



João Rodrigo Mendes Marques

**NATO'S ADAPTATION TO *HYBRID WARFARE* AND
THE LEGAL CHALLENGES**

Dissertation to obtain a Master's
Degree in Law, in the specialty of
Security.

Supervisor:

Dr José Fontes, Professor of the NOVA School of Law

2022, September

INTENTIONALLY LEFT BLANK

Anti plagiarism statement

I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

INTENTIONALLY LEFT BLANK

Agradecimentos

Ao Professor Doutor José Fontes pela sua disponibilidade académica e pessoal, por me ter orientado durante a vida académica, culminando na orientação desta Dissertação,

À constante da minha vida, a minha insubstituível e grande família, e em especial aos meus pais, João e Nanda, cuja dedicação à minha formação pessoal e académica tem sido incondicional,

À Clara, minha namorada, por me apoiar nas minhas decisões, celebrar as minhas conquistas, me confortar nas diversas vicissitudes da vida e por ser a minha melhor amiga,

E aos meus amigos que me têm acompanhado no percurso da vida, entre Viseu, Lisboa e além-fronteiras, nos bons e nos maus momentos,

O meu muito obrigado.

INTENTIONALLY LEFT BLANK

Resumo

Foi Frank G. Hoffman quem primeiro lançou as bases daquilo que viria a ser um debate muito rico academicamente. Contudo, foi apenas na sequência das atividades levadas a cabo pela Rússia na Ucrânia, particularmente a anexação ilegal da Crimeia, em 2014, que o debate se elevou à discussão política e mediática. As instituições ocidentais estavam finalmente convencidas de que a Rússia estava comprometida a aumentar o nível de competição através da utilização dos mais variados meios. Paralelamente, atores não estatais estavam igualmente a adquirir novas capacidades tecnológicas que lhes permitiam desafiar um poder estatal então incontestado. Foi o modo sinérgico com que, atores estatais e não estatais começavam a combinar meios convencionais e não convencionais, ou tipos de guerra regulares e não regulares, que motivou académicos e *policy planners* a levar a cabo um processo de adaptação. No entanto, o domínio jurídico, as implicações jurídicas e, particularmente, os desafios de ordem jurídica que a *hybrid warfare* representa, estavam a ser deixados para trás, e ainda não existe, até hoje, uma abordagem suficientemente abrangente desta dimensão. Esta Dissertação de Mestrado procura compreender a natureza adaptativa da NATO e analisar se, e em que medida, a Aliança Atlântica deve prosseguir uma adaptação jurídica à *hybrid warfare*.

Palavras-chave: Hybrid Warfare; Hybrid Threats; Lawfare; Legal Asymmetry;
International Law; Legal Resilience

Abstract

It was Frank G. Hoffman who first laid the foundations to what would become a very rich academic debate. However, it was only after Russia's activities in Ukraine, particularly the illegal annexation of Crimea, in 2014, that the debate reached the political and public attention. Western institutions were finally convinced that Russia was committed to raise the level of competition through the use of the most varied means. In parallel, non-State actors were similarly acquiring new technological capabilities that allowed them to challenge the uncontested State power. It was the synergistical design that States and non-State actors were starting to blend conventional and unconventional means, and regular and irregular modes of warfare that urged academics and policy planners to carry out an adaptation process. However, the legal domain, the legal implications and particularly the legal challenges posed by *hybrid warfare* were being left behind, and there is not yet, today, a comprehensive approach to that dimension. This dissertation seeks to understand NATO's adaptive nature and analyse if and to what extent NATO should embrace a legal adaptation to *hybrid warfare*.

Key-words: Guerra Híbrida; Ameaças Híbridas; Lawfare; Assimetria Jurídica;
Direito Internacional; Resiliência Jurídica

Table of Contents

Anti plagiarism statement	III
Agradecimientos.....	V
Resumo.....	VII
Abstract	VIII
Table of Contents	IX
Introduction.....	1
1 – Review of Relevant Literature	4
<i>Hybrid Warfare</i>	4
<i>Hybrid warfare and Hybrid Threats</i>	10
A Look at the Criticism.....	12
<i>Lawfare</i> and Malign Legal Operations.....	17
2 – NATO’s Evolution and Adaptation to New Threats	21
NATO in Yugoslavia.....	24
NATO, the 9/11 and Terrorism.....	26
NATO, Russia and Today	28
3 – Legal Challenges Resulting from <i>Hybrid Warfare</i>	44
Ambiguity - Deniability and Attribution.....	48
“Armed Attack” Threshold	50
Threat to the International Legal System	53
4 – NATO’s Legal Adaptation to <i>Hybrid Warfare</i>	56
Understanding the Legal Dynamics.....	56
Strengthening Legal Preparedness	58
Strengthening Legal Deterrence.....	59
Strengthening Legal Defence	60
Adopting a Legal Resilience Perspective	60

Strengthening Cooperation with the EU	62
Conclusion	64
References.....	67

Introduction

On February 24, 2022, Vladimir Putin, President of the Russian Federation, announced the beginning of a "special military operation" in Ukrainian territory, starting, through the use of armed force on European soil, a renewed, but not so new, period of confrontation between Russia, on the one hand, and Ukraine, supported, to varying degrees, by its Western partners. None of what we have been witnessing reveals anything new in the Russian *modus operandi*, much less on the positive side, since its military performance has led NATO defence planners to reassess "Moscow's military might in their contingency plans in the unlikely event of a conventional war between the alliance and Russia"¹.

Moreover, from the military build-up along Ukraine's borders with Russia and Belarus to the employment of military and non-military tactics that preceded the invasion itself (not to mention, of course, the fact that an International Armed Conflict has been going on between these two countries at least since 2014, with the annexation of Crimea and funding and extensively supporting the separatists in the Donbas region), the tactics itself, are not new. What is new, however, is the new atmosphere in which the relations between Russia and NATO occur.

This also shed light on some of the threats that the Alliance faces, especially during the recent period of strategic thinking that the Organization carried out and which culminated in the endorsement of the new Strategic Concept. Although Russia is not the only actor that offers strategic challenges and threats, it is yet, "the most significant and direct threat to Allies' security and to peace and stability in the Euro-Atlantic area"². A Russian military overt and kinetic attack, such as the full-fledged invasion of Ukraine, against one of the soon-to-become 32 Allies is unlikely, in part due to NATO's credible deterrent capabilities and the unvaluable costs an attack of this kind would have for both Russia and NATO. This, nevertheless, does not prevent Russia of trying to achieve the same desirable strategic objectives, of

¹ Gramer, R. (2022, June 7). NATO Allies Are Rethinking Russia's Supposed Military Prowess. *Foreign Policy*.

² NATO Strategic Concept (2022), p. 4.

creating “spheres of influence”³, or even, of obtaining territorial gains. For such, Russia employs a wide variety of tactics, ranging from military to non-military, diplomatic, informational, cyber, intelligence, and vastly others. In other words, Mr. Putin has engaged its Country’s efforts “regard[ing] the West in the hybrid realm”⁴. Not only Russia, but also China, and other non-state actors have been defining different hybrid strategies, employing them either in the context of armed conflicts or intense competition, seeking to maintain its disputes, regarding the target/adversary, at a low level of intensity, avoiding unwanted costs, and ultimately, crossing adversaries’ right to self-defence under Article 51 of the United Nations Charter. The inability of a State to defend itself from any offense, but specifically, from these ones, poses serious risks to its National Defence and Security. *Hybrid Warfare*, although a vastly majority of experts in this field states that is not totally novel, adds new and different perspectives to the strategic thinking, depending on the lenses that one puts in.

As this dissertation will expose, NATO’s 360° approach comprehends literal and conceptual meanings, i.e., geographical, but also the different nature of the threats and challenges. *Hybrid Warfare* has been elected as central to this research, as it is part of the vast challenges which Allies, individually and collectively, must dwell. In addition to the military tactical, operational, and strategic aspects of *Hybrid Warfare*, the present research will demonstrate that the latter also emanates challenges to the International and National legal systems to which NATO, and its members individually, should adapt.

The first chapter will review the most significant literature developments regarding the concept of “Hybrid Warfare”, discuss its usefulness, the different critic approaches and adopt a perspective through which the main issue will be looked on, even though a binding definition is inexistent. Likewise, for the purpose of assessing and demonstrating the set of legal implications, and due to its frequent occurrence

³ “It seeks to establish spheres of influence and direct control through coercion, subversion, aggression and annexation.” *In* NATO Strategic Concept (2022), p. 4.

⁴ Deni, J. R. (2021, December 2). NATO Must Adapt to an Era of Hybrid Threats. *Carnegie Europe*, p. 1.

among the relevant literature consulted, other concepts such as *Lawfare*, or similarly Malign Legal Operations, will be reviewed.

At a subsequent stage, for the sake of this dissertation argument, a second chapter will be dedicated to comprehensively understand the environment in which NATO operates, but so as well, the evolution made by the Organization in the face of different threats, with a singular focus on those of a hybrid nature. For discussing a potential adaptation, it will also be necessary to consider the current circumstances that the Alliance cope with, such as its renewed significance and consequently, the added responsibility to its tasks following the serious threat presented by Russia to the European continent.

In a third chapter the legal issues surrounding the resort to *Hybrid Warfare* will be addressed, because “it does not exist in a legal vacuum”⁵. At the forefront will be what was once considered an elementary distinction - between peace and war – upon which Hugo Grotius wrote in 1625 *On the Law of War and Peace*⁶ and which dividing lines Hybrid actors seek to blur. From that point, a cascade of intentional legal effects (of such an integrated and instrumental nature) unveils, that democratic countries struggle to handle and act upon.

Finally, and having in mind the conceptual approaches covered in the previous chapters, there will be a couple of considerations and final remarks on the need for NATO to adapt to the challenges posed, particularly one the legal domain, and what kind and to what extent should that adaptation be carried out, and what vulnerabilities may come with it.

The methodology adopted for this research was qualitative in nature and focused on an analytical and exploratory approach to several written sources, both primary and secondary, legislation, jurisprudence, monographies, scientific articles and thesis or dissertations.

⁵ Sari, A. (2015, October 2). Legal Aspects of Hybrid Warfare. *LAWFARE*.

⁶ Värk, R. (2020). Legal Complexities in the Service of Hybrid Warfare. *Kyiv-Mohyla Law and Politics Journal* 6, p. 34.

1 – Review of Relevant Literature

Hybrid Warfare

Although it was William J. Nemeth, in 2002, who originally coined the concept “Hybrid Warfare” in his Master Thesis “Future War and Chechnya: A Case for Hybrid Warfare”, who eventually would come to popularize it, would be Retired Lieutenant Colonel Frank G. Hoffman and Lieutenant General James N. Mattis in an issue published in 2005, where they “claimed that future wars [would] present a combination of emerging challengers – namely, traditional, irregular, catastrophic, and disruptive rather than separate challengers.”⁷ It was however in 2007 that Frank G. Hoffman better defined his understanding of *Hybrid Warfare*, making it the “the point of origin of the great debate on ‘hybrid warfare.’”⁸

Hoffman states that different modes of warfare, including “conventional capabilities, irregular tactics and formations, terrorist acts including indiscriminate violence and coercion, and criminal disorder”⁹ are incorporated in *Hybrid Warfare*, and it is this blend of violence that makes it “the potentially most dangerous and the increasingly most likely form of conflict.”¹⁰ To get to the final definition and characteristics, he first looked at the three existent and most known modes of unconventional warfare, which are the “Fourth Generation Warfare” (4GW), “Compound Wars” and “Unrestricted Warfare”. 4GW is succinctly understood as a strategy that combines conventional and unconventional means, “including terrorism and information, to undermine the will of the existing state, to de-legitimize it, and to stimulate an internal social breakdown”, “blurring of war and peace” and of the distinction between “combatants and non-combatants.”¹¹ Hoffman acknowledges that most of what is described in this theory as being “inconsistent with a

⁷ According to Caliskan and Liégeois, it was on the basis of these assumptions that Mattis and Hoffman preferred “to name this unprecedented synthesis as Hybrid Warfare.” See Caliskan, M., & Liégeois, M. (2021). The concept of ‘hybrid warfare’ undermines NATO’s strategic thinking: insights from interviews with NATO officials. *Small Wars & Insurgencies*, p. 1.

⁸ Solmaz, T. (2022, February). *Hybrid Warfare’: One Term, Many Meanings*, p. 1.

⁹ Hoffman, F. G. (2007). Conflict in the 21st Century: The Rise of Hybrid Wars. *Virginia: Potomac Institute for Policy Studies*, p. 14.

¹⁰ *Idem, ibidem*, p.16.

¹¹ *Idem, ibidem*, p.18.

Clausewitzian understanding of war”¹² is not in fact in such a disagreement, except for the idea of achieving the destabilization of “one’s political cohesion or will” through indirect ways and not on the battlefield, to which Hoffman gives credit.¹³ Compound Wars stem from the idea that many wars share, in a variable degree, the characteristic of having regular and irregular forces. As Hoffman says, it is “when a significant degree of strategic coordination between separate regular and irregular forces in conflicts occurs”¹⁴ that one can consider those as “compound wars”. The idea is to be in control of the dynamics of the battlefield and maximize each force’s efficiency. Hoffman highlights that this theory offers “synergy and combination at the strategic level, but not the complexity, fusion and simultaneity we foresaw at the operational and even tactical level.”¹⁵ Regarding “Unrestricted Warfare”, as defined by two notorious Chinese Colonels, Hoffman prefers to translate it to “war beyond limits.”¹⁶ “This concept exploits the benefits of ‘combinations’ in types of organizations and among the various domains of national power.”¹⁷ The use of combined resources at the disposal of the “future Great Captains (...) to prosecute the war (...) must include information warfare, financial warfare, trade warfare, and other entirely new forms of war.” Key here is to recognize that warfare is not anymore “confined only to the military sphere.”¹⁸

According to Frank G. Hoffman, “‘Hybrid Wars’ blend the lethality of state conflict and the fanatical and protracted fervour of irregular warfare.”¹⁹ In this monography, Hoffman picks on the 2006 war between Israel-Hezbollah and uses it as a prototype to teste his definition of *Hybrid Warfare*. He identifies, in Hezbollah tactics, that “highly disciplined, well trained, distributed cells can contest modern conventional forces with an admixture of guerrilla tactics and technology in densely

¹² Hoffman, F. G. (2007), *op. cit.*, p. 20.

¹³ *Idem, ibidem.*

¹⁴ *Idem, ibidem.*

¹⁵ *Idem, ibidem*, p. 21.

¹⁶ *Idem, ibidem*, p. 22.

¹⁷ *Idem, ibidem.*

¹⁸ *Idem, ibidem*, p. 23.

¹⁹ *Idem, ibidem*, p. 28 - Irregular warfare as used by the author was borrowed from US 2005 National Defense Strategy – “irregular challenges come from those employing ‘unconventional’ methods to counter the *traditional* advantages of stronger opponents.”

packed urban centers.”²⁰ Military technology plays a very significant role in this context. For example, Hezbollah, “demonstrated a number of state-like military capabilities, including thousands of short and intermediate-range rockets and missiles”²¹, while at the same time, created ambushes and co-ordinately mobilised into proximity of non-combatants for defensive purposes and “deliberately blended into the civilian population and infrastructure”²², which will also be analysed from the legal point of view as an example of *Lamfare*. He also notes the impressive information operations carried out by Hezbollah, both at the strategic and operational level.²³ In contrast with the other modes of warfare analysed in Hoffman’s work, the coordination level was not only detected on the strategic level, and in different battlespaces, it occurred right at the tactical level, and in the same battle space, being this one of the core characteristics noted by different experts.

Frank G. Hoffman finally explains his definition of *Hybrid Warfare*, or Wars, as those that “can be waged by states or political groups and incorporate a range of different modes of warfare including conventional capabilities, irregular tactics and formations, terrorist acts including indiscriminate violence and coercion, and criminal disorder.”²⁴ For Hoffman, what is significantly different is the ability of states and non-state actors to be operationally and tactically directed within the main battlespace in order to achieve synergistic effects.²⁵

This work and his subsequent publications provided a fertile environment for further developments on the specifics of the concept. However, it is worth note that the crux of what was elaborated in Hoffman’s writes is still valid for current discussions. It should, nevertheless, be highlighted that his theory is battlefield centric.²⁶

Who have also made a noteworthy approach to the concept was Élie Tenenbaum. Interestingly he also drew his conclusions from the concept of

²⁰ Hoffman, F. G. (2007), *op. cit.*, p. 41.

²¹ *Idem, ibidem*, p. 35.

²² *Idem, ibidem*, p. 37.

²³ *Idem, ibidem*, p. 38.

²⁴ *Idem, ibidem*, p. 58.

²⁵ *Idem, ibidem*, p. 14.

²⁶ Solmaz, T. (2022, February), *op. cit.*, p. 2.

“compound warfare”, where the most emblematic characteristic at the tactical level of irregularity is guerrilla warfare.²⁷ What was lacking to the latter mode of warfare was the later technological innovations. Tenenbaum highlights two transformative novelties in the mid-20th century. First, aviation, that “allowed parachuting of regular airborne troops directly on the enemy’s rear, so that they could join up with local guerrillas”²⁸, and second, the radio, which “offered the crucial opportunity to retain a command and control channel in spite of spatial non-linearity.”²⁹ So, in this authors’ perspective, *hybrid warfare* may not be a novelty, but it presents tactical and technological transformations “that may alter the relationship between the two main modes of war.”³⁰ He gave a very revealing example in the eastern Ukrainian context. He reported that high-end medium-range surface-to-air missile (SAM) systems, such as the “Russian Buk System (SA-11/17) (...) whose range and performance make it much more deadly than any MANPADS” were, in 2015, at the disposal of pro-Russian militias.³¹ He also asserts that other capabilities, for instance, precision mortars, armoured vehicles and other conventional military equipment, are “swelling the ranks of many irregular groups [and] are altering the regular-irregular tactical balance”³², as well as, the “good use of social media and other user-generated content web platforms” that is enabling these groups “to conduct state-of-the-art propaganda and psychological warfare campaigns.”³³

The top rank military who would also become very famous among west researchers, military and politicians would be the Russian Chief of General Staff, General Valery Gerasimov. In fact, he would become famously known for the “Gerasimov Doctrine” unveiled in an article he published in 2013. As cited by Réne Värk³⁴, Gerasimov said that “in the 21st century we have seen a tendency toward blurring the lines between the states of war and peace”; “wars are no longer declared

²⁷ Tenenbaum, É. (2015). Hybrid Warfare in the Strategic Spectrum: An Historical Assessment. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO's response to Hybrid Threats*, p. 100.

²⁸ *Idem, ibidem*, p. 103

²⁹ *Idem, ibidem*

³⁰ *Idem, ibidem*, p. 108

³¹ *Idem, ibidem*, p. 109

³² *Idem, ibidem*, p. 109-110

³³ *Idem, ibidem*, p. 110

³⁴ Värk, R. (2020), *op. cit.*, p. 3.

and, having begun, proceed according to an unfamiliar template”; and “the role of non-military means of achieving political and strategic goals has grown, and, in many cases, they have exceeded the power of force of weapons in their effectiveness.” This idea, that was also considered for some authors as an “exposé” of Russian military doctrine and thinking³⁵, is consistent with Russian practice towards its adversaries and/or enemies. In fact, what came to popularize the concept of *Hybrid Warfare* was the Russian military activities in and around Ukraine, particularly in Crimea with its annexation through the parallel use of unconventional tactics, where it employed “a mix of non-kinetic tools including cyber-attacks, propaganda, disinformation, economic coercion, and diplomatic pressure, and military methods such as conducting covert operations and empowering proxy warriors.”³⁶

As mentioned before, after the Russian annexation of Crimea, the concept grew in popularity, and has actually been stretched to accommodate new and more vast conceptions. Some authors emphasised core characteristics of Hoffman’s definition or added new ones, for example, Arsalan Bilal refers to the use of tools of subversion, ambiguity and attribution³⁷; Andres B. Munoz Mosquera underlines the “denial” of the hybrid actors’ actions³⁸; Erik Reichborn-Kjennerud and Patrick Cullen speak of “horizontal escalation”, including recruitment, propaganda and ideological mobilization, as well as, in the case of State actors, “highly centralized abilities to coordinate and synchronize their instruments of power”³⁹; Tarik Solmaz qualifies activities carried out by Hybrid actors as “sub-threshold”⁴⁰; Aurel Sari highlights in his several papers on this topic that one of the main traits is the “synergistic use of multiple levers of power across different domains”⁴¹; Diego A. Ruiz Palmer says that “Hybrid Warfare bridges the divide between the hard and soft power applications that

³⁵ Sari, A. (2 de outubro de 2015). Legal Aspects of Hybrid Warfare. *LAWFARE*.

³⁶ Solmaz, T. (2022, February), *op. cit.*, p. 1.

³⁷ Bilal, A. (2021, November). Hybrid Warfare – New Threats, Complexity, and ‘Trust’ as the Antidote. *NATO Review*, p. 2.

³⁸ Mosquera, A. B., & Bachmann, S. (2016). Lawfare in Hybrid Wars: The 21st Century Warfare. *Journal of International Humanitarian Legal Studies*, p.18.

³⁹ Reichborn-Kjennerud, E., & Cullen, P. (2016). What is Hybrid Warfare? *Norwegian Institute for International Affairs (NUPI)*, p. 2.

⁴⁰ Solmaz, T. (2022, February), *op. cit.*, p. 2.

