reach objectives of peace and stability. Before looking at these two challenges in more depth, it should be specified that the fact that one state's actions hurt another state does not make such action unlawful. There is enduring practice and examples which accept that states can impose hardship upon each other entirely within international law. If there is no agreement nor any customary law – states don't have any obligations, in terms of international law, to act in a certain kind of way (Greenberg et al., 1998: 18).

The specific challenge: Erosion of the categories of international law

Different problems of applicability

As we have argued, all three states see grey zone warfare as compatible with their view on war, explaining their use of this form of warfare and making utilizing the distinction between war and peace; the Order have based international law on an easy target. Furthermore, their understanding of war and choice to exploit differing interpretations express different ambitions, which can best be realized through a change in the knowledge of legal principles. We will now seek to address how the use of grey zone warfare challenges legal regulations and international law. We have observed how China, Russia, and Iran use different grey zone warfare tools to fight their battles through our case studies. As argued in Chapter 3 these tools were chosen based on each country's military strategies and what best serves its ambitions. In all three cases, grey zone warfare included attempts at placing the state in a legally advantageous position where they could act in a way favourable to themselves while avoiding legal repercussions that would negatively impact their chances of obtaining their goals. We now draw out the tendencies of each case to illustrate what kind of problem their conduct causes for international law.

In the case of China's lawfare in the South China Sea, we found that China's conduct can best be described as targeting the *application and process of law*. In a move to legitimize their territorial claims, China relied heavily on delegitimizing the South China Sea Arbitration Process. After losing the case, it moved to instead claiming a customary right of outlying archipelagos. Overall, China chose to utilise international law to call other actors illegitimate while presenting themselves as law-abiding and interpreting international law with the same intent. China's grey zone system has focused on creating uncertainty and ambiguity and gradually creating clouding what is lawful and not. The Case of Russia's information warfare in Ukraine challenged the Jus ad Bellum framework. It became difficult to ascertain when exactly information warfare would cross the lines of the use of force and armed attack. Both Russia's technological and information warfare was not a violation of the Jus ad Bellum but lived close to the thresholds. In a similar vein to China, Russia utilized ambiguity and uncertainty to challenge the applicability of law – here specifically by targeting thresholds, and thereby *when the law is applied, keeping* away from the triggers that legitimize its application. Avoiding this trigger promises a significant advantage to Russia. Russia is thus exploiting the determination of thresholds, encroaching on them without crossing them (Jackson, 2017: 42). The Case of Iran examined Iran's proxy war in Yemen and found that Iran utilized proxies to fight an indirect war. This allows Iran, because of the uncertainty and ambiguity that Proxy Warfare entails, to avoid responsibility and be required to follow IHL and other laws that could be applicable if they were confirmed as responsible for the acts of the Houthis in Yemen.

In contrast to China and Russia, who tried to avoid illegal acts, Iran instead tried to remove itself from the equation, letting others take responsibility for its actions, thereby targeting and creating ambiguity around if *the law is applicable and to who it applies.* The use of proxies here provided the perfect cover for Iran. There is thus a clear tendency to grey zone warfare challenging the application of international law, which is mend to hinder unwanted state behaviour. China's conduct can be described as questioning how the law is applied, Russia's conduct is a challenge to when the law is used, and Iran's conduct is a challenge to how the law should be applied. It is different branches of the same tree of *applicability issues*. If the law can be applied, it cannot be used to serve its function for the international order. Moving from this, we will now illustrate how these different issues of applicability branches stem from one overarching root cause: grey zone warfare, at its core, is thus an attack on the binary categories that international law builds upon.

An Issue of Categorization

The different cases targeted different areas of law in different ways, but they all challenged the applicability of international law. Three other cases, thus, have shown the same tendency, which must mean that there is something about grey zone warfare that interferes with international law. The question then becomes, why does grey zone warfare challenge the applicability of international law? This section seeks to answer this question and illustrate why it hinders the function of law to be carried out, to illustrate the effect on the international liberal rules-based order.

As described, the function of international law, for the international liberal rules-based order, is that it allows the order to shape and manage state activity to obtain peace and security. International law constrains state conduct via a normative framework of accepted behaviour (Guilfoyle, 2019: 2). International law gains its legitimacy and effect via its capacity to via established categories, determine acts as either illegal or legal. Thus, it becomes a powerful tool to attack the legitimacy of an opponent, not based on power but standard rules of regulation (Guilfoyle, 2018: 2). As described, the binary distinction between war and peace is inherently western and not shared by China, Russia and Iran, allowing them to utilize this dividing line. The issues arise because international law is built around similar dividing lines, distinguishing what is legal from that which is not. Distinctions between war and peace, regular and irregular, lawful and unlawful, were inserted into the international legal framework that characterized the years between the two world wars (Sari, 2019: 175).

