

Grey Zone Conflict and Legal Derision

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Abstract

The Grey Zone conflict falls between the war and peace on the war-peace continuum. The Grey Zone is characterised by intense political, economic, informational, and military show of force. Grey Zone actions are not new. Examples of Grey Zone tactics include cyber warfare, deception, proxy war, economic pressure, digital propaganda, and drones etc. They may also involve military show of force or intimidation and unconventional military operations. The ambiguous nature of Grey Zone activity coupled with a lack well-defined international law makes it difficult to hold Grey Zone actors accountable for their misdeeds. The United Nations, the largest international player to facilitate conflict management by states, remains an ineffective organ for conflict de-escalation in Grey Zone conflicts. There is an urgent need to upgrade international legal frameworks and mechanisms of conflict management which could be employed to address the Grey Zone conflicts.

Introduction

If a state is engaged in an armed conflict, it is said that the state is at war. If the state is not in an armed conflict, it is at peace. 'Grey Zone' is the space between war and peace involving coercive actions that do not reach the level of armed conflict. Today there are several Grey-Zone conflicts involving confrontations over territory, sovereignty and economic interests. The operations launched by Russia against Ukraine in 2014, the Russian interference in the 2016 US Presidential election¹, the Chinese interventions in the South China Sea and

intrusion in Ladakh, and Pakistan's proxy war in Jammu and Kashmir could be termed grey-zone activities. Another recent example of this kind is the killing of the Islamic Revolutionary Guard Corps (IRGC) Quds Force chief Qasim Soleimani by a US drone strike in Iraq in January 2020. In such situations, the use of military forces falls short of actual war but cannot qualify as peace.

A few states are using non-state actors and unconventional tools to destabilise their adversaries. Russian Army General Gerasimov, without explicitly using the term Grey Zone, has expressed the view that "A perfectly thriving state can, in a matter of months and even days, be transformed into an arena of fierce armed conflict, become a victim of foreign intervention, and sink into a web of chaos, humanitarian catastrophe, and civil war".²

The laws of war or international humanitarian law (IHL) regulates relations between states by limiting the use of violence in armed conflicts.³ IHL applies only to international armed conflict or internal armed conflict; it does not cover internal tensions or disturbances such as isolated acts of violence. International law does not clearly set out acceptable norms in many areas of the Grey Zone. The main reason is that Grey-Zone conflicts do not reach the level of an armed conflict. Besides discussing the concept of Grey-Zone conflict, this article discusses some relevant legal issues such as the effectiveness of the United Nations Charter and the means and methods of warfare that may be exploited in a Grey-Zone conflict.

Defining Grey Zone Conflict

Grey Zone has been defined by one author as, "Those covert or illegal activities of non-traditional statecraft that are below the threshold of armed organised violence; including disruption of order, political subversion of government or non-governmental organisations, psychological operations, abuse of legal processes, and financial corruption as part of an integrated design to achieve strategic advantage."⁴ The US Special Operations Command (SOCOM) uses the following definition of Grey-Zone conflict: "Grey Zone challenges are defined as competitive interaction among and within state and non-state actors that fall between the

traditional war and peace duality. They are characterised by ambiguity about the nature of the conflict, opacity of the parties involved, or uncertainty about the relevant policy and legal frameworks”.⁵

The important characteristics of Grey Zone conflict are: (i) It remains below the threshold that would justify a military response with an aim to avoid major clashes, or attributable violations of international law; (ii) It unfolds gradually over time rather than involving bold, all-encompassing actions to achieve objectives in one step; (iii) There is lack of attributability with an aim to disguise its role at least to some extent by using disinformation or/and cyber-attacks; (iv) There is extensive legal and political justifications, often grounded in historical claims supported with documentation; (v) It stops short of threatening the defender’s vital or existential interests; (vi) It is typically built around non-military tools, as part of the general approach of remaining below key thresholds for response; (vii) It may use the threat of more violent military actions; and (viii) It puts the defender in situations where strong responses appear non-viable or counterproductive, for strategic and domestic political reasons.⁶

Grey-Zone warfare has been referred to as irregular warfare, political warfare, asymmetric warfare, and unconventional warfare.⁷ Grey-Zone tactics may include cyber-attacks, deception, sabotage, proxy war, assassinations, espionage, economic pressure, terrorism, and exploitation of gaps and ambiguities in the law. Manipulation of public opinion at home and abroad by using information warfare and disseminating “fake news” is an important means of creating confusion and skepticism.⁸

Grey Zone Conflicts and Hybrid Warfare

Grey-Zone conflict and hybrid war are two different concepts. The use of the term ‘conflict’ for the former and ‘war’ for the latter is intentional. However, hybrid warfare techniques may be used in a Grey-Zone conflict. In a Grey-Zone conflict, conventional military operations may be used alongside non-conventional tactics, whereas in hybrid warfare, conventional military operations are dominant and non-conventional operations are used as auxiliary tactics. Protracted engagement is one of the dominant characteristics of a Grey-Zone conflict, whereas engagements are

of short duration in hybrid warfare.⁹ Parties engaged in Grey-Zone conflicts use unconventional hybrid warfare tactics such as political and information warfare, propaganda appealing to transnational actors, equipment and training of non-state actors, state-level economic pressures and unconventional operations by the security forces.

