

INTRODUCTION: NEGOTIATION STRATEGIES FOR WAR BY OTHER MEANS

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We are delighted to introduce the topic of hybrid warfare into the dispute resolution field, with the first symposium for a law audience focused on how hybrid warfare might be more effectively understood, and defended against, through negotiation theories.¹ In the last three-plus years we, along with three colleagues,² have enlisted a number of additional colleagues from a variety of fields in a very unusual project—how to engage with a type of conflict often called grey zone conflict (by some people) or hybrid warfare (by others).³ Our conflict management experts have come from a wide array of disciplines, as well as geographically ranging from Europe to Australia, and are balanced with a multinational array of security experts.

In every case, our conflict management experts have started our conversations with the same question: What on earth does this subject have to do with me, and my practice or my scholarship? We believe that question has now been answered in detail. And the synthesis of our discipline with the security experts is reflected in the richness of the articles which follow.

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¹ We have previously published a symposium for a military audience through the Canadian military journal ON TRACK, which is the official journal of the Canadian Conference of Defense Associations (CDA) Institute. See Chris Honeyman & Andrea Kupfer Schneider, *Hybrid Warfare: Fighting Back with Whole-of-Society Tactics*, 30 ON TRACK 7 (2023).

² Along with this article's authors, security consultant Calvin Chrustie, business school professor Barney Jordaan and law professor Véronique Fraser constitute the Project Seshat steering committee. Additional biographical information can be found at *Who We Are*, PROJECT SESHAT, <https://www.project-seshat.org/who-we-are.html> (last visited May 31, 2023).

³ Some military experts distinguish these terms functionally, defining hybrid warfare as implying “a conventional army augmented by a complex cyber/disinformation capacity” and grey zone conflict as “small tactical gains made ‘under the threshold’ [of] war” (personal note to authors of this article, as editors of the ON TRACK symposium, from ON TRACK managing editor, Jan. 16, 2023). However, we have not yet seen a broad consensus distinguishing these terms, and have observed many writers using them interchangeably, so we will merely note that we are following the latter practice here.

GREY ZONE CONFLICT, HYBRID WARFARE, AND DELIBERATE
CONFUSION

As we have described elsewhere, “grey zone conflict” and “hybrid warfare” are just two of multiple terms now in circulation to describe the same phenomenon⁴ — attacks against a country and its private businesses and public and NGO sectors that may or may not have any military element, by actors who may or may not appear to be connected with another country’s national security apparatus.⁵

These attacks continue to proliferate, and it is apparent that Western military, intelligence, police, and other security agencies are not (yet) well-structured to respond to such private sector actions in any strategic or coherent way. Furthermore, grey zone conflict / hybrid warfare campaigns change tactics frequently, coordinate activity by government, private and nonprofit entities, and use cyber tools, public and commercial corruption, transnational organized crime, and disinformation campaigns, along with a host of other methods. Deception and denial are standard elements of this type of conflict as well.⁶ Reactions by the target are often unhelpful and ineffective, ranging from threats of retaliation to denying the fact of any attack. At the government level, some suggest increasing defense expenditures or even cutting off all dealings with those countries who mount these attacks. None of these responses has proven useful as a general rule. Therefore, it is necessary to develop a wide-ranging approach, such that grey zone conflicts will be better understood as a class and *managed* on an overall level.

There is a strong precedent for this view: our group, known as Project Seshat, is inspired by Cold War negotiation and conflict management studies of how the West and the Soviet Union, over

⁴ *About Project Seshat*, PROJECT SESHAT, <https://www.project-seshat.org/about.html> (last visited May 31, 2023).

⁵ See Honeyman and Schneider, *supra* note 1; see also *Gray-zone Aggression: Countering a Growing National Security Threat*, AEI (Nov. 10, 2020), <https://www.aei.org/events/gray-zone-aggression-countering-a-growing-national-security-threat/>; MARK GALEOTTI, *THE WEAPONIZATION OF EVERYTHING: A FIELD GUIDE TO THE NEW WAY OF WAR* (2022); Scott Tait, *Hybrid warfare: the new face of global competition*, FINANCIAL TIMES (Oct. 14, 2019), <https://www.ft.com/content/ffe7771e-e5bb-11e9-9743-db5a370481bc>; QIAO LIANG & WANG XIANGSUI, *UNRESTRICTED WARFARE* (Beijing: PLA Literature and Arts Publishing House, Feb. 1999), available at <http://redreform.com/unrestrictedwarfare.htm>.

