

**“Grey Zone measures never breach the prohibition on the use of force.” Discuss.**

*“War is more than a true chameleon that slightly adapts its characteristics to the given case.”<sup>1</sup>*

Grey-zone measures were referred to for the first time in the 2010 US Department of Defense Quadrennial Defense Review (QDR), which forecast that the *“future strategic landscape will increasingly feature challenges in the ambiguous gray area that is neither fully war nor fully peace.”*<sup>2</sup> Factors such as geo-economics, economic interdependence, the presence of nuclear weapons and advancement in technology have significantly influenced the evolution of conflicts from the traditional methods of warfare seen during the Second World War.<sup>3</sup> Conflicts have become less kinetic as states and their adversaries increasingly resort to *short-of-war* tactics, such as cyber-attacks, economic coercion, and political subversion, to achieve strategic objectives without triggering open conflict.<sup>4</sup>

There has been an explosion of lexicons used for these tactics, each with slightly different connotations, for example, hybrid warfare, proxy war, fifth generation warfare and the topic of this essay: grey-zone measures.<sup>5</sup> The grey zone, as the term suggests, is a murky area of conflict where aggressors employ a blend of non-military tools to achieve gradual strategic aims without crossing red lines into overt acts of war.<sup>6</sup> This ambiguity creates significant challenges when trying to apply these measures to the legal framework governing the prohibition of the use of force, which was primarily designed to prevent traditional armed conflict.

This essay attempts to navigate this complex domain, firstly by outlining the legal framework on the prohibition of the use of force. It then looks at the nature of grey-zone measures, using Russia’s invasion of Ukraine and China’s actions in the South China Sea as case studies. Finally, this essay concludes with an analysis of whether grey-zone measures do ever breach the prohibition on the use of force

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<sup>1</sup> Howard, M. and Paret, P., 1976. *On War*, Vol.117. Princeton, NJ: Princeton University Press. Quoted in Azad, T. M., Haider, M. W. and Sadiq, M., 2023. Understanding Gray Zone Warfare from Multiple Perspectives. *World Affairs*, 186(1), 83.

<sup>2</sup> U.S. Department of Defense., 2010. *Quadrennial Defense Review Report*, 73. Available at: [https://dod.defense.gov/Portals/1/features/defenseReviews/QDR/QDR\\_as\\_of\\_29JAN10\\_1600.pdf](https://dod.defense.gov/Portals/1/features/defenseReviews/QDR/QDR_as_of_29JAN10_1600.pdf) [Accessed 25 July 2024].

<sup>3</sup> Azad, Haider, and Sadiq (n 1), 83.

<sup>4</sup> *Ibid*, 83-84.

<sup>5</sup> *Ibid*, 83-84; Krishnan, A., 2022. Fifth Generation Warfare, Hybrid Warfare, and Gray Zone Conflict: A comparison. Armin Krishnan. *Journal of Strategic Security*. 15(4), 14; Echevarria II, A., 2016. Operating in the Gray Zone: An Alternative Paradigm for U.S. Military Strategy. *Strategic Studies Institute (SSI)*, U.S. Army War College, xi-xii.

<sup>6</sup> Maazar, M. J. 2015. Mastering the Gray Zone: Understanding a Changing Era of Conflict. *Strategic Studies Institute (SSI)*, U.S. Army War College, 58; Javier, J., 2020. International Competition Below the Threshold of War: Toward a theory of Gray Zone Conflict. *Journal of strategic Security*, 14(1), 1.

focusing on aspects such as their military character, the intention to attack, the chain of causation between the State and initial act, and the resulting physical harm to individuals and property.

### **Legal Principles Governing the Prohibition of Force**

The prohibition on the use of force enshrined within Article 2(4) of the United Nations Charter states:

*“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*<sup>7</sup>

It is a peremptory norm of international law to which there are two exceptions: use of force authorised by the security council under Article 42 and self-defence under Article 51.<sup>8</sup> It is confined to interstate conflicts and does not apply to non-state actors (NSAs), unless there is a close nexus between the State and NSA.<sup>9</sup> This nexus amounts to supporting an organisation, irregular forces or armed bands by organising or encouraging their incursion in the territory of another State, including financing, training and equipping or providing operational support to that group.<sup>10</sup>