Grey Zone Conflict and the UN Charter

The UN Charter prohibits aggression. Article 2(4) of the Charter states that, “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”. Unlawful uses of force that violate provisions of Article 2(4) generally require forces engaging in military activities whether traditional armed forces or non-state armed groups. In practice, Grey Zone conflict measures are designed to avoid being identified as clear violations of the Charter even when they do constitute an unlawful use of force. A number of tactics used in Grey Zone conflict are not accounted for by the Charter’s prohibition on the use of force. For example, economic measures, cyber operations, disinformation, and lawfare traditionally do not violate Charter Article 2(4). In theory, the UN Charter’s prohibition on the use of force is sufficient to account for Grey Zone tactics when they resemble traditional military activities. However, when a state employs cyber capabilities in a Grey Zone conflict to damage or disable infrastructure, it would not amount to the use of force in violation of Article 2(4). Disinformation and criminal activity generally also fall below the threshold of an armed conflict. In fact, it gives an impression that ‘principle of non-use of force’ under Article 2(4) of the Charter has been made impotent by Grey Zone conflict.

Applicability of IHL

Classification of contemporary conflict is based on the post-World War II revision of the Geneva Conventions, which are applicable in international and internal armed conflicts. Assessing the existence of armed conflict is easy when the armed forces of states are engaged in hostilities against each other in an inter-state dispute. However, in the case of Grey Zone conflict, which

cannot be classified as 'war or armed conflict', the applicability of IHL remains ambiguous.

In the past few decades, high-tech advancements have altered the means and methods of warfare. Today, the means of Grey Zone conflict includes surgical operations, restrained and limited use of kinetic forces by special operations forces or irregular forces; cyber warfare; information warfare; use of autonomous weapons, and other non-violent means of coercive diplomacy such as economic sanctions, etc. The states in a Grey-Zone conflict use a mix of strategic and operational techniques, making any resolution arduous. The beginning and termination of conflict remain uncertain because most of the Grey Zone conflicts operations are undertaken in highly permeable international borders. Since Grey Zone is a mix of military and non-military measures; application of IHL in the use of means and methods of conflict becomes difficult.¹⁰

Lawfare. Today, domestic law, international law and judicial institutions are being exploited to influence the military policies of the government. Lawfare is the strategy of using or misusing law as a substitute for traditional military means. It is becoming a powerful 'force multiplier', reminding one of Sun Tzu, who once said, "... to fight and conquer in all your battles is not supreme excellence; supreme excellence consists in breaking the enemy's resistance without fighting".¹¹ It has become an integral element of any Grey Zone conflict. As Grey Zone conflicts become more prevalent, relevance of lawfare intensifies. It provides a means to compel specified behaviour with fewer costs than the use of weapons. Lawfare thrives on legal ambiguity and presents challenges to international peace and security by questioning the validity of existing public international law rules. For instance, PLA's handbook on international law states that officers should not feel completely bound by international laws that are detrimental to China's national interests but should focus on those international laws beneficial to China while evading those harmful to China's interest.¹² Russia, China and Palestine Authority (PA) have used 'legal warfare' as a major component of their strategic doctrine. Lawfare is a good substitute for kinetic warfare; the states need to exploit it for strategic advantages.

Challenges for India

China and Pakistan, based on their own interests and abilities, have developed different Grey Zone strategies against India. Pakistan is relying on Grey Zone tactics using what is described as salami tactics, support to terrorism and cross border infiltrations; whereas China's actions are incrementally changing the territorial status quo. Both these adversaries are using non-military tools of coercion —such as cyber-attacks, propaganda, terrorism, insurgency and covert operations. Such activities are likely to continue using Grey Zone strategies in the coming years.

To counter a Grey Zone conflict requires a full spectrum response involving the state's security as well the private sector. Countering measures against this method of conflict will require more than traditional military strategy responses and must incorporate more than special operations forces or paramilitary operations. The members of Special Forces may have to undertake clandestine operations in the grey area between overt military operations and covert operations. These members may also have to adopt certain methods like "perfidy" which may be prohibited under IHL.¹³

Non-Lethal Weapons. Non-lethal weapons (NLWs) can also play an important role in countering Grey Zone tactics. The use of such weapons may also be strategically advantageous since conventional weapons may cause unnecessary, indiscriminate or disproportionate harm. The use of NLWs such as chemical riot agents or incapacitating agents may be an effective way of responding to unconventional Grey Zone threat that may be operating in the area dominated by civilians.