⁴¹ Sari, A. (2021, November). Hybrid threats and the law: Building legal resilience. *Hybrid CoE Research Report 3*, p. 12.

result from the technological and information revolutions”⁴², and Mosquera, Bachmann and Bravo mention that Hybrid actors synchronize their instruments in order to “maximize the economy of force” and thus “achieve the goal of the system” while “defeating or damaging the adversary with the minimum investment of resources and, as a result, on responsibility/attribution”. The references to, for example, the “highly centralized” coordination and synchronization,

Mosquera and Bachmann note that one of the most recent definitions issued by a State official source is from the United Kingdom Ministry of Defence in a memorandum to the Defence Committee that comprehensively catches most of the elements discussed:

“Hybrid warfare can be characterised as a comprehensive strategy based on a broad, complex, adaptive and often **highly integrated combination of conventional and unconventional means**. It uses **overt and covert activities**, which can include **military, paramilitary, irregular and civilian** actors, targeted to achieve (geo) **political and strategic objectives**. Hybrid warfare is directed at an adversary’s vulnerabilities, focussed on **complicating decision making** and **conducted across the full spectrum** (which can encompass diplomatic, political, information, military, economic, financial, intelligence and legal activity) whilst **creating ambiguity and deniability**. Hybrid strategies can be **applied by both state and non-state actors**.”⁴³

Another interesting and helpful work was conducted by the US-led Multinational Capability Development Campaign (MCDC) to help to better understand the core of the concept. First, they refer to a “relative novelty”⁴⁴, which, by doing so, acknowledges that there is no radical transformation between this and other methods of warfare, yet recognizing that some characteristic elements are

⁴² Palmer, D. A. (2015). Back to the Future? Russia’s Hybrid Warfare, Revolutions in Military Affairs, and Cold War Comparisons. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO’s response to Hybrid Threats*, p. 83.

⁴³ Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*, p. 68.

⁴⁴ Multinational Capability Development Campaign. (2017, January). Understanding Hybrid Warfare. (P. J. Cullen, & E. Reichborn-Kjennerud, Edits.) *MCDC Countering Hybrid Warfare Project*, p. 3.

transformative, i.e., “ability to synchronize multiple instruments of power simultaneously and intentionally exploit creativity, ambiguity, non-linearity and the cognitive elements of warfare.”⁴⁵ Other authors refer to instruments of power using the model PMESII (Political, Military, Economic, Social, Infrastructure, and Legal instruments)⁴⁶. MCDC also picks on some of the previous elements to state that the ultimate objective is to exploit our understanding of war and tailor the attacks to be below “certain detection and response thresholds” and impede a proper reaction to a hybrid attack.⁴⁷

Hybrid warfare and Hybrid Threats

In the meantime, some authors started using “threat” instead of “warfare”, or using one or the other indistinctly, which added confusion to the already challenging task of bringing a common agreed definition to life. However, this research will adopt a rather simple distinction based on a few premises. The first is terminological, i.e., what defines a threat. General Abel Cabral Couto considers that a “threat is any event or action, of vary nature, which opposes to the prosecution of an objective, and it is often harmful”⁴⁸ and Escorrega completes by saying that a given situation may be considered as a threat if the author is capable to carry it out, and if he has the will to provoke it.⁴⁹ Hybrid threats are, thus, “passive, being real or imagined threats from possible future actions against oneself.”⁵⁰ Hybrid Threats are in much of its essence very similar to *Hybrid Warfare*, i.e., it can be conducted by a state or a non-state actor, its actions are “coordinated and synchronized”⁵¹, it results from the “convergence and interconnection of different elements”⁵² and it targets “the political, social, economic, military and other vulnerabilities of Western nations in pursuit of strategic

⁴⁵ Multinational Capability Development Campaign. (2017, January), *op. cit.*, p. 3.

⁴⁶ Mosquera, A., Bachmann, S., & Bravo, J. (2019). Hybrid Warfare and the Legal Domain. *Terrorism and Political Violence*, p. 3

⁴⁷ Multinational Capability Development Campaign. (2017, January), *op. cit.*, p. 10.

⁴⁸ As cited Escorrega, L. C. (2009, August/September). A Segurança e os "Novos" Riscos e Ameaças: Perspectivas Várias. *Revista Militar* (2491/2192), p. 6. Translated by the author.

⁴⁹ *Idem, ibidem.*

⁵⁰ Weissmann, M. (2019). Hybrid warfare and hybrid threats today and tomorrow: towards an analytical framework. *Journal on Baltic Security*, 5(1), p. 18.

⁵¹ Hybrid CoE. (2022). Hybrid threats as a concept.

⁵² Pawlak, P. (2017, March). Countering hybrid threats: EU-NATO cooperation. *European Parliamentary Briefing*, p. 2.

goals.”⁵³ In fact, “hybrid threats should be reserved for situations where States or non-State actors employ non-violent means of warfare as instruments of warfare by integrating them with the use of armed force or the threat of force”, i.e., hybrid threats and warfare/war are part of the same phenomenon, where the latter poses specific different threats. What makes it hybrid is its conjugation with military force or threat, that employed to such a degree, could amount to hybrid war. Russian activities since mid-2014 have been labelled as Hybrid (warfighting included) because various experts started to link the core characteristics of Hoffman’s and others’ definitions with its actions. Because since then Russia has engaged in an intense strategic competition with the west, with which it often employs destabilizing operations of great similarities to those employed against other adversaries (mainly Ukraine, Moldova, and Georgia), and with the infamous capacity and potential will to go further on the use of armed force, the [hybrid] threat it poses to the West is in fact real.

However, they are not necessarily part of a military campaign, whether hybrid or conventional, and may not even be in the imminence of a conflict. Legally speaking, hybrid threats, *per se*, lack the triggering conditions of Article 51 of the United Nations Charter, because, by definition, they remain below that threshold, as there may not be a resort to armed force, although it still constitutes a “complex and multidimensional threat.”⁵⁴ In other words, “it is more precise to use the term ‘hybrid war’ only when an armed conflict exists.”⁵⁵ This is the reason why the EU more often prefers to use *threat* instead of *warfare*, as the former is more consistent with its policies and purpose, contrarily to NATO as it will be addressed in the next chapter. As Sari well says, the “definition of hybrid threats may offer a fitting description of the current geopolitical condition”⁵⁶ of intense and aggressive competition.

Due to the existent conceptual confusion and, in some cases, undifferentiated use of both concepts among different authors, much of the elements used in the

⁵³ Sari, A. (2019). *Legal Resilience in an Era of Gray Zone Conflicts and Hybrid Threats*. Exeter Centre for International Law, p. 13.

⁵⁴ Pawlak, P. (2017, March), *op. cit.*, p. 2.

⁵⁵ Cilevics, B. (2018). Legal Challenges Related to Hybrid War and Human Rights Obligations. *Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights*, p. 9.

⁵⁶ Sari, A. (2019), *op. cit.*, p. 13.

course of this research may suggest similar confusion, however, they will be, to the maximum extent possible, deconflicted for clarity purposes.

A Look at the Criticism

At this point, it is clear that the usage of the idiom *Hybrid Warfare* in its multiple shapes will not be exempt of criticism. The first among the critics is its lack of conceptual clarity, as it is often called a “catch-all phrase” which distorts “the traditional distinctions between peace, conflict, and war” and is pushed to the point of becoming “conceptually synonymous with grand strategy.”⁵⁷ Caliskan and Liégeois⁵⁸ also point out the broadness and dilution of the definition as one of the main reasons for criticism, on the basis that the meaning has already been attributed to the rise of ISIS, drug cartel violence in Mexico, and the Russian strategy in Ukraine. This conceptual elasticity is a result not only of the evolving nature of warfare, but also the need to go beyond the original approach “included in the West’s military lexicon as a battle-field centric concept.”⁵⁹ Other authors question the alleged novelty of this mode of warfare, which can be used to “describe anything unconventional”⁶⁰, whereas some characteristic novelties could already be identified “in the past in the practice of State and non-State actors.”⁶¹ Murray and Mansoor said that the combined use of conventional and irregular tactics have been around “since ancient times.”⁶² Even Jens Stoltenberg, NATO’s Secretary General, once said that “it is as old as the Trojan Horse.”⁶³ Tienhoven additionally notes that in the definition of Hoffman and Glenn, “it is not clear whether non-military means should also be taken into account.”⁶⁴ To summarize, the main critics are - no novelty (and, thus, its utility), vagueness of the term (due to dilution and stretching) and extent of the military means (which may be also as result of stretching the original approach).

⁵⁷ Reichborn-Kjennerud, E., & Cullen, P. (2016). *What is Hybrid Warfare?* Norwegian Institute for International Affairs (NUPI), p. 1.

⁵⁸ Caliskan, M., & Liégeois, M. (2021). *op. cit.*, p. 8.

⁵⁹ Solmaz, T. (2022, February), *op. cit.*, p. 2.

⁶⁰ *Idem, ibidem*, p. 7.

⁶¹ *Idem, ibidem*, p. 10.

⁶² *As cited in* Tienhoven, M. v., & Leeuwen. (2016). *Identifying "Hybrid Warfare"*. Master Thesis, Leiden University, pp. 10-13.

⁶³ Stoltenberg, J. (2015, March 25). Keynote speech at the opening of the NATO Transformation Seminar.

⁶⁴ Tienhoven, M. v., & Leeuwen. (2016), *op. cit.*, pp. 10-13.

As the previous discussion demonstrates, some of the criticisms are fair, insofar as it is undeniable that it exists a lot of unclarity around the hybridity of warfare, conflict, and threats; it is also a fact the there is doubt on to what extent the criterion set by one author is accepted by the other; it is also conceivable that a potential uselessness may result from using the concept in a wide range of situations; and the fact that the coordination between conventional warfare and other modalities, such as irregular warfare, always existed. Nevertheless, even those who do not agree with the applicability of this concept recognize that it has some utility. Reichborn-Kjennerud and Cullen, for instance, admit that it is a “valuable way of describing the intellectual challenges adversaries are bringing”, and that if adversaries are looking for new ways of getting around the West’s traditional war fighting, then the western States must also detach themselves from “an instrumentalist, technician, battle-centric and kinetic understanding of war”⁶⁵. This also reflects the opinion of Lasconjarias and Larsen, who say “it is nevertheless useful in providing perspectives on the rising complexity of NATO’s security challenge.”⁶⁶ It is worth saying that a notable work was made by Manon van Tienhoven in his Master thesis. His methodology consisted in selecting the perspectives of the three most prominent academics and triangulate it with other modes of warfare and empirical evidence from two “uncontested” warfare cases: Daesh in Syria and Iraq, and Russia in Crimea. He concluded that all eight characteristic modes of warfare (conventional, irregular, terrorism, criminal activities, political, economic, information, and social) occurred in Crimea, and five in Syria and Iraq (conventional, irregular, terrorism, criminal activities, information)⁶⁷, which means that although a lack of clarity exists in current definitions (and he recognizes it), it is possible to operationalize it.

Moreover, despite all the criticism, one thing appears to be incontestable – the threats that the West faces today are unprecedented and are due to the rapid technological advances. This conclusion can be drawn from those of are more critic about the novelty and usefulness of the concept, as is the case of Wittes⁶⁸, from those

⁶⁵ Reichborn-Kjennerud, E., & Cullen, P. (2016), *op. cit.*, p. 1.

⁶⁶ Jacobs, A., & Lasconjarias, G. (2015). NATO’s Hybrid Flanks: Handling Unconventional Warfare in the South and the East, *op. cit.*, p. 275.

⁶⁷ Tienhoven, M. v., & Leeuwen. (2016)., *op. cit.*, p. 47.

⁶⁸ Wittes, B. (2015, September 11). What Is Hybrid Conflict? *LAWFARE*.

who admit that the novelty may be questioned but believe that the threats it poses are new, like Sari⁶⁹, and from those who believe that besides *Hybrid Warfare* being a new phenomenon is additionally and increasingly aggravated by technology.⁷⁰ Frank G. Hoffman too said in 2007 that “hybrid challengers”, specifically referring to non-State actors, would not limit themselves to “low tech applications”⁷¹ and that they would “learn how to use high technology in unique and unanticipated ways”.⁷²

The argument that *Hybrid Warfare* is not new, and thus, does not pose any specific challenges to its targets, seems to be difficult to sustain in the face of technological developments. As seen previously, although “compound wars” benefited from a synergistic employment of both regular and irregular forces, Tenenbaum⁷³ also said that the Radio and Aviation revolutionized the level of synchronization observed in this type of warfare. For Hoffman, as Caliskan and Liégeois summarize⁷⁴, the level of synchronization found in *hybrid warfare* is distinguishable by reaching down to the tactical level, not only in terms of warfighting capabilities, but of “learning cycles” and “transfer [of] lessons learned (...) from one theater to another.”⁷⁵ If this were Hoffman’s conclusions in 2007, fifteen years later evidence can only lead to an aggravated situation in that matter. New technologies, in particular, in the field of information and communication technologies, “have created vulnerabilities and opened new vectors for malign interference that are qualitatively and quantitatively” novel.⁷⁶

The cyberspace dimension plays here a crucial role, and it presents itself as a completely new element in warfare. Not only States, but non-State actors as well, consistently rely on this domain to target its adversaries in the context of *Hybrid Warfare*. As seen before, non-State actors have long benefited from the increasingly easy access to conventional forces weaponry (as Hoffman concluded in regard to

⁶⁹ Sari, A. (novembro de 2021), *op. cit.*

⁷⁰ Thiele, R. (março de 2020). Artificial Intelligence – A key enabler of hybrid warfare. *Hybrid CoE Working Paper 6*, p. 5.

⁷¹ Hoffman, F. G. (2007), *op. cit.*, p.10.

⁷² *Idem, Ibidem*, p. 16

⁷³ Tenenbaum, É. (2015), *op. cit.*, p. 103.

⁷⁴ Caliskan, M., & Liégeois, M. (2021), *op. cit.*

⁷⁵ Hoffman, F. G. (2007), *op. cit.*, p. 53.

⁷⁶ Sari, A. (2021, November), *op. cit.*, p. 12.

Hezbollah), however, what is really transformative in the role of these actors in *hybrid warfare* is the use of modern and technological tools. Along with their “good use of social media”, which allows them to communicate and conduct “state-of-the-art propaganda and psychological warfare campaigns”, relatively affordable military cutting-edge technologies are available to them, as well as dual-use commercial technology as simple as “Google Earth’s high definition satellite imagery, GPS and other navigation systems, civilian UAVs, night vision goggles and even laser guidance systems.”⁷⁷

Artificial Intelligence, among others (such as big data, quantum technology, robotics, autonomous systems, etc), for instance, is catalogued by NATO as an Emerging and Disruptive Technology. It has a great disruptive potential because it “open[s] up new avenues for violence, as well as for the use of force in a hybrid warfare/conflict environment” and has the potential to increase the complexity of warfare, pushing it further to grey zones. Widespread distribution of AI technologies, e.g., machine learning and use of algorithms, will have a significant impact on cyber operations, decision-making, electronic warfare, targeting, training and situational awareness, to name a few.⁷⁸ It benefits Hybrid actors a lot, since its actions are primarily intended to remain below “obvious detection and response thresholds” and they rely on the “speed, volume and ubiquity of digital technology.”⁷⁹ Wittes gives an example of how paralysing this threat could become. After attending a panel discussion among various experts on the legal implications of *hybrid warfare*, he reported the experience of one participant. That participant said that the combination of volume and opacity of suspicious malign incoming network traffic can be “so large and so opaque that induces a paralysis in the response” in network time.⁸⁰ For NATO, the fresh elements in comparison to other destabiliser methods that long existed, such as sabotage, deception or propaganda, is the “speed, scale and intensity, facilitated by

⁷⁷ Tenenbaum, É. (2015), *op. cit.*, p. 110.

⁷⁸ Thiele, R. (2020, March), *op. cit.*, pp. 5-6.

⁷⁹ Gaiser, L. (2019). NATO-EU Collaboration on Hybrid Threats: Cooperation Out of Necessity with Potential Consequences on International Legal Framework. *National Security and the Future*, 20(1-2), p. 3.

⁸⁰ Wittes, B. (2015, September 11), *op. cit.*

technological change and global interconnectivity.”⁸¹ In Palmer’s view⁸², these transformative technologies benefit aggressors in the full spectrum of conflict, depending on the necessity and/or opportunity, i.e., it can help to achieve a “decisive military advantage in the *context of hostilities*”, or a “decisive political advantage *short of war*”. Russia, in particular, has been exploring for the last three decades both the necessity, in situations in which it is involved in *Hybrid Warfare*, as it is currently in Ukraine, and opportunity in the presence of West’s vulnerabilities, aiming for maximizing asymmetry and minimizing the risks and costs.⁸³ Returning to “Gerasimov’s doctrine”, although his acknowledgment that the “combination of all elements of power to achieve strategic objectives is nothing new”, new technologies have allowed the effectiveness of the effects of such integration to be exponentially magnified by the “sophisticated modalities” of employing political elements in the place of military ones.⁸⁴ In the field of “Hybrid Threats”, the Canadian Centre for Cyber Security assessed in mid-June of 2022 that state-sponsored cyber actors “have almost certainly increased cyberespionage” targeting NATO member’s governments, academia and critical infrastructures, and that Russia is “almost certainly in the process of developing cyber capabilities” against EU and NATO members⁸⁵, on the other hand, in the field of *Hybrid Warfare* it is assessed that persistent cyberattacks have accompanied kinetic operations, and that “almost certainly Ukrainian sovereignty was violated well before any actual invasion.”⁸⁶ This is important to understand the continuum of Russian hybrid action and validate that some threats posed by Russia are in fact “hybrid”, in the sense that they differ from those posed

⁸¹ NATO. (2022, June 21). *NATO’s response to hybrid threats*.

⁸² “Necessity and opportunity are the mirror-image of one another: where advances in technology that support key military functions –e.g., intelligence, surveillance, reconnaissance; information fusion; communications; navigation; precision targeting – offer the prospect of attaining decisive military advantage *in the context of hostilities*, other advances in technology– web-based information technologies; instant, mass communications; computer hacking; the persistent use of cyber warfare to inflict damage on foreign information infrastructure; etc. – aim at attaining a decisive political advantage *short of war*. In Palmer, D. A. (2015), *op. cit.*, p. 82.

⁸³ *Idem, ibidem*, p. 83.

⁸⁴ Johnson, D. (2015). Russia’s Approach to Conflict: Implications for NATO’s Deterrence and Defence, *op. cit.*, p. 149.

⁸⁵ Canadian Centre for Cyber Security. (2022). *Cyber threat bulletin: Cyber threat activity related to the Russian invasion of Ukraine*.

⁸⁶ Tech Accord. (23 de maio de 2022). *The Technology Industry and the Age of Hybrid Warfare*.

to Ukraine only because, in regard to the it, the red line, that turns it into a war, was blatantly crossed.

Despite of some author's opinion that *Hybrid Warfare* - as the synergistic and highly integrated employment of regular and irregular forces, conventional and unconventional methods, covertly or overtly, and with the engagement of a broad spectrum of non-military tools in the context of hostilities - is not new, and to that regard even authors who embrace the concept attribute some fairness to that argument, the vastly majority of authors agree that recent technological developments radically innovate warfare. Actually, if one accepts that technological advances are revolutionary; if one agrees with Hoffmans when he attributes to the synchronization of efforts at the tactical level a core characteristic; and if the latter fact is only possible due to the former, then, it tends to seem that authors in apparent disagreement, agree more with each other than one is led to believe. So, even for those who refuse to call *Hybrid Warfare* to, for example, the activities carried out in eastern Ukraine at least since 2014, what really matters for the purpose of evaluating the legal challenges, as it will be done in the third chapter, is, regardless of the label that one puts on it, agree that a new phenomenon significantly alters the dynamics of warfare and strategic competition, and thus, entails new threats, particularly, on the legal domain.

Lawfare and Malign Legal Operations

Lawfare, as the military use of Law, or a way of making war by using Law as a weapon, was first addressed by USAF Major-General Charles Dunlap Jr. in 2001. In his article, he stated that the law would become, as it is, and with crescent predominance, “a prime feature of modern military interventions.”⁸⁷ What States do bear in mind is that, as Dunlap Jr. questions, other non-kinetic means “results in less suffering in war”, referring specifically to *Lawfare*. Yet, the author also considers that, contrarily, it may also have a more negative impact, by affecting others not directly involved in the conflict. In an article published later, Dunlap Jr.⁸⁸ slightly updates his definition to a “strategy of using – or misusing – law as a substitute for traditional

⁸⁷ Dunlap Jr., U. (2001). Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts. *Humanitarian Challenges in Military Intervention Conference*. Washington, D.C., p. 2.

⁸⁸ Dunlap Jr., C. J. (2008). Lawfare Today: A perspective. *Yale Journal of Interntional Affairs.*, p. 146.

military means to achieve an operational objective.” This update also carried a more neutral approach to the definition. Considering Law in the context of *Lawfare*, i.e., its weaponization, just like any other weapon, it can be used for both good and bad purposes.⁸⁹

In this regard, a different position has Susan W. Tiefenbrun, that sees *Lawfare* with an exclusively disruptive purpose. In her own words, “Lawfare is a weapon designed to destroy the enemy by using, misusing, and abusing the legal system and the media in order to raise a public outcry against the enemy”⁹⁰, consequently creating asymmetry in hostilities, which is, by definition, unfair. The major difference between these two approaches relies on the fact that one looks at this concept as a merely neutral mean of making war, like any other weapon that can be used to achieve military and strategic objectives. This understanding, as broad as it is, from my point of view, means that the Law can be used not only for offensive purposes but also for defensive ones, and in that same track of thought, to preventively deter offensives of similar nature. Susan W. Tiefenbrun, on the other hand, refers to the latter position as a premeditated misuse of the International Legal System, and then, no positive or even neutral usage can be drawn, thus making this argument the most delicate aspect of Dunlap Jr.’s arguments. As Orde Kittrie says in his book, “all three of these [Dunlap Jr.’s] definitions of lawfare are value-neutral.”⁹¹

With a similar approach to that of Dunlap Jr., Orde Kittrie, also conceptualize *Lawfare* in a neutral value way, further explaining that this can be divided into two different forms. These are “Instrumental Lawfare”, described as the “instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action”, and “compliance-leverage disparity lawfare”, in turn, described as “lawfare, typically on the kinetic battlefield, which is designed to gain advantage from greater influence that law, typically the law of armed conflict, and its processes exerts over an adversary.”⁹²

Kittrie also sets criteria to qualify a given action as *Lawfare*. For that purpose, he proposes that two tests must be met: “(1) the actor uses law to create the same or

⁸⁹ *Idem, ibidem*, p. 147.

⁹⁰ Tiefenbrun, S. (2011). *Semiotic Definition of "Lawfare"*. San Diego, p. 1.

⁹¹ Kittrie, O. F. (2016). *Lawfare: Law as a Weapon of War*. New York: Oxford University Press, p. 6.