Article 2(4) does not employ the term ‘war’, instead the term ‘force’ is used to beset a wide ambit of forms of conflict, however, the prevailing view is that it is limited to ‘armed force’ characterised by military power and physical violence.<sup>11</sup> During the Charter’s *travaux préparatoires*, a proposal by Brazil to extend the prohibition to economic coercion was rejected which is viewed as an indication that *force* refers to force that has the scale and effect of traditional forms and methods of conflict.<sup>12</sup> This is reaffirmed by the non-intervention principle expressed in the Friendly Relations Declaration which places a duty upon States to refrain from *“economic, political or any other type of measures to coerce*

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<sup>7</sup> United Nations., 1945. *Charter of the United Nations*, 1 UNTS XVI. Available at: <https://www.un.org/en/about-us/un-charter/full-text> [Accessed 22.08.24]

<sup>8</sup> *Ibid.*

<sup>9</sup> *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, para 191; Corten, O., 2021. *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*, 2<sup>nd</sup> ed. London: Bloomsbury Publishing, 53.

<sup>10</sup> *Nicaragua v United States*, *ibid*, para 228; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, para 146, found similarly on the point of armed attack; *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-A, Appeal Judgment, ICTY, 15 July 1999, para 137.

<sup>11</sup> Dinstein, Y., 2018. *War, Aggression and Self-Defence*. 6<sup>th</sup> ed. Cambridge University Press, 91.

<sup>12</sup> Simma, B., 1995. *The Charter of the United Nations: A commentary*, Oxford University Press, 112.

*another state and obtain from it advantages of any kind*”, thus, distinguishing these types of force from armed force prohibited by the Charter.<sup>13</sup>

The ICJ has held that the provisions of the Charter “do not refer to specific weapons. They apply to any use of force, regardless of the weapons employed.”<sup>14</sup> Thus, the types of weapons which may be used to conduct an illegal use of force can encompass non-kinetic, non-military weapons such as chemical, biological and nuclear, and could even involve releasing large quantities of water or spreading fires.<sup>15</sup> It therefore does not matter what type of weapon is used, whether it is a computer or a nuclear bomb, only that the scale and impact of the operation amounts to force comparable to traditional armed force.<sup>16</sup>

For force to amount to the scale and effect of traditional armed force, it requires damage to physical property and/or injury to human life. Recent examples include the 9/11 attack by Al-Qaeda on the World Trade Centre in New York which led to the collapse of the Twin Tower buildings killing 2,977 people.<sup>17</sup> Little clarity is given to the gravity or severity of force required to breach Article 2(4), and not all intrusions and acts of violence by one state in the territory of another constitute a violation, such as covert operations, unintentional acts, abductions and unauthorised intrusions into a State’s maritime area or airspace.<sup>18</sup> These examples cannot clearly be seen as a breach of Article 2(4) not only because they lack scale and effect, but importantly they lack an intention to attack a State.<sup>19</sup> Furthermore, a series of attacks, collectively, could amount to an armed attack justifying self-defence.<sup>20</sup> Therefore, illegal force requires military character, intention to attack, a clear chain of causation between the State and initial act, and consequences involving physical harm to individuals or property.

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<sup>13</sup> United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, Resolution 2625 (XXV), 24 October 1970, preamble, 122.

<sup>14</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, para 39.

<sup>15</sup> Brownlie, I., 1963. *International Law and the Use of Force by States*. Oxford: Clarendon Press, 362-363, 372, 376.

<sup>16</sup> Schmitt, Michael N., ed. *Tallinn Manual on the International Law Applicable to Cyber Warfare*. 2nd ed. NATO Cooperative Cyber Defence Centre of Excellence. Cambridge: Cambridge University Press, 42.

<sup>17</sup> BBC., 2004. *September 11 attacks: What happened on 9/11?* BBC News. Available at: <https://www.bbc.co.uk/news/world-us-canada-57698668> [Accessed 18.08.2024]; United Nations Security Council Resolution 1368, U.N. Doc. S/RES/1368 (12 September 2001).

<sup>18</sup> Corten, (n 9), 55.

<sup>19</sup> Brownlie, (n 15), 362.

<sup>20</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, ICJ Reports 2003, para 64.

