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To cite this article: Jan Almäng (2019) War, vagueness and hybrid war, *Defence Studies*, 19:2, 189-204, DOI: [10.1080/14702436.2019.1597631](https://doi.org/10.1080/14702436.2019.1597631)

To link to this article: <https://doi.org/10.1080/14702436.2019.1597631>



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Published online: 02 Apr 2019.



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War, vagueness and hybrid war

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ABSTRACT

It has frequently been observed in the literature on hybrid wars that there is a grey zone between peace and war, and that hybrid wars are conflicts which are not clear cases of war. In this paper, I attempt to illuminate this grey zone and the concept and nature of war from the philosophical discussions of vagueness and institutional facts. Vague terms are characterized by the fact that there is no non-arbitrary boundary between entities which lie in their extension, and entities which do not lie in their extension. I apply a theory of vagueness to notions such as “war” and “peace” and go on to suggest that the exact boundary for what counts as a war or not is arbitrary. However, the context in which the conflict occurs determines a range of possible locations for this boundary. The most important contextual parameter is in this respect how the parties to the conflict themselves conceptualize the conflict. I suggest that this can in various ways help us understand grey-zone conflicts.

ARTICLE HISTORY

Received 31 July 2017
Accepted 18 March 2019

KEYWORDS

War; hybrid war; vagueness; ontology of war; concept of war; international law

1. Introduction

Recent years have seen many military conflicts which are described as residing in a grey zone between peace and war. I am thinking here of the Russian invasion of Crimea, various low-intensive conflicts around the world and asymmetrical conflicts where one of the parties is a state and the other party is not a state, or at any rate does not obviously qualify as a state.

All these conflicts raise the issue of what exactly a war is, and which criteria a conflict should fulfil to qualify as a war. Whether or not a conflict qualifies as a war is important for both legal and analytical reasons. It is important for legal reasons because a state that is at war has certain rights and duties not conferred on states not at war. And it is important for analytical reasons in order for us to be able to see similarities and dissimilarities between different types of conflicts.

The main purpose of this paper is to attempt to illuminate the grey zone between war and peace – the kind of conflict that in recent years has been called “hybrid war.” Or, more precisely, I am primarily interested in conflicts where it is unclear whether or not the use and threat of force involved meets the threshold for the conflict to qualify as a war. The term “hybrid war” has in recent years been used in a quite wide sense so as to encompass

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not only conflicts involving the use of force, but also conflicts which does not involve the use of force, but, for example, “only” involves cyberattacks or information operations. I will only in passing attempt to analyse these dimensions of hybrid conflicts.

My paper applies some lessons from the philosophical discussion of vagueness to the discussion of the nature of hybrid wars. Vague terms are characterized by there being no non-arbitrary boundary between entities which are, and entities which are not in the extension of the term. Terms such as “war” and “peace” are, I shall suggest, typical cases of vague terms. But “war” is different from other vague words in the sense that whether or not the parties of the conflict conceptualize the conflict as a war partially determines where it is reasonable to draw the boundary for being in the extension of the term.

While the purpose of this paper is to illuminate the grey zone between peace and war, the method consists at least partially of an analysis of the concept of war and in particular under what conditions a conflict qualifies as a war or not. This is important for understanding grey-zone conflicts, because an important feature of the latter is that they are often deliberately waged at a level where it is in some sense unclear whether or not they qualify as a war in the legal sense of the word. An analysis of the concept of war can consequently better help us understand grey-zone conflicts. It is important to note that whereas the purpose of the paper is to perform a conceptual analysis of the word war to explain a feature of what is commonly called “hybrid wars,” the purpose of the paper is not to conceptually analyse the concept of hybrid war.

In Section 2, some of the key notions are presented. The purpose of the section is to explain how a semantical analysis of the notion of war can illuminate the nature of hybrid war. In Section 3 of the paper I suggest that “war” in the sense that interests us here is a vague term and introduce Diane Raffman’s account of vagueness. According to Raffman, vague terms are context sensitive. This means that whether a conflict qualifies as a war or not, depends on the context. I suggest that the critical contextual parameter for war is the institutional facts in which the conflict is embedded. In Section 4, I apply the lessons from the two previous sections and discuss the nature of hybrid war in light of the vagueness of the word “war” and of the institutional context of conflict. In particular, I emphasize that a conflict might be indeterminate in both an ontological sense and in an epistemological sense. A conflict is indeterminate or vague in an ontological sense if there is no non-arbitrary answer with respect to whether it is a war or not. It is indeterminate or opaque in an epistemological sense if it is impossible for one of the parties to accurately assess the nature of the conflict. Section 5 discusses various ways that a conflict can be epistemically opaque and how an attacker can utilize this fact by means of information operations. And in Section 6, I employ the conclusions of the previous sections in order to present an explanation of how hybrid conflicts may be used by the attacker against an unwilling defender. Section 7 contains some concluding words.