⁹² Kittrie, O. F. (2016), *op. cit.*, p. 11.

similar effects as those traditionally sought from conventional kinetic military action—including impacting the key armed force decision-making and capabilities of the target; and (2) one of the actor’s motivations is to weaken or destroy an adversary against which the lawfare is being deployed.”⁹³ As we can see, Kittrie’s proposal is in line with all *Lawfare* definitions known so far, since it is precisely the link between the weaponization of Law and the military operational or strategic objective that makes this conceptualization pertinent.

For Sari, that does not see it value-neutral, the easiest example of *Lawfare*, is when an adversary deliberately violates its legal obligations with the purpose of obtaining an advantage on the battlefield illicitly.⁹⁴ For him, *Lawfare* is part of the Hybrid way of warfare, since adversaries intend to “legitimize their own behaviour and maintain their freedom of action” as well as “delegitimize” their adversaries’ manoeuvres, by resorting to law and legal arguments.⁹⁵ Another clear example of how law may be used as a method of *hybrid warfare* was witnessed in Ukraine in 2014 and in 2022. In 2014, the annexation of Crimea was allegedly an “exercise of self-determination”, the “little green men” were “local voluntaries with no links to Russia”, the sanctions to Russia were not lawful because “they were not adopted by the security council.”⁹⁶ In 2022, days before the invasion, Vladimir Putin appears in a pre-recorded televised speech recognizing the independence of Luhansk and Donetsk, so that he would have a pretext to send a peacekeeping mission by invitation of the separatists’ “independent” government, then concealing the actual illegal “special operation.”⁹⁷

Another expression, or phrase, used and proposed as more doctrinally appropriate, that, in comparison with the above developed understandings, matches Tiefenbrun’s negative value, is Malign Legal Operations, described as “the exploitation of legal domains by employing disinformation to shape legitimacy, justify violations, escape legal obligations, contain adversaries, and ultimately to

⁹³ Kittrie, O. F. (2016), *op. cit.*, p. 8.

⁹⁴ Sari, A. (2019), *op. cit.*, p. 9.

⁹⁵ *Idem, ibidem*, p. 17.

⁹⁶ Värk, R. (2020), *op. cit.*, p. 4.

⁹⁷ AP, Reuters, AFP. (2022, February 21). Russia recognizes independence of Ukraine separatist regions. *DW*.

advantageously revise the rule of law.”⁹⁸ This is particularly interesting because it links *Lawfare* with the broader phenomenon of Malign Operations (MALOPS) within *Hybrid Warfare* strategies. In fact, Russia has been particularly engaged in MALOPS as we observed in the 2018 seizure of Ukrainian military personnel and equipment when trying to transit the Kerch Strait from Black Sea to Sea of Azov; also in the 2016 United States Elections, Russia carried out Information Operations, in line with its hybrid strategy to weaken the democratic institutions in other States and to seek social disruption.

One of the most paradigmatic examples of *Lawfare* in the International arena is the claim by the Popular Republic of China of the Islands in the South China Sea and the adjacent waters, by resorting to a so-called nine-dash map. The concrete behavior of China in the region relies on the building of islands where before only submerged reefs existed.⁹⁹ Considering the UNCLOS, an Island is defined as “a naturally formed area of land, surrounded by water, which is above water at high tide” restricting any “rocks which cannot sustain human habitation or economic life of their own” of being considered as such. With this behavior, adding to the heavy military presence and operations in the maritime region, China is very likely, and along with a long-term strategy, consolidating its maritime rights, jurisdiction claims and reinforcing its capacity to deter other States’ claims.¹⁰⁰

Moreover, before moving on, it is worth pointing out the due distinction between *Lawfare* and Conventional Application of Law. As Guilherme Berriel says, the former phenomenon should not be seen as exclusively juridical, but as a strategic one as well, and “norms, principles and methods of the legal discipline are insufficient to understand, explain or regulate the practice in its amplitude.”¹⁰¹

⁹⁸ Fisher, B. (2019). The Kremlin’s Malign Legal Operations on the Black Sea: Analyzing the Exploitation of Public International Law Against Ukraine. *Kyiv-Mohyla Law and Politics Journal*, 5, p-198.

⁹⁹ Guilfoyle, D. (2019, September). The rule of law and maritime security: understanding lawfare in the South China Sea. *International Affairs*, p. 14.

¹⁰⁰ Fravel, T. (2011). China's Strategy in the South China Sea. *Contemporary Southeast Asia*, 33(3), p. 298.

¹⁰¹ Oliveira, G. T. (2021, April/June). “Lawfare” e o uso do direito como instrumento de guerra. *Revista Inclusiones*, 8(Especial).

2 – NATO's Evolution and Adaptation to New Threats

NATO and the Soviet Union

World War II had left a trail of destruction in Europe, killing 36 million people, many of them civilians, and causing the displacement of millions. The end of the Nazi rule had also paved way for the Soviet expansion in Eastern Europe, where Joseph Stalin wanted to create a buffer zone against the west, installing satellite communist governments. The Soviet Union was emerging as a super power and the tensions with Western Countries were heating, as well as political instability. On the one hand, the Truman Doctrine seek to provide Europe with political, military and economic assistance to all democratic nations under threat aimed at containing the Soviet expansion. On the other, Ernest Bevin UK was committed to find a solution in the sequence of failed negotiations with the USSR, which first lead to the signature of the Brussels Treaty in 1948, signed by Belgium, France, Luxembourg, the Netherlands, and the UK.¹⁰² The core objective of this treaty was to signal cooperation among Western European countries, as well as to encourage the US to join the. It would happen on April 4, 1949, with the establishment of the North Atlantic Treaty in Washington DC, together with other 6 Countries, among which, Portugal. In a speech after the signature of the Treaty the then-US President, Harry Truman emphasised that the aim of the treaty was “to maintain friendly relations and economic cooperation with one another. To consult together whenever the territory or independence of any of them is threatened. And to come to the aid of any one o them who may be attacked.”¹⁰³

When in 1955 West Germany followed other countries into the Alliance, the Soviet Union faced it as if a red a line had been crossed and retaliated by forming its own regional alliance, the Warsaw Pact, or the Warsaw Treaty Organization, which also took the form of a collective defence commitment among the Soviet Union and its communist partners in Eastern Europe. The bipolarization of the tensions led to

¹⁰² Insall, T., & Salmon, P. (2014). *The Brussels and North Atlantic Treaties, 1947-1949: Documents on British Policy Overseas, Series I, Volume X*. Routledge, pp. xi-xx.

¹⁰³ Harry S. Truman (1949), Address on the Occasion of the Signing of the North Atlantic Treaty Online by Gerhard Peters and John T. Woolley, The American Presidency Project

the heavy development and test of nuclear arms for the following 10 years, with France, the UK and the US testing and experimenting them in various parts of the world.¹⁰⁴ In 1961, after other tests, the USSR detonated the world's most powerful nuclear weapon, the Tsar Bomba, estimated to be at least a 50-megatonne atmosphere blast, three thousand times more powerful than the atomic bomb dropped over Hiroshima, and with a much larger range.¹⁰⁵ At this stage, both NATO and the Soviet Union were in possession of the most destructive nuclear weapons. Even though they were capable of using these weapons against each other, the resort to it would automatically decimate both sides. Aware of the danger this situation constituted globally, the UK, the US, the Soviet Union and 59 other states opted for signing the Treaty on the Non-Proliferation of Nuclear Weapons in 1968, "under which the three major signatories, which possessed nuclear weapons, agreed not to assist other states in obtaining or producing them."¹⁰⁶ The Cold War would not be a conventional war with the two sides never directly fighting each other, instead, it would be more an ideological battle of influence and power between the Soviet Communism and the American capitalism with loads of tense events, from the arms race to the Berlin blockade, and Vietnam and Korean War. The most difficult moment was possibly the Cuban missile crisis, which pushed the Cold War to its highest temperature, and to the brink of a nuclear war.

During the subsequent years, NATO was growing and becoming stronger, whereas the Soviet Union was struggling to hold on to Eastern Europe, which was heating the internal difficulties and would culminate in Khrushchev deposition. With American own problems at home, mainly regarding the protests over Vietnam and Cambodia, Nixon and Brezhnev, were both looking to stabilize relations, and in 1969 they begun talks over a strategic arms limitation treaty, which would freeze the existing number of intercontinental ballistic missiles on the two sides. This marked the beginning of a period of *détente*, referring to a period of easing of tensions between nations. However, with the Soviet deployment of SS-20 ballistic missiles in Eastern Europe in 1976, the

¹⁰⁴ Bergkvist, N. O., & Ferm, R. (2000). Nuclear Explosions 1945-1998.

¹⁰⁵ "Tsar Bomba." Atomic Heritage Foundation, 8 Aug. 2014

¹⁰⁶ Freedman, L. D. (2022, June 24). *Treaty on the Non-Proliferation of Nuclear Weapons*. *Encyclopedia Britannica*.

invasion of Afghanistan in 1979, and the election in 1981 of Reagan, this *détente* period had ceased to exist. The US President would then put in motion a policy known as “Peace through strength” intended to “break their backs to keep up, or to agree to reductions” and consisting in forcing the Soviet Union into a new arms race they would not keep up, due to American vast computer technological superiority. This strategy would result in the first of five meetings among Regan and Gorbachev between 1985 and 1988. Gorbachev’s domestic political situation was diffculted by the years of economic stagnation and growing discontent in eastern Europe¹⁰⁷, and so he knew things would have to change, namely on the unattainable arms race that was accentuating economic difficulties. As part of his different and more open policy towards not only the West, but the USSR itself, he implemented numerous reforms. This would lead to significative changes and meaningful events, such as the signature in December 1987, between him and Regan, of the Intermediate Nuclear Forces Treaty that resulted in the destruction of over two and a half thousand nuclear weapons, the cut by half a million men in Eastern Countries, and the well-known democratic awakening through all these peoples subjected to the repression of “Brezhnev Doctrine”. The Soviet Union would then collapse in 1991.

Returning to NATO, during this period, its mission was clear – deter Soviet expansionism and nuclear and conventional aggression. “If there had been no threat of Soviet aggression, there would have been no NATO”¹⁰⁸, and to that threat, NATO responded with “Massive Retaliation”¹⁰⁹ and forward presence. Generally, authors agree on NATO’s overall success in maintaining peace in Europe during the Cold War. Legally speaking, NATO’s legal framework was clear – collective defence, enshrined in Article 5 of the Washington Treaty, towards an enemy State and under the clause of Article 51 of the UN Charter.

With the dismemberment of the USSR marking the end of the Cold War, NATO did not disappear from the radar. Although it was formed to respond to the

¹⁰⁷ Kramer, M. (2003). The collapse of East European communism and the repercussions within the Soviet Union (Part 1). *Journal of Cold War Studies*, 5(4), p. 181.

¹⁰⁸ Schake, K. & Pepe, E. (2019, April). 70 years of NATO: the strength of the past, looking into the future. *NDC Policy Brief* 9.

¹⁰⁹ NATO (2022, June). A Short History of NATO.

specific threat posed by the Eastern Bloc, it survived until today, and that is why it has been considered the most successful military Alliance in history. It was in the post-Cold War that NATO started its long-lasting and uninterrupted process of adaptation, that is still today an important attribution of NATO's staff. The first and official mindset change carried out by the Alliance was materialized in the 1991 Strategic Concept, approved in London in 1990. The document reflects on the, at the time, new strategic environment, "in which a single massive and global threat has given way to diverse and multi-directional risks"¹¹⁰, at a new approach to the south and Middle East, as well as proliferation of weapons of mass destruction, actions of terrorism and sabotage. On the core tasks, it elaborates on the other two for the first time. Beyond the original one – collective defence, it refers to the management of crisis and conflict prevention, and cooperative security through bilateral and multilateral cooperation "in all relevant fields of European security"¹¹¹.

NATO in Yugoslavia

The following year to the approval of the Strategic Concept, in 1992, NATO offered support to the UN in the Former Yugoslavia, after serious fighting erupted in June 1991 between Croatia and Slovenia, which had declared independence, against Serbs leaving in Croatia supported by the Yugoslav People's Army¹¹². With tensions growing and unsuccessful attempts to resolve the crisis, the UN adopted unanimously Resolution 713 (1991) calling for a "general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia"¹¹³. In October 1992 NATO began the operation "Sky Monitor" to monitor the No-Fly Zone (NFZ) declared by the United Nations over Bosnia-Herzegovina to prevent the use of aerial fire¹¹⁴ and in March 1993, after two villages have been bombed east of Srebrenica, the UNSC decided to authorize Member States to take "all necessary measures" in the airspace of BiH to enforce the adherence to the NFZ, "acting nationally or through regional

¹¹⁰ NATO Strategic Concept (1991)

¹¹¹ *Idem, ibidem.*

¹¹² UNPROFOR. (n.d.).

¹¹³ Resolution 713 (1991) adopted by the Security Council at its 3009th meeting, on 25 September 1991.

¹¹⁴ SHAPE. (n.d.). That the first combat action by NATO forces took place in 1994, 45 years after the creation of the alliance?

arrangements”.¹¹⁵ Under the Authority of the UN, NATO began Operation DENY FLIGHT to enforce the NZ. Months later, in February 1994, in what would become “the first combat action in NATO’s history”, four of six Bosnian Serbs aircrafts were shot down while conducting a “bombing mission in clear violation of the UN No-Fly Zone.”¹¹⁶ UN Operation, with the help of NATO and other countries military means, proceeded with the sequence of several other events.

Another event that would become well-known, for its success in halting de humanitarian catastrophe¹¹⁷, on the one hand, or, in the opinion of some authors, for its violation of International Law, as Aaron Schwabach explains¹¹⁸, would be the Kosovo Air Campaign or the Bombing Operation in the Federal Republic of Yugoslavia - “Operation Allied Force”.

NATO’s involvement in the Former Yugoslavia was the first major military engagement of the Organization after the Cold War, and it would be the first of many take overs of missions not directly connected to its collective defence¹¹⁹ and to its Area of Responsibility. To it, it would follow ISAF in Afghanistan¹²⁰, “Operation Unified Protector” in Lybia¹²¹ and counter-piracy operations off the Horns of Africa and Gulf of Guinea.¹²²

Since the end of the Cold War, NATO’s involvement in the Balkans would be one of the first times operating out-of-area (OOA), i.e., “anywhere outside the territorial integrity of the member states”¹²³, and thus, one of the first major reconfigurations. Politically, at that time it was said that or NATO would go out of area, or it would go out of business. On a legal perspective, nothing has forced to a substantial legal adaptation other than operating under the mandate of a UNSCR

¹¹⁵ UNPROFOR. (n.d.).

¹¹⁶ SHAPE. (n.d.), *op. cit.*

¹¹⁷ NATO. (2022). Kosovo Air Campaign (March-June 1999).

¹¹⁸ See Schwabach, A. (1999). The Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia. *Pace International Law Review*, 11(2), 405–418.

¹¹⁹ Latawski, P., & Smith, M. A. (2018). Kosovo and NATO’s post-Cold War adaptation. *The Kosovo Crisis and the Evolution of post-Cold War European Security*.

¹²⁰ NATO. (2022). ISAF’s mission in Afghanistan (2001-2014).

¹²¹ NATO. (n.d.). Operation UNIFIED PROTECTOR NATO No-Fly Zone over Libya. *Fact Sheet*.

¹²² NATO. (2022). Counter-piracy operations (2008-2016).

¹²³ Sendmeyer, S. A. (2010). *NATO Strategy and Out-of-Area Operations*. School of Advanced Military Studies - United States Army Command and General Staff College, p. 16.

setting the scope of its operation. However, on the Kosovo Air Campaign, there were also some debates surrounding its lawfulness in regard to Article 2(4), as the Alliance alleged it was entitled of the right to anticipatory collective self-defence, a contested interpretation of the customary right to self-defence and Article 51 of the UN Charter, and until there, not exercised.¹²⁴

NATO, the 9/11 and Terrorism

The terrorist phenomenon, although not new, was only strategically considered for the first time in the 1999 Strategic Concept¹²⁵, far from being considered a priority and totally unaware of the importance that was coming ahead. The suicidal terrorist attacks carried out by Al-Qaeda on US soil on September 11, 2001, killed around 3000 people and caused great destruction in New York City as two of the four hijacked aircrafts were flown into the twin towers of the World Trade Centre, and other into the Pentagon. It was a moment that glowed the entire world to the TV in a state of shock and incredulity. Besides that, it was also the moment that the US, as well as NATO, although it has already been object of reflection, namely in the 1999 Strategic Concept, faced a new reality in the hardest way. The so-called process of globalization has brought with it the gravest form of terrorism ever witnessed, which threat was emanated far from NATO's Allies territories. Even though NATO has invoked the principle of Article 5 nearly less than 24 hours after the attacks, it was only on 2 October, after an investigation determine that the attack was directed from abroad, that the North Atlantic Council (NAC) agreed to regard the attack "as an action covered by Article 5"¹²⁶, making it the first and only time that action was took under the collective defence commitments. It consisted of eight measures to support the US and two operations – Operation "Eagle Assist" and Operation "Active Endeavour". The 9/11 is regarded by many as a watershed moment in the history of the Organization because, in fact, after the attacks, a succession of events led to transformative changes. However, others are of the opinion that the attacks were not, by itself, "a paradigm shift for the Alliance" but

¹²⁴ Schwabach, A. (1999), *op. cit.*, p. 417.

¹²⁵ NATO Strategic Concept (1999)

¹²⁶ NATO. (2022). Collective defence - Article 5.

more of an accelerator of the on-going debate and internal tensions since the end of the Cold War.¹²⁷ However, on the practical side, it had direct implications on NATO's future. Not only it set the scene for a broader out-of-area involvement, which also led to almost twenty years of military engagement in Afghanistan (although of different natures during that period), but it also carried transformations on the perception and in countering the terrorist threat, which is still today, one of the main concerns identified in the strategic environment. It is also an interesting and demonstrative fact of its adaptive nature that the first time NATO invoked Article 5 was anything but close to the originally designed purpose of deterring and defending against a State threat. In that sense, one can also argue that it was the first legal adaptation of Article 5, and judging by its scale, the biggest legal adaptation at all, since it meant the "broaden" of the collective self-defence scope to encompass non-State actors and not only "military invasion"¹²⁸. This may have also created a challenge for future counterterrorism efforts. It is until today debatable the lawfulness of the US and NATO operations in Afghanistan territory, but at the time, moved by some reasonable emotional solidarity, there was the perception that it was legal and ethical¹²⁹. In principle, it would be harder today, politically and legally, to respond with the same weight to a similar situation, as the past experience (perceived negatively by some and worsen with the withdrawal in 2021) also carries its value. Additionally, there is a divisive issue among Allies that may prevent coordinated military action against terrorist groups under NATO's hat, which is concerned, for example, to some legal heterogeneity in the methods of intelligence gathering, that may not be in accordance with some State's legal standards. As of 2010, terrorism became designated as a "direct threat to the security of citizens of NATO countries"¹³⁰, and policies and guidelines were drawn – in May 2012 new guidelines for Alliance work on counter-terrorism are endorsed, as well as the military concept for defence against terrorism, released to the public in 2016. In both, it is clearly stated that there must

¹²⁷ Hallams, E., Ratti, L., & Zyla, B. (2013). Introduction – A New Paradigm for NATO? In *NATO Beyond 9/11*, p. 20.

¹²⁸ Michael, R. (2013). Reflections on 9/11: A View from NATO. In *NATO Beyond 9/11*. P.57

¹²⁹ Chin, W. (2015). *NATO and the Future of International Terrorism and Counterterrorism*. Centre of Excellence Defence Against Terrorism, p. 21.

¹³⁰ NATO Strategic Concept (2010)

be full compliance with International – “UN Charter and the Universal Declaration of Human Rights. The UN Global Counter-terrorism Strategy, International Conventions and Protocols against terrorism and relevant UN Resolutions provide the framework for all (...) efforts to combat terrorism.”¹³¹ What NATO lacks is a legal framework to act pre-emptively in the face of a terrorist threat emanating from outside its borders.¹³²

NATO, Russia and Today

Since the Cold War and until today, there have always been a connecting element of NATO’s history. Despite some authors have sentenced NATO to caducity in different moments - after its original and core purpose fell with the Berlin wall, or with the lack of purpose deemed by the same who considered de organization “brain dead” in 2019, it always found way of showing utility. Although relations with Russia enjoyed some prosperity, particularly since its joining to the North Atlantic Cooperation Council in 1991, followed by the beginning of practical cooperation in 1994 with the participation of Russia in the Partners for Peace Programme, and ultimately, in 1997, by signing the 1997 NATO-Russia Founding Act which instituted a framework for bilateral relations through, for instance, the NATO-Russia Permanent Joint Council, later replaced by the NATO-Russia Council. Beside the political developments, between 1998 and 2002 both parties agreed to create political and military channels of communication, first by establishing a Russian Diplomatic Mission to NATO, in 2001, an Information Office in Moscow and in 2002, a Military Liaison Mission, all sought to avoid misunderstandings, increase military predictability and transparency, and reduce the risk of conflict, at least these were the desired goals.¹³³ On the military side, it’s worth noting that for almost 5 years, Russian participated along with NATO in peacekeeping operations, first in BiH and later in Kosovo. Among the Stabilisation Force (SFOR) 20 000 troops, Russia contributed with around 1200, and to the Kosovo Force (KFOR) contributed with some 3 150 of the 40 000 troops.¹³⁴ About two decades later, the scenario in these countries has

¹³¹ NATO. (2012). NATO’s policy guidelines on counter-terrorism. Para.5

¹³² Chin, W. (2015), *op. cit.*, p. 23.

¹³³ NATO. (2022). Relations with Russia.