## Understanding Grey-zone Measures

There is no universally agreed definition of what grey-zone measures are. The US Special Operations Command illustrate grey-zone measures as “*competitive interaction among and within state and non-state actors that fall between the traditional war and peace duality. They are characterized by ambiguity about the nature of the conflict, the opacity of the parties involved, or uncertainty about the relevant policy and legal frameworks.*”<sup>21</sup> They include cyber warfare, information operations, special operations, intermediaries, proxies, fait accompli<sup>22</sup> and salami-slicing tactics<sup>23</sup> and can be used alongside kinetic military action.<sup>24</sup> These tactics are looked at in depth as they have been used by China to assert its control over the South China Sea and Russia during its invasion of Ukraine.

### (1) China's action in the South China Sea

Over the past decade, China has increased its efforts to legitimise its claim of ownership over the South China Sea (“the Sea”) by employing a range of grey-zone measures, including salami-slicing tactics, proxy representatives, and cyber-espionage with the strategic aim of intimidating neighbouring countries and exploit legal uncertainties about the territorial sovereignty of the Sea. Using salami slicing tactics, China has carried out a land reclamation and island-building projects over disputed territories within the nine-dash line, an area which China claims to have exclusive jurisdiction.<sup>25</sup> The nine-dash line comprises almost the entirety of the Sea, including the Spratly Islands, Scarborough Shoal and

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<sup>21</sup> Azad, Haider, and Sadiq (n 1), 87.

<sup>22</sup> A fait accompli is described as a strategic move to unilaterally seize a piece of territory by presenting it as a done deal to other states in Altman, D., 2017. *By Fait Accompli, Not Coercion: How states West Territory from Their Adversaries. International Studies Quarterly.* 61(4), 882.

<sup>23</sup> Salami-slicing is described as a series of small fait accompli “on a scale too small to provoke a reaction, and increase it by imperceptible degrees, never quite presenting a sudden, dramatic challenge that would invoke the committed response.” In Schelling, T. C., 1966. *Arms and Influence.* New Haven, CT: Yale University Press, 68.

<sup>24</sup> See Azad, Haider, and Sadiq (n 1), 83; Jackson, V., 2019. Tactics of strategic Competition: Gray Zones, Redlines, and Conflicts before War, *Naval War College Review.* 70(3), 39-62; Hayes III, J., 2018. Beyond the Gray Zone: Special Operation in Multidomain Battle. *Joint Force quarterly.* 91(4), 60-66; Wirtz, J. J., 2017. Life in the ‘Gray Zone’: Observations for Contemporary Strategists. *Defense & Security Analysis.* 33 (2), 106–114.; Hoffman, F. G., 2016. The Contemporary Spectrum of Conflict: Protracted, Gray Zone, Ambiguous, and Hybrid Modes of War. *The Heritage Foundation.* 25-36.

<sup>25</sup> Holmes, J. R. and Yoshihara, T., 2017. Deterring China in the “Gray Zone”: Lessons of the South China Sea for U.S. Alliances. *Orbis.* 61(3), 322-339; Yamaguchi, S., 2016. Strategies of China’s Maritime Actors in the South China Sea: A Coordinated Plan under the Leadership of Xi Jinping? *China Perspectives,* 2016/3, 28-29.

Paracel Islands, which China has committed to transforming into administrative regions with military bases in order to control vital sea lanes and the movement of global trade.<sup>26</sup>

For more than 50 years, China has engaged in coercive and intimidating actions aimed at seizing control over these islands from its neighbouring states.<sup>27</sup> These attacks, while frequent, tend to be low in intensity and generally result in minimum damage. A prominent example occurred in 2012 when a tense three-month standoff between China and the Philippine Navy over Scarborough Shoal ended in the Philippines ceding control of the shoal to China.<sup>28</sup> Similarly, in the 2019 Reed Bank incident, a Chinese fishing vessel rammed and sank a Philippine fishing board, leaving its crew in the water for six hours. More recently, in February 2023, a Chinese vessel allegedly used a military grade laser to temporarily blind crew members on a Philippine Coast Guard boat, and in May 2024, the China Coast Guard faced criticism for using water cannons against Philippine vessels patrolling near Scarborough Shoal.<sup>29</sup> Despite these provocations, which consistently avoided causing loss of life, China has downplayed accusations of dangerous and illegal behaviour, typically framing them as routine maritime incidences or as legitimate actions to defend its sovereignty over disputed territories.<sup>30</sup>