⁶ See Christopher A. Corpora, *How to Undermine a Nation-state in 120 Days: Mediation and Negotiation in a Hybrid Warfare World*, 24 *CARDOZO JOURNAL OF CONFLICT RESOL.* — (2023).

decades, could and did maintain something approximating a working relationship (including avoiding a nuclear war) even at the height of their conflict. The project therefore uses a negotiation and conflict management perspective as its organizing principle.⁷

HOW PROJECT SESHAT WORKS

Project Seshat was organized starting in 2020 as a group of scholars and practitioners, for two main purposes: first, to *increase understanding* of a type of activity that is carefully designed to be as obscure as the attackers can make it; and then, to use that understanding to *help create methods* for averting attacks, and for mitigating harm when they occur.⁸

In a globalized economy, business and NGO executives, and critically, their lawyers, are routinely engaged in negotiations of all kinds, with suppliers, customers, municipalities, potential merger partners and more. These dealings do not have to be visibly cross-border transactions to have hybrid warfare connotations. For example, if an apparently domestic company a city government is contracting with—for water or other utilities, transport, its communication networks or a thousand other things—is in some hidden way influenced by an adversary government, the city might find itself on the wrong end of an attack without ever realizing the opponent’s intention, or even its existence.

⁷ We should note right away, though, that in one key respect the Cold War analogy can be misleading: the West-Soviet relationship was fraught and complicated, but compared to what exists now, it was somewhat structured. Hybrid warfare is much more related to the “complex” than the “complicated”—and these similar-sounding terms mask a huge difference, captured by theorists under terms such as “chaos theory” and admittedly hard to grasp for most people. A Project Seshat team is at work on this now, writing a series of papers that we hope will show how “chaos” and related theories operate in practice in hybrid warfare. *See also* Cynthia Alkon & Sanda Kaufman, *A Theory of Interests in the Context of Hybrid Warfare: It’s Complex*, 24 CARDOZO JOURNAL OF CONFLICT RESOL. — (2023) (discussing complexity v complication in more detail).

⁸ Participants in Project Seshat are invited specialists in either negotiation, conflict management or security. The project is led by the five-member Steering Committee, of which one member (Honeyman) serves as principal investigator. The initial working group of some fifty people come from nine allied countries, and a larger array of subject fields, though more are trained in law than in any other single field. *About Project Seshat, supra* note 4.

WHAT CAN WE DO?

We think Project Seshat can help set up parallel groups within some of society's main constituencies (including bar associations), specifically chartered to make collaboration across silos easier. "Silos" crop up even within a single corporation—think about the cultures in engineering vs marketing, for example—and proliferate across society in general. One result (for example) is in the often-observed difficulties of sharing expertise and information between a federal law enforcement agency and a state agency that theoretically has the same kind of role and strong shared interests. This pattern is even more prevalent between government agencies and the companies which might need that support, as Hinshaw, Borbély and Christie describe in their article in this issue.⁹ We think we can help create structures that will foster continuing interchange among them, including across the particularly difficult division between "civil" and "military" spheres.¹⁰ As we have outlined before,¹¹ such a network can, in the future:

- Provide lawyers, business executives and other practitioners with the *tools* needed to recognize when one is dealing—even

⁹ Art Hinshaw, Adrian Borbély & Calvin Christie, *Where Is Negotiation In Hybrid Warfare?*, 24 *CARDOZO JOURNAL OF CONFLICT RESOL.* — (2023).

¹⁰ We have long believed in the importance of civil-military collaboration around concepts of conflict management, and our work in this area now has a nearly twenty-year history. We started working with Leonard Lira, then a U.S. Army officer and a professor at the United States Military Academy (West Point) in the mid-2000s. Lira's initial contribution to our Canon of Negotiation Initiative (Leonard Lira, *The Military Learns to Negotiate* in *THE NEGOTIATOR'S FIELDBOOK*, 675 (American Bar Association ed., 2005)), along with our separate discussions with Calvin Christie (Canada's chief hostage negotiator then, and a current contributor to this issue) led to convening the "wicked problems team" in the Rethinking Negotiation Teaching project a few years later. The team rapidly grew to include military and police officers, a professor of peacebuilding at a Mennonite university, an ombudsman whose daily fare was disputes between 20,000 scientists (each of whom, he said, had "a direct line to Truth"), a London-based theater director, and a South American politician whose experience included serving as a big-city mayor, and later, as president of his country. See e.g., Christie, Calvin, Jayne Seminare Docherty, Leonard Lira, Jamil Mahuad, Howard Gadlin, & Chris Honeyman, *Negotiating Wicked Problems: Five Stories*, in *VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES* (2010). Together, their output laid the basis for understanding how "wicked problems" operate in conflict and its management, and what an intervenor — military or otherwise — might usefully do about it. For further discussion, see Nancy A. Welsh, Sharon Press & Andrea Kupfer Schneider, *Negotiation Theories Engage Hybrid Warfare*, 24 *CARDOZO JOURNAL OF CONFLICT RESOL.* — (2023).