Specifically, modern international law can be said to have been founded on three principles. Firstly, peace is the normal state of international relations, and that war is its opposition (Sari, 2019: 175f). Second, war and peace are mutually exclusive (Sari, 2019: 175f). Thirdly war was an objective phenomenon and should be understood as something between two or more states using armed force (Sari, 2019:176). This meant that modern international law was founded on dividing lines and categories

(Sari, 2019:176). Even as international law evolved, transforming from a focus on war to the use of force and armed conflict, the traditional conceptual lines of division stayed around and transformed into the categories we have today (Sari, 2019:177; Sari, 2020a: 855). These categories are used by the international liberal rules-based order to create peace, security and stability by regulating state behaviour and thus as the primary organizing principle (Sari, 2019:177; Sari, 2020a: 855). These categories and distinctions provide the framework for understanding what is unlawful and what is not. Because they also happen to be central to how grey zone actors challenge international law.

Looking again at the conduct of Russia, China and Iran, we can see that at the root of it, the applicability problems stem from grey zone warfare interfering with the legal categories that make the law applicable in the first case by clouding what is lawful from what is not. As Aurel Sari has described it, the thing is that: "*when a river enters the sea, the freshwater does not turn into seawater in an instant. It tends to produce brackish water."* (Sari, 2019: 176f). And this is precisely what grey zone actors such as China, Russia and Iran utilize – war and peace might be opposites under the law, but in practice, they often mix.

As described, China's use of lawfare demonstrated an attack on the application and process of international law. China's whole approach was to either apply and interpret the law to make themselves appear as the legitimate actor or delegitimize any other conduct in a similar vein. Thus, China created enough confusion and ambiguity about the interpretation of the law to create doubt and mistrust over what the law is saying. As that is their intended target, it is a malicious act of manipulating and subverting international law to undermine natural justice and indisputable truth (Samson, 2009). International law is used to circumvent the categories of law; at their core – the distinction between lawful and unlawful becomes clouded. China's strategy of targeting the application of international law, though the advance of misapplication and misinterpretation of international law and positioning what is unlawful as illegal and lawful, thus clouds what the law says. It makes it difficult to categories the conduct as permitted or not under UNCLOS's applicable legal regime. Looking then at Russia and Iran, we see the same picture.

As described, Russian information warfare inherently challenged the Jus ad Bellum framework by being a weapon that not traditionally have raised questions of illegality. Specifically, information warfare challenges law by being conducted at a low level of intensity, enabling actors to reach their objectives gradually without employing the amount of force required to activate the thresholds of use of pressure and armed attack. The lack of clear definitions and certainty about when precisely a threshold is activated and if information warfare can be applied allows Russia to benefit from the doubt and ambiguity about whether their attacks are lawful or not under the Jus ad Bellum (Rousseau, 2017: 16). Specifically, Russia's conduct challenges the categorizations of use of force and armed attack that are used within the Jus ad Bellum framework to determine if acts are lawful or not. Targeting when the

law is applicable is thus a product of eroding and clouding the categories of the jus ad Bellum (Greenberg et al., 1998: 19; Kiessling, 2021: 123).

The challenges international law meets, from Iran's proxy warfare targeting who the law applies, can also stem from similar categorization issues. The problem was not that the actions of the Houthis weren't seen as illegal, nor that they did not amount to the use of force. The specific issue was here the extent of Iran's involvement. Because international law is built upon categories of actors, such as State and Non-state actors, or International Armed Conflict or Non-International Armed Conflict, targeting what law is appliable and who it applies to and creating ambiguity here directly erodes and circumvents these categories, it is only unlawful under state responsibility, if Iran can be said to be involved. Thus, Iran's conduct also challenges the distinction between lawful and unlawful. By utilizing the different grey zone tools of lawfare, information warfare, and proxy warfare, China, Russia, and Iran are breaking down legal distinctions between lawful and unlawful, and therethrough the fundamental international law stands. This fits well with the notion that grey zone warfare, at its core, challenges the legal distinction between war and peace and hinges on the distinctions of lawful and unlawful to announce when we move from one to the other. However, since war and peace are not viewed as binary by China, Russia and Iran, war and peace – and unlawful and lawful are mixed and create a grey zone (Sari, 2020a: 855). Thus, grey zone warfare inherently challenges international law by using the perceived gap between international law and modern warfare. Therefore, something could suggest that international law, with its binary thinking and legal categories, is vulnerable to grey zone warfare(Sari, 2020a: 855).

We can determine that in all three cases, no matter the country or the tool utilized, or what part of the law is targeted, grey–zone warfare ends up doing the same thing. Specifically, the problem that grey zone warfare creates for international law is that it is difficult to apply because it relies on binary legal categories. From this point of view, Grey zone warfare attacks core concepts and categories of international law and the usefulness of categories. For example, international law governs the conduct of parties to armed conflict, we comprehend and understand behaviour in terms of "force," "self-defence," "armed attacks," or actions that fall below it, we differentiate between "active hostilities" and areas without such hostilities, and between "international," and "non-international" armed conflicts (Brooks, 2018: 5).

