

Managing Asymmetric Conflicts in the Dynamics of the 21st Century

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Abstract: *In the modern global community, what dictates the world order is international law. It defines the behavior of state actors and imposes restrictions against violation of other state's rights. But due to the shifts in modern conflict management, the law has been converted into a weapon against democracy used to achieve operational objectives. Lawfare - legal warfare - has proved to be a less resource-consuming alternative to traditional military means which arouses the interest of powerful actors. In this complex equation, the role of security managers is to identify and implement effective strategies designed to guide the exercise of power among the global arena players, maintain the balance of power through the decision-making process and inter-state cooperation. This paper aims to draw the coordinates of the nature of modern conflicts analyzing the relation between international law and the use of lawfare as a counterweight to the conventional methods of waging war. At the same, it will focus on the Hadesian lawfare pattern used by Russia to materialize its hegemonic ambitions by analyzing recent cases of implementing lawfare strategies. As it has been engaged in a comprehensive hybrid warfare campaign in the last decade, Russia regards lawfare as another pivotal instrument from its hybrid toolbox, one that has received little analytical effort. The information presented was gathered from the literature corpus on international relationships and national doctrines, following empirical research based on the qualitative method. The methodology used is qualitative thematic analysis, focusing on the current conflict environment in the global arena, as this topic is considered of high interest, whose consequences can affect the population, depending on the geographical area and its own disputes. By resorting to empirical research, we chose the method of direct observation of contemporary reality, on which we applied the case study as an instrument. From the interpretation of the data analyzed, the relations and processes of the Russian offensive, we will proceed to identify an optimal solution for the defensive in an asymmetric conflict.*

Keywords: Management; Conflicts; Asymmetric Threats; International Humanitarian Law; Russia.

Introduction

We live in a modern, global community, whose features are gradually being printed on all nations and which is dominated by international law. The paradigm shifts require the modern management of conflicts between various entities or states. Globalization has led to a series of major interconnected and interdependent changes. Transposed into the management of decision-establishing factors, this means the need for more accurate decision-making, more information in creating medium and long-term strategies and a controlled impact on the population.

The public decision managers have to align their strategies for the overall pursued intentions (goals) and they need also, to have three characteristics that underpin the decision-making process: to be willing to take risks, to have an open mind and to keep up-to-date – using the intelligence to be in possession of an overall situational vision. During a conflict, the desire for change allows you to "move from a point of view in a panoramic position - to a higher, larger place where you can see both sides," says Thomas Crum, martial arts aikido expert in Colorado, USA, and a writer in the areas of conflict resolution, top performance and stress management.

The 21st century has not taken over the *clichés* of the past, highlighting new challenges the world will have to overcome. If the empiricism of the past century seemed to have prepared the nations for any type of conflict, the current geopolitical context outpaces in technology and strategy the theories applied so far. The new millennium translates in reality, unconventional threats that capture opponents and change the rules of the game. It is not certain if we can call the "evolution" phenomenon, but the conventional war ceased with the twentieth century. The world is currently facing terrorist attacks, hybrid wars, non-state actors, gradually moving from bipolarity to a multipolar geopolitical architecture.

The new socio-political-military challenges - such as illegal migration, the spread of Islamic terrorism, the deepening of insurgent groups in Asia and Africa, cybercrime or multiple forms of hybrid wars – will require a global security network that will find its sustainability base in efforts of adaptability, flexibility, and rapid response. All these are necessary for the context of strategic reconfiguration in national key areas such as economy, politics or security.

In the context of new global-scale conflict paradigms, it is necessary to create and implement a new type of management that encompasses trajectories at a macro level. Current conflicts are significantly different from the past given lessons, changing the core of inter-state conflicts of interest, regional revolts, and international armed wars. The present era is witnessing new types of conflicts (exemplified by hybrid warfare), soft power tools, and novel ways of resolving them (resilience).

In this complex equation, the role of managers is to identify and implement effective strategies for exercising power by global arena players, poisoning the balance of power, making decisions about interstate competition or cooperation, and strengthening the using collective security.

The aims of this paper are to draw the definitional aspects of "hybrid warfare" in the process of evaluating the analytical value of this strategic concept and the extent to which it has become an untraditional military capability deployed by Russia in its approaches to war.

The qualitative research will focus on the dynamics of asymmetric conflicts, trying to anticipate where, when and how to tackle them. We will examine a case study to get a better comprehension of pattern variation, in terms of interests, triggers, means, resources, casualties and law enforcement.