¹³⁴ *Idem.* (n.d.). NATO and Russia: Partners in Peacekeeping.

changed considerably. Apart from the tensions covered below, in BiH, for instance, and for the purpose of comparing these specific situations, Russia has moved to a strategy of destabilization through a set of hybrid techniques, primarily, disinformation and psychological operations, targeting mainly the Serbian speakers, in particular, in the Republika Srpska (RS) of Serb-majority.¹³⁵ It is doing so also by constraining the peace process set out by the Dayton peace accords, through cutting the financing of the Office of the High Representative (HR) to Bosnia, by backing RS's claims that hinder the process, by disturbing the appointment of the HR, or, as it tried to do with the support of China without success, reduce HR powers and competences.¹³⁶ In Kosovo, on the other hand, where NATO, under the UNSCR 1244, is still leading a peace support operation, without Russian contributions since July, 2003¹³⁷, the scenario has its own peculiarity. Although Russia does not recognize officially Kosovo sovereignty, there are evidence, according to Orhan Dragaš¹³⁸ that the latter is treated *de facto* as independent by the former. This may be considered a crossroad situation for Russia. On the one hand, after Belarus, Serbia is its stronger Allie in Eastern Europe and is the stronger voice against Kosovo sovereignty. On the other hand, recognizing Kosovo's people independence plays in favour of the recently declared Republics of Donetsk and Luhansk. Actually, an argument the TASS agency says was raised by Putin in a meeting with the UN Secretary-General António Guterres.¹³⁹ Apparently it doesn't mean neither that Russia is not willing to "encourage its ally Serbia into an armed intervention in northern Kosovo."¹⁴⁰

To put these last facts into context, one needs to return a few years. Russo-Georgia war is considered as a pivotal moment in NATO-Russia relations by the fact that both were increasingly reading differently the current events, "from the 'colours revolutions' in Georgia and Ukraine to the gas disputes between Gazprom and

¹³⁵ Salvo, D., & de Leon, S. (2018). *Russia's Efforts to Destabilize Bosnia and Herzegovina*. German Marshall Fund of the United States, p. 2.

¹³⁶ Reuters. (2022, April 19). Russia suspends financing of Bosnia peace envoy's office. *Reuters*.

¹³⁷ NATO. (2003). Russian troops leave KFOR.

¹³⁸ Dragaš, O. (2022, July 14). How Russia de facto recognised Kosovo. *Euractiv*.

¹³⁹ TASS. (2022, April 26). Putin cites precedent of Kosovo in explaining recognition of DPR, LPR. *TASS*.

¹⁴⁰ Euronews. (2022, August 22). "Protect Serbs in Kosovo or we'll do it ourselves," Vucic warns NATO. *Euronews*.

Naftohaz Ukraini.”¹⁴¹ Despite the path of cooperation in the post-Cold War period, there were always moments of heightened tension and disputes over certain events, such as the NATO strikes in BiH between 1994-1995, in Kosovo airstrikes in 1999, where Russia, although opposing to such attacks, abstained from taking any action. In 2008 things changed considerably, as it was clear that Russia was willing to level up its military ambitions regarding the former Soviet States.¹⁴² Already in 1992 Russia had conducted what it called a peacekeeping operation in Transnistria among the conflict between the Moldovan government and the separatists, also known as the Moldo-Russia war. Later, not only Georgia, but Tajikistan too would be subject to a non-UN mandated peacekeeping operation, under the pretext that they were conducted in agreement with Chapter VII of the UN Charter (regional arrangements).¹⁴³

The post-Soviet period is understood by some authors as a period of Russian fragility¹⁴⁴, what may very well explain its limited actions amid some disputes and the openness for peace and cooperation with the West, and particularly with NATO. After Putin first came to power in 2000, Russia has been making a trajectory of reclaiming its global status as a great power, increasingly engaging in confrontations and threats to its western neighbours.¹⁴⁵ If one is to identify the moment when this reassertion moment was patently exposed, Vladimir Putin’s speech in the Munich Security Conference in February 2007, may very well be it. As cited by Forsberg¹⁴⁶, his words were: “I am convinced that we have reached that decisive moment when we must seriously think about the architecture of global security”. It may also have been a response to NATO enlargements between March 12, 1999, and March 29, 2004, when several former USSR republics and former members of the Warsaw pact joined the Alliance, as is the case of Estonia, Latvia and Lithuania, and Hungary,

¹⁴¹ Monaghan, A. (2011). NATO and Russia: resuscitating the partnership. *NATO Review*.

¹⁴² Cottey, A. (2021). The West, Russia and European security: Still the long peace? *The British Journal of Politics and International Relations*, 24(2), p. 217.

¹⁴³ Forsberg, T. (2018). Russia and the European security order revisited: from the congress of Vienna to the post-cold war. *European Politics and Society*, 20(2).

¹⁴⁴ *Idem, ibidem*.

¹⁴⁵ Ucko, D. H. (2022, July 29). Resetting Article 5: Toward a New Understanding of NATO’s Security Guarantees.

¹⁴⁶ Forsberg, T. (2018), *op. cit.*

Czechia, Bulgaria, Poland, Romania and Slovakia, correspondingly. In the case of Georgia, it was clear its path towards the West since the rise of “Western-minded Mikheil Saakashvili to power” that immediately impacted relations between Tbilisi and Moscow.¹⁴⁷ His intentions were to get more support from NATO and the US and strengthen the relationship started in 1994 when practical bilateral cooperation started under the Partnership for Peace programme.¹⁴⁸ This was the “*casus belli*” for Russia that had then to find a pretext to “teach Georgia a lesson”.¹⁴⁹ Similarly to Ukraine in 2014, it used the instability breakaway provinces of South Ossetia and Abkhazia to put pressure on Tbilisi, and along with its peacekeeping forces already deployed in these territories since the 1990s¹⁵⁰, it set up and sustained irregular forces aiming at creating the pretext to declare them as independent States, and hindering Georgia’s integration with West Institutions.

The 2008 Georgia war led to a temporary suspension of the NATO-Russia Council (NRC) and cooperation in some areas¹⁵¹, however, in what is also considered an example of “mutual restraint”¹⁵², and due to the risk of escalation, it was considered important to maintain channels of communication and so, the NRC meetings resumed in spring 2009. The military intervention in Georgia was likewise a focal point for NATO understanding of a potentially new type of threat emanated from Russia, since some authors see it as the first time Russia employed *hybrid warfare* techniques.¹⁵³ As Hoffman noted in 2018¹⁵⁴, the “fusion of advanced military capabilities with irregular forces and tactics (...) has appeared repeatedly (...) in Georgia” and Georgia’s crisis was a key moment for Russia’s development of its hybrid tactics, as the lessons learned would be crucial for the 2014 intervention in Ukraine.¹⁵⁵ On a NATO perspective, Russian intervention in Georgia called for a

¹⁴⁷Muradov, I. (2022). The Russian hybrid warfare: the cases of Ukraine and Georgia. *Defence Studies*, 22(2), p. 183

¹⁴⁸ NATO. (2022). Relations with Georgia.

¹⁴⁹ Muradov, I. (2022), *op. cit.*, p. 183.

¹⁵⁰ *Idem, ibidem*, p. 185.

¹⁵¹ NATO. (2022). Relations with Russia.

¹⁵²Cottey, A. (2021). *op. cit.*, p. 216.

¹⁵³ *Idem, ibidem*, p. 218.

¹⁵⁴ Hoffman, F. G. (2018, November 8). Examining Complex Forms of Conflict: Gray Zone and Hybrid Challenges, p. 38.

¹⁵⁵ *Idem, ibidem*, p. 39.

need to reflect on the Alliance's ability (or lack it), to respond to crisis in its neighbourhood, all the more in a period of a active engagement out-of-era, i.e., Afghanistan.¹⁵⁶

After the Georgia Crisis everything pointed to a renewed period of peaceful relations with Russia. Despite NATO's condemnation of Russia's independence recognition of South Ossetia and Abkhazia in the Strasbourg/Kehl Summit (2009), it still called for continued dialogue and cooperation between Russia and the Alliance.¹⁵⁷ In 2010 the Strategic Concept referred to "actively seek cooperation on missile defence with Russia"¹⁵⁸; "Russian agreement" on Nuclear Arms reduction and transparency¹⁵⁹; "NATO-Russia cooperation is of Strategic importance" and "we want to see a true strategic partnership"¹⁶⁰. The Security Environment didn't count with any conventional threat against its territory and refused to directly attribute any specific threat to the Russian Federation, although recognizing being targeted by cyber-attacks by, *inter alia*, "foreign militaries and intelligence services".¹⁶¹ In the years that followed, Russia cooperate with NATO in a vary of fields, from fighting against terrorism, to joint counter-piracy and submarine-rescue exercises.¹⁶²

Assessing with today's lenses, 2014 was the year when everything radically changed. It's difficult to identify the exact triggering event, but it is generally agreed that the tensions started rising with several protests against the former Ukrainian President Yanukovich, seen as a pro-Russia and Putin's "puppet"¹⁶³, after he rejected an association with the European Union in 2013 in order to get closer to Russia. The pro-European protests, known as "Euromaidan", that started in November 21, 2013, would be violently repressed by the police and last for 3 months. In February, the former President Yanukovich would abandon the country and seek exile in Russia. However, the difficult situation would only get worse in the following months. Crimea

¹⁵⁶ Ucko, D. H. (2022, July 29), *op. cit.*

¹⁵⁷ NATO Strasbourg/Kehl Summit Declaration (2009)

¹⁵⁸ NATO Strategic Concept (2010)

¹⁵⁹ *Idem, ibidem.*

¹⁶⁰ *Idem, ibidem.*

¹⁶¹ *Idem, ibidem.*

¹⁶² NATO. (2020, March). NATO-Russia Relations: The Background.

¹⁶³ Kramer, A. E. (2019, January 24). Ukraine's Ex-President Is Convicted of Treason. *The New York Times*

has been part of Ukrainian territory since its independence in 1991, nonetheless enjoying a special status and autonomy. To Russia, however, this mostly Russophone and ethnical Russian territory being part of Ukraine was only unacceptable. In late-February, unmarked and unidentifiable uniformed and armed men started occupying key positions, administrative facilities, and checkpoints¹⁶⁴, to soon realize that they could only be professional special forces coming from Russia, despite President Putin emphatical denial of the facts, and operating along with “local armed actors, economic clout, disinformation, and exploitation of socio-political polarisation in Ukraine.”¹⁶⁵ These troops would become famously known as “little green men”. Bloodlessly Russia achieved its strategic objective and in March 16 a referendum was conducted. Not only the plebiscite would be considered unfair due to the lack of international observers and armed men securing polling stations, but it also manifestly violated Ukrainian constitution and International Law.¹⁶⁶ Only five days later the referendum unrealistic results¹⁶⁷ were revealed, a Treaty of Accession of the Republic of Crimea to Russia was already being ratified by Vladimir Putin.

In April, pro-Russian separatist in Eastern Ukraine regions of Donetsk and Luhansk began fighting against the Ukrainian Army and local authorities, in an attempt to seize territory and administrative buildings, at the same time that, as NATO intelligence revealed, Russia was amassing approximately 40,000 troops along the Ukrainian border, including fighter jets, tanks and artillery.¹⁶⁸ Russian officials denied this claim, saying that the satellite imagery was from past military drills. Among these “pro-Russian separatists” or “Russian-backed militias” there were actually Russians citizens who have served, for instance, in FSB, the Russian Federal Security

¹⁶⁴Pifer, S. (2020, March). Crimea: Six years after illegal annexation.

¹⁶⁵ NATO. (2021, November). Hybrid Warfare – New Threats, Complexity, and ‘Trust’ as the Antidote. *NATO Review*.

¹⁶⁶ Bellinger, J. B., III. (2014, March 16). Why the Crimean Referendum Is Illegitimate.

¹⁶⁷ Pifer, S. (2019, March 9). Five years after Crimea’s illegal annexation, the issue is no closer to resolution.

¹⁶⁸ Thompson, N. (2014, April 15). Fighter jets, special forces: Photos “show Russian military buildup” near Ukraine. *CNN*.

Service¹⁶⁹. This was the case of Igor "Strelkov" Girkin, who retired just weeks before moving to lead rebels in Ukraine.¹⁷⁰

As Ukraine was making some progresses in combating the rebels, despite some fierce losses, Russia was increasing its level of support of local rebels. It has been reported that in mid-June “a trio of unidentified Soviet-era tanks appeared in Ukrainian towns near the Russian border”¹⁷¹, in early August ten Russian paratroopers were captured by Ukrainian forces when they “crossed it by accident [the border]”, said a Russian Defence Ministry source¹⁷², and in July, the US showed evidence that Russia was firing artillery from its side of the border to the Ukraine’s.¹⁷³

In the following weeks the situation got worse and Ukraine significantly increased the pressure on the rebels after they shot down a civil airplane with almost three hundred people onboard using “high-tech surface-to-air missiles”.¹⁷⁴ In response to the Ukrainian offensives and to what started to seem to be a defeat of its proxy fighters¹⁷⁵, what was until mid-August a rather obvious Russian covert involvement in the hostilities, became an overt and conventional invasion of Ukraine on August 24.¹⁷⁶ From May 26 to August 24, “Russia employed a hybrid approach. The integration of irregular fighters, conventional capabilities, and regular Russian units in summer 2014 seems to have been an effort to bridge the desire for vertical escalation with low costs and deniability.”¹⁷⁷ In early September, Ukrainian authorities and the Russian-backed separatists signed a 12-point agreement in the city of Minsk that was intended to institute a ceasefire, halt the violent clashes that killed more than 2,600 people (although other sources refer to a higher toll), proceed with prisoners

¹⁶⁹ Gessen, K. (2014, September). Why not kill them all? *LRB*.

¹⁷⁰ Fisher, M. (2014, September 3). Everything you need to know about the 2014 Ukraine crisis. *Vox*.

¹⁷¹ Ukraine - The Poroshenko administration. (n.d.). *Encyclopedia Britannica*.

¹⁷² BBC News. (2014, August 26). Captured Russian troops “in Ukraine by accident.” *BBC News*.

¹⁷³ DeYoung, K. (2014, July 27). U.S. releases images it says show Russia has fired artillery over border into Ukraine. *The Washington Post*.

¹⁷⁴ Fisher, M. (2014, September 3), *op. cit.*

¹⁷⁵ Dews, F. (2014, August 29). What Brookings Experts Are Saying about Russia’s Invasion of Ukraine.

¹⁷⁶ Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., & Oberholtzer, J. (2017). *Lessons from Russia's operations in Crimea and Eastern Ukraine*. Rand Corporation, p. 44.

¹⁷⁷ *Idem, ibidem*, p. 69.

exchange, the delivery of humanitarian aid and the withdrawal of heavy weapons.¹⁷⁸ Notwithstanding, Russia took this opportunity to strengthen the separatists' preparedness and resources and to turn them into a "more capable conventional force".¹⁷⁹ They did so until January 13, 2015 when Russia launched a second offensive which pushed back Ukrainian forces and allowed for the take-over of the Donetsk Airport symbolic battlefield among other violations by both sides of the cease-fire agreed in September. On February 12, representatives of the Russian Federation, Ukraine and the Organization for Security and Cooperation in Europe (OSCE), as well as, subsequently, the leaders of the two breakaway regions of Donetsk and Luhansk agreed on a 13-point accord that would soon be, once again, breached in a muddle false arguments and violence. Until the revival of the Eastern Ukraine crisis in February 2022, Russia, although in denial, was in violation of the Minsk Agreements, as it refused to accept that it is part of such agreements and claimed that the two separatist regions representatives were "recognized as legitimate entities under the Minsk Agreements", it prevented OSCE Monitoring Mission from carrying out their activity, and so on.¹⁸⁰ The conjunction of the deal, itself, with the way Russia has been conducting its *hybrid warfare* in the region granted "Moscow its permanent frozen conflict in Ukraine" and a *de facto* control over it, with the ultimate goal of keep with its destabilization and deny "Ukraine a path to NATO or EU membership."¹⁸¹ In its assessment of Russian activity in Ukraine, Mosquera and Bachmann stated that it was "particularly sensitive to Lawfare due to an apparent asymmetric adherence to the international rule of law among involved actors"¹⁸² and the intentional "undefined situation" without a clear "definition of the conflict (whether it constitu[ted] international armed conflict, non-international conflict, or civil unrest"¹⁸³ and to which NATO, included, struggle to identify.

¹⁷⁸ Reuters. (2022, February 21). Factbox: What are the Minsk agreements on the Ukraine conflict? *Reuters*.

¹⁷⁹ Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., & Oberholtzer, J. (2017), *op. cit.*, p.44

¹⁸⁰ Volker, K. (2021, December 16). Don't Let Russia Fool You About the Minsk Agreements.

¹⁸¹ Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., & Oberholtzer, J. (2017), *op. cit.*, p.45

¹⁸² Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*, p.1

¹⁸³ Mosquera, A. B., & Bachmann, S. (2015), *op. cit.*, p.27

In preparation for the NATO Summit in Lisbon, in 2010, the NATO Strategic Commands, Allied Command Operations and Allied Command Transformation, had already developed a contribution to countering Hybrid Threats¹⁸⁴, however, it did not count on the dramatical change of circumstances - although real, it was yet rather abstract. Already in April 2014, NATO had suspended all the practical civilian and military cooperation with Russia and in September 2014 almost fully dedicated the Wales Summit to Russia's actions against Ukraine. In its final communiqué it addresses officially for the first time the *hybrid warfare* threat posed by Russia and the need to adapt and be able to effectively respond to these kinds of threats. It remembered the Russian behaviour against Georgia and Moldova, and publicly established a pattern of Russia's new assertive posture, of "disregard for international law".¹⁸⁵ It supported the sanctions imposed by the EU and the Western countries as a necessary part of the "international effort to address the destabilizing behaviour of Russia" and finally stated that the conditions to pursue the desired cooperation did not exist. NATO additionally agreed on a Readiness Action Plan aimed at significantly strengthen collective defence by improving "responsiveness and effectiveness of its forces and deter threats."¹⁸⁶

The events in Ukraine compelled NATO to become aware of its own limitations when it comes to respond to "events that fall in between the seams of its three-part strategic construct."¹⁸⁷ It found it very hard to respond, even politically, to Russia's "strategy of deception, ambiguity, and denial" as well as in terms of assessing the "size and scale" of Russia's involvement.¹⁸⁸ According to Andreas Jacobs and Guillaume Lasconjarias¹⁸⁹, NATO could build on the developments made years before about a "Comprehensive Approach", that although not tailored to respond to *hybrid warfare* threats (called the "dark side" of NATO's Comprehensive Approach)

¹⁸⁴ SACEUR & SACT (2010, August 25). *Bi-SC Input to a New NATO Capstone Concept for the Military Contribution to Countering Hybrid Threats*.

¹⁸⁵ NATO Wales Summit Declaration (2014)

¹⁸⁶ Brooke-Holland, L. (2016). *NATO's military response to Russia: November 2016 update*. House of Commons Library.

¹⁸⁷ Deni, J. R. (2021, December 2), *op. cit.*, p.1

¹⁸⁸ Oğuz, Ş. (2016). The new NATO: Prepared for Russian hybrid warfare? *Insight Turkey*, 18(4), p.172

¹⁸⁹ Jacobs, A., & Lasconjarias, G. (2015), *op. cit.*, p.271

were a first step to respond operationally to a new environment that counted on the blend of means used by different actors¹⁹⁰, such as “military, diplomatic, economic, information and social levers.”¹⁹¹ In 2015, further to the decisions took in 2014 Summit, the Alliance decided to size the VJTF at around 5 000 troops and the NRF at up to 40 000, as well as adapt its military and political decision-making process, in order to speed it up, which included new authorities delegated to the Supreme Allied Commander Europe (SACEUR) and the approval of the Graduated Response Plans, allowing a more swift path under the NATO’s Crisis Response Process. In December 2015 Foreign Ministers also agreed on a New Strategy on Hybrid Warfare built on three strategic vectors: to prepare, to deter, and to defend. This essentially aimed at an “increased responsiveness and readiness of NATO Forces, of intelligence, and of surveillance; improved situational awareness; the use of special operations and of cyber capabilities; and close cooperation with the European Union.”¹⁹² A very important step given in response to the decision-making process lag, especially when compared to Russia’s very centralized and speedy process (characteristic in authoritarian states), was the delegation to SACEUR of the authority to alert, stage, and prepare troops before the North Atlantic Council (NAC) decision to actually deploy those forces.¹⁹³ After the reported cyber-attacks against Ukraine and NATO members have proved to be “massive and effective”¹⁹⁴, in February 2016, together with the EU, a joint program was launched for “exchange of information and incident data in order to boost situational awareness of cyber threats” and Secretary General, Jens Stoltenberg, in the same year, as cited by Şafak Oğuz¹⁹⁵ stated that “a major cyberattack against the Alliance could trigger a collective response”, hinting about the 2016 Summit developments, when the cyberspace was declared a new operational domain, along with air, sea and land.¹⁹⁶ This had great impact and contributed for its consolidation in different aspects of Customary International Law, at the same time

¹⁹⁰ *Idem, ibidem.*

¹⁹¹ Oğuz, Ş. (2016), *op. cit.*, p. 175.

¹⁹² Oğuz, Ş. (2016), *op. cit.*, p. 175.

¹⁹³ Arnold, J. M. (2016). NATO’s readiness action plan: Strategic benefits and outstanding challenges. *Strategic Studies Quarterly*, 10(1), p. 79.

¹⁹⁴ Oğuz, Ş. (2016), *op. cit.*, p. 175.

¹⁹⁵ *Idem, ibidem.*

¹⁹⁶ Prucková, M. (n.d.). Cyber attacks and Article 5 – a note on a blurry but consistent position of NATO.

that it is an expression of the Article 5 of the Washington Treaty legal metamorphose - one of the most visible aspects of NATO's continuous legal evolution. Similarly, in the same Summit, it was declared that Allies were prepared to “counter hybrid warfare as part of collective defence” and that “the Council could decide to invoke Article 5.”¹⁹⁷ Apart from other developments, such as the institution of a Intelligence division at NATO Headquarters, the JISD (Joint Intelligence and Security Division) in 2017, under which a hybrid branch was created, it also established, in 2018, the counter-hybrid support teams. The underlying idea is that in order to effectively counter Hybrid Threats or Attacks, States must fulfil individual obligations under Article 3 of the Treaty, strengthening their resilience and thus “detering by denial”.¹⁹⁸ Since the “primary responsibility to respond to hybrid threats or attacks rests with the targeted country”¹⁹⁹ and “resilience is first and foremost a national responsibility” NATO decided to create a mechanism to assist Allies, and Partners too, “either in a crisis or to assist in building national counter-hybrid capacities.”²⁰⁰ The most obvious next step in NATO's path towards adaptation to Hybrid Threats, and once again, building on the previous concept of “comprehensive approach”, would be, as it was indeed, to bridge the “politico-military component” to the “societal and an economic dimension”²⁰¹ and transition to a “whole-of-society” approach.²⁰² Cooperation has also been designated a key feature for tackling these threats, not only with the EU, but also through other arrangements, such as the NATO-Ukraine Platform on Countering Hybrid Warfare, or the European Centre of Excellence for Countering Hybrid Threats.