The trend that can be derived is thus that grey zone warfare strains the traditional distinctions in categories of war. Therefore China, Russia and Iran's view of war – with its contradiction to international law, provide them with great benefit and opportunity to reach their goals. This, in turn, calls the validity and functionality of the dividing lines of law into question, as it simultaneously erodes the applicability of international law. It might just be that when it comes to grey zone warfare, the categories of international law cannot be upheld, as grey zone warfare erodes international laws' ability

to use categories to distinguish between lawful and unlawful (Sari, 2019: 176f). This represents a significant challenge to international law. Lawmaking entails creating categories because interpreting law requires assigning actions to actor and their conduct to categories that can cover them (Brooks, 2018: 5). Based on such categorization, it becomes possible to determine what acts are lawful and not. This is the core of how international law works. Applying and utilising the categories of international law coherently is essential, but it has become more and more challenging to use and apply coherently (Brooks, 2018: 5). This challenge to international law is not a product of grey zone actors', such as China, Russia and Iran, generally acting unlawfully. Instead, ironically, their actions would possibly be less of a challenge to international law and less corrosive, of they could simply be determined as unlawful (Brooks, 2018: 5). The grey zone tools utilized by China, Russia, and Iran challenge international law precisely because they challenge the legal categorization we use to determine if the law has been broken (Brooks, 2018: 5).

The lines of divisions and uncertainty enshrined in international law that Iran, Russia and China's grey zone warfare utilise and targets are not simply a product of oversight or ineptitude. Instead, the lines of division and lack of clear definitions must be understood as a choice made by policymakers and lawyers to avoid political deadlock (Sari, 2020a: 17). Legal categories have always been, and most likely always will be, the centre of contestation and disagreement. Grey areas in the law are often a product of States not being able to agree on enhanced definitions, and thus much of international law is, in some sense, vague and ambiguous(Sari, 2020a: 17). In this specific sense, the effort by grey zone actors to exploit gaps and ambiguities in international law is not new. Up to a point, legal vagueness and ambiguity give states a way to avoid direct conflict, as it allows states to prevent challenging conduct but not directly illegal (Brooks, 2018: 5).

Furthermore, vagueness and ambiguity can be a way to allow changes to occur in international law, as changing words can be challenging, but changing the meaning of a vague text is more manageable, thus allowing the law to be adapted (Brooks, 2018: 5). However, when grey zone warfare and its challenges to international law become standard practice and not an exception, vagueness, ambiguity and the challenge to legal categories can become crippling for international law (Brooks, 2018: 2f). The strength of international law necessitates that categories' content is approached with clearness and agreement (Brooks, 2018: 1). When international legal categories are challenged, international law is then disallowed to serve its function for the international liberal rules-based order, which is the focus of the section below.

The systemic challenge:
The effect on the International Liberal Rules-Based Order

As described multiple times throughout this thesis, English School Theory understands international law as a normative framework used to manage large complex arrangements, such as the Order that makes up the current International Society (Evans, 2018: 28; Wilson, 2009: 168f). International law is, furthermore a product of the values and ideals inherent to the society from which it has emerged. International law has thus been provided with a distinct liberal character by the Order, allowing grey zone actors to take advantage of its distinction between war and peace and allowing the Order and its supporting states to use it as an instrument to reach their objectives (Evans, 2018: 28; Wilson, 2009: 168f). The function of international law, as we have examined in this thesis, can be seen as a mechanism allowing the Order to regulate the conduct of state actors, creating predictability and regularity enough to reach the objectives of peace, security, and justice by protecting and hindering states from violating sovereignty (Evans, 2018: 28). The regulating ability of international law is therefore crucial for maintaining the Order. The Order relies on the ability of international law to limit or moderate state behaviour, as it is designed to mitigate unpredictability and provide a foundation upon which the conduct of the state can be valued and processed (Wilson, 2009: 168). However, this processing and evaluation is based upon the categories of international law. As has just been demonstrated, these categories are being eroded by grey zone warfare. The overall blurring and erosion of categories, created and maintained by the Order to allow it to distinguish between lawful and unlawful, dramatically impacts its ability to regulate state behaviour through international law.

The Case of China illustrated challenges to the law carrying out its function for the Order through hampering and undermining the dispute settlement process and the overall creation of mistrust in international law providing necessary solutions to a threatening situation. The Philippines might have won the arbitration case against China, but, as China's conduct illustrated, lawfare can be used to shape a narrative, where winning in Court does not equate to an ultimate victory. Instead, there might be something to gain from challenging international law. As the case showed, it is challenging to hinder the damage done by legal arguments and discreditation of international law. By presenting it as a matter of differing opinion, China makes the dispute a question of interpretation and avoids the legal repercussions or limitations that arise if they accept generally agreed upon and interpretations. China's conduct is damaging to the function of international law for the Order, because it erodes trust in how to apply international law, such as through the processes carried out by international courts and tribunals. If states are skilled enough at lawfare, they can impede international law enforcement because they create a stalemate of legal argumentation and counter-argumentation. At some point, the law might start to change. This means for the function of international law that China**,** by co-opting, manipulating, and skillfully arguing their case, with seemingly illegitimate intent and in stark contradiction to the rules of good faith interpretation and application of the law, can create a stalemate for the application of

international law. By making it challenging to control and delegitimize their conduct, international law is thus hindered in fulfilling its function as regulating mechanism for the Order in this context.