Theoretical framework

The conflict is a complex phenomenon that needs to be analyzed from the perspective of three components: the conflict situation, the behavior that generated the conflict and the perceptions and attitudes of the conflict. The conflict can be defined as a situation between at least two parties that finds irreconcilable incompatibilities between their values, interests, and goals. The quintessence of the conflict portrays it as the element that activates a situation where two or more parties understand that they have incompatible values, targets, and interests. The conflict is ubiquitous in all areas, whether we are talking about politics, the international environment, the economy, or strongly consolidated societies. Conflict situations involve relationships between the parties regarding "their perceptions and misinterpretations, common and separate values, their goals and motivations" (Burton, Montville, & Julius, 1991).

The key to resolving/ending conflicts involves the ability to reconcile incompatibilities peacefully (avoiding violence or armed conflicts as much as possible) with the help of efficient management. The conflict situation is composed of four ineluctably linked elements: the parties, the incompatibilities (disputed problems), the target and the context. It should be noted that there is a link between violence and conflict, but that does not exclude the possibility of them existing separately.

Conflicts can be armed (also known as military conflicts), unarmed (non-military) or mixed (Mureșan & Văduva, 2007). At a structural level, the causes of conflicts may be diverse, but the most common, with major repercussions on the population are the establishment of anarchy and the desire for power, the diminishing of natural resources and population growth, the proliferation of weapons and technological innovations.

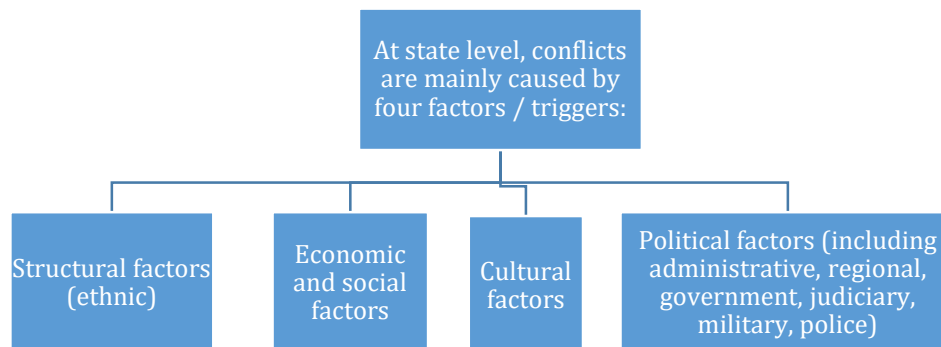


Figure 1. The main causes of domestic conflicts

Source: authors processing

The role of state leaders in conflict management has not been presented for its true potential and has not received sufficient attention. Analyzing the permissive causes of armed conflicts, it can be noticed that the decisions and actions of the heads of states most often dictate the way of resolving armed conflicts. Their influence is not limited by the state management they lead, only inside the borders, and the effects can be felt internationally. Thus, the terminology of "bad neighbors" appeared in literature, referring to those heads of state who deliberately act to instigate the creation of new conflicts for different purposes: political, economic or ideological.

Table 1. Status quo of the global conflict

Conflicts whose status is getting worse	Frozen conflicts	Possible sources of conflict
War in Afghanistan	Civil war of Syria	The decision of the USA to withdraw the JPOCA ¹
Conflict between Turkey and the Armed Kurdish Groups	Political instability in Iraq	The ideology of Islam revolution
Destabilization of Mali	Conflict in Ukraine	(Al) Houthi movement
Israeli-Palestinian Conflict	War in Yemen	The fight for power consolidation and strengthens in the Middle East between 3 strong powers: Iran, Turkey and Saudi Arabia
Conflict between India and Pakistan	Civil war in South Sudan	
Violence in the Democratic Republic of Congo	Nagorno-Karabakh Conflict	
Instability in Venezuela	The spread of the organized crime in Mexico	
Al-Shabab in Somalia	Territorial disputes in the South China Sea	
	Islamist Militancy in Pakistan	
	Tensions in the East China Sea	
	Political instability in Lebanon	
	Boko haram in Nigeria	
	North Korea Crisis	
	Instability in Egypt	
	Civil war in Libya	
	Violence in the Central African Republic	
	Rohingya Crisis in Myanmar	

Source: authors processing based on the information published by the Global Conflict Tracker, Council on Foreign Relations

¹ Joint Comprehensive Plan of Action - (P5+1 - the US, UK, France, China, Russia and Germany), that implies the *mutual consensus* in what concerns nuclear weapon in Iran.