2. The semantics of war and the nature of hybrid war

How can the semantics of the term “war” help illuminate the nature of hybrid war? A short answer is that whether or not a conflict qualifies as a war changes the legal situation with respect to the conflict. If a conflict qualifies as a war, the participants of the conflict acquire rights and duties that they had hitherto lacked. Since a hybrid war in one sense of the term – there are as we shall see others – just is the kind of conflict

that resides in the grey zone between peace and war, an investigation into the nature of the semantics of the term war would ipso facto help illuminate the nature of hybrid war. A semantical analysis of the term “war” helps illuminate (some of) the conditions for when a conflict actually resides in the grey zone.

It is common to distinguish between the intension and the extension of a word. The extension of a word is the objects or entities that “fall under” a word. Thus, for example, Winston Churchill and Anthony Eden are both in the extension of the expression “former Prime Ministers of the United Kingdom.” The intension of a word on the other hand is the condition that an object or entity must satisfy to fall under the extension of the word. For the word “prime minister” that condition may be that an individual is the head of government of a state, or something similar.

What is the intension of the word “war”? Clausewitz famously defined “war” as “an act of force to compel our enemy to do our will.” (Clausewitz 1832, 1993). More recently, Hedley Bull has defined war as “[o]rganized violence carried on by political units against each other.” (Bull 1977, p. 184) According to both definitions, wars essentially consist of the use of force or organized violence by two parties against each other. For the sake of simplicity, we shall unless otherwise stated be concerned with situations in which the two parties are states.

I shall follow Clausewitz and Bull and assume that the condition that a conflict has to fulfil to qualify as a war is that it involves the use of force or violence between two parties. This, incidentally, rules out “trade wars” and “propaganda wars” as wars on our conception of the term “war.” However, it is legitimate to ask just what degree of force or violence is needed in order for a conflict to qualify as a war.

Rid (2012) and Whetham (2016b) conceive of peace and war as poles on a spectrum. As Whetham puts it: “Real war takes place on a spectrum, framed by the unattainable concept of absolute war at one end and the absence of war at the other.” (Whetham 2016b, p. 86) Clearly, levels of violence or the intensity of the use of force can be modelled in this way. Nevertheless, there is something amiss in this picture. And that is that war in the legal and political sense of the word is not a quantitative concept in the sense that meters and kilograms are quantitative concepts. It makes no sense to claim that a conflict is twice as warlike as another conflict even though the claim that one conflict is twice as violent as another makes sense.

The concept war is rather a concept *a par* with child. These concepts have in common that their extensions consist of entities that can at least theoretically be graded on a quantitative scale (level of violence, age) but the border between entities which fall into the extension (the level of violence required for a conflict to count as war, the exact age to qualify as a child) is indeterminate or vague.

Why would this semantical discussion matter? It matters because the semantics of the term “war” determines the extension of the said word. And the extension of the word partially grounds the legal facts of any conflict. Article 51 of the UN charter gives a state that is the subject of an armed attack the right to self-defense. But – obviously – the UN charter does not specify the exact level of violence required for a conflict to count as an armed attack.

The legal concept of war is of particular interest in order to clarify the nature of hybrid war. The Russian invasion of Crimea (and to some extent the subsequent invasion of the Donbas-area) is a typical example of a campaign that seems to have

been deliberately waged to blur the lines between war and peace. Bachmann and Munoz Nosquera (2018) for example describe the Russian campaign as a case of lawfare, which “in this context thrives on legal ambiguity and exploits legal thresholds and fault lines” (Bachmann and Munoz Nosquera 2018, p. 67).

According to Bachmann and Munoz Nosquera, hybrid wars raise the issue of whether an “aggression meets the threshold requirement of an ‘armed attack’ as a manifest violation of the Charter of the United Nations in the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state.” (Bachmann and Munoz Nosquera 2018, p. 65) Consequently, the semantical properties of the concept of war help to determine the nature of hybrid war. The vagueness inherent in the concept of war is an essential feature of the nature of hybrid war.