China leverages the local government and military-established maritime militia, the China Coast Guard, and private fishing vessels to conduct regular patrols around the Senkaku, Paracels, Palawan and Natuna Islands to challenge Japan, Philippine and Indonesia's administrative control in the region.<sup>31</sup> Using maritime law enforcement agencies and private vessels, China projects the semblance of sovereignty and of defending its borders rather than of land grabbing and disputing the territorial claims of

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<sup>26</sup> Holmes and Yoshihara, (n 25), 328-330; Wingfield-Hayes, R., 2014. *China's Island Factory*. BBC News. 9 Sept. Available at: <https://www.bbc.co.uk/news/resources/idt-1446c419-fc55-4a07-9527-a6199f5dc0e2> [Accessed 31.07.24]; Wingfield-Hayes, R., 2023. *Holding out against China in a row over reefs*. BBC News. 16 Feb. Available at: <https://www.bbc.co.uk/news/world-asia-64634814> [Accessed 31.07.24].

<sup>27</sup> Holmes and Yoshihara, (n 25), 325.

<sup>28</sup> *Ibid.*

<sup>29</sup> Wingfield-Hayes, 2023, (n 25); Al-Jazeera, 2024. *Philippines summons China envoy over water cannon attack in South China Sea*, 2 May. Available at: <https://www.aljazeera.com/news/2024/5/2/philippines-summons-china-envoy-over-water-cannon-attack-in-south-china-sea> [Accessed 02.08.2024]; McLaughlin, R. 2022. The Law of the Sea and PRC Gray-Zone Operations in the South China Sea. *American Journal of International Law*. 116(4), 836.

<sup>30</sup> Wingfield-Hayes, 2023, (n 25); Cruz De Castro, R., 2019. *The June 9 Reed Bank Incident: Chinese gray zone operation in action?* Business World. 2 July. Available at: <https://www.bworldonline.com/editors-picks/2019/07/02/240129/the-june-9-reed-bank-incident-chinese-gray-zone-operation-in-action/> [Accessed: 02.08.2024].

<sup>31</sup> Holmes and Yoshihara, (n 25), 324; Yamaguchi, (n 24), 30; The Diplomat., 2020. *The Natuna Sea Incident: How Indonesia Is Managing its Bilateral Relationship with China*. The Diplomat. 12 Nov. Available at: <https://thediplomat.com/2020/01/the-natuna-sea-incident-how-indonesia-is-managing-its-bilateral-relationship-with-china/> [Accessed 01.08.24].

neighbouring states.<sup>32</sup> This deliberately sparks uncertainty regarding their status and the direct attribution of their actions to the Chinese state.<sup>33</sup> In the Reed Bank incident, the ambiguity over whether it was a deliberate act under state orders or a reckless action by a private vessel paralysed the Philippines as to how to respond, with President Duterte taking more than a week to officially address the incident, eventually downplaying it as a “*little maritime incident*” and cautioning against escalating tensions with China.<sup>34</sup>

Cyber-espionage has been employed by Chinese hackers to gain strategic advantages in the Sea. Advanced Persistent Threat (APT) groups have been targeting government agencies, military operations, and maritime industries in countries involved in disputes with China.<sup>35</sup> Over a number of months these APT groups sat within a targeted State’s IT networks and systems gathering sensitive intelligence on energy and oil exploration in the Sea and conducting surveillance on military and government authorities.<sup>36</sup> Initially these attacks were thought to be the actions of Chinese threat group Mustang Panda, but subsequently multiple clusters of activity were identified to be working in tandem to steal data, making it difficult to attribute responsibility to a particular individual or group let alone a State government.<sup>37</sup>

## (2) *Russia’s invasion of Ukraine*

In 2014, Russia embarked on a campaign to annex Crimea, which escalated in 2022 with a full-scale military invasion to separate eastern Ukraine from the West. The methods employed by Russia include cyber exploitation, disinformation and propaganda, irregular forces, lawfare, civilian coercion and a *fait accompli* of Crimea. The strategic aim was to confuse, divide and demoralise Ukraine and its

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<sup>32</sup> Holmes and Yoshihara, (n 25), 324, 333; Tisdall, S., 2016. *China’s Maritime Militia: Taming the ‘Little Blue Men’*. The Guardian, 16 May. Available at: <https://www.theguardian.com/world/2016/may/16/little-blue-men-the-maritime-militias-pushing-chinas-claims-in-south-china-sea> [Accessed 03.08.2024]; Al-Jazeera, (n 24).