The 21st Century has its own cases of such leaders, who can put their mark on world history and can rewrite the course of peace. We will choose some of the most publicized examples to better understand the phenomenon:

- ⇒ Russia's leader, Vladimir Putin, exerts an expansionist influence on Ukraine and the Baltic countries and tries to win "frozen/unchanging conflicts" and international decision-making power by imposing realities on the ground;
- ⇒ The North Korean leader, Kim Jong-Un, threatens the possibility of a nuclear crisis;
- ⇒ President of Syria, Bashar al-Assad, has been fighting for 8 years for power in the Civil War in Syria at the cost of an economic collapse and a disaster for humanity;
- ⇒ Turkish leader Recep Tayyip Erdogan tries to establish a dictatorship in the form of the "sultan tradition" (Democracy dies in darkness, 2018);

So far, the conclusion is that the effects of an armed conflict always converge to the same results: diminishing resources, social disintegration, weakening of the economy. Furthermore, it is noted that the 21st century has strong leaders who manage the states, caring more for the international ranking of power than for social welfare.

Current conflicting predispositions

The conflict scenario predicts for the year 2019 an accumulation of frozen conflicts and increasing status of wars followed by social and political instabilities.

Following the data analysis (Conflict Status, 2019), we can see that not only the efforts of humanitarian organizations will intensify, but also that there is a possibility that strong alliances will be re-established on the international stage. The conclusion marks the year 2019 as having resonant geopolitical dilemmas caused by rebel groups of jihadists and insurgent struggles, as well as intra-community struggles. The lack of sustainable solutions to ending these conflicts will foster the creation of an environment conducive to their expansion. The activity of insurgent groups will increase both in frequency and geographical distribution (Matfess, Carboni., Hart, & Bynum, 2019). Both as a form of response, as well as for avoiding, counteracting and eliminating conflicts, we will witness the implementation of intensified measures to counter Iran's influence and the fight against Islamic terrorism by MESA (the Middle East and South Asia), the Arab military regional alliance.

International humanitarian law and the right to war

We will focus our attention on the international conflicts of the armed type, which will divide into two coordinates: the right to war and the right in war. The right to war (*jus ad bellum*) refers to the possibility or necessity - legally understood and a legal right, to trigger an armed conflict. The main source of this right lies in the Charter of the United Nations; Article 2, paragraph (4) of the Official Document prohibits the use of threats or the use of violence in international relations: "In pursuit of the purposes stated in Article 1, the United Nations and its Members shall act in accordance with the following principles: (4) All Members of the Organization shall abstain in their international relations from resorting to the threat of use or use against either the territorial integrity or political independence of any State or in any manner incompatible with the goals of the United Nations".

However, these bans are of a general nature, so they bear exceptions to the principle of non-aggression, as follows:

- Article 51 recognizes the right of states to self-defense (individual or collective) in the context of an armed attack against the state in question;
- Article 39-41 permits military action authorized or taken by the Security Council if "a threat to peace, a peace violation or an act of aggression is found".

These amendments apply only to inter-state conflicts, so intra-state conflicts or those caused by non-state actors remain without uniform regulation. The right to war (*jus in bello*) is known as international humanitarian law. Regardless of the terminology used ("conflict law", "laws of war"), *jus in bello* refers to the rules on the treatment of civilians and non-combatants in the area of armed conflicts, as well as on the regulations of soldiers and combatants. International humanitarian law (IHL) applies only in times of war and has two main sources:



Hague laws developed on the basis of The Hague Conventions of 1899 and 1907 on the justification of the use of military weapons and tactics, and also the two Additional Protocols ratified in 1977.

The Geneva Conventions, which regulate among other things the treatment of war prisoners, civilians and other non-combatants. The rights deriving from these laws include the granting of non-discriminatory respect, protection and treatment.

Figure 2. The main regulations of international humanitarian law

Source: Authors' processing sources of international law

While in the past, international law was used *a posteriori* to solve the disputes that took place on the battlefield, currently we see IHL is evoked in conflicts that emerged in cyberspace. The hybrid warfare encompasses both military and non-military tools – in the knowledge-based society information can be a double-edged sword that can inform and mislead people at the same time.

Russia is recognized for its ability to craft disinformation campaigns in order to sow discord among ex-soviet states. As Valery Gerasimov, the chief of the Russian General Staff, has stated: "The very 'rules of war' have changed. The role of nonmilitary 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".