The purpose of this paper is thus to investigate the legal and (the two cannot as we will see not readily be separated) political concept of war in order to elucidate the nature of hybrid war. But before I proceed to do that, I should say something about the term “hybrid war,” which has become something of a buzzword in the last few years.

The term “hybrid war” has been used in a wide variety of senses during the last decade and it has also been the subject of much criticism. It was initially used in the literature to refer to asymmetric wars, where one of the combatants may not even qualify as a state in the normal sense of the word (See for example Hoffman 2007, McCuen 2008).

On this early conception of hybrid wars, they were wars that utilized irregular forces (for example insurgents or terrorists) or operations when using force (Cf Hoffman 2007). In recent years however, the term has mostly been used to describe various features of the Russian aggression against Ukraine and of political interference in western countries (Cf Tenenbaum 2015, Renz and Smith 2016 for histories of the word).

A good illustration of how the meaning of the term “hybrid war” has changed during the last decade can be found by consulting NATO:s Allied Joint Doctrine. In 2010, hybrid threats are described under the heading “Other threats” as a form of both conventional and non-conventional threats from non-state actors (NATO 2010, p. 2–6). In the edition from 2017 however, the term is described under its own heading and given a much broader definition:

Hybrid threats occur where conventional, irregular and asymmetric threats are combined in the same time and space. Conflict could involve a range of transnational, state, group and individual participants operating globally and locally. Some conflicts may involve concurrent inter-communal violence, terrorism, cyberspace attacks, insurgency, pervasive criminality and widespread disorder. (NATO 2017, p. 2–11)

Accordingly, a hybrid conflict may involve both state and non-state actors using a wide range of means to attain their goals. There is, it is to be noted, nothing in the definition that means that a conflict needs to have a kinetic dimension in order to qualify as “hybrid.”

It is fair to say that NATO has come to use the term in a very broad sense. NATO is in this respect not alone; the term has come to be used for a wide variety of threats and kinds of conflicts in the last few years.¹

When the term is used thus broadly however, it is inevitable that the term is challenged. Thus, we find Kofman and Rojansky (2015) claiming that it is merely a new term for unconventional and political warfare, and Van Puyvelde (2015) claiming that it has such a wide sense the term lacks explanatory value: “In practice, any threat

can be hybrid as long as it is not limited to a single form and dimension of warfare. When any threat or use of force is defined as hybrid, the term loses its value and causes confusion instead of clarifying the ‘reality’ of modern warfare” (Van Puyvelde 2015). The author goes on to suggest that NATO should forget about the term and focus on the threats they face.²

Yet other authors have suggested that the term is used with very different meanings in different contexts. Mark Galeotti for example distinguishes between two senses of the term hybrid war: “it must be emphasized that there are two, cognate phenomena at work: the essentially bloodless, if no less ruthless ‘political war’ which is essentially what is currently being waged on the West, and the political-military ‘hybrid war’ experienced in Ukraine” (Galeotti 2016, p. 97).

In this paper, I am not interested in the term hybrid war or what may be the best usage of it. Hence, I will mostly refrain from commenting on the discussion of the explanatory value of the term. Rather, I am interested in one type of phenomenon that the term “hybrid war” normally designates, namely conflicts where both parties use force, but where it is unclear or indeterminate whether or not the level of violence in the conflict is sufficient for the conflict to qualify as a war. I will focus on conflicts where the two parties to the conflict are states, but the analysis could easily be extended to include cases where one of the parties fails to be a state, or where it is indeterminate whether one party is a state or not.

3. The vagueness of war and its institutional context

Following Clausewitz, we have opted to conceive of war as a type of conflict that essentially involves the use of force between two conflicting parties. Different conflicts can consequently be compared with each other with respect to the level of violence that characterize them. This however invites a natural question: What is the level of violence that is required for a conflict to actually qualify as a war? If we conceive of armed conflict on a spectrum, with no organized violence at one end of the spectrum and more organized violence the closer we get to the other end of the spectrum, the question arises where – on this spectrum – the boundary between peace and war lies.

It is at this point an investigation into the semantics of war becomes relevant. The question whether a conflict qualifies as a war or not is a semantic question. It pertains to which conflicts lies in the extension of the word “war.” In the case of “war” it seems quite certain that World War I, World War II and the Falklands War all feature in the extension. It is more contentious if the Russian invasion of Crimea in 2014 is included in the extension, and a conflict such as the Sino-Russian border conflict of 1968 is normally not included in the extension of “war.”