Similarly, if we look at Russia's information warfare in Ukraine, it also directly impacts the function of international law for the Order. Due to the intangibility of information warfare and the lack of a clear definition of armed attack and use of force, Russia can use information warfare without triggering the ability of other states to respond under the Jus ad Bellum framework. Essentially, even if an exercise of information warfare was to be considered a use of force, it would not trigger the threshold of an armed attack, meaning that it does not provide the basis for self-defence under UNC article 51 (Kiessling, 2021: 136). This is of great benefit to Russia, as it is then unclear to Ukraine, or any victim state, what conventional measures could lawfully be taken in response to an information warfare attack (Kiessling, 2021: 136). Furthermore, a miscalculation of how to respond legally could leave a victim of information warfare looking like the aggressor State, and thus the victim state would have an incentive to be careful in determining how to react (Kiessling, 2021: 162f). This uncertainty is why Russia and other grey zone actors utilize a below threshold strategy, for which information warfare provides the perfect tool. Russia thus benefits from avoiding legal, economic, and political fallout by using information warfare and is thereby able to act without international law regulating or modifying its behaviour (Brooks, 2018: 4f). While Russia's military invasion of Crimea might have triggered direct military feedback and confrontation from the outside, its use of information warfare has been ambiguous enough to create doubt about the appropriate response (Brooks, 2018: 3f; Dalton, 2017: 312). Again, information warfare challenges the right to self-defence, as any such act would need to live up to the principles of necessity and proportionality. Still, due to the intangibility of information warfare, it is difficult to assess what that entails explicitly. When is it ever lawful for a state to respond to a non-kinetic attack, with conventional force? (Greenberg et al., 1998: 32). From such a standpoint, states like Ukraine could find that international law does not offer the necessary tools to address their problems, and either risk being a perpetual victim, or committing illegal acts themselves (Kiessling, 2021: 162f). This means for the function of law that Russia can circumvent the enforcement of international law**,** and that international law is thus hindered in fulfilling its function for the international liberal rules-based order also in this context

Looking at Iran, we see that, similarly to China and Russia, the use of proxy warfare by Iran challenges the ability of international law to fulfil its function for the Order. Despite the actions undertaken by the Houthis against Saudi Arabia, or the government of Yemen, being easily classified as illegal uses of force, the role of Iran in supporting these actions is less clear. Since the application of international law hinges on the ability to determine if an actor has carried out illegal acts and thus what law applies to them, Iran's actions challenge the applicability of the law. Another challenge posed by proxy warfare, is that it hampers possible related parties, such as Yemen, from taking countermeasures or requiring appropriate remedies for the damage done (Schmitt & Wall, 2014: 367). Operating in the

grey zone through proxies, Iran avoids escalating any conflict to the point where it would either tilt into direct warfare, or become internationalised, with Iran forced to take responsibility for it. By keeping its involvement below a level where it can be said to control the proxies, Iran can challenge other state actors without validating a full-scale response in return (Dalton, 2017: 312). Iran creates doubt about their part in hostilities, which provides a loophole for avoiding the legal, political, and economic consequences of breaking the rules. This means for the function of international law that, because Iran uses proxies, it clouds its accountability to the actors involved. Determining the classification of a the conflict and being able to respond to its actions hinges on these categories being clear. Iran's use of indirect measures means that it can avoid the regulating nature of international law, challenging international law's ability to carry out its function for the Order (Eisenstadt, 2021: 82; Jackson, 2017: 43f).

From this, a clear tendency can be ascertained for the applicability of international law. As it hinges on legal categories that grey zone warfare undermines and challenges, this form of warfare invertedly challenges the ability of international law to serve its function of regulating state behaviour for the Order. With the function of international law regulating state behaviour, creating predictability, and stability needed to reach peace, security, and justice objectives, grey zone warfare poses a serious challenge. State actors' desire to be perceived as legitimate actors has long been strengthened by international law, which lends itself to claims of legitimacy. International law is backwards-looking in that it draws its legitimacy from referring to historical events, facts, and long-standing acceptance of practice by international society (Krisch, 2005: 377). And so, legitimacy is an essential part of how the Order uses international law to regulate state behaviour and minimises the likelihood that this regulation is a result of power relations. Hence, it is not the United States as a hegemonic power which forces states to act a certain way; it is international law which prescribes them to do so. Complying with international law thus becomes a source of legitimacy for a state, and a necessary factor for them, in maintaining relations with other states. We have thus shown that China, Russia, and Iran all go to great lengths to appear law-abiding and cover up their rule-breaking, even when it is seemingly very evident (Sari, 2020a: 10). However, this incentive to remain legitimate becomes less of a concern for states in their use of grey zone warfare, as it allows them to never truly break the law, hence avoiding the label of illegitimacy (Krisch, 2005: 377).

The grey zone conduct by China, Russia, and Iran risks leaving international law vague, ambiguous, and essentially uncategorized, prohibiting international law from carrying out its function for the Order (Brooks, 2018: 8; Sari, 2020a: 10). In other words, states can find it challenging to navigate the available response options because grey zone warfare challenges elementary legal categorization and clouds what regulative conduct could be permissible under international law (Wilson, 2009: 172).