According to Fitton (2016), counter-responses to Grey Zone tactics would involve further investment in show of force, disinformation, deterrence and manoeuvring adversaries away from Grey Zone tactics.¹⁴ Grey-Zone success depends on patience and an ability to blend together all the instruments of state power. We must remember that even a strongest enemy with well-developed armed forces and technologically advanced weapons has some vulnerability. These vulnerabilities need to be exploited at the right time and by appropriate military and non-military means.

The challenges of today are that state and non-state actors do not respect the norms and rules of the international law. Any use of force or threat to use force that is contrary to Article 2(4) of the UN Charter and that fails to meet the requirement of self-defence under Article 51 remains unlawful.¹⁵ In order to achieve an edge in Grey Zone conflicts, India must:

- Invest in establishing and upgrading its cyber capabilities, improve the intelligence gathering effort against its potential adversaries.
- Intensify the quality and quantity of attacks on targets located near its border through limited military operations.
- The use of drone technology could be a game changer in Grey Zone conflicts and, therefore, must be exploited.
- The armed forces must invest in lawfare and devise a comprehensive strategy for its effective exploitation.
- The use of NLWs must be considered to avoid disproportionate civilian casualties in operations.

Conclusion

The ambiguous nature of Grey Zone activity, coupled with a lack of clearly defined law, makes it difficult to hold Grey Zone actors accountable and develop acceptable countermeasures. The role of non-military means of achieving political and strategic goals has grown in the last decade; they have exceeded the power of weapons in their effectiveness. Today, the internet and social media are creating entirely new opportunities for the mass manipulation of opinion. The rules of war are changing rapidly. Grey Zone conflict is a viable and cheap option when compared to a broad military operation. States engaged in Grey Zone conflicts will continue to exploit weaknesses in adversaries to increase their own relative gains. The international community must recognise that Grey Zone conflict poses a real danger to the world peace. It must ensure that Grey Zone conflict does not operate in a legal vacuum. Since IHL fails Grey Zone conflict, it needs to be updated.

Endnotes

¹ Facebook now estimates that during and after the American election in 2016 a Russian-linked troll farm called the Internet Research Agency was responsible for at least 120 fake pages and 80,000 posts that were directly received by 29m Americans. Through sharing and liking, the number multiplied to nearly 150million, about two-thirds of the potential electorate. "Waging war with disinformation," *The Economist*, (25 January 2018).

² Valery Gerasimov Valery, "The Value of Science is in Foresight: New Challenges Demand Rethinking the Forms and Methods of Carrying out Combat Operations," *Military Review*, (January-February 2016), 23-29.

³ IHL achieves this by: (i) Geneva Conventions of 1949—sparing those who do not or no longer directly participate in hostilities (for example civilians; injured, sick or wounded soldiers; or those who have surrendered or been taken prisoners of war; and (ii) Weapon ban/limiting treaties—limiting the means and methods of warfare which could be used by the adversaries. The present-day rules of IHL are contained in nearly 50 conventions or treaties dealing with matters ranging from the prohibition on the use of certain weapons which cause indiscriminate damage and cause unnecessary suffering, to those that deal with means and methods of warfare.

⁴ Hoffman Frank G., "Examining Complex Forms of Conflict: Grey Zone and Hybrid Challenges," *PRISM*, 7, No. 4, (2018), 31-47.

⁵ The Grey Zone, "The US Special Operations Command," (9 September 2015), 1.

⁶ Morris Lyle J., Michael J. Mazarr, Jeffrey W. Hornung, et.al, *Gaining Competitive Advantage in the Gray Zone: Response Options for Coercive Aggression Below the Threshold of Major War*, (RAND Corporation, 2019) 8-11.

⁷ Elizabeth G. Troeder Elizabeth G., *A Whole of Government Approach to Grey Zone Warfare*, Strategic Studies Institute, (US Army War College, 2019), 38.

⁸ In the future, "fake news" put together with the aid of artificial intelligence will be so realistic that even the best-resourced and most professional news organisation will not be able to make the difference between the real and the made-up news. This news can spread across social media in nanoseconds, disseminating information that would undermine the entire democratic institution.

⁹ Carment David and Dani Belo, "War's Future: The Risks and Rewards of Grey-Zone Conflict and Hybrid Warfare," (Canadian Global Affairs Institute, October 2018), 15.

¹⁰ For instance, in the recent past, the Chinese civilian fishing boats have caused near-collisions with US military vessels in the South China Sea, off the coast of Chinese man-made islands. The nexus between these agents and the Chinese government is difficult to prove, eluding the traditional law of state responsibility. International law or IHL cannot hold China accountable.

¹¹ Sun Tzu, *The Art of War* (New York: Fall River Press, 2014), 92.

¹² Kittrie Orde F., *Lawfare: Law as a Weapon of War*, (New York: Oxford University Press, 2016), 172.

¹³ Article 37 of the 1977 Additional Protocol I prohibit “perfidy” and defines it as an acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.

¹⁴ Fitton Oliver, “Cyber Operations and Gray Zones: Challenges for NATO,” *Connections*, 15(2), (2016), 109-119.

¹⁵ Article 51 of the United Nations Charter states, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.”

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