Now, if there is no sharp boundary between peace and war the word “war” (and “peace” as well for that matter) is a vague word. In order to illuminate the semantics of the word “war” we would thus do well to consider what characterizes vagueness. Vague terms lack sharp boundaries in the sense that any boundary between the cases that fall within the extension of the terms and those cases that do not will be arbitrary.

The fact that vague words have borderline cases have generated what is known as the Sorites Paradox. Let us assume that a conflict with 1000 combat-related deaths a year counts as a war.³ Then, it may be argued that it is also true that any conflict with one

combat-related death less a year also counts as a war. And, more generally, for any armed conflict that counts as a war, it is true that it would also had been a war had it had one combat-related death less than it actually had. This however generates a paradox, for it now follows that conflicts without battle-deaths are also wars.

The paradox follows the following schema:

Base step: Any conflict with 1000 battle deaths a year is a war.

Induction Step: Any conflict with one less battle death than a conflict that qualifies as a war, is also a war.

Conclusion: A conflict without battle-deaths is also a war.

It seems quite obvious that our reasoning is logically valid. And it also seems obvious enough that the base step is correct. Consequently, the paradox must be stopped by a rejection of the induction step. *a fortiori*, the boundary between wars and non-wars is sharp but arbitrary.⁴

According to one prominent theory of vagueness, contextualism, vague terms have different extensions in different contexts. There is an arbitrary boundary between cases that fall within the extension of the term and cases that do not fall within the extension of the term. But this boundary is determined by the context of the cases.

In what follows, I will use Diana Raffman's contextual theory of vagueness in order to examine the vagueness of war. Raffman (2014) suggests that vague terms have a range of application where different competent speakers can draw different boundaries in the same context. So, for example, the range of application for a conflict qualifying as a war may lie between 700 and 800 battle-related deaths with widespread destruction of property and between 1000 and 1100 battle-related deaths with limited destruction of property. Thus, no competent speaker would hold that a conflict with 699 battle-related deaths would count as a war in the context of widespread destruction of property, and all competent speakers would agree that a conflict with 800 battle-related deaths would count as a war. But equally competent speakers may draw the exact boundary in different and arbitrary ways.

The contextual parameter that is most important in the present context is the institutional parameter. What is the institutional context in which the conflict is embedded? The institutional context of a conflict consists of the relevant institutional facts in which the conflict is embedded.⁵

For present purposes, there are three relevant kinds of institutional facts. The first kind of fact concerns the status of the parties of the conflict. Are they states or organizations of some other kinds? The second kind of fact concerns which rights and duties the parties themselves invoke in response to the conflict. Thus, for example, do they invoke the right to self-defense as specified in the UN Charter or not? How do they treat the prisoners they take in the conflict? Are the prisoners treated as criminals, illegal combatants, or as prisoners of war? The third kind of fact concerns the orders given by the governments involved to the armed forces and the police. What are the rules of engagement under which they are acting?

Institutional facts such as the above are – following John Searle's pioneering work into social ontology (Searle 1995, 2010) – often considered to be representational facts.

Institutional facts exist because they are represented as existing. They are representation-dependent facts. Alasdair MacIntyre for example has pointed out that in order for someone to be an officer, the person in question must “be recognized as an officer by his subordinates, by his superiors, and by civilians. When, as in Russia in 1917, this condition ceases to hold, there cease to be officers.” (MacIntyre 1973, p. 3) This is also true of other institutional facts. If no one believed that the Government of the United States was the Government of the United States it would not be the Government of the United States.

Let us now take a closer look at conflicts between states and how institutional facts of the second and third institutional kinds help determine whether or not these conflicts are wars or not. The simple lesson from these cases is that whether or not a conflict actually is a war, partially depends on whether or not they are represented as wars by the parties involved in the conflict.

Consider for example the so-called phoney war between France and the UK on the one hand, and Germany on the other hand, in the opening eight months of World War Two. The phoney war involved almost no use of force along the border between France and Germany. There were however some naval battles during this period. In any case, this is a conflict which probably would not have counted as a war, had it not been represented as a war by the parties involved.

Rosa Brooks has suggested that “war is whatever powerful states say it is” (Brooks 2016, p. 218) While I believe that wars at least to some extent depend on being represented as wars, I do not believe that this is entirely true. Thus, for example, even though there were no acts of war between Soviet and Japan after 1945, they did not issue a joint declaration to the effect that the war had ended until 1956. A formal peace treaty has still not been entered. In retrospect however, it is quite clear that the war actually ended in 1945. So even though two states claim to be at war, this is not enough for them to actually be at war.