As the consequences of conventional military competition only becomes more extensive, states have, and will most likely continue to, utilise grey zone warfare more in the future. But how international law comprehends grey zone warfare is not clear. Therefore, it can be difficult to analyse how to respond and subdue these tactics via international law as it is now (Kiessling, 2021: 161). As illustrated, international law is built upon thresholds, legal categories, and dichotomies that conceptually distinguish what is legal and what is not. China, Russia and Iran use this to their benefit by using grey zone tools to seek their objectives without creating an opportunity for response (Sari, 2019: 189). As a result, States could conclude that there are no meaningful legal options of response under international law and eventually begin to change their understanding or reasoning for using international law or avoid it altogether, and simply conduct illegal actions (Dalton, 2017: 312; Kiessling, 2021: 162f).

The possible implications for the Order are considerable. Leaving the conduct exemplified by China, Russia, and Iran unregulated could erode the perceived authority of the Order, while regulating behaviour unwarranted by international law could produce a spiral of escalation and create a narrative that the Order is essentially about power rather than shared agreed-upon rules (Kiessling, 2021: 123). On their own and isolated, each instance of grey zone warfare appears insignificant. With the ambiguity and unconventionality that defines them, victim states can find themselves hesitant to respond to grey zone warfare. That exactly is the winning logic of grey zone warfare. The issue is, that if lack of enforcement, options for responding and regulation continues, it can lead to a gradual breakdown of international law's ability to regulate state behaviour (Brooks, 2018: 4f). When the main categories and concepts of international law lose their stability and meanings, agreement on how to evaluate and thus regulate state behaviour erodes. The international laws are still there; they exist. However, they no longer ensure that states conduct themselves in a settled and expectable manner, nor can it ensure that if they don't, provide a way to categorise the behaviour and suggest an appropriate response (Brooks, 2018: 7; Kiessling, 2021: 123). This thus challenges the Order in its ability to achieve peace, stability, and security, which, to a large degree after the world war experiences, has been based on an international liberal legal framework. This means that grey zone warfare is characteristically challenging to the Order through its effect on international law. Thus, international law is critical in understanding the effect that grey zone warfare has on the Order. Namely that by being faced with the possibility of losing the regulative ability of international law, it must become creative in how it continues to regulate international relations between states, to maintain peace and security – as determined by liberal values (Kiessling, 2021: 124).

THE IMPLICATIONS FOR INTERNATIONAL LAW AND ORDER

This thesis has sought to answer the research question:

> *Why are states using grey zone warfare to target international law, and what are the implications for the international liberal rules-based order?*

Specifically, it aimed to provide a better understanding of how international law inhabits a vital role in why and how grey zone warfare affects the Order. There are three key findings of this research: First, while grey zone state uses different tactics, they are all based upon a similar understanding of the gap between war and peace and produce the same effect on international law. Second, that effect challenges the legal categorisation that international law hinges upon. Third, this challenge to legal categorisation further challenges the Order's ability to regulate the behaviour of states. Thus, the results of this thesis support the hypothesis that international law plays a central role in how grey zone warfare challenges the international liberal rules-based order. What then are the implications of such findings?

Implications for International Law

On the one hand, our findings suggest that China, Russia, and Iran utilise grey zone warfare to destroy international law and circumvent the international liberal rules-based order's ability to regulate them through the legal framework. The analytical section has accordingly illustrated how the grey zone warfare conducted by all three states has attacked the categorisations that international law is built upon and through which the international liberal rules-based order legitimises its regulation of state conduct. Furthermore, international law is a product of the society from which it emanates (Wilson, 2009: 168f). The international liberal rules-based order is thus what is giving international law a distinctive liberal character. However, our findings suggest that these liberal characteristics are based upon assumptions of war and peace, which are not shared by China, Russia, and Iran. Since states' intentions to overthrow a legal system should be observed through their actions and values, this could indicate a want to destroy international law. While states might want to secure peace, security, and justice or agree that state behaviour should be regulated, that means, in practice, it is not universal (Evans, 2018: 31). Pluralistic societies often disagree about what ends international society should seek to realise and what those ends mean (Evans, 2018: 45). This disagreement is also inherent to international law, as there are no determining objectives to which international law should pay deference (Evans, 2018: 46). Ultimo, since international society has no fixed ends, international orders themselves determine the ends they seek to realise, and international law becomes a product and tool hereof (Sari, 2020b: 849).

International law, under the international liberal rules-based order, is thus currently relying on outdated conceptions of war and sovereignty that are wholly incompatible with those of the three states examined. Not all states are interested in the offers of the liberal order, either due to ideology, ethnonationalism, culture, or other national considerations (Bell, 2014: 135f; Colleau, 2017: 96; Flockhart, 2014: 140). Attempting to apply Western standards of legitimacy can thus be troublesome for how non-liberal states view international law, and our findings, therefore, do discern that the three states have clear motives for wanting to destroy international law(Xiang, 2014: 118). From this point of view, it could be argued that when the legal system's legitimacy and applicability are challenged, its function and regulative nature are disrupted, rendering it inoperable at times (Wilson, 2009: 181). Since the liberal filter the international liberal rules-based order has applied to international law interferes with China, Russia, and Iran's ability to reach their goals, our findings could support the argument that international law is in danger of eroding past functionality (Sari, 2020b: 861). In other words, since international law can be a vehicle of those in power to reach their ends, it would be plausible that actors not wanting those ends would destroy it (Evans, 2018: 36).