The methodology of scientific research

The information presented was gathered from the literature corpus, respectively the national and international doctrine applicable to the chosen subject, the conflict management in the 21st century, followed by empirical research, based on the qualitative method. The qualitative thematic analysis has been used, focusing on the current conflict environment in the global arena which is considered to be a current topic of interest as its consequences can affect the population, depending on the geographical area and its own disputes. Based on empirical research, the method of direct observation of contemporary reality was used on which we applied the case study as an instrument. This aimed at analyzing the use of the right to war for malicious purposes in the case of Russia over Ukraine (in literature, the conflict is described as a hybrid war). By interpreting the analyzed data, the relations and processes of the Russian offensive, we will proceed to identify an optimal solution for the defensive in an asymmetric conflict. Information from international statistics on the current status of conflicts has also been used. Based on international reports on current conflicts, evolving scenarios can be created to base effective managerial decisions globally.

Right to war: Hadesian v. Zeusian hypothesis warfare

From the point of view of international conflicts, the most recent feature of the 21st century is the use of the law as a weapon of war, generally known as "legal warfare" or abbreviated "lawfare". The term was first coined in 2001 by General Charles Dunlap, the former US general attorney, and professor of international law at Duke University, and refers to "the strategy of using or abusing the law as a substitute for traditional military means to achieve an operational objective" (Dunlap, C., 2008). The law is certainly a unique tool of power on any battlefield and can be exploited not only by law-oriented societies but also by those who do not respect the rule of law. Nowadays, it is easy to observe and analyze the various motives and intentions underlying the actions of the state in the field of international law. The use of legal maneuvers instead of armed forces is more attractive to international actors than conventional kinetic military actions and has become a critical strategic platform.

Also, "lawfare" has been seen as a viable instrument of governance art suited for future conflicts, and has thus become an integrated element of hybrid war, along with disinformation and cyberwar. Having

leverage against an enemy is crucial in an asymmetric clash of forces, which is why the symbolic balance of justice has been turned into a crossbow and gained a place in the hybrid arsenal of the states.

Generally, "lawfare" develops in legal ambiguity and exploits legal thresholds and legislative loopholes. The legal areas in which the law can be used as a method of war are domestic law and international law, fluctuating between the classic pillars: *Jus ad bellum* and *Jus in bellum*. The researches have outlined two dimensions of this phenomenon - benevolent and evil - correlated with the antagonism between the Greek gods Zeus and Hades (Munoz Mosquera & Bachmann, 2016). If it is used to distort the basic principles of the rule of law, it would qualify as Hadesian, if it were used to strengthen the principles of the law, it would be Zeusian. The question raised by this taxonomy is which part will tip the balance?

Use of the law to war for malicious purposes

When it comes to conflict, international law makes use of two mechanisms: negotiations and agreements. Managing the right to war requires a series of steps, a rigorous regulation, rules of engagement/assumption, and post-war relations are normalized by cease-fire, disarmament, and peace treaties. In a modern interpretation, international law does not have the power to sanction or justify unlawful trials, such as the annexation of territories or aggression against other states.

We propose to analyze an atypical management type. In detail, we propose to study a case of management whose sphere of influence extends more than the area of economic relations - reflecting also on the geopolitical and military domains on a global scale. We choose to put on the table the analysis of the management of a strong state trying to re-establish itself on the international scene using a new form of war (asymmetric), new means and a strategy based on the fruition of the strengths and the minimization of its own vulnerabilities (Hunter & Pernik, 2015).

Russia's hybrid war strategies are characterized by actions that have become a systemic challenge to common international law. The interpretative aspect of international law appears to be a fluid element that Russia used extensively and in the most creative way to support its numerous territorial, political, economic and humanitarian claims against Ukraine, as well as to harass its neighbors in the regions they perceive to be post-Soviet. So far, the existing international system based on international bodies and treaties has failed to protect Ukraine from the hostile re-emergence of Russian hegemony. Returning to this territorial crisis, we must first analyze the actions taken by Russia.

Since 2014, the Republic of Crimea and the federal city of Sevastopol have been administered as two components of the Russian Federation. The Russian *modus operandi* was simple and unexpected: The Russian military forces, masked and without the specific emblem (the army) took over the Crimean Parliament and proceeded to the establishment of a pro-Russian government. Thus, Russia has tried and managed to erode many of the principles of the international *de facto* system. The most important principle is the inviolability of national borders. This is mentioned in the Helsinki Treaty signed in 1975, a treaty recognized by the Russian Federation at the end of the Cold War.