<sup>33</sup> McLaughlin, (n 28), 831; Yamaguchi, (n 24), 23-30.

<sup>34</sup> McLaughlin, (n 28), 831; Cruz de Castro (n 29); Haydarian, R., 2019. *Defiant Rodrigo Duterte shrugs off Reed Bank incident to defend his China policy in speech*. South China Morning Post. 27 July. Available at: <https://www.scmp.com/news/china/diplomacy/article/3020140/defiant-rodrico-duterte-shrugs-reed-bank-incident-defend-his> [Accessed 18.08.2024].

<sup>35</sup> Greig, J. 2024. *Chinese hackers compromising military and gov’t entities around South China Sea, report finds*. 22 May. The Record. 22 May. Available at: <https://therecord.media/chinese-hackers-compromising-south-china-sea-targets> [Accessed 18.08.2024]; Greig, J. 2024. *Chinese hacking groups stole ‘sensitive’ intel on South China Sea from SE Asian government*. The Record. 5 June. Available at: <https://therecord.media/chinese-hacking-groups-stole-from-se-asia> [Accessed 18.08.2024].

<sup>36</sup> Greig, 22 May 2024, *Ibid*.

<sup>37</sup> *Ibid*.

Western allies while obscuring Russia's direct involvement in any aggression and discouraging retaliation from NATO.<sup>38</sup>

A notable element of Russia's strategy was the deployment of Russian Special Forces to Crimea, who were masked and wore green uniforms without any insignia or markings, earning the moniker "little green men."<sup>39</sup> Their occupation of government buildings, including the Crimean Parliament, the seizure of military bases and airports, and control of polling stations during the referendum of Crimea's status, created an environment of intimidation and confusion among Crimeans and the international community about their identity, purpose, and scale of the operation.<sup>40</sup> It enabled Russia's President Vladimir Putin to maintain denial by throwing out misleading information, for example stating "*There are many military uniforms. Go into any shop and you can find one*" and suggesting they were possibly local self-defence units.<sup>41</sup> This effort at plausible deniability delayed the acknowledgement of their Russian origin for 5 weeks until the annexation of Crimea was effectively inevitable and left Ukraine and the West paralysed, unable to respond without risking further escalation.<sup>42</sup>

Russia's long-standing propaganda campaigns have isolated and influenced targeted areas of the public in eastern Ukraine, creating internal divisions and cognitive dissonance.<sup>43</sup> Pro-Russian sentiment is strongest in the populations within reach of broadcast media and localised Russian information campaigns which have distorted perceptions of truth and coerced sections of the population to accuse the West of causing the war and to believe that their own military forces are the enemy.<sup>44</sup> Furthermore, social media has become a battleground for competing narratives and promoting pro-Russian propaganda, through the sharing of AI-generated images and videos of nuclear destruction and terror with a Ukrainian flag flying in the background and fake stories of a small boy being crucified by

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<sup>38</sup> Galeotti, M. 2019. *We Need to Talk About Putin: How the West gets him wrong*. 1<sup>st</sup> Ed. Ebury Press, 16; Azad, Haider, and Sadiq (n 1), 96.

<sup>39</sup> Ash, L. 2015. *How Russia outfoxes its enemies*. BBC News. 29 Jan. Available at: <https://www.bbc.co.uk/news/magazine-31020283> [Accessed 01.08.2024].

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Azad, Haider, and Sadiq (n 1), 96.

<sup>43</sup> Giles, K., 2023. *Russian cyber and information warfare in practices: Lessons observed from the war on Ukraine*. Chatham House, 21.

<sup>44</sup> Giles, *ibid*; Gall, C. 2023. 'Our Own Guys Are Shelling Us': How Russian Propaganda Plagues Ukraine. The New York Times. 19 April. Available at: <https://www.nytimes.com/2023/04/19/world/europe/ukraine-russia-donbas-propaganda.html> [Accessed 09.08.24].