While the situation in and around Ukraine had not yet met its end, other episodes harmed even more the relations between the Western Countries and Russia and made even more clear the disregard Russia had/has for the rules-based international order. In March 2018 Sergei Skripal, a former Russian Colonel from the

¹⁹⁷ NATO Warsaw Communiqué (2016)

¹⁹⁸ Rühle, M. & Roberts, C. (2021, March). Enlarging NATO's toolbox to counter hybrid threats. *NATO Review*.

¹⁹⁹ NATO. (2022, June 21). *NATO's response to hybrid threats*.

²⁰⁰ Rühle, M. & Roberts, C. (2021, March), *op. cit.*

²⁰¹ Kasapoglu, C. (2022, June). Countering hybrid threats: a new NATO core task?

²⁰² NATO Parliamentary Assembly. (2021). Developing a Whole-Of-Society, Integrated and Coordinated Approach to Resilience for Allied Democracies, p. 1

Russian Military Intelligence, known as GRU, who has passed information to the British MI6, and his daughter, were found unconscious after being exposed to a “military-grade nerve agent from the Novichok family developed by the Soviet Union in the Cold War.”²⁰³ At the time, NATO publicly attributed with high probability the attack to Russia, and demonstrated great concern for the occurrence of such event for the first time in the Alliance territory.²⁰⁴ In the same year, Russia was blamed for the attempt to hack the Organisation for the Prohibition of Chemical Weapons by the Netherlands and the UK.²⁰⁵ In December, the same year, Allies declared that Russia was in violation of the Intermediate-Range Nuclear Forces Treaty for developing and fielding the 9M729 missile system.²⁰⁶ In 2020, NATO was observing with great concern Russia’s hybrid operations Libya, Syria and Ukraine, the no-notice exercises and large-scale exercises, as well as the poisoning of Alexei Navalny.²⁰⁷ In October 2021 Russia suspended its mission to NATO and demanded the closing of NATO’s Information Office in Moscow, in a response to the Alliance’s expel of alleged Russian spies working within the delegation.²⁰⁸ Back in June, NATO Secretary General, ahead of the Brussels Summit, had already declared that “relationship with Russia is at its lowest point since the end of the Cold War.”²⁰⁹ Before the apparent radical split that recent events have provoked, NATO have been posturing itself regarding Russia’s aggressive actions with a “dual-track approach” at least since 2017, when, between 2022 and 2014, relations may have found its healthier state. However, the apparent ease NATO was living regarding the threat perception, came with other consequences. The French President’s declarations in reaction to the Trump administration’s apparent weakening commitment to its European Allies, when he

²⁰³ Corera, B. G. (2020, March 4). Salisbury poisoning: What did the attack mean for the UK and Russia? *BBC News*.

²⁰⁴ NATO (2018, March). Statement by the North Atlantic Council on the use of a nerve agent in Salisbury.

²⁰⁵ NATO (2018), Secretary General Annual Report, p. 20.

²⁰⁶ NATO (2019, February). Statement on Russia's failure to comply with the Intermediate-Range Nuclear Forces (INF) Treaty.

²⁰⁷ NATO (2020), Secretary General Annual Report, p. 20.

²⁰⁸ France 24 (2021, October 18). Russia closes NATO missions as ties plunge to new low.

²⁰⁹ Stoltenberg, J. (2021, June 14). Doorstep statement.

declared the “brain death” of NATO, was part of a European autonomy strategy in relation to the US, which necessarily favoured a less hostile relation with Russia.²¹⁰

These circumstances, in conjunction with the global crisis cutting defence investments and putting them on the backburner, or the idea that “NATO is well-nigh irrelevant when it comes to the main global security challenges”²¹¹, all contributed to question the real value of the Atlantic Alliance. Who also questioned the suitability of the Organization for the 21st century's new challenges, was NATO itself when in December 2019 the Leaders tasked the Secretary General to initiate a reflexion process known as NATO 2030, where, among the findings, hybrid threats deserved a relevant status throughout the document.

In spring 2021 Russia started amassing an unusual quantity of military personal and hardware along the Ukrainian border, under the pretext of “readiness checks”, “exercises that the Russian forces customarily conduct in March and April after the standard winter training program”²¹², although “reminiscent of Russia’s actions in 2014-15.”²¹³ In the months that followed, accompanied with a more aggressive rhetoric against Ukraine and its ties with the West²¹⁴, as well as media disinformation²¹⁵, the military build-up continued, distancing itself more and more from what Russia said were only exercises. As the Washington Post reported in October, the 41st Combined Arms Army didn’t return to Siberia (where it is normally headquartered) after the end of the exercises.²¹⁶ In December the Politico pointed out that “more tanks, mobile rocket artillery and advanced-range ballistic batteries” were being stationed near the border with Ukraine.²¹⁷ By the end of January, it was reported that Russia had deployed around 130 000 troops all around Ukraine, from

²¹⁰ Dobbins, J. (2019, December 3). Is NATO Brain Dead? *The RAND Blog*.

²¹¹ Rogers, P. (2022, May 24). The Ukraine war and NATO’s renewed credibility.

²¹² Bielieskov, M. (2021). Russian and Ukrainian Spring 2021 War Scare. *Center for Strategic & International Studies*, p. 1.

²¹³ *Idem, ibidem*, p. 2.

²¹⁴ Dixon, R., Sonne, P., & Stern D. L., (2021). Russian troop movements near Ukraine border prompt concern in U.S., Europe. *The Washington Post*.

²¹⁵ Crowley, M., (2021, December 4). U.S. Intelligence Sees Russian Plan for Possible Ukraine Invasion. *The New York Times*.

²¹⁶ Dixon, R., Sonne, P., & Stern D. L., (2021), *op. cit.*

²¹⁷ Mcleary, P. (2021, December 23). Russian buildup near Ukraine gains steam, new satellite images show. *POLITICO*.

Belarus to Crimea, and from Transnistria to Russia²¹⁸, matching the US Intelligence findings revealed in December pointing to the existence of invasion plans which included around 175 000 troops.²¹⁹ In response, NATO Allies reinforced the eastern flank and promised further deployments to strengthen its deterrence and defence.²²⁰ To Russian claims that it was withdrawing forces from the border with Ukraine in mid-February, Ukrainian President, Western leaders and NATO officials responded that everything pointed to the exact opposite, witnessing an actual reinforcement²²¹ rather than a “‘partial’ drawdown.”²²² In April 15, 2022 the State Duma (the lower house of the Federal Assembly of Russia) appealed to the President to recognise the two regions of Donetsk and Luhansk as independent States, to which Putin did not accede immediately and NATO Secretary General denounced as a “blatant violation of Ukraine’s territorial integrity and sovereignty” if implemented.²²³

However, on the 21st of February, after a “strange, stage-managed” security council meeting, Vladimir Putin addresses his Country in a speech marked by the repetition of some of the arguments enshrined in his July article “On the Historical Unity of Russians and Ukrainians”, by the refusal of Ukraine’s right to a “genuine statehood”²²⁴, by the threat posed by the US and NATO and Ukraine if it ever joined the Alliance, and more essentially, in a response to the lower house parliament appeal, by the decision of “immediately recognize the independence and sovereignty of the Donetsk People’s Republic and Luhansk People’s Republic.”²²⁵ The following day, the Federation Council would approve the president’s request to use the Armed Forces abroad as “peacekeeping forces aimed at maintaining peace and stability on

²¹⁸ Schwartz, M., Reinhard, S., & Holder, J. (2022, January 27). How Russia Has Increased Its Military Buildup. *The New York Times*.

²¹⁹ Crowley, M., (2021, December 4), *op. cit.*

²²⁰ NATO (2022, January 24). NATO Allies send more ships, jets to enhance deterrence and defence in eastern Europe.

²²¹ BBC News. (2022, February 17). Ukraine crisis: Russian claim of troop withdrawal false, says US. *BBC News*.

²²² Roth, A., & Oltermann, P. (2022, February 15). Russia confirms ‘partial’ withdrawal of troops from Ukraine border. *The Guardian*.

²²³ Roth, A. (2022, February 16). Duma manoeuvre points to Kremlin impatience in Ukraine standoff. *The Guardian*.

²²⁴ Reuters. (2022, February 21). Extracts from Putin’s speech on Ukraine. *Reuters*

²²⁵ *Idem, ibidem.*

the soil of Donetsk and Luhansk People’s Republics”, said the Council’s Chair²²⁶, as it resulted from the Article 3²²⁷ of the treaties signed between Russia and the separatists leaders. On that same day, among other world leaders, António Guterres, the UN Secretary General reacted with determination saying that such decision to recognize de independence was “a violation of the territorial integrity and sovereignty of Ukraine” and that troops sent to another country without its consent “are not impartial peacekeepers. They are not peacekeepers at all.”²²⁸ On the 23rd, the leaders from the two breakaway republics ask Russia for help to repel Ukrainian forces under the grounds that “Kyiv continues to build up its military presence (...) and receiving (...) support (...) from the US and other Western Countries.”²²⁹ At 5:30 local time of February 24, in another televised speech to the nation, Putin announced a “special military operation” to “protect people who have been subjected to abuse and genocide”²³⁰ and to “demilitarise and denazify Ukraine”²³¹, which was rapidly followed by air strikes a bit all over the country, targeting particularly the capital Kyiv.²³² Several experts have, since then, accused Russia of misinterpreting facts and International Law. Cavandoli and Wilson²³³ qualified Russian claims as unclear and uncoherent, stretching from the right to self-determination, to exceptions to the prohibition of the use of force based on distorted interpretations. Wuerth²³⁴ called Putin justifications “absurd” and arguments such as “collective self-defense” and “intervention by invitation” from the Popular Republics recognized by Russia are “laughably weak.” Dworkin²³⁵ calls it a “clear act of aggression and a manifest violation of Article 2(4) of the UN Charter”, among several other accusations

²²⁶ RIA Novosti (2022, February 22). The Federation Council agreed to the use of the armed forces outside the country. *RIA Novosti*.

²²⁷ “implementation of peacekeeping functions by the armed forces of the Russian Federation” in Roth, A., & Borger, J. (2022, February 22). Putin orders troops into eastern Ukraine on ‘peacekeeping duties.’ *The Guardian*.

²²⁸ Guterres, A. (2022, February 22). *Secretary-General's opening remarks at press encounter on Ukraine*.

²²⁹ Yeung, B. A. (2022, February 24). Live news. *CNN*.

²³⁰ AJ Staff (2022, February 24). ‘No other option’: Excerpts of Putin’s speech declaring war.

²³¹ Cavandoli, S., & Wilson, G. (2022). Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia’s Invasion of Ukraine. *Netherlands International Law Review*, p. 3

²³² *Idem, ibidem*.

²³³ *Idem, ibidem*.

²³⁴ Wuerth, I. (2022, February 25). International Law and the Russian Invasion of Ukraine. *Lawfare*.

²³⁵ Dworkin, A. (2022, February 25). International law and the invasion of Ukraine.

regarding *jus ad bellum*. On the conduct of hostilities, in June, the office of the High Commissioner for Human Rights informed that it had “received and visited sites that ‘may support claims that serious violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL), perhaps reaching war crimes and crimes against humanity, have been committed.’”²³⁶ In a paper for the NATO Defence College on the preliminary lessons learned from the Russian invasion, Thierry Tardy writes that Russian hybrid tactics against NATO members were recorded prior to 24 February, but kinetic operations were considered highly improbable, however he further develops that Russia’s invasion makes it “more difficult to exclude deliberate attack elsewhere.”²³⁷ On the early hours of the 24th, NATO heads of State and Government met in a VTC emergency North Atlantic Council (NAC) meeting for consultations under Article 4 of the Washington Treaty, where, at the request of SACEUR, the defence plans were publicly activated for the first time.²³⁸ The Leaders additionally condemned “in the strongest possible terms” Russia’s “unjustified and unprovoked” invasion and the grave violation of international law, as well as they demonstrated their strong commitment to Article 5, as “iron-clad”.²³⁹

Inevitably, the soon-to-be-approved Strategic Concept would be influenced by the recent events, characterising the current Strategic Environment as not at peace, and addressing with greater concern “the possibility of an attack against Allies’ sovereignty and territorial integrity.”²⁴⁰ This possibility is directly linked to the Russian Federation significant threat it poses to the Alliance peace and stability, by resorting to “conventional, cyber and hybrid means.”²⁴¹ On the hybrid realm, NATO pledged to invest more in the preparation, deterrence and defence against this tactics and

²³⁶ 9080TH (PM) meeting of the United Nations Security Council, June 28, 2022.

²³⁷ Tardy, T. (2022). Ukraine, NATO, and the Madrid Strategic Concept. In *War in Europe: preliminary lessons*. NDC Research Division, p. 14.

²³⁸ Stoltenberg, J. (2022, February 25). Press briefing following an extraordinary meeting of the North Atlantic Council.

²³⁹ NATO (2022, February 24). Statement by the North Atlantic Council on Russia's attack on Ukraine.

²⁴⁰ NATO Strategic Concept (2022), p. 2.

²⁴¹ *Idem, ibidem*, p. 4.

operations, as well as it emphasized that operations of such nature that might reach the level of an armed attack can lead to the invocation of Article 5.²⁴²

From the dissolution of the Soviet Union, by the hand of Mikhail Gorbachev, recently deceased by the time of this writing, until this very moment, numerous pages were written on the relationship between what has always been the major State threat to NATO members and Western Countries. During all these years, the level of competition and assertiveness emanated from Russia, as well as the will to impose its vision for a new global order with disregard for the rules-based international order has been increasing. This has, likewise, prompted the Kremlin to pursue its imperialistic objectives towards the former Soviet States through different techniques that circumvent and undermine International Law, among which *hybrid warfare*.

3 – Legal Challenges Resulting from *Hybrid Warfare*

Given that it is contextualized the evolution of the *hybrid warfare* concept and the milestones of NATO's evolution in the face of the different threats it has been confronted with, particularly, the most acute and contemporary of them – Russia, here it is the space to look at one specific perspective, sometimes overshadowed, which is part of the hybridity of modern conflicts. As the previous paragraphs have made clear, when Russia chose to invade Ukraine in February 2022, a set of legal arguments were publicly disseminated in different moments, as part of the Kremlin narrative and information warfare, intended to densify its propaganda and conceal the violation of International Law. Although it is so far not clear if and to what extent Russia is exploiting asymmetry and employing/controlling irregular forces in Ukraine (reason why it does not yet provide a useful case-study of Russia's *hybrid warfare*), it is a fact that until the day of the invasion, it has been waging a hybrid war with Ukraine, where the cyber domain, among other means, has played a crucial role. Another domain that is being intensively exploited is Law, and regardless of the warfare nature of the present conflict, it has been part of Russian *hybrid* campaign against its adversaries since many years. Among the several possible examples, it is 2014 military campaign against Ukraine, when it took advantage of the ambiguity itself created on

²⁴² *Idem, ibidem*, p. 7.

whether the armed conflict was international or non-international, thus constraining the applicability of International Law and identification of legal responsibilities.²⁴³

The primary challenge to the legal system that hybrid actors pose is directly linked to the unconventional warfighting that undermine the traditional distinction between the conventionally established states of peace and war, which, normatively speaking, imply different sets of regulating norms. As cited by Sari²⁴⁴, Lord Macnaghten, a famous British *law lord* from the 19-20th century, once asserted that “[t]he law recognizes a state of peace and a state of war, but... it knows nothing of an intermediate state which is neither the one thing nor the other—neither peace nor war”. The intrinsic attribution difficulty and ambiguity played in favour of the perpetrator of a hybrid campaign raises challenges not only to “international peace and security” but similarly weakens National and International Law “by questioning (...) the rules applicable in international relations in peace time and times of war”²⁴⁵, while it creates legal challenges to the law-abiding States and Institutions “in good-faith”²⁴⁶. Although International Law has significantly evolved during the past century, substantially since the end of the World War II and in particular regarding International Humanitarian Law, the truth is that the boundaries that stand between Grotius’ right to war and peace are becoming greyer and more blurred. This has resulted from the increasingly complexity posed by the State and non-State subverters of international norms that intentionally explore the seams of these two states. Adding to the difficult fact that “internal dividing lines [are not] necessarily becoming clearer”²⁴⁷, there are coordination obstacles between different branches of International Law, notably, IHL and International Human Rights Law (IHRL), as well as international norms applicable to Cyber Warfare, for instance. The more complexity there is in the legal arena, the more fertile ground there is to serve different purposes and arguments, and ultimately, advance one’s “operations and to impede the operations of their target”²⁴⁸, whereas not pursuing adequately a legal adaptation

²⁴³ Mosquera, A. B., & Bachmann, S. (2015). Lawfare and hybrid warfare – how Russia is using the law as a weapon. *Amicus Curiae*, 102, p. 27.

²⁴⁴ Sari, A. (2017). *Hybrid Warfare, Law and the Fulda Gap*. Law School University of Exeter, p. 19

²⁴⁵ Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*, p. 12.

²⁴⁶ Mosquera, A., Bachmann, S., & Bravo, J. (2019), *op. cit.*, p. 100.

²⁴⁷ Sari, A. (2017), *op. cit.*, p. 22

²⁴⁸ *Idem, ibidem*, p. 23.

to the specific threats of *hybrid warfare*, creates the problem of “incoherent application of the existing rules.”²⁴⁹ Legal uncertainties in international relations inevitably end up being the result of the intimate relation between International Law and international politics as well, what makes “all questions of international law [being] political.”²⁵⁰

The elements of *lawfare* as part of *hybrid warfare* can range from conflict attribution, that can comprehend, in the context of *jus ad bellum*, the denial of a State involvement in hostilities, or in the context of *jus in bello*, violating basic customary norms, such as seeking military sheltering in the vicinities of civilian infrastructures²⁵¹ (untargetable under IHL), to “aggressive internal laws”²⁵² which can be displayed, among other means, as *passportisation*²⁵³ campaigns, or the exploitation of the Law of Treaties, whether by the strategic withdraw from treaties or by claiming its invalidity, when, in fact, rejecting the *pacta sunt servanda* principle.²⁵⁴

The primary aim of hybrid adversaries is to impend the targets’ ability to respond in self-defence by sustaining legal asymmetry while still employing armed force.²⁵⁵ For such, hybrid actors resort to different techniques. Aurel Sari²⁵⁶ outlines the exploration of “legal thresholds, complexity and uncertainty”, the generation of “legal ambiguity”, the violation of legal obligations, and the utilization of “law and legal process to create narratives and counter-narratives” to attain the desired leverage. Värk²⁵⁷ complements that it is intended to greatly politicize the law and deliberately explore the existent loopholes. The Committee on Legal Affairs and Human Rights at the Council of Europe Parliamentary Assembly²⁵⁸ proceeds from

²⁴⁹ Pawlak, P. (2017, March). *op. cit.*, p. 3.

²⁵⁰ Sari, A. (2019), *op. cit.*, p. 7.

²⁵¹ Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*, p. 74.

²⁵² Mosquera, A., Bachmann, S., & Bravo, J. (2019). *op. cit.*, p. 103.

²⁵³ “Passportisation” is usually described as a tool of “mass extraterritorial naturalisation” and it is a characteristic instrument of Russian foreign policy. It was witnessed in other breakaway territories, such as Abkhazia and South Ossetia, Transnistria, Crimea and Donbas, and it is largely considered a violation of international law. See Burkhardt, F. (2020, March 3). Russia’s “Passportisation” of the Donbas.

²⁵⁴ Mosquera, A. B., & Bachmann, S. (2016). *op. cit.*, p. 19.

²⁵⁵ Cilevics, B. (2018), *op. cit.*, p.13.

²⁵⁶ Sari, A. (2017), *op. cit.*, p. 30.

²⁵⁷ Värk, R. (2020), *op. cit.*, p. 28.

²⁵⁸ Cilevics, B. (2018), *op. cit.*, p. 15.

the exact idea that legal asymmetry is a key feature of hybrid adversaries' intention to create a legal grey zone where they can operate without the legal constraints all parties are obliged to. They seek to hamper their target's justified responses by exploiting lacunas and legal thresholds, by operating "across legal boundaries and under-regulated spaces" and by substantially violating the law "under cover of legal and factual ambiguity." This ambiguity is militarily and strategically rationalized among hostilities in order to be officially formulated and then distributed by the different media platforms. It takes the form of propaganda and incorporates, as it was said before, legal, and factual arguments to support military purposes.

In this context of uncertainties, also described as "the fog of Lawfare"²⁵⁹, law can be considered both as a weapon²⁶⁰, i.e., in an instrumental perspective, as it was previously described, and as a warfare domain. Conceptually, the legal domain may be "described as the normative and physical sphere of rules, actions, processes and institutions in which activities, functions, and operations are undertaken to achieve strategic effects"²⁶¹, in an analogous meaning to how one can describe the land, air, maritime and space domains.

What is of great relevance to this investigation, and particularly for NATO missions, is the impact of this legal asymmetry to law-abiding Allies' military operations and policy planning. *Hybrid Warfare* not only challenges general International Law, but specifically the portion of it that regulates armed conflicts, and which is traditionally tailored to "more tangible and conventional military warfare, and whose rules assume that that we can distinguish between states of peace and war."²⁶² Confronted with the actions of a hybrid adversary operating in "settings of non-conventional violence"²⁶³, the main issue is generally associated with the

²⁵⁹ Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*, p. 74

²⁶⁰ This weaponization of the Law, or Lawfare, was already covered before in Chapter I and can be understood as a value-neutral or negative concept, i.e., not necessarily as a misuse of the Law, or, on the other hand, a strict abuse of the Legal System.

²⁶¹ Sari, A. (2021, November), *op. cit.*, p. 17.

²⁶² Värk, R. (2020), *op. cit.*, p. 34.

²⁶³ Briscoe, I. (2013). *Non-conventional armed violence and non-state actors: challenges for mediation and humanitarian action*. Norwegian Peacebuilding Resource Centre, p. 4

applicability and enforcement of the corresponding legal framework, particularly IHL, IHRL and the prohibition of the use of force.