On the other hand, many of our findings contradict such an argument. Instead of indicating an attempt or campaign to destroy international law, China, Russia, and Iran's grey zone warfare could be understood as owing to their interest in keeping this version of international law around. China, Russia, and Iran are all working hard to avoid breaking international law or appear to do so. Our findings suggest that a core element of grey zone warfare is challenging legal categories to prevent the law's applicability. From the perspective of English schools, we assume that States follow the law as it is to their benefit. China, Russia, and Iran do appear, at least to a certain degree, to want to appear in conformity with international law, or at least not to be violating it (Wilson, 2009: 173f; Wirtz, 2017: 111). From this point of view, it could thus be argued that international law must in some ways be to the benefit of China, Russia and Iran.

Furthermore, evidence suggests the States are interested in upholding international law, as operated by the international liberal rules-based order (Acharya, 2017: 276). As we have previously argued, international law regulates state behaviour. This does not necessarily mean that states follow the law, but that they are continuously aware of its existence and feel a need to frame their actions as legitimate so as not to be seen as law-breaking by others, which would hinder their possibility for cooperation and trade (Acharya, 2017: 276; Paikin, 2021: 414f; Sari, 2020b: 849; Wilson, 2009: 183). Firstly, China, Russia and Iran have found a way to utilise the international liberal rules-based orders framework of regulation against them. Our analysis shows how the West's binary understanding of war and peace, inherent to international law, provides China, Russia, and Iran with opportunity. Secondly, China, Iran and Russia's objectives also seem to be supported by their adherence to or recognition of international law. For China, this is based on its desire to take part in the economic benefits the international liberal rules-based order provides (Acharya, 2017: 276; Nye, 2008: 13; Paikin, 2021: 414;

Walt, 2021). Although Russia and Iran are more hostile, both states show elements of support for its continuation. For Iran, the hostility is primarily reflected in security concerns and economic repercussions (Fathollah-Nejad, 2021: 283f). And Russia found it necessary to justify its annexation of Crimea through legal arguments, however flawed they might have been (Sari, 2020b: 849). States act in a way which is the least harmful to their interests, and our findings support the argument that keeping international law could be in China, Russia, and Iran's interests.

Another way to understand the implications of our findings is to conclude that China, Russia, and Iran find elements of the international legal system that they wish to maintain and abolish (Flockhart et al., 2014: 163; Sørensen, 2011: 155; Xiang, 2014: 109,120). States following international law does not mean they support it or adhere to the order in which it is an expression. However, challenging the established structures of international law does not necessarily mean that someone wants to destroy it (Guilfoyle, 2019b). Thus, from this perspective, our findings imply that China, Russia, and Iran might be trying to modify and develop international law (Guilfoyle, 2019b). The sovereign equality of states is a central feature of the international system and great importance to States. Still, states often do not have the same influence and impact. This difference in perceived equality is often used as a foundation for requiring change (Scott, 2017: 10). Law has always been a place of competition, which is not new (Sari, 2020b: 858). Thus, it should already be cemented that a change in law does not mean that the law itself disappears – it will remain a central structure in any order that may exist (Buzan, 1993: 6). International law being challenged does not mean it is not legally binding or make it any less fundamental. It means that international law connects with other systems, such as politics and culture, and does not provide states with a neutral platform to understand the world (Sari, 2018: 4). International law is both a product of and a way to challenge powerholders simultaneously (Evans, 2018: 39; Krisch, 2005: 370). China, Russia and Iran's grey zone warfare have illustrated the weaknesses of the current international legal system. The binary legal categorisation does not reflect contemporary reality and does not suffice to regulate state behaviour in an increasingly complex world (Brooks, 2018: 9). In addition, however, when states are unsatisfied with international law, they apply their understanding of it – effectively creating competing international laws (Sari, 2020b: 849; Lin, 2014: 134). Addressing the matter at hand, international law, the course ahead is a mix of old and new legal norms and values (Xiang, 2014: 109). The main grievances from China, Russia, and Iran seem to come from liberal values and not the existence of the law itself.

In particular, both Russia and China share an affinity for capitalism while rejecting the human rights norms that underpin current international law (Flockhart, 2014: 149). There is dissatisfaction with the order having co-opted law to further the purpose of the liberal states in their way, but non-liberal states might be trying to do just the same. Ultimately, our findings would imply that China, Russia, and Iran wish to better modify the current legal regime to fit their values and norms. Law is unavoidably affected by politics, a view supported by English School theory, which means that we do not honour

law because it is made up of norms alone but because those norms enable us to reach practical purposes (Evans, 2018: 35; Krisch, 2005: 369). Entertaining briefly, what such a new international law might look, like, it could be argued that China, Russia, and Iran might want to emphasise non-interference, sovereignty and financial prosperity, meaning that the liberal core of the current legal regime could lose its place (Acharya, 2017: 278; Buzan, 1993: 6; Flockhart et al., 2014: 162; Sørensen, 2011: 156f; Walt, 2021). Seemingly, this would satisfy the concerns of the non-democratic states, as they are left with more freedom of individuality while maintaining many of the protections of their borders and economy, as is often their goal (Buzan, 1993: 6; Flockhart, 2014: 140; Flockhart et al., 2014: 156; Lin, 2014: 132; Walt, 2021).