Ukrainian soldiers.<sup>45</sup> Despite being described by one local Ukrainian police chief as “*the most brutal weapon the Russian Federation uses on our people,*” this method of coercion and propaganda has cultivated a narrative that aligns with Russia's interests, portraying the conflict as a defensive operation rather than an act of aggression.<sup>46</sup>

The disinformation campaign has been coupled with cyber-attacks aimed at immobilising Ukrainian telecommunications and energy infrastructure. In December 2015, the BlackEnergy malware attack caused three companies and 27 substations to go offline resulting in widespread outages that affected around 225,000 Ukrainians.<sup>47</sup> Attackers sat within the companies IT networks for months, monitoring activities and gathering data and strategically executing the attack to maximise impact without direct physical confrontation.<sup>48</sup> The Industroyer, or CashOverride, cyber-attack in 2016 had similar effects targeting Ukraine's power grid causing a power outage in Kyiv and surrounding area for over an hour.<sup>49</sup> Each cyber-attack against Ukraine has become more sophisticated, as Industroyer and a second attempt in early 2022 was directly capable of controlling switchboards and circuit breakers.<sup>50</sup> Although these attacks did not have a detrimental impact to human life, the effect was to prevent access to reliable news and information and blind the military having the cognitive effect of intimidating and demoralising the Ukrainian population.<sup>51</sup> These are widely believed to be the work of Sandworm, a hacking group linked to Russian Military Intelligence, however, there is no conclusive evidence to suggest the group or the Russian state are responsible.<sup>52</sup>

Finally, Russia has engaged in lawfare to justify its actions and erode fundamental principles of international law.<sup>53</sup> Russia has drafted amendments to Russian law allowing Russia to legally

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<sup>45</sup> Perez, C. and Nair, A. 2022. *Information Warfare in Russia's War in Ukraine The Role of Social Media and Artificial Intelligence in Shaping Global Narratives*. Foreign Policy, 22 Aug. Available at: <https://foreignpolicy.com/2022/08/22/information-warfare-in-russias-war-in-ukraine/> [Accessed 09.08.24].

<sup>46</sup> Gall, (n 43).

<sup>47</sup> Ansaria, A. 2024. Analysis of Ukraine power grid cyber-attack 2015. *World Journal of Advanced Engineering Technology and Sciences*, 11(1), 410-412.

<sup>48</sup> *Ibid.*

<sup>49</sup> Kozak, P., Klaban, I. and Slajs, T., 2023. Industroyer cyber-attacks on Ukraine's critical infrastructure. *International Conference on Military Technologies (ICMT)*, 3-4.

<sup>50</sup> *Ibid.*, 1.

<sup>51</sup> *Ibid*; Giles, (n 42), 36.

<sup>52</sup> Giles, (n 42), 12.

<sup>53</sup> Voyager, M., 2018. Russian Lawfare – Russia's Weaponisation of International And Domestic Law: Implications For The Region And Policy Recommendations. *Journal on Baltic Security*, 4(2), 2, provide the following definition of lawfare: “a method of warfare where law is used as a means of realising a military objective.” In the context of Russia “Russian lawfare is the domain that intertwines with, and supports, Russian

incorporate regions of neighbouring states following local referenda, given Russian passports to Ukrainians in Crimea and eastern Ukraine, and redefined and expanded the right to ‘responsibility to protect’ to people with cultural links to Russia.<sup>54</sup> By exploiting legal ambiguities around the concepts of self-determination and intervention by calling for recognition of the Donetsk and Luhansk regions as independent states, Russia frames its actions as a legitimate response to alleged threats against ethnic Russians.<sup>55</sup> Russia has established a legal veneer over its actions Russia portrays of the secession of Crimea and eastern Ukraine as legitimate action in response to the ‘will’ of the people.<sup>56</sup>

## Analysis and Conclusion

Whether grey-zone measures breach the prohibition on the use of force under international law hinges on the nuanced intentions behind these tactics, the connection between the State and the act of force, their divergence from traditional methods of conflict, and the resulting consequences. The intention behind a state’s choice to employ grey-zone measures influences the means of conflict. For Russia grey-zone measures were used pre-2022 for laying the groundwork for combined-arms operations, while China uses such measures incrementally to achieve political goals.<sup>57</sup> According to Brownlie, “*the minor nature of an attack is prima facie evidence of the absence of an intention to attack, of honest mistake, or simply the limited objectives of an attack.*”<sup>58</sup> This suggests that the severity of an act is crucial in determining whether it constitutes an illegal use of force. This rings true for states employing grey-zone measures as the intention is to avoid triggering a self-defence response but to use gradual force for strategic gain.