Ambiguity - Deniability and Attribution

Attribution of hybrid attacks is critical from a legal perspective because the unlawful act must be attributable to another State or non-State actor so that responsibility can be pursued. In the context of *jus ad bellum* it is critical to understand the limits of a possible response. Although it is a general difficulty that States face when confronted with a hybrid adversary, the cyber domain is particularly sensitive to this matter, where the attribution task is greatly challenged by technical obstacles and limitations. For instance, since cyberspace does not limit itself to physical borders and the perpetrators make great technical efforts to conceal the true source, which makes the task of “retrospectively establishing a forensic link”²⁶⁴ exceptionally difficult. As it was already mentioned, these conditions may create a situation of total paralysis that, postponing a response, may very well avoid misattribution and unwanted escalation, but at the same time, can also exceed the ideal moment to exert its right to self-defence under Article 51 of the UN Charter, whether in terms of effectiveness or in terms of legitimacy. The amount of time needed to comprehensively assess cyber attribution may preclude any right to respond by no longer verifying the “traditional necessity requirement.”²⁶⁵ Hybrid attacks of different natures are aimed at creating, as much as possible, a similar situation. Technological developments did not only contribute to increase the sophistication of cyber-attacks, but it did contribute too to the employment of more advanced weaponry, better synchronization of covert military operations and better coordination between military and non-military measures. Another complexity when attributing the authorship of an armed attack for the purpose of *jus ad bellum*, has to do with armed groups. Under the UN Charter and decisions held by the International Criminal Court (ICC), an armed attack is traditionally associated to States “through their land, air and maritime forces”, as it resulted from the definitions that informed the ICJ’s decisions

²⁶⁴ Finlay, L., & Payne, C. (2019). The Attribution Problem and Cyber Armed Attacks. *AJIL Unbound*, 113, p. 203

²⁶⁵ *Idem, ibidem*, p. 204

on the Nicaragua and Democratic Republic of Congo.²⁶⁶ The involvement of armed groups under the mandate of a third State adds complications to the equation. First, when fighting armed groups there is the question of evaluating the level of intensity, upon which the dispute may be raised from a law enforcement to a military case. For it to be considered a NIAC, “the hostilities must reach a minimum level of intensity.”²⁶⁷ Secondly, such groups must be considered a “Party to the conflict”, according to Article 3 common to the Geneva Conventions, which means that the non-governmental forces must “possess organized forces” and retain “certain command structure and have the capacity to sustain military operations.”²⁶⁸ Another issue is brought up regarding the involvement of a backing State. For that armed group to be considered as acting on behalf of a State, and therefore to consider the conflict as a IAC by attributing the armed attacks perpetrated by the armed group to a State, the relationship between them must be very close – “the group either had to be sent and controlled by the state itself (as a *de facto* state organ), or had to act under its direct instruction or control.”²⁶⁹ These context put the targeted States in a legal muddle intentionally generated by the hybrid adversaries, where one common strategy is the use of proxies. Proxy wars may be characterized for having a “major power” playing an important role “in supporting and directing a party to a conflict”²⁷⁰ to avoid direct attribution, conflict escalation, while pursuing its strategic military objectives. So, the first legal challenge that a targeted State must tackle is how to determine the legal framework applicable to the specific situation – consider it from a law enforcement perspective (IHRL), as a Non-International Armed Conflict, or as an International Armed Conflict. This ambiguity is not only a result of different legal interpretations, but a product of a *hybrid warfare* strategy that uses deniability as a key element. Deniability does not only mean to literally deny the involvement of a State, but to cover its participation through different means. Russia, for example, not only denied its military involvement in the annexation of Crimea, as it employed the

²⁶⁶ de Wet, E. (2018). The invocation of the right to self-defence in response to armed attacks conducted by armed groups: Implications for attribution. *Leiden Journal of International Law*, 32(01), p. 3.

²⁶⁷ ICRC. (n.d.). Non-international armed conflict.

²⁶⁸ ICRC. (n.d.), *op. cit.*

²⁶⁹ de Wet, E. (2018), *op. cit.*, p. 3.

²⁷⁰ Byman, D. L. (2022, March 9). Why engage in proxy war? A state’s perspective.

famous “little green men” with unmarked uniforms and lacking any insignia that could identify them as Russia special forces. Other examples are “provocateurs, Private Military Contractors, or Private Military Security Contractors like the Wagner group, mercenaries (...) provoking the uprising of the civilian population.”²⁷¹ The challenge in this regard, therefore, is multi-layered, and “full attribution and undeniable proofs that can stand before the court is not always possible.”²⁷²

“Armed Attack” Threshold

A legal challenge that arises out of *hybrid warfare* and its techniques is whether or not a targeted State may deem a given hybrid attack as a mere use of force or as an armed attack for the purposes of triggering a legitimate military response in accordance with customary self-defence and Article 51 of the UN Charter. The point from which one can consider it an armed attack is commonly referred as the threshold, a boundary a hybrid adversary avoids at all costs to cross in order to maximize their economy of force for “tactical and strategic advantage”²⁷³ and limit the adversaries’ ability to respond militarily. A hybrid actor therefore will try to conduct “its operations at a low level of intensity or by limiting itself to the threat of force”²⁷⁴, despite risking the violation of Article 2(4) of the UN Charter on the prohibition of the use of force. The intention is to explore this ambiguous “sweet spot”²⁷⁵, right under the threshold of an armed attack. Along with the attribution and deniability aspects, a targeted State may find the ambiguity on the kind of use of force, legally challenging. This is due, mainly, to the rather controversial ICJ’s understanding that “the exercise of this right [individual self-defence] is subject to the State concerned having been the victim of an armed attack” and not merely a “frontier incident”²⁷⁶, since those acts constituting an armed attack must occur in a significant scale.²⁷⁷ A few authors and States, particularly the US, are of the opinion that this is a

²⁷¹ Fogt, M. M. (2020). Legal Challenges or “Gaps” by Countering Hybrid Warfare - Building Resilience in Jus Ante Bellum. *Southwestern Journal of International Law*, XXVII(1), p. 74.

²⁷² Sari, A. (2017), *op. cit.*, p. 29.

²⁷³ Sari, A. (2018, January). Blurred Lines: Hybrid Threats and the Politics of International Law. *Hybrid CoE Strategic Analysis* 4, p. 3.

²⁷⁴ Sari, A. (2017), *op. cit.*, p. 23.

²⁷⁵ *Idem, ibidem.*

²⁷⁶ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986. Para. 195

²⁷⁷ *Idem, ibidem.*

very restrictive understanding and so they reject the existence of any gap²⁷⁸, thus ruling out any gravity requirement for a legitimate response under Article 51 of the UN Charter.²⁷⁹ ICJ's understanding may very well be pursuant to the spirit of the UN Charter that aims at avoiding escalatory behaviours, despite the risk of giving room for more opportunities of "asymmetric warfare below the critical threshold (...) and [narrowing] down the possibility to create effective deterrence policies and apply effective countermeasures."²⁸⁰ Although the threshold to initiate an International Armed Conflict is relatively low²⁸¹, particularly when compared to the requirements of a conflict not internationalized, as it only requires the occurrence of a State-to-State armed attack, hybrid State actors will camouflage their military activities so that they are kept below that said threshold. Of course, most of the times, if not always, this is played in conjugation with the previous elements. Deniability and ambiguity about the authorship may allow the perpetration of unattributable attacks of graver level (which, once attributed, would immediately trigger a response in self-defence), synchronized with less graver aggressions, not constituting an armed attack, which could be carried in more overt settings and more susceptible to attribution. Regarding the latter, even for those States more prone to deem such uses of force as sufficient for triggering a self-defence response, it would most likely lead to a delaying legal debate, which would probably favour adversary's further military moves. Once again, as it was already covered before, hybrid State actors that resort to proxies, for instance, can attain similar effects in terms of hampering the targeted State's decision-making, since attributing the overall control of such groups to a backing-State, so that it would be able to respond in self-defence against that State and held it accountable would most likely be very complicated.

This is a question particularly sensitive to NATO, an Organisation primarily designed to ensure collective deterrence and defence to its members, based on the principle of collective self-defence enshrined in Article 51 of the UN Charter, and to which, pursuant to Article 5 of the Washington Treaty, every member is committed

²⁷⁸ Sari, A. (2017), *op. cit.*, p. 23.

²⁷⁹ Fogt, M. M. (2020), *op. cit.*, p. 64.

²⁸⁰ Fogt, M. M. (2020), *op. cit.*, p. 99.

²⁸¹ Cilevics, B. (2018), *op. cit.*, p. 11.

in the event of an armed attack against any of their Allies to act upon. Barnes²⁸², citing the Czech General Petr Pavel, a former Chair of NATO's Military Committee, wrote that "the primary purpose [of *hybrid warfare*] is to create an influence that is strong enough, but below the threshold of Article 5, so they achieve the goals without provoking the enemy or opponent to initiate a defense response." This influence ends up challenging the "need for a maximum certainty", a core prerequisite behind the principle of collective defence, and pushing for more frequent invocations of Article 4, under which some Allies have already gathered to discuss operational clarity on the intensity of certain conflicts, such as Ukraine in 2014 and 2022, Turkey in 2015, among others.²⁸³ This also means that NATO's traditional instruments are not quite tailored to respond to events that, by their ambiguity and concealment, fall in-between peace-time operations and collective self-defence operations,²⁸⁴ leaving the Organisation reliant only on "peacetime cooperation and resilience regarding national law enforcement and crisis management."²⁸⁵

Article 5 undoubtedly serves the purpose of signalling the existence of a strong commitment between Allies, source of a credible deterrence strategy, but at the same time, it also indicates to adversaries that operations falling below that threshold will not necessarily be met with a collective response in self-defence.²⁸⁶ Russia, particularly, as it has been identified through out this investigation, is very much interested in developing its own hybrid strategy that circumvents NATO's political and military strategy.

Another legal challenge that NATO faces is the exploitation by its adversaries of the "lack of legal interoperability and consensus among Allies."²⁸⁷ It happens, for example, with the gap between the use of force and armed conflict, for the purpose of triggering the collective self-defence clause. If a given aggression does not meet all Allies' standards to be faced as an armed attack and fails to be addressed in the scope

²⁸² Barnes, J. E. (2016, February 8). NATO Works to Adapt to More Ambiguous Warfare Techniques. *The Wall Street Journal*.

²⁸³ Pawlak, P. (2017, March), *op. cit.*, p. 4.

²⁸⁴ Jacobs, A., & Lasconjarias, G. (2015), *op. cit.*, p. 270.

²⁸⁵ Fogt, M. M. (2020), *op. cit.*, p. 56.

²⁸⁶ Sari, A. (2017), *op. cit.*, p. 31.

²⁸⁷ *Idem, ibidem*, p. 12.

of Article 5, NATO won't be able to lead a defensive operation collectively. On the other hand, even in a NATO-led operation in the context of an armed conflict some problems of interoperability may arise from the application of the LOAC and other legal frameworks, such as the IHRL and the European Convention on Human Rights (ECHR), e.g., an attack may be lawful under IHL while unlawful under ECHR, in regard to which European States may be more susceptible to adhere to; or an attack against a economic target may be considered lawful by a particular State, and to the other States it could be considered civilian in nature and so, any attack would be unlawful under IHL.²⁸⁸ The interpretation of norms regulating an Armed Conflict may differ among Allies, which can have an impact on the operational planning and approval of Rules of Engagement. Consequently, as it will be addressed next, it not only may give more tactical liberty to the adversaries, as it may increase the opportunities for legal asymmetry through the use of *Lawfare*.

Threat to the International Legal System

The global consequences to the legal system and the rules-based international order resulting from *hybrid warfare* are possibly the most significant of the legal challenges, despite the threats, individually pondered, can range from the tactical to the strategic level. When global superpowers, especially those with a permanent sit at the UN Security Council, engage in asymmetric warfare, and particularly, misuse the legal system in favour of their own strategy, what is at stake is the undermining of “respect for the rule of law in international affairs.”²⁸⁹ An immediate consequence is the weakening of the fundamental principle of legal certainty, which is meant to assure predictability to States and individuals abiding to international law and guarantee “a sense of ‘regularity and continuity’ without which political life would not be possible.”²⁹⁰ Militarily speaking, a hybrid actor, being it a State or non-State, will seek to break the confidence of its adversary in the regulatory norms of the conflict. On the Strategic level, State behaviour that consistently challenges the International system by distorting legal frameworks and historic facts, by shaping existent legal

²⁸⁸ Goddard, D. S. (2017). Understanding the Challenge of Legal Interoperability in Coalition Operations. *Journal of National Security Law & Policy*, 9(211), p. 226.

²⁸⁹ Sari, A. (2018, January), *op. cit.*, p. 5.

²⁹⁰ *Idem.* (2019), *op. cit.*, p. 5

norms to their own exclusive and strategic benefit, by exploring underregulated areas like the cyberspace or space, by abandoning international treaties and deliberately violating international norms, as it was the case of Russia's violation of Budapest Memorandum, implicitly test law-abiding States' democratic cohesion, obstruct decision-making processes, defence and security policy planning and defy cooperation among alliances, partnerships and other multilateral bodies.²⁹¹ On the operational and tactical levels, *Lawfare* has a great impact in the conduction of hostilities and is an effective weapon to create legal asymmetry in the theatre of operations, since law-abiding parties will be constrained by the rule of law, while the hybrid adversaries will not²⁹², and will further explore that exact abidance. Kittrie states that this battlefield tactics are aimed at:

“(1) causing the more law-sensitive adversary to self-impose restraints that render its armed forces less effective and (2) eroding public and international support for the more law-sensitive adversary by causing it to actually or arguably violate the law of armed conflict.”²⁹³

A clear example of *Lawfare* employed in the battlefield is the Taliban placement of military assets in the vicinity of civilian objects, such as schools, religious sites, or hospitals, preventing the United States and its Allies to target those assets in violation of international customary law and Article 58 of Additional Protocol I to the Geneva Conventions.²⁹⁴ “In response, the US and its Allies have adopted targeting standards more stringent than required by international law.”²⁹⁵ Hamas, as well, has carried a similar strategy when, to deter Israel's missile strikes over Gaza, demanded its residents not to abandon their homes despite the attack warnings, in what is known as “human shielding”, clearly violating customary norms of International

²⁹¹ Elonheimo, T. (2021). Comprehensive Security Approach in Response to Russian Hybrid Warfare. *Strategic Studies Quarterly*, 15(3), p. 114.

²⁹² Mosquera, A., Bachmann, S., & Bravo, J. (2019), *op. cit.*

²⁹³ Kittrie, O. F. (2016), *op. cit.*, p. 285

²⁹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

²⁹⁵ Kittrie, O. F. (2016), *op. cit.*, p. 2.

Humanitarian Law and Article 51(7) of Additional Protocol I to the Geneva Conventions.²⁹⁶

More recently, although it is probably too soon to accurately assess the situation, Russia has allegedly placed military forces and rocket artillery in the nuclear power plant of Zaporizhzhya, using it as a “shield”, as it is very likely that Ukrainian forces would not target their own infrastructures, staff, and risk a nuclear disaster in its own territory.²⁹⁷ Before that, it used armed forces to enter and gain control over the site. Russia acted in violation of International Law by targeting a civilian object and putting the civilian population and infrastructures disproportionately at risk. As for the sheltering, by placing its military personnel and weaponry in an untargetable place, similarly to Hamas or Taliban, Russia is obstructing Ukraine’s ability to defend against those active forces. These examples of tactical and operational *Lamfare* are important to understand the global impact of such activities. By blatantly disregarding the rules governing International and non-International Conflicts, the overall International System is endangered, while the mechanisms to hold these unlawful conducts accountable are scarce, even more so if these acts are perpetrated by a Permanent Member of the Security Council, as is the case of Russia. In the case of grave violations of International Law by hybrid actors, it’s not just the peace and security surrounding the battlefield and of the involved countries that is threatened, but the whole system, the rules-based international order and the mechanisms it retains to prevent such violations.²⁹⁸ The unfortunate result that stems from these circumstances is that “the ‘rules-based’ ideal cannot be realized in future, because of the tragic nature of international life”²⁹⁹ and “believe that order in international relations can be based on strict rules is to engage in wishful thinking.”³⁰⁰ Grave violations of international principles and basic international norms can be followed by mainly two attitudes, a more legalist one, based on an international effort to “strengthen, uphold responsibility to ensure accountability when International Law is

²⁹⁶ *Idem, ibidem*, p. 286.

²⁹⁷ Bacheva, B. H. (2022, August 8). Russia using Zaporizhzhia nuclear power plant as army base - Ukraine. *BBC News*.

²⁹⁸ Sari, A. (2017), *op. cit.*, p. 29.

²⁹⁹ Porter, P. (2016, August 29). Sorry, Folks. There Is No Rules-Based World Order.

³⁰⁰ Sari, A. (2019), *op. cit.*, p. 5.

violated”³⁰¹, or else get into such views as the ones just cited, with a predominantly 20th century realist theory-based orientation.

4 – NATO’s Legal Adaptation to *Hybrid Warfare*

In view of the legal challenges that not only NATO and its member-States, but the rules-based international order as a whole is facing, it goes without saying that an adaptation at the legal level to the threats posed by *hybrid warfare* must urgently be pondered, based on the notion that “in the world of hybrid conflict, there is no one-size-fits-all response.”³⁰² Failure to move forward with a strategic plan of legal adaptation runs the risk of being more exposed to legal asymmetry and *Lawfare* exerted by State and non-State adversaries, be less deterrent, and generally “outmoded and outmanoeuvred when it comes to Russia (...) hybrid warfare.”³⁰³

NATO should pay close attention to the legal domain, as it is complex enough to be delt independently, both by the NATO civilian legal advisers and military legal advisors, as well as policy planners in both strategic headquarters, which must develop the necessary “legal capabilities, mechanisms and frameworks for individual and collective action to confront hostile legal activities and narratives.”³⁰⁴

Understanding the Legal Dynamics

First, there should be a clear understanding of the legal dynamics in the strategic, operational, and tactical levels. This implies that NATO must pursue a comprehensive assessment of the adversaries’ strategy in regard to the use of unconventional means, on evaluating the will to employ them and the capacity to actually produce the intended effects. In the case of Russia, for example, there exists already loads of case studies that may allow western countries and organizations specialists to draw reliable conclusions and lessons learned as to the extent and pattern of the employment of law as part of a hybrid strategy, contributing to the Alliance’s awareness and preparedness. To this purpose, Aurel Sari has advanced with a

³⁰¹ 9052nd (AM & PM) meeting of the United Nations Security Council, June 2, 2022.

³⁰² Rühle, M. (2019, July). Deterring Hybrid Threats: The Need for a More Rational Debate. *NDC Policy Brief*, p. 4

³⁰³ Deni, J. R. (2021, December 2). *NATO Must Adapt to an Era of Hybrid Threats*. *Carnegie Europe*.

³⁰⁴ Sari, A. (2018, January), *op. cit.*

definition that aims at tracing the link between the hybrid actor's objective (create and maintain relationships of legal asymmetry), through a series of techniques (e.g., generating legal ambiguity), to win operational or strategic advantages.³⁰⁵

Similarly, NATO should also focus on scanning its own legal vulnerabilities, some of them already covered below, such as the Article 5 of the Washington Treaty limitations for a collective military response (although it has been extending the scope of its application, as part of its continued adaptation) in situations that go beyond conventional threats. If NATO could come to a more comprehensive definition of these legal dynamics, including calculating, to each aspect, the adversaries' tools, and real capabilities, it would pave the way for the development of policies more tailored to each adversary or threat.

Also associated with understanding the legal dynamics, it is worth mentioning that the "instrumental use of law as a tool of hybrid warfare"³⁰⁶, or *Lanfare*, should equally be addressed, defined and conceptually deepened by NATO, in order to determine, pursuant to the dichotomy of Kittrie³⁰⁷ or Mosquera and Bachmann³⁰⁸, what should be considered as a Zeusian use of law (or an affirmative use) and a Hadesian use of law (or a negative use) and thus, develop clear guidelines with respect to NATO's own operability of fighting legal asymmetry with affirmative *Lanfare* in the context of hostilities or as part of pre-emptive measures. For such, it would also require recognizing international law as an instrument to achieve strategic and operational objectives and to acknowledge that legal experts could, in partnership with defence policy planners and commanders as well, conduct "legal operations"³⁰⁹, disputing the legal domain, as they would militarily in any other warfare domain, against hybrid adversaries, and with a particular emphasis on safeguarding international norms and hold opponents accountable.

Related to the application of Article 5 and the dividing lines between an armed attack for the purpose of the Article 51 of the UN Charter and the prohibition of the

³⁰⁵ See more in *idem*. (2017), *op. cit.*, p. 30.

³⁰⁶ Sari, A. (2 de outubro de 2015), *op. cit.*

³⁰⁷ See Kittrie, O. F. (2016), *op. cit.*

³⁰⁸ See Mosquera, A. B., & Bachmann, S. (2016), *op. cit.*

³⁰⁹ Sari, A. (2019), *op. cit.*, p. 23.

use of force (Article 2(4) of the UN Charter), Sari also makes a good point about the attempt to fight this uncertainty. He notes that it is not due to “legal incompetence” that this ambiguity and uncertainty exists, but rather due to the politization of the international legal domain. As he states, “these grey areas exist because States do not want that everything is black and white.”³¹⁰ There were similarly other attempts to cover this gap, or “sweet spot” as it was called before, but all fail to correctly address the issue. One, as reported by Sari³¹¹, and by him contested too, was to remove “armed” from “armed attack” on Article 5, however, it’s easy to understand that the collective self-defence clause derives directly from the UN Charter Article 51, and so, NATO could only use force in self-defence in what is pursuant to the UN Charter. Another could be the development of an intermediate legal regime, that could cover the gap between the use of force and an armed attack, allowing a construct that could encompass the law enforcement and the armed conflict paradigms. Although it could apparently solve part of the problem, i.e., with an appropriate legal framework, States would be entitled to operate and respond to an aggression falling below the threshold of an armed attack, not only limited to IHRL, but with some permissibility to IHL, this measure could potentially create even more ambiguity and would certainly collide with the ICJ’s understanding. However, as it will be analysed later, under the national efforts, there are some steps that may be taken to cover “attacks from within.” Besides that, legally adapting to *hybrid warfare* does not need to mean that the way forward is to autonomize or calling for the autonomization of a field of law with its specific rules, which would probably, as previously said, further aggravate the lack of international legal certainty. In other words, advance with a comprehensive definition and policy of *hybrid warfare* (including for legalist objectives), does not need to mean that a ‘law of *hybrid warfare*’ must exist.