The full national and international supremacy of the nation-states, which is the cornerstone of the existing international system based on the Westphalian principles, is another fundamental principle eroded by Russia's actions. Moreover, the right - universally acknowledged - to self-determination is used by Russia to undermine the unity of Ukraine as a national state, raising the status of Russian-speaking Ukrainian citizens in the Crimea, Donbas and other parts of the country to the separate peoples. Thus, Russia embraces aggression in the language of self-determination.

The Russian Hybrid War Arsenal contains a wide range of elements, from tactical to strategic, elements that are used in accordance with Moscow's interests. When it comes to hybrid warfare, we must not be surprised by the means of disseminating chaos and, more importantly, we consider optimal the creation of resilience strategies as a response to unexpected attacks.

At the beginning of Ukraine's aggression, Russia turned to various subterfuges, including a draft amendment to the law on the admission of territories to the Russian Federation, which claims to allow Russia to legally incorporate the regions of neighboring countries following local controlled and manipulated referenda (Commission, 2014). This document was withdrawn from the Duma agenda on

March 20, 2014, just after the Crimean referendum, which took place four days before, on March 16, 2014. However, the fact that it was presented before the visible actions of the Crimean soldiers indicates the high level of coordination between the military and non-military elements of Russia's hybrid efforts, especially in the area of legislation and information.

In the field of international law, Russia is playing a double game: on the one hand, it violates the rules to justify its hegemonic tendencies and, on the other hand, continues to blame the Western powers for applying unequal and selective treatment to the rules against Russia, a hybrid reply technique. In December 2014 and 2015, Russia's security strategy and military doctrine presented Russia as the target of western hybrid efforts, with the mobile to destabilize it (Voyger, 2018).

From the information outlined we can highlight several aspects:

- Hybrid warfare promotes a complex of forces adapted to the available resources and to the selected target;
- The evolution of hybrid war is difficult to predict because it depends on the external factors and the dynamics of security architecture;
- Non-linear, hybrid conflicts systematically delete the concise division between peace and war;
- For an effective defense against hybrid warfare, a sustainable solution is the fusion of the NATO-EU defensive, requiring an Alliance with extensive capabilities and powers to face such a threat to states;
- The hybrid war strategy carried out by Russia in order to achieve its own interests is another proof of the legal reinterpretation of international law. Although Russia officially respects the principles of international law, the state adopts a revisionist vision of the rule of law to justify its expansionist and interventionist policies, considered as spheres of legitimate interest.
- Russia's actions will set a precedent, backing the claims submitted by powerful states like China or Iran.
- Russia's use of law as a main tool in asymmetric combat strategies presents challenges to the international security system and the balance required by the international legal order.
- The key to solving these conflicts is the creation of strong alliances with a role in counteracting the hybrid war and strengthening the resilience of states.

Conclusions

Based on the empirical research applied to the case study, we note the constancy of Putin's government policy in the defense and security sector. The Kremlin will expand both in terms of resources and geographic area, targeting the less developed EU and the Middle East. The strategy used by Russia is an aggressive one, based on the hard power concept, aiming at destabilizing the West and the values it promotes from the inside. The means used are diverse, involving corruption, propaganda, and misinformation, hacker groups coordinated by intelligence services and military force.

The identified patterns of the hybrid warfare conducted by Russia are to redesign borders and reaffirm itself as one of the most important and active participants of geopolitical games. The key areas targeted are economical, technological and human resources with the purpose of hiding a war declaration in plain sight.

Russia is trying to prove its leadership in the new world battlefield, and the current context offers Ukraine as an exponent of testing all the hybrid warfare methods that Russia can innovate. As a lesson learned, the digital era should be considered one of the tools prone to be used to intensify the chaos at a national level and to grant access to the internal affairs of other countries.

The purpose of these actions was to reduce the confidence of Ukrainian citizens in state institutions and authorities, as well as to create a sense of insecurity and fair representation in parliament. Through propaganda, the unique solution to these internal dysfunctions appears to be Moscow - the only one who can *pro bono* restore the stability and balance in the country.

The practical implications of the case study consist in highlighting the need of the policymakers to rethink the strategies, in order to adapt them to the ever-changing threat environment. When faced with ambiguous warfare, actions should be taken considering the opening of new fronts such as social media and news platforms.

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