Hathaway and Shapiro imply that when grey-zone measures are used in conjunction with military actions, as seen in Russia’s actions, they may indeed amount to a violation of Article 2(4).<sup>59</sup> At present,

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information warfare, thus providing the (quasi)-legal justification for Russia’s propaganda claims and aggressive actions.”

<sup>54</sup> *Ibid*, 38.

<sup>55</sup> Al Jazeera., 2022. *Putin recognises independence of Ukraine breakaway regions*, 21 Feb, Available at: <https://www.aljazeera.com/news/2022/2/21/russia-to-recognise-ukraine-breakaway-region-kremlin-confirms> [Accessed: 09.08.24].

<sup>56</sup> *Ibid*.

<sup>57</sup> Maazar, (n 6), 60.

<sup>58</sup> Brownlie, (n 15), 366.

<sup>59</sup> Hathaway, O, A., 2023. *Commentary: How Russia’s invasion of Ukraine tested the international legal order*. Brookings Institute. 3 April. Available at: <https://www.brookings.edu/articles/how-russias-invasion-of-ukraine-tested-the-international-legal-order/> [Accessed 07.08.24]; Hathaway, O, A. and Shapiro, S. J. 2017. *The Internationalists: How a Radical Plan to Outlaw War Remade the World*. Simon & Schuster, Ch.14.

while Russia's use of information warfare, propaganda, and cyberattacks clearly breach Ukraine's sovereignty and violate the principle of non-intervention, they are not military in character of on their own led to loss of life or physical damage to property. Similarly, China's strategy in the South China Sea involves small-scale incidents that do not result in significant loss of life or property damage or are military in character. Despite seizing control of islands from its neighbours, they are difficult to view collectively as a series of ongoing attacks because they present as distinct low-scale attacks directed at different states and do not escalate.<sup>60</sup> This has kept conflicts localized and largely out of the international spotlight, thus facing little to no condemnation.<sup>61</sup> So whilst then it's easier to downplay these acts, the reality is that they make a big change with no immediate visible effects. These measures do not fit neatly into the traditional understandings of military force, and so tend to be downplayed or misinterpreted in legal contexts. The Charter encompasses a wide ambit of conflicts, and so the potential to expand its meaning to encompass condemning grey-zone measures alongside acts of military force as illegal force would give them higher status as serious methods of warfare.

Where grey-zone measures involve proxies or covert operations, they could potentially amount to an illegal use of force if they cause significant harm or coercion.<sup>62</sup> However, determining the connection between a state and its proxies or non-state actors (NSAs) is no simple challenge. Russia's use of "little green men" and China's use of non-combatant vessels allows both countries to downplay their intentions and maintain plausible deniability making it difficult to identify a clear line of causation between the act and commanding state. This is more complex in the realm of cyberattacks, where it must be proven that a cyber group has acted under state orders before attributing their actions to the state for the purpose of establishing an international armed conflict.<sup>63</sup> Currently, there is a significant lack of clarity in determining responsibility for cyberattacks, let alone definitively attributing them to a state.

In conclusion, it is challenging to argue that grey-zone measures currently breach the threshold of the prohibition on the use of force. These tactics are designed to coerce states into ceding territory and curtailing their sovereign borders without provoking a significant response that could escalate to open conflict. Because these measures do not align with traditional methods of conflict and force, applying legal standards based on conventional warfare creates an ambiguity and uncertainty. As Mazarr notes,

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<sup>60</sup> Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, ICJ Reports 2003, para. 64.

<sup>61</sup> Holmes and Yoshihara, (n 25), 333.

<sup>62</sup> Fortin, K., 2017. *The Accountability of Armed Groups under Human Rights Law*. Oxford: Oxford University Press, 152-73.

<sup>63</sup> Tadić, (n 10), paras 132, 137, 141, 145.

states engaged in grey-zone conflicts are technically not “at war.”<sup>64</sup> However, as Clausewitz emphasises, war is an ever-evolving phenomenon typified by politics, reason, chance and uncertainty—qualities inherent in grey-zone measures, which represent modern adaptations to tradition strategies in response to 21<sup>st</sup> century complexities.<sup>65</sup> Therefore, it cannot be ruled out that these tactics could not eventually amount to an illegal use of force in the future.

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<sup>64</sup> Maazar (n 60), 66.

<sup>65</sup> Howard, M. and Paret, P., 1976. *On War*, Vol.117. Princeton, NJ: Princeton University Press, 88-91.

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