Strengthening Legal Preparedness

The comprehensive understanding of the legal environment in which NATO is inserted and in which it operates will contribute to its preparedness to face the legal challenges to come and to make positive adaptations to its experience at warfighting.

³¹⁰ *Idem*, (2015, October 2), *op. cit.*

³¹¹ *Idem*, (2017), *op. cit.*, p. 31.

An example of this positive legal adaptation to *hybrid warfare* was already shown above. If one picks on the examples of the US strikes on the Taliban, which were allegedly refined in terms of precision to respond to the terrorist group's 'human shields', it is possible to understand how the circumstances on the ground, in particular, situations amounting to war crimes, can be operationalized in such a way as to counter legal asymmetry in the battlefield. Mosquera, Bachmann and Bravo³¹² suggest to develop legal readiness and training of legal advice in areas such as "rules and criteria for attribution, extra warnings, targeting recording, protection of civilians, human rights law, detention rules, [and in] areas relating to the implementation of Security Council's sanctions." However, strengthening legal preparedness encompasses not only strategic awareness, understanding legal dynamics and training specific sensitive areas to the law, particularly those more vulnerable to being abused by adversaries, but it also includes increasing situational awareness throughout the chain of command (a step already taken at NATO HQ with the creation of a hybrid analysis cell in the Joint Intelligence and Analysis Division), strengthening legal interoperability, so that it is possible to plan and exercise on common grounds across the entire spectrum of conflict and improving the fluidity of the decision-making process, particularly in the 'grey areas' of transition from peace to war. Legal preparedness aims at enabling and "preserving freedom of manoeuvre in the legal domain"³¹³ but also to provide a robust level of legal deterrence.

Strengthening Legal Deterrence

Legal deterrence is another critical element of adaptation to the *hybrid warfare* legal domain. It means that NATO should demonstrate that it is capable, willing and has the tools to contest the legal domain. This is where legal interoperability and consensus plays a significant role, since the demonstration of unity, particularly on sensitive legal aspects of *hybrid warfare*, already discussed above, diminishes vulnerability and exposure to precisely targeted legal asymmetry. Allies should develop clear policies that align legal understanding and signal to adversaries the unity in countering malign legal operations, which is also prosecuted by defining a legal

³¹² Mosquera, A., Bachmann, S., & Bravo, J. (2019), *op. cit.*

³¹³ Sari, A. (2017), *op. cit.*, p. 31.

basis, as well as political, for responses to a variety of aggressive and hostile activities below Article 5. According to Aurel Sari, these “may be addressed on the basis of Article 4 of the North Atlantic Treaty”³¹⁴ through consultations on the threaten of “territorial integrity, political independence or security”³¹⁵, under which there is “ample legal basis for creative horizontal escalation to counter hybrid warfare”³¹⁶, for instance, collective sanctions³¹⁷ (like those in effect since 2014 against Russia, and reinforced in 2022), retorsions³¹⁸ or countermeasures³¹⁹.

Strengthening Legal Defence

In the event that deterrence fails to prevent a hybrid attack, NATO must be able to respond effectively and in accordance with its obligations under International Law. That is where legal defence must also be strengthened. Not only legal defence in *stricto sensu*, before national and international instances, such as the United Nations, ICJ, OSCE, national courts, and so on, despite being a very valuable defence component, particularly in inflicting reputational costs.³²⁰ Employing legal arguments in response to adversary’s, while defending the rule of law, as part of a strategic communication strategy, building trust with home audience, using affirmative legal measures to obtain operational advantages and impede adversary’s benefits that may come from *Lamfare* practices are other mechanisms to unsure capable defensive capacities.

Adopting a Legal Resilience Perspective

However, transversal to all the aforementioned aspects, the most plausible solution for countering the legal challenges posed by *hybrid warfare*, avoid them to cause “existential damage (...) and to quickly ‘bounce [them] back’”³²¹ is to adopt a strategy of legal resilience, that can be absorbed by current NATO resilience strategy

³¹⁴ *Idem, ibidem*, p. 32

³¹⁵ Washington Treaty, April 4, 1949. Art. 4

³¹⁶ Multinational Capability Development Campaign. (2019, March). Countering Hybrid Warfare. (S. Monaghan, Ed.) *MCDC Countering Hybrid Warfare Project*, p. 57.

³¹⁷ Multinational Capability Development Campaign. (2019, March), *op. cit.*, p. 58.

³¹⁸ Karski, K., & Mielniczek, P. (2019). The notion of hybrid warfare in international law and its importance for NATO. *NATO Legal Gazette*, 39, p. 78.

³¹⁹ Sari, A. (2017), *op. cit.*, p. 32.

³²⁰ Sari, A. (2018, January), *op. cit.*, p. 6.

³²¹ Rühle, M. (2019, July), *op. cit.*, p. 2.

under the same principle of Article 3 of the North Atlantic Treaty which asserts that the States, “separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.”³²²

In the same sense that ‘resilience’, as adopted by the Alliance, aims at reducing its vulnerability and likelihood of an attack, legal resilience has as its goal, to maintain and create resistance in Allies’ legal systems and create conditions to its adaptation. Sari, for instance, who have been dedicated to study this theory, has departed from a “scientific” approach to resilience, i.e., it can be engineering and/or ecological. The former is based on the capacity of a system to return to its original stable state after being affected by an external or internal shock, whereas the latter refers to the capacity of that affected system to adapt while maintaining “its original function and (...) core characteristics.”³²³ By pursuing a legal resilience strategy, NATO and Allies must build more coherent understanding and interpretation of international law, “including the *jus ad bellum*, *jus in bello* and *jus post bellum*.”³²⁴

Pursuant to the spirit of Article 3, and particularly constrained by the limited willingness to increase its defence investments, resilience has been framed as “first and foremost a national responsibility”, thus limiting the tools NATO could have at its disposal to set standards and targets of resilience in specific areas. What NATO has developed are guidelines, known as the “seven baseline requirements for national resilience”, however, it has failed to autonomize a specifically oriented baseline towards legal resilience.

It is true, nevertheless, that the primary responsibility to ensure an individual and collective legal resilience resides on the States, the primary and ultimate targets of *hybrid warfare*. Therefore, once again, Allies must line up their strategies and policies, so that they can individually, and through the vast international fora (including those with a permanent sit at the UN Security Council), push for countering malign

³²² Washington Treaty, April 4, 1949. Art. 3

³²³ Sari, A. (2019), *op. cit.*, p. 20.

³²⁴ Fogt, M. M. (2020), *op. cit.*, p. 99.

narratives, uphold responsibilities and accountability, and in due course, preserve compliance with the rules-based international order.

Besides the international influence and advocacy Allies may exert in good faith for strengthening the international legal system, by adopting a legal resilience perspective, States are, likewise, encouraged to bolster their own national resilience.³²⁵ It is on the national level that important legislation can be adopted and adapted to make national legal frameworks more resilient to instrumentalization by hybrid actors and turn responses quicker and more effective. A good example of such efforts is, for instance, Finland or Estonia, that found in Crimean Little Green Men a sample of what could potentially occur in their territory. In 2017, Finland underwent a process of adaptation of its national defence law and criminal law, and one of the measures it took was to prohibit the presence in its territory of unidentified soldiers, by criminalizing it.³²⁶ Estonia, on the other hand, has reviewed its legislation to improve coordination and establish clear responsibilities between the internal security services and the Defence Forces with the intention of “get rid of legal loopholes and enable swift reaction in case of scenarios involving an ‘attack from within’ situations.”³²⁷ . It has also adopted a concept closer to the broad ‘national security’ approach, or “comprehensive national defence concept” as it calls it³²⁸, different from the one adopted by other European nations, like Portugal, that keeps the constitutional division of labour based on the internal and external threats - internal security and national defence.

Strengthening Cooperation with the EU

Also irrefutable is the need for strategic cooperation with the European Union to strengthen both organizations’ preparedness, deterrence, defence, and resilience. Cooperation should focus on the division of labour in what is incumbent upon each other, avoiding unproductive overlapping, but pushing for synergistic efforts in

³²⁵ Sari, A. (2019), *op. cit.*, p. 21.

³²⁶ Lott, A. (2022). *Hybrid Threats and the Law of the Sea: Use of Force and Discriminatory Navigational Restrictions in Straits*. Brill Nijhoff, p. 222.

³²⁷ Praks, H. (2015). Hybrid or Not: Deterring and Defeating Russia’s Ways of Warfare in the Baltics - The Case of Estonia, *op. cit.*, p. 234.

³²⁸ The coordination of national security and defence management | Riigikantslei. (n.d.).

developing policies, legal understanding, and assessing common vulnerabilities, risks, and challenges. The EU is an important forum for considering, discussing, and deciding on European legislation to counter hybrid threats, such as discussing measures like in the previous examples, mainly those falling short of armed attacks, whereas NATO is best tailored to deal with the *hybrid warfare* threat militarily, notwithstanding the fact that here too information sharing is of great relevance.

Conclusion

A few months prior to this date, one would easily state that today's world was becoming more competitive, however, with the unfolding events started in February 24, 2022, it seems that qualifying it as "competitive" does not translate entirely the true global environment. One of the unfortunate conclusions could easily be that State competition has evolved to a world order contestation. War has arrived in Europe and has stayed (militarily) just outside EU and NATO's doorsteps. Since then, consequences of the war have been increasing and affecting every western citizen in aspects as simple as the price of bread. Besides that, they have been subject to Russian propaganda and information warfare which aims at discredit the effort to help Ukraine and disseminate its own narrative and arguments, legal ones included. In some way, this dissertation comes at a time of renewed momentum for NATO's role generally, and for NATO's reflection particularly. Despite it has recently underwent a revision process for the most recent Strategic Concept 2022, the brutal impacts of the War in Ukraine will demand a more thorough strategic ponderation, which should not be difficult for an organization that has uphold its relevance for the last 73 years, sometimes more confident, others more questioned. This research has tried to capture the key events of NATO's history, from its creation to the recent State threat posed by modern Russia, covering the tumultuous period of the Cold War, the calm years

that followed the dissolution of the Soviet Union and the end of an existential State threat, NATO's out-of-area adventures, and the rise of the terrorist threat. Each of these events described meant new realities for an Alliance originally uniquely designed for a conventional collective defence purpose, and upon which transformational adaptations were required. It is important to realize that moving from a strategy focused on deterring and defending from conventional threats to non-Article 5 operations, fighting terrorism, peacekeeping operations, cyber-defence, and, of course, countering *hybrid warfare*, is very demanding from the policy planning, consensus building and strategic thinking point of view. Common to all these adaptations is the challenge of legally adaptation, since Article 5, very narrowly understood, was originally the sole source of legitimacy for the use of force.

With the evolution of new technologies, came new modes of warfare too. The first chapter was dedicated to cover the most relevant literature about the developments of *hybrid warfare* as an effectively new mode of warfare. Weighing the main elements of the definitions analysed and the opposing criticisms helped to reach a useful conclusion from this research point of view, that no matter which side one chooses to defend, it is in their intersection that one can find the answer. As stated, refusing to call it *hybrid warfare* is acceptable, however, the true nature of it, is that new circumstances, notably, new technologies, have imposed significant changes in warfighting, and have empowered, like never before, both non-State actors and least capable States. Fighting with and through the law has proven to be one of the elected means of hybrid actors. *Lanfare*, as a concept, was also conceptually analysed to validate its subsequent usage as a main element of both the legal challenges and the legal response. In order to answer to the main research question, of whether and to what extent NATO should embrace a comprehensive adaption to *hybrid warfare*, and in particular in the legal domain, it was indispensable to look at the main legal challenges posed by *hybrid warfare*, which, as it resulted, are very specific in nature, and demand a tailored and autonomous response. NATO should be capable to take on this task, as it is in its genetic this adaptive character, as witnessed in the historical contextualization. NATO has fought terrorism, has operated in non-Article 5 contexts and has been advocating for compliance with international rules

cumulatively. The challenge ahead of the organization should not be difficult to cope, as long as there is political will.

To address the assessed legal challenges, that range from blurring the classical distinction between war and peace to the objectives of creating tactical-strategic legal asymmetry, with its vast impacts for the integrity of the legal system as a whole and for the operational conduct of law-abiding States, six main vectors of legal adaptation have been put forward – to understand the legal dynamics of hybrid warfare; to strengthen legal preparedness; to strengthen legal deterrence; to strengthen legal defence capabilities; to adopt a legal resilience perspective; and to increase cooperation with the European Union.

Although NATO has already advanced towards countering *hybrid warfare*, there seems to remain lack of conceptual clarity, particularly in what it comes to define it and confront it with other parallel concepts, such as *hybrid threats*, and other modes of warfare that have not ceased to exist. The legal domain, on the other hand, has not yet received the attention it deserves when addressing this phenomenon. The proposed vectors for adaptation may serve as helpful guidelines for taking this work further and should be subject to individual reflection, as they provide, independently, exceptionally fertile ground for further research.

The new strategic environment is challenging and presents the Alliance with multiple threats and risks, among which, the one elaborated in here is no more than one. Nevertheless, Western nations must seriously reflect on what is at stake. The basic principles of the international order are being contested, and it may be its endurance that is being seriously threatened. A world order not based in rules would be a huge civilizational step backwards, and by aiming to fight this tendency, it is paramount that NATO, the EU, and any other like-minded Country do not sacrifice these values to fight those who undermine them.

References

- “Tsar Bomba.” Atomic Heritage Foundation, 8 Aug. 2014. Retrieved from <https://www.atomicheritage.org/history/tsar-bomba>
- 9052nd (AM & PM) meeting of the United Nations Security Council, June 2, 2022.
- 9080TH (PM) meeting of the United Nations Security Council, June 28, 2022.
- AJ Staff (2022, February 24). ‘No other option’: Excerpts of Putin’s speech declaring war. Retrieved from <https://www.aljazeera.com/news/2022/2/24/putins-speech-declaring-war-on-ukraine-translated-excerpts>
- AP, Reuters, AFP. (21 de February de 2022). Russia recognizes independence of Ukraine separatist regions. DW. Retrieved from: <https://www.dw.com/en/russia-recognizes-independence-of-ukraine-separatist-regions/a-60861963>
- Arnold, J. M. (2016). NATO’s readiness action plan: Strategic benefits and outstanding challenges. *Strategic Studies Quarterly*, 10(1), 74-105.
- Bachega, B. H. (2022, August 8). Russia using Zaporizhzhia nuclear power plant as army base - Ukraine. BBC News. Retrieved from <https://www.bbc.com/news/world-europe-62469740>
- Barnes, J. E. (2016, February 8). NATO Works to Adapt to More Ambiguous Warfare Techniques. *The Wall Street Journal*. Retrieved from <https://www.wsj.com/articles/nato-works-to-adapt-to-more-ambiguous-warfare-techniques-1454928411>

- BBC News. (2014, August 26). Captured Russian troops “in Ukraine by accident.”
BBC News. Retrieved from <https://www.bbc.com>
- BBC News. (2022, February 17). Ukraine crisis: Russian claim of troop withdrawal false, says US. BBC News. Retrieved from <https://www.bbc.com/news/world-europe-60407010>
- Bellinger, J. B., III. (2014, March 16). Why the Crimean Referendum Is Illegitimate. Retrieved from <https://www.cfr.org/interview/why-crimean-referendum-illegitimate>
- Bergkvist, N. O., & Ferm, R. (2000). Nuclear Explosions 1945-1998
- Bielieskov, M. (2021). Russian and Ukrainian Spring 2021 War Scare. Center for Strategic & International Studies. Retrieved from https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210921_Bielieskov_War_Scene.pdf?1LcoLhk8Qe3cswHqsQPNN6HJg0XvrdNa
- Bilal, A. (2021, November). Hybrid Warfare – New Threats, Complexity, and ‘Trust’ as the Antidote. NATO Review. Retrieved from: <https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html#:~:text=are%20their%20own.-,Hybrid%20Warfare%20%E2%80%93%20New%20Threats%2C%20Complexity%2C,and%20'Trust'%20as%20the%20Antidote>
- Briscoe, I. (2013). Non-conventional armed violence and non-state actors: challenges for mediation and humanitarian action. Norwegian Peacebuilding Resource Centre.
- Brooke-Holland, L. (2016). NATO's military response to Russia: November 2016 update. House of Commons Library.
- Burkhardt, F. (2020, March 3). Russia’s “Passportisation” of the Donbas. Retrieved from <https://www.swp-berlin.org/en/publication/russias-passportisation-of-the-donbas>

- Byman, D. L. (2022, March 9). Why engage in proxy war? A state's perspective. Retrieved from <https://www.brookings.edu/blog/order-from-chaos/2018/05/21/why-engage-in-proxy-war-a-states-perspective/>
- Caliskan , M., & Liégeois , M. (2021). The concept of 'hybrid warfare' undermines NATO's strategic thinking: insights from interviews with NATO officials. *Small Wars & Insurgencies*, pp. 295-319.
- Canadian Centre for Cyber Security. (2022). Cyber threat bulletin: Cyber threat activity related to the Russian invasion of Ukraine. Retrieved from Government of Canada: <https://cyber.gc.ca/en/guidance/cyber-threat-bulletin-cyber-threat-activity-related-russian-invasion-ukraine>
- Cavandoli, S., & Wilson, G. (2022). Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia's Invasion of Ukraine. *Netherlands International Law Review*, 1-28.
- Chin, W. (2015). NATO and the Future of International Terrorism and Counterterrorism. Centre of Excellence Defence Against Terrorism.
- Cilevics, B. (2018). Legal Challenges Related to Hybrid War and Human Rights Obligations. Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights.
- Corera, B. G. (2020, March 4). Salisbury poisoning: What did the attack mean for the UK and Russia? BBC News. Retrieved from <https://www.bbc.com/news/uk-51722301>
- Cottey, A. (2021). The West, Russia and European security: Still the long peace? *The British Journal of Politics and International Relations*, 24(2), 207–223.
- Crowley, M., (2021, December 4). U.S. Intelligence Sees Russian Plan for Possible Ukraine Invasion. *The New York Times*. Retrieved from <https://www.nytimes.com/2021/12/04/us/politics/russia-ukraine-biden.html>

- de Wet, E. (2018). The invocation of the right to self-defence in response to armed attacks conducted by armed groups: Implications for attribution. *Leiden Journal of International Law*, 32(01), 91–110.
- Deni, J. R. (2021, December 2). NATO Must Adapt to an Era of Hybrid Threats. Carnegie Europe. Retrieved from: <https://carnegieeurope.eu/strategieurope/?fa=85900>
- Dews, F. (2014, August 29). What Brookings Experts Are Saying about Russia's Invasion of Ukraine. Retrieved from <https://www.brookings.edu/blog/brookings-now/2014/08/29/what-brookings-experts-are-saying-about-russias-invasion-of-ukraine/>
- DeYoung, K. (2014, July 27). U.S. releases images it says show Russia has fired artillery over border into Ukraine. *The Washington Post*. Retrieved from <https://www.washingtonpost.com>
- Dobbins, J. (2019, December 3). Is NATO Brain Dead? *The RAND Blog*. Retrieved from <https://www.rand.org/blog/2019/12/is-nato-brain-dead.html>
- Dolan, C. (2022, February 15). NATO Must Boost Hybrid Warfare Defenses. *Just Security*. Retrieved from: <https://www.justsecurity.org/80176/nato-must-boost-hybrid-warfare-defenses/>
- Dragaš, O. (2022, July 14). How Russia de facto recognised Kosovo. *Euractiv*. Retrieved from <https://www.euractiv.com>
- Dunlap Jr., C. J. (2008). Lawfare Today: A perspective. *Yale Journal of International Affairs*, 146-154.
- Dunlap Jr., U. (2001). Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts. *Humanitarian Challenges in Military Intervention Conference*. Washington, D.C.
- Dunlap Jr., U. M. (2008). Lawfare Today: A perspective. *Yale Journal of International Affairs*, 146-154.

- Dworkin, A. (2022, February 25). International law and the invasion of Ukraine. Retrieved from <https://ecfr.eu/article/international-law-and-the-invasion-of-ukraine/>
- Elonheimo, T. (2021). Comprehensive Security Approach in Response to Russian Hybrid Warfare. *Strategic Studies Quarterly*, 15(3), 113–137.
- Escorrega, L. C. (August/September de 2009). A Segurança e os "Novos" Riscos e Ameaças: Perspectivas Várias. *Revista Militar*(2491/2192).
- Euronews. (2022, August 22). “Protect Serbs in Kosovo or we’ll do it ourselves,” Vucic warns NATO. Euronews. Retrieved from <https://www.euronews.com>
- Fernandes, A. H. (2021, December). O que É a Guerra. A Falácia do Conceito de Guerra Híbrida — Breve Excurso. *Nação e Defesa*, pp. 99-117.
- Finlay, L., & Payne, C. (2019). The Attribution Problem and Cyber Armed Attacks. *AJIL Unbound*, 113, 202–206.
- Fisher, B. (2019). The Kremlin’s Malign Legal Operations on the Black Sea: Analyzing the Exploitation of Public International Law Against Ukraine. *Kyiv-Mohyla Law and Politics Journal*, 5. (292-319)
- Fisher, M. (2014, September 3). Everything you need to know about the 2014 Ukraine crisis. *Vox*. Retrieved from <https://www.vox.com/2014/9/3/18088560/ukraine-everything-you-need-to-know>
- Fogt, M. M. (2020). Legal Challenges or “Gaps” by Countering Hybrid Warfare - Building Resilience in Jus Ante Bellum. *Southwestern Journal of International Law*, XXVII(1), 28–100.
- Forsberg, T. (2018). Russia and the European security order revisited: from the congress of Vienna to the post-cold war. *European Politics and Society*, 20(2), 154–171.