¹¹ *About Project Seshat*, *supra* note 4; see also Andrea Kupfer Schneider and Chris Honeyman, *Advocates' and Neutrals' Roles in a New Type of Conflict — The Private and Public Crises of Hybrid Warfare*, 16 *NEW YORK DISPUTE RESOL. LAWYER*, No. 1, 2023, at 34-39.

indirectly—with a supplier, a customer, a possible merger partner or any of a lengthy list of other parties that may be, perhaps unknowingly, influenced by a hybrid warfare gambit.

- Help both advocates and neutrals develop improved conflict analysis *skills* such that they can better predict which situations are likely to expose them to hybrid warfare risks.
- Help academics develop both formal and “crash” courses to make such knowledge, understanding and competence *widely available* to all interested constituencies.
- Provide military and other security people with the access necessary to *use* their expertise in the broader society.
- Develop a support network of civil and military *partner organizations*, helping to build their capacity to address related needs in their membership and communities.
- Build and distribute *a knowledge base* of publications and available presentations, not just in writing but in a variety of media, to share the emerging knowledge and skills as widely as possible.

The articles in this issue are designed to bridge gaps of understanding and further build networks of experts to help manage this new type of warfare more effectively.

ARTICLES IN THIS ISSUE

In this issue, Anne Leslie¹² uses her own counterintuitive career to argue that to get any grip on something as elusive as hybrid warfare, professionals of many kinds will have to break out of our often self-limiting conceptions of our work and our organizational roles. All of us, she says, are now going to have to enlarge the bounds of what we might previously have considered our sphere of influence or concern.

Christopher Corpora¹³ reviews the long history of nations’ attempts to undermine perceived adversaries without actual combat. He argues that hybrid warfare, as the newest development in this long history, has become so much more effective (including cost-

¹² Anne Leslie, *Know Thyself—Embracing the Ambiguity of War By Other Means*, 24 CARDOZO JOURNAL OF CONFLICT RESOL. — (2023); cf. Anne Leslie, *How Hybrid Warfare is Redefining Contours of ‘Business as Usual’ and the Potential Role of the Military*, 30 ON TRACK 28 (2023) (reviewing the issue from a more technical perspective).

¹³ Corpora, *supra* note 6.

effective) than open warfare, especially for authoritarian governments, that we should expect its use to grow even further. In particular, he contends that Western concepts of rules and fairness are themselves seen as soft points by adversaries who are using a quite different set of principles to play the game.

Art Hinshaw, Adrian Borbély and Calvin Christie,¹⁴ meanwhile, go into detail on how negotiation *works* in the grey zone. Unpacking some conceptual flaws—for this context, at least—arising from traditional training in negotiation, they show how a broader and more effective set of responses can be drawn from a combination of broader social-science-derived concepts of negotiation along with security expertise. They direct readers' attention particularly to the distinction between evidence-led responses and intelligence-led responses to an emerging situation.

Nancy Welsh, Sharon Press and Andrea Schneider¹⁵ review the literature on negotiation and draw an important distinction between the “classical” sources, including the interest-based model of negotiation, and the literature that derives more from “wicked problems.” The former can be quite useful for the targets of hybrid warfare, as they gather their team and conduct innumerable internal negotiations to drive their response. Yet the latter—negotiation theories for wicked problems—can be more broadly useful in conceptualizing how to respond to hybrid warfare. They propose a related move toward reframing this work as “hybrid conflict management.” Such a shift, they argue, will make it easier to enlist every company, and other entities, such as NGOs and hospitals, in the long-term preparatory effort they find is now essential.

Cynthia Alkon and Sanda Kaufman¹⁶ also assess the utility of classical negotiation advice in a hybrid warfare context and conclude that negotiators facing this context need a whole different mindset. Yet they also describe not only how all of the traditional training remains useful in the many negotiations between stakeholders within the defending side, but also that there is at least a subset of hybrid warfare attacks where direct negotiation with the attacker *may* occur. Examples include ransomware attacks and targeted kidnapping. For these situations, however, their advice is very different from what they recommend for the “internal” or “behind the table” negotiations.

¹⁴ Hinshaw, Borbély & Christie, *supra* note 9.

¹⁵ Welsh, Press & Schneider, *supra* note 10.

¹⁶ Alkon & Kaufman, *supra* note 7.

Finally, Chris Honeyman and Ellen Parker¹⁷ focus specifically on those “behind the table” negotiations, between players that are nominally all on the same side. They pick apart an existing slate of techniques, to analyze which can be usefully adapted to preparation for and responses to hybrid warfare attacks, and how these could be used.

To conclude: Among many groups across our society with whom we hope to develop ongoing partnerships to address grey zone conflicts, the kinds of people likely to read the *Cardozo Journal of Conflict Resolution* are naturally high on our list. If you are interested in exploring this subject further, we would like to hear from you. You can reach us at andrea.schneider@yu.edu and honeyman@convenor.com respectively.

¹⁷ Chris Honeyman & Ellen Parker, *Thinking Ahead in the Grey Zone*, 24 CARDOZO JOURNAL OF CONFLICT RESOL. — (2023).