No matter which of the above views one subscribes to, it is clear that China, Russia, and Iran's conduct illustrates a move toward a more antagonistic utilisation of international law; this lies in the link between norms and power (Sari, 2020b: 858). China, Russia, and Iran are not trying to destroy international law outright but are trying to change it to serve more of their goals, thus making room for them to get their agenda through. As already argued, attacking the West (and the US) conventionally will leave little chance of success due to the apparent differences in military capacities. Where the West is weak, however, is in its liberal values, and grey zone warfare utilises that. Having established this, the question remains, what are they trying to do by creating this new legal framework with more space? Why would they want to change something you are benefiting from? One possible reason would be because they see greater benefits somewhere else. Could the radical changes in the primary institutions of the Order allow the order to remain, or does it mean that we will see the emergence of a new order?

Reflection: Could a new world order be on its way?

China, Russia, and Iran's grey zone warfare are founded on their view of war, allowing them to exploit the gap between war and peace. The categories of law are also based upon this divide, providing the States with the ability to challenge the functionality of international law and incrementally erode international law and create a framework more to their liking. How much can the law change for the order to remain the international liberal rules-based order? The findings of our thesis could lead to a new question that would explore the connection between order and law more intensively and explore what the challenges and possible changes this thesis has identified might mean. The following section will reflect on the possibility of what is to come in terms of the order by using the ideal type of the multi-order system set out by Trine Flockhart.

The future of the international order

Should the liberal order wish to survive, it would require rethinking its commitment to liberal values and understanding of key concepts such as warfare and sovereignty. Albeit possible, this would be a

big sacrifice for an already troubled order. If the international liberal rules-based order then does not, or cannot, manage to change to encompass these values and norms of non-democratic states, it becomes increasingly more likely that new orders will emerge – leading to the multi-order system. The rise of a multi-order system, rather than another unipolar one, is due to the lack of a capable replacement. Due to both the political and economic troubles of Iran or Russia, they can quickly be ruled out as possible hegemons in the global order. China might have the capabilities to do so but seemingly lack the will or motivation. Because of the geographic distance between these three nations, they are not likely to band together to create one opposing order to the current Order, nor are they strong enough to make a competing order by themselves, ruling out the bipolar system. However, as previously discussed, it also does not seem like the US can retain its place as a hegemon for much longer, necessitating a change in the current system. So, what is the alternative?

We suggest that one such alternative is the multi-order system, as described by Trine Flockhart. We might soon see an attempt by China, Russia, and/or Iran to create new regional orders within a more extensive system in which their values and norms are considered. This type of order would potentially still be marked by the remnants of the liberal order but would allow for greater regionalisation of the institutions within these new orders (Acharya, 2017: 272). This would enable states (or organisations such as the EU) to work as regional hegemons with differing values and norms while still maintaining enough cooperation and regulation amongst them. New orders are thus also more likely to be based on identity rather than geographical divisions, allowing, for example, to create of a Eurasian order (Flockhart, 2016: 24). Furthermore, as multiple orders also allow for varying degrees of "weakness"[11], power will be spread amongst various orders that are even more closely related on parameters of identity (Flockhart, 2016: 24). It could be speculated that organisations like the UN would become less regulative and legislative but instead gain a more prominent role as a forum for which the regional systems can come together to tackle global issues.

There will be an increasing need for institutions to connect these orders (Flockhart, 2016: 25). The role of international law and legal institutions becomes the question for such a new order. As we have demonstrated, there still seem to be some norms that all states can agree upon and wish to maintain. We have also concluded that international law will never be absent as a primary institution in any order, as states see the function of law as central to regulating order. However, international law is shaped by the powers dictating the system or order it resides in. With multiple orders may arise multiple legal regimes – but there can still only be one *international* law. How this will look is then uncertain, as it will rely on the orders present and the institutions that support the creation, maintenance, and enforcement of such a law. While a future order might thus still be rules-based, we argue that there is a possibility that it may not be liberal. Instead, we might see a new international system that we have not

[11] Having less materials, resources, military capacity etc.

experienced yet. The implications of this are still unknown and, depending on movements of power in the world, might also change significantly before the new multi-order system emerges.

Limitations of the study

As with any research, this thesis has limitations that could have an implication for its findings. Three such limitations will be addressed below.

Despite this paper having chosen to rule out developments in the world in 2022, the authors are not blind to the current events in Ukraine nor the potential implications this could have for the conclusions of this paper. At an online seminar with the London School of Economics, Trine Flockhart argued that the rules-based order as we know it died on the day Russia invaded Ukraine. She thus finds that the order is now in the middle of a transformational period. What this means for the *actual* international order remains to be seen. However, these recent changes do not diminish the theoretical and analytical considerations made in this thesis. States, not unlike people, are driven by their ideologies and beliefs and are thus not always rational or predictable – even if attempts are made at predicting their actions. Assuming that we can correctly predict the future would therefore be absurd. With this paper's solid academic, legal, and practical foundation, we have grounded our assumptions and conclusions in the best way possible. This makes the findings valid and relevant for future hypothesising and theory-development on English School and international law matters.