- France 24 (2021, October 18). Russia closes NATO missions as ties plunge to new low. Retrieved from <https://www.france24.com/en/live-news/20211018-russia-closes-nato-missions-as-ties-plunge-to-new-low>
- Fravel, T. (2011). China's Strategy in the South China Sea. *Contemporary Southeast Asia*, 33(3).
- Freedman, L. D. (2022, June 24). Treaty on the Non-Proliferation of Nuclear Weapons. *Encyclopedia Britannica*. Retrieved from <https://www.britannica.com/event/Treaty-on-the-Non-proliferation-of-Nuclear-Weapons>
- Gaiser, L. (2019). NATO-EU Collaboration on Hybrid Threats: Cooperation Out of Necessity with Potential Consequences on International Legal Framework. *National Security and the Future*, 20(1-2), pp. 13-24.
- Gardner, H. (2015). Hybrid Warfare: Iranian and Russian Versions of “Little Green Men” and Contemporary Conflict. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO’s response to Hybrid Threats*, pp. 163-187.
- Gessen, K. (2014, September). Why not kill them all? *LRB*. Retrieved from <https://www.lrb.co.uk/the-paper/v36/n17/keith-gessen/why-not-kill-them-all>
- Giles, K. (2015). Conclusion: Is Hybrid Warfare Really New? (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO’s response to Hybrid Threats*, pp. 321-337.
- Goddard, D. S. (2017). Understanding the Challenge of Legal Interoperability in Coalition Operations. *Journal of National Security Law & Policy*, 9(211), 211–232.
- Gramer, R. (2022, June 7). NATO Allies Are Rethinking Russia’s Supposed Military Prowess. *Foreign Policy*. Retrieved from: <https://foreignpolicy.com/2022/06/07/ukraine-nato-allies-rethinking-russia-military-prowess/>
- Guilfoyle, D. (2019, September). The rule of law and maritime security: understanding lawfare in the South China Sea. *International Affairs*.

- Guterres, A. (2022, February 22). Secretary-General's opening remarks at press encounter on Ukraine. Retrieved from <https://www.un.org/sg/en/content/sg/speeches/2022-02-22/opening-remarks-press-encounter-ukraine>
- Hallams, E., Ratti, L., & Zyla, B. (2013). Introduction – A New Paradigm for NATO? In *NATO Beyond 9/11* (pp. 1–26). palgrave macmillan.
- Harry S. Truman (1949), Address on the Occasion of the Signing of the North Atlantic Treaty Online by Gerhard Peters and John T. Woolley, The American Presidency Project. Retrieved from <https://www.presidency.ucsb.edu/node/230088>
- Hoffman, F. G. (2007). *Conflict in the 21st Century: The Rise of Hybrid Wars*. Virginia: Potomac Institute for Policy Studies.
- Hoffman, F. G. (2009). Hybrid Warfare and Challenges. *JFQ*, pp. 34-39.
- Hoffman, F. G. (2018, November 8). Examining Complex Forms of Conflict: Gray Zone and Hybrid Challenges. Retrieved from <https://cco.ndu.edu/news/article/1680696/examining-complex-forms-of-conflict-gray-zone-and-hybrid-challenges/>
- Hybrid CoE. (2022). Hybrid threats as a concept. Hybrid CoE. Retrieved from: <https://www.hybridcoe.fi/hybrid-threats-as-a-phenomenon/>
- ICRC. (n.d.). Non-international armed conflict. Retrieved from <https://casebook.icrc.org/glossary/non-international-armed-conflict>
- Insall, T., & Salmon, P. (2014). *The Brussels and North Atlantic Treaties, 1947-1949: Documents on British Policy Overseas, Series I, Volume X*. Routledge
- Jacobs, A., & Lasconjarias, G. (2015). NATO's Hybrid Flanks: Handling Unconventional Warfare in the South and the East. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO's response to Hybrid Threats*, pp. 257-276.

- Johnson, D. (2015). Russia's Approach to Conflict: Implications for NATO's Deterrence and Defence. (G. Lasconjarias, & J. A. Larsen, Edits.) NATO's response to Hybrid Threats, pp. 137-160.
- Johnson, R. (2018, December). Hybrid War and Its Countermeasures: A Critique of the Literature. *Small Wars & Insurgencies*, 29(1), pp. 141-163.
- Karski, K., & Mielniczek, P. (2019). The notion of hybrid warfare in international law and its importance for NATO. *NATO Legal Gazette*, 39, pp. 67-80.
- Kasapoglu, C. (2022, June). Countering hybrid threats: a new NATO core task? Retrieved from <https://spectator.clingendael.org/en/publication/countering-hybrid-threats-new-nato-core-task>
- Kittrie, O. F. (2016). *Lawfare: Law as a Weapon of War*. New York: Oxford University Press.
- Kofman, M., Migacheva, K., Nichiporuk, B., Radin, A., & Oberholtzer, J. (2017). *Lessons from Russia's operations in Crimea and Eastern Ukraine*. Rand Corporation.
- Kramer, A. E. (2019, January 24). Ukraine's Ex-President Is Convicted of Treason. *The New York Times*. Retrieved from: <https://www.nytimes.com/2019/01/24/world/europe/viktor-yanukovych-russia-ukraine-treason.html>
- Kramer, M. (2003). The collapse of East European communism and the repercussions within the Soviet Union (Part 1). *Journal of Cold War Studies*, 5(4), 178-256.
- Lasconjarias, G., & Larsen, J. A. (2015). Introduction: A New Way of Warfare. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO's Response to Hybrid Threats*, pp. 33-45.
- Latawski, P., & Smith, M. A. (2018). *Kosovo and NATO's post-Cold War adaptation. The Kosovo Crisis and the Evolution of post-Cold War European Security*. Retrieved from:

<https://www.manchesteropenhive.com/view/9781526137784/9781526137784.00008.xml>

Lott, A. (2022). *Hybrid Threats and the Law of the Sea: Use of Force and Discriminatory Navigational Restrictions in Straits*. Brill Nijhoff.

Mcleary, P. (2021, December 23). Russian buildup near Ukraine gains steam, new satellite images show. POLITICO. Retrieved from <https://www.politico.com/news/2021/12/23/russia-buildup-ukraine-satellite-images-526109>

Michael, R. (2013). Reflections on 9/11: A View from NATO. In *NATO Beyond 9/11* (pp. 54–66). palgrave macmillan.

Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*). Merits, Judgment. I.C.J. Reports 1986. Para. 195

Monaghan, A. (2011). NATO and Russia: resuscitating the partnership. NATO Review. Retrieved from <https://www.nato.int/docu/review/articles/2011/06/29/nato-and-russia-resuscitating-the-partnership/index.html>

Mosquera, A. B., & Bachmann, S. (2015). Lawfare and hybrid warfare – how Russia is using the law as a weapon. *Amicus Curiaae*, 102, pp. 25-28.

Mosquera, A. B., & Bachmann, S. (2016). Lawfare in Hybrid Wars: The 21st Century Warfare. *Journal of International Humanitarian Legal Studies*, pp. 63-87.

Mosquera, A., Bachmann, S., & Bravo, J. (2019). Hybrid Warfare and the Legal Domain. *Terrorism and Political Violence*, pp. 98-104.

Multinational Capability Development Campaign. (2017, January). *Understanding Hybrid Warfare*. (P. J. Cullen, & E. Reichborn-Kjennerud, Edits.) MCDC Countering Hybrid Warfare Project.

Multinational Capability Development Campaign. (2019, March). *Countering Hybrid Warfare*. (S. Monaghan, Ed.) MCDC Countering Hybrid Warfare Project.

- Mumford, A. (2020, September). Ambiguity in Hybrid Warfare. *Hybrid CoE Strategic Analysis* / 24.
- Muradov, I. (2022). The Russian hybrid warfare: the cases of Ukraine and Georgia. *Defence Studies*, 22(2), 168–191.
- NATO (2019, February). Statement on Russia's failure to comply with the Intermediate-Range Nuclear Forces (INF) Treaty. Retrieved from https://www.nato.int/cps/en/natohq/news_162996.htm
- NATO (2022, February 24). Statement by the North Atlantic Council on Russia's attack on Ukraine. Retrieved from https://www.nato.int/cps/en/natohq/official_texts_192404.htm
- NATO (2022, January 24). NATO Allies send more ships, jets to enhance deterrence and defence in eastern Europe. Retrieved from https://www.nato.int/cps/en/natohq/news_191040.htm#:~:text=NATO%20Allies%20are%20putting%20forces,up%20in%20and%20around%20Ukraine
- NATO (2022, June). A Short History of NATO. Retrieved from https://www.nato.int/cps/en/natohq/declassified_139339.htm
- NATO Brussels Summit Communiqué (2018)
- NATO Brussels Summit Communiqué (2021)
- NATO London Summit Communiqué (2019)
- NATO Madrid Summit Communiqué (2022)
- NATO Parliamentary Assembly. (2021). Developing a Whole-Of-Society, Integrated and Coordinated Approach to Resilience for Allied Democracies. Retrieved from https://www.nato-pa.int/download-file?filename=/sites/default/files/2021-10/2021%20-%20NATO%20PA%20Resolution%20466%20-%20Resilience_0.pdf
- NATO Strasbourg/Kehl Summit Declaration (2009)
- NATO Strategic Concept (1991)

NATO Strategic Concept (1999)

NATO Strategic Concept (2010)

NATO Strategic Concept (2022)

NATO Wales Summit Communiqué (2014)

NATO Warsaw Communiqué (2016)

NATO. (2003). Russian troops leave KFOR. Retrieved from:
<https://www.nato.int/docu/update/2003/07-july/e0702a.htm>

NATO. (2012). NATO's policy guidelines on counter-terrorism. Retrieved from:
https://www.nato.int/cps/en/natohq/official_texts_87905.htm

NATO. (2018, March). Statement by the North Atlantic Council on the use of a nerve agent in Salisbury. Retrieved from
https://www.nato.int/cps/en/natohq/news_152787.htm

NATO. (2020, March). NATO-Russia Relations: The Background. Retrieved from:
https://www.nato.int/nato_static_fl2014/assets/pdf/2020/4/pdf/2003-NATO-Russia_en.pdf

NATO. (2021, November). Hybrid Warfare – New Threats, Complexity, and ‘Trust’ as the Antidote. NATO Review. Retrieved from:
https://www.nato.int/nato_static_fl2014/assets/pdf/2020/4/pdf/2003-NATO-Russia_en.pdf

NATO. (2022). Collective defence - Article 5. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_110496.htm

NATO. (2022). Counter-piracy operations (2008-2016). Retrieved from:
https://www.nato.int/cps/en/natohq/topics_48815.htm#:~:text=In%20sum%2C%20NATO's%20role%20was,evolving%20pirate%20trends%20and%20tactics.

NATO. (2022). ISAF's mission in Afghanistan (2001-2014). Retrieved from:
https://www.nato.int/cps/en/natolive/topics_69366.htm

- NATO. (2022). Kosovo Air Campaign (March-June 1999). Retrieved from:
https://www.nato.int/cps/en/natolive/topics_49602.htm
- NATO. (2022). Relations with Georgia. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_38988.htm
- NATO. (2022). Relations with Russia. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_50090.htm
- NATO. (2022, July 14). Relations with Russia. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_50090.htm
- NATO. (2022, June 21). NATO's response to hybrid threats. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_156338.htm
- NATO. (2022, June 21). Resilience and civil preparedness – Article 3. Retrieved from:
https://www.nato.int/cps/en/natohq/topics_132722.htm
- NATO. (n.d.). NATO and Russia: Partners in Peacekeeping. Retrieved from:
<https://www.nato.int/docu/presskit/010219/brocheng.pdf>
- NATO. (n.d.). Operation UNIFIED PROTECTOR NATO No-Fly Zone over Libya. Fact Sheet. Retrieved from:
https://www.nato.int/nato_static/assets/pdf/pdf_2011_03/unified-protector-no-fly-zone.pdf
- NATO's Secretary General Annual Report (2018)
- NATO's Secretary General Annual Report (2020)
- Oğuz, Ş. (2016). The new NATO: Prepared for Russian hybrid warfare? *Insight Turkey*, 18(4), 165-180.
- Oliveira, G. T. (2021, April/June). "Lawfare" e o uso do direito como instrumento de guerra. *Revista Inclusiones*, 8(Especial), 125-145.
- Palmer, D. A. (2015). Back to the Future? Russia's Hybrid Warfare, Revolutions in Military Affairs, and Cold War Comparisons. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO's response to Hybrid Threats*, pp. 49-71.

- Pawlak, P. (2017, March). Countering hybrid threats: EU-NATO cooperation. European Parliamentary Briefing.
- Pifer, S. (2019, March 9). Five years after Crimea's illegal annexation, the issue is no closer to resolution. Retrieved from: <https://www.brookings.edu/blog/order-from-chaos/2019/03/18/five-years-after-crimeas-illegal-annexation-the-issue-is-no-closer-to-resolution/>
- Pifer, S. (2020, March). Crimea: Six years after illegal annexation. Retrieved from: <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/>
- Porter, P. (2016, August 29). Sorry, Folks. There Is No Rules-Based World Order. Retrieved from <https://nationalinterest.org/blog/the-skeptics/sorry-folks-there-no-rules-based-world-order-17497>
- Praks, H. (2015). Hybrid or Not: Deterring and Defeating Russia's Ways of Warfare in the Baltics - The Case of Estonia. (G. Lasconjarias, & J. A. Larsen, Edits.) NATO's response to Hybrid Threats, pp. 219-241.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977. Retrieved from <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDocument>
- Prucková, M. (n.d.). Cyber attacks and Article 5 – a note on a blurry but consistent position of NATO. Retrieved from <https://ccdcoe.org/library/publications/cyber-attacks-and-article-5-a-note-on-a-blurry-but-consistent-position-of-nato/>
- Reichborn-Kjennerud, E., & Cullen, P. (2016). What is Hybrid Warfare? Norwegian Institute for International Affairs (NUPI).
- Reisinger, H., & Golts, A. (2015). Russia's Hybrid Warfare: Waging War below the Radar of Traditional Collective Defence. (G. Lasconjarias, & J. A. Larsen, Edits.) NATO's response to Hybrid Threats, pp. 113-136.

Resolution 713 (1991) adopted by the Security Council at its 3009th meeting, on 25 September 1991.

Reuters. (2022, April 19). Russia suspends financing of Bosnia peace envoy's office. Reuters. Retrieved from <https://www.reuters.com>

Reuters. (2022, February 21). Extracts from Putin's speech on Ukraine. Reuters. Retrieved from <https://www.reuters.com/world/europe/extracts-putins-speech-ukraine-2022-02-21/>

Reuters. (2022, February 21). Factbox: What are the Minsk agreements on the Ukraine conflict? Reuters. Retrieved from <https://www.reuters.com/world/europe/what-are-minsk-agreements-ukraine-conflict-2022-02-21/>

Reuters. (2022a, February 21). Factbox: What are the Minsk agreements on the Ukraine conflict? Reuters. Retrieved from <https://www.reuters.com>

RIA Novosti (2022, February 22). The Federation Council agreed to the use of the armed forces outside the country. RIA Novosti. Retrieved from <https://ria.ru/20220222/soglasie-1774434602.html>

Rogers, P. (2022, May 24). The Ukraine war and NATO's renewed credibility. Retrieved from <https://socialeurope.eu/the-ukraine-war-and-natos-renewed-credibility>

Roth, A. (2022, February 15). Duma manoeuvre points to Kremlin impatience in Ukraine standoff. The Guardian. Retrieved from <https://www.theguardian.com/world/2022/feb/15/duma-manoeuvre-points-to-kremlin-impatience-in-ukraine-standoff>

Roth, A., & Borger, J. (2022, February 22). Putin orders troops into eastern Ukraine on 'peacekeeping duties.' The Guardian. Retrieved from <https://www.theguardian.com/world/2022/feb/21/ukraine-putin-decide-recognition-breakaway-states-today>

- Roth, A., & Oltermann, P. (2022, February 15). Russia confirms 'partial' withdrawal of troops from Ukraine border. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2022/feb/15/russia-ukraine-border-troops-withdrawal>
- Rühle, M. & Roberts, C. (2021, March). Enlarging NATO's toolbox to counter hybrid threats. *NATO Review*. Retrieved from: <https://www.nato.int/docu/review/articles/2021/03/19/enlarging-natos-toolbox-to-counter-hybrid-threats/index.html>
- Rühle, M. (2019, July). *Deterring Hybrid Threats: The Need for a More Rational Debate*. NDC Policy Brief.
- SACEUR & SACT (2010, August 25). *Bi-SC Input to a New NATO Capstone Concept for the Military Contribution to Countering Hybrid Threats*. Retrieved from https://www.act.nato.int/images/stories/events/2010/20100826_bi-sc_cht.pdf
- Salvo, D., & de Leon, S. (2018). *Russia's Efforts to Destabilize Bosnia and Herzegovina*. German Marshall Fund of the United States.
- Sari, A. (2015, October 2). *Legal Aspects of Hybrid Warfare*. *Hybrid Warfare – New Threats, Complexity, and 'Trust' as the Antidote*. Retrieved from: <https://www.lawfareblog.com/legal-aspects-hybrid-warfare>
- Sari, A. (2017). *Hybrid Warfare, Law and the Fulda Gap*. Law School University of Exeter.
- Sari, A. (2018, January). *Blurred Lines: Hybrid Threats and the Politics of International Law*. Hybrid CoE Strategic Analysis 4.
- Sari, A. (2019). *Legal Resilience in an Era of Gray Zone Conflicts and Hybrid Threats*. Exeter Centre for International Law.
- Sari, A. (2021, November). *Hybrid threats and the law: Building legal resilience*. Hybrid CoE Research Report 3.

- Schake, K. & Pepe, E. (2019, April). 70 years of NATO: the strength of the past, looking into the future. NDC Policy Brief 9.
- Schwabach, A. (1999). The Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia. *Pace International Law Review*, 11(2), 405–418.
- Schwartz, M., Reinhard, S., & Holder, J. (2022, January 27). How Russia Has Increased Its Military Buildup. *The New York Times*. Retrieved from <https://www.nytimes.com/interactive/2022/01/27/world/europe/russia-forces.html>
- Sendmeyer, S. A. (2010). NATO Strategy and Out-of-Area Operations. School of Advanced Military Studies - United States Army Command and General Staff College.
- SHAPE. (n.d.). That the first combat action by nato forces took place in 1994, 45 years after the creation of the alliance? Retrieved from <https://shape.nato.int/page2148121621>
- Solmaz, T. (2022, February). ‘Hybrid Warfare’: One Term, Many Meanings. *Small Wars Journal*. Retrieved from: <https://smallwarsjournal.com/jrnl/art/hybrid-warfare-one-term-many-meanings>
- Sonne, P., Dixon, R., & Stern D. L., (2021, October 30). Russian troop movements near Ukraine border prompt concern in U.S., Europe. *The Washington Post*. Retrieved from https://www.washingtonpost.com/world/russian-troop-movements-near-ukraine-border-prompt-concern-in-us-europe/2021/10/30/c122e57c-3983-11ec-9662-399cfa75efee_story.html
- Stoltenberg, J. (2015, March 25). Keynote speech at the opening of the NATO Transformation Seminar. Retrieved from https://www.nato.int/cps/en/natohq/opinions_118435.htm
- Stoltenberg, J. (2021, June 14). Doorstep statement. Retrieved from https://www.nato.int/cps/en/natohq/opinions_184960.htm?selectedLocale=fr

- Stoltenberg, J. (2022, February 25). Press briefing following an extraordinary meeting of the North Atlantic Council. Retrieved from https://www.nato.int/cps/en/natohq/opinions_192408.htm
- Tardy, T. (2022). Ukraine, NATO, and the Madrid Strategic Concept. In *War in Europe: preliminary lessons* (pp. 13–24). NDC Research Division.
- TASS. (2022, April 26). Putin cites precedent of Kosovo in explaining recognition of DPR, LPR. TASS. Retrieved from <https://tass.com>
- Tech Accord. (2022, May 23). The Technology Industry and the Age of Hybrid Warfare. Retrieved from: <https://cybertechaccord.org/the-technology-industry-and-the-age-of-hybrid-warfare/>
- Tenenbaum, É. (2015). Hybrid Warfare in the Strategic Spectrum: An Historical Assessment. (G. Lasconjarias, & J. A. Larsen, Edits.) *NATO's response to Hybrid Threats*, pp. 95-112.
- The coordination of national security and defence management | Riigikantselei. (n.d.). Retrieved from <https://riigikantselei.ee/en/supporting-government-and-prime-minister/organisation-and-planning-work-government/national#government-office>
- Thiele, R. (2020, March). Artificial Intelligence – A key enabler of hybrid warfare. Hybrid CoE Working Paper 6.
- Thompson, N. (2014, April 15). Fighter jets, special forces: Photos “show Russian military buildup” near Ukraine. CNN. Retrieved from: <https://edition.cnn.com/2014/04/11/world/europe/nato-satellite-images-russia/index.html>
- Tiefenbrun, S. (2011). *Semiotic Definition of "Lawfare"*. San Diego.
- Tienhoven, M. v., & Leeuwen. (2016). *Identifying "Hybrid Warfare"*. Master Thesis, Leiden University.
- Ucko, D. H. (2022, July 29). Resetting Article 5: Toward a New Understanding of NATO's Security Guarantees. Retrieved from:

<https://www.worldpoliticsreview.com/resetting-article-5-toward-a-new-understanding-of-natos-security-guarantees/>

Ukraine - The Poroshenko administration. (n.d.). Encyclopedia Britannica. Retrieved from <https://www.britannica.com>

UNPROFOR. (n.d.). Retrieved from: https://peacekeeping.un.org/sites/default/files/past/unprof_b.htm

Värk, R. (2020). Legal Complexities in the Service of Hybrid Warfare. *Kyiv-Mohyla Law and Politics Journal* 6, pp. 27–43.

Volker, K. (2021, December 16). Don't Let Russia Fool You About the Minsk Agreements. Retrieved from <https://cepa.org/dont-let-russia-fool-you-about-the-minsk-agreements/>

Washington Treaty, April 4, 1949. Retrieved from https://www.nato.int/cps/en/natohq/official_texts_17120.htm

Weissmann, M. (2019). Hybrid warfare and hybrid threats today and tomorrow: towards an analytical framework. *Journal on Baltic Security*, 5(1), pp. 17-26.

Wittes, B. (2015, September 11). What Is Hybrid Conflict? *LAWFARE*. Retrieved from: <https://www.lawfareblog.com/what-hybrid-conflict>

Wuerth, I. (2022, February 25). International Law and the Russian Invasion of Ukraine. *Lawfare*. Retrieved from <https://www.lawfareblog.com/international-law-and-russian-invasion-ukraine>

Yeung, B. A. (2022, February 24). Live news. CNN. Retrieved from <https://edition.cnn.com/europe/live-news/ukraine-russia-news-02-23-22/index.html>