Two conflicts that show the importance of how the parties themselves represent the conflict for whether or not a conflict counts as a war are the Falklands war and the Sino-Soviet border conflict of 1969. The latter conflict centred around the small island Zhenbao in the Ussuri river along the border. Between 900 and 1000 soldiers were killed in the Falklands War, and at least on some accounts, the number of casualties in the Sino-Soviet conflict was also between 900 and 1000 soldiers.⁶ So the amount of violence in both conflicts might roughly have been the same. Nevertheless, it is only the Falklands War that is normally classified as a war.

The main difference between the Falklands war and the Sino-Russian conflict is that the former conflict, but not the latter, was represented by the parties involved as a war. Neither Argentina nor the UK formally declared war against each other, but the UK invoked the right to self-defense as specified in the UN charter and granted captive Argentinians the status of prisoners of war. The Sino-Soviet border conflict on the other hand never appears to have been represented by the parties of the conflict as a war in any sense. The institutional context of these two conflicts was very different, which explains why one conflict but not the other lies in the extension of the term “war.”

So in conclusion one of the most important contextual parameters with respect to whether a conflict can be adequately classified as a war or not is how the parties to the

conflict represent the conflict. Armed conflicts sometimes qualify as wars because they are represented as such by the parties of the conflict. One of the main lessons from this is that the legal concept of war cannot readily be separated from the political concept of war. Whether or not a conflict is a war in the legal sense of the word frequently depends on how the conflict is represented by the political leaders of the states involved.

4. Hybrid war

Hybrid wars are on the conception used here armed conflicts which count as borderline cases of war. It is however important to point out that the status of these conflicts may be unclear in two different ways. The unclarity may be of an ontological nature, and it may be of an epistemological nature. I believe that this distinction can help clarify some of the confusions surrounding the concept of hybrid war.

An ontological unclarity concerns a case in which the conflict lies in the range of application for where it is permissible to draw the boundary between peace and war. If this is the case, it is completely arbitrary whether or not we chose to classify the conflict as a war or not. Even if the relevant contextual facts are known, there may simply be no non-arbitrary answer as to whether an attack constitutes an act of war or not and whether or not the defender has a legal right to respond with the use of armed force.

The border between attacks which qualifies as acts of war, and those which do not is arbitrary and cannot be given an exact specification in laws. With respect to the borderline cases, there is no legal answer as to whether they qualify as acts of war or not. Whether or not an attack is an act of war is in such cases a political matter rather than a legal matter. The answer to the question depends upon the political decisions taken by the attacked country. The attack might with equal justification be treated as an act of war as not being an act of war. The decision ultimately resides with the politicians.⁷

The second way in which there may be unclarity with respect to whether or not a conflict qualifies as a war or not is epistemological. I am here thinking of cases where one or both of the parties to the conflict lack knowledge of the relevant contextual parameters of the conflict. Since the contextual parameters help determine whether or not a conflict actually is a conflict, lack of knowledge of the relevant parameters may lead to a case where there is no ontological indeterminacy with respect to whether a conflict counts as a war or not, but where one or both of the parties lack evidence to that effect.

Consider for example the fact that one of the main contextual parameters is the institutional context in which the conflict occurs. Is the attacker acting under orders from a foreign government or not? If it is a foreign government, what is the intention behind the attack? Which types of violence – if any – is its armed force permitted to use? And under what orders did the armed forces act when attacking? The answers to all these questions help determine whether or not an armed conflict qualifies as a war.

The problem arises if the defender does not know the institutional context in which the attack occurs. If that is the case, there might well be a non-arbitrary answer as to whether the attack qualifies as an act of war. It might for example be true that the conflict in question is a war. But the defender would not know this since she does not know the context in which the attack occurs. The attacker might hide her intentions, deny involvement, and attack with soldiers with their insignia removed. In this case, it might be impossible for one of the states to make a non-arbitrary and true judgment

with respect to whether or not the states are at war, but there may well be a non-arbitrary answer to the question of whether or not this is the case.

Let us now say that a conflict is vague in the proper sense of the word when the conflict is a borderline case and non-vague when this is not the case. Thus, a conflict is vague if there is no non-arbitrary answer with respect to the question of whether the conflict is a war or not. And let us say that a conflict is transparent when both parties know all the relevant institutional facts and