Another limitation concerns the exclusion of other possible intervening variables that could hinder the explanatory power of international law in describing the effect grey zone warfare has on international liberal rules-based order. For example, grey zone warfare is often explained by, or written in the context of, nuclear deterrence. Concerning grey zone warfare, nuclear deterrence is used to describe why States have moved into the grey area to fight their wars and realise their objectives, as direct warfare has become too costly. Nuclear deterrence could thereby be an explanatory factor in why states choose to fight grey zone wars instead of conventional ones. However, this does not seemingly change the overall importance of international law for grey zone warfare and its effect on international order. Even if nuclear deterrence holds part of the explanatory power for the choice of warfare, the law is still how the international liberal rules-based order determines how and with what force it can respond to other states' conduct (overestimating nuclear deterrence?).

The final significant limitation we will address in this thesis relates to the case selection and ensuing method. As has been previously mentioned, this thesis has chosen three different states and three different tools of grey zone warfare as cases. Although it enables us better to avoid biases as to the tool or actor, it challenges the generalisability of the findings. Despite containing sections of comparison, the cases are not easily compared due to their significant differences, meaning that the direct

observations made in our analysis have not been comparable. This has necessitated us to look beyond the surface and draw out tendencies from the examined material. Again, this does not mean that our findings are not generalisable, nor insignificant, but rather that they would be ill-fitting for further quantitative studies. Our choice of method, a comparative case study, can therefore be criticised.

This section has discussed the possible implications for international law arising from being challenged by grey zone warfare. We have discussed the options that international law might be destroyed, maintained, or changed. Arguing that our findings point to a change, we have then discussed what this could mean for creating a new order and what this may look like.

CONCLUSION

What this thesis has sought to do, is to provide the debate on grey zone warfare and international order with an under-examined legal dimension. This thesis has thus endeavoured to offer an answer to the research question:

> *Why are states using grey zone warfare to target international law, and what are the implications for the international liberal rules-based order?*

By examining why and how states employ grey zone warfare, this study provided a basis for analysing the legal ramifications of these actions on international law. Notably, our results highlight the importance of international law in understanding how grey zone warfare impacts the Order and suggests a potential explanatory factor for why the challenge arose in the first place.

Due to fundamental differences in understanding war, we found that states were prone to interpret international law differently and use it to further their own goals. The three case studies conducted on China, Russia, and Iran's respective use of grey zone warfare, even when targeting different areas of international law, all illustrate a tendency to challenge the applicability of international law, though in distinctively different ways. We have thus found a tendency between all three states to seek to protect their sovereignty and that using any tool of grey zone warfare inherently challenges the legal categorisations of international law, as determined by the normative values of the Order. These findings enable us to theorise that it is not a matter of state or tool but the existence of grey zone warfare itself, which challenges international law.

By comparing the cases further, it became evident that the different branches of applicability issues all belonged to the same root cause. Specifically, the problem that grey zone warfare creates for international law is that it becomes difficult to apply it, challenging its use for the Order. Keeping the dissatisfaction with the current Order's regulation of their conduct in mind, the easiest way to target the Order without creating World War III was thus to target international law. Although the primary target of grey zone warfare is not necessarily international law, a commonality between our three cases is the challenge and erosion of legal categories, which we found, seems to be inherent to the use of grey zone warfare, allowed by grey zone actors' non-binary understanding of war and peace. Simply put, Russia, China and Iran are all bearers of the same understanding of war and peace, which stands in stark contrast to the Order's binary definition. The binary legal categories that international law rests upon and derives its legitimacy from being challenged by grey zone warfare. With its inherent destructiveness of the binary categories of war and peace, grey zone warfare puts pressure on the categories of international law. This, in turn, calls the validity and functionality of the dividing lines of law into question.

Our comparisons thus revealed the connection between grey zone actors' understanding of the gap between war and peace and the categories that law is built up of, making international law an easy and intuitive target for grey zone actors to attack to reach their goals. Therefore, this thesis argues that states are aware of the gaps in international law and seek to challenge them to maximise their interests. The Order is thus faced with challenges in ensuring peace, security and justice based on the rules it uses to legitimise itself. This means that grey zone warfare is characteristically challenging to the Order through its effect on international law.

Our study of both motivations and actions of grey zone actors has thus shown that the normative underpinnings of the Order are no longer universally accepted or tolerated but are actively challenged. The meaning of this for the international Order is that it loses its ability to regulate state behaviour. As the function of any order is to regulate, the continuity of the Order becomes severely challenged, and it must either address the problems it is facing or risk losing its place as a unipolar order. Even considering the limitations presented in the final chapter of this thesis, our study presents several findings of significance to the overall topic. This research provides supporting evidence that international law matters and should be examined more in the context of modern warfare. However, not a new concept, the study of grey zone warfare is still significant for future conflicts. As long as the international system is anarchical, states will constantly fight for power and security. As the role of international law is regulative, it plays a crucial role in regulating future conflicts, and examining grey zone warfare's impact is thus significant for policymakers and military strategists alike. Connected to international law carrying out its function for the Order, the authors of this thesis conclude with a sceptical outlook on the Order's ability to change its normative understanding of war. Thus, our thesis has suggested that absent a regulating mechanism, or by preserving one that is continuously challenged and delegitimised, the Order might not be able to continue to be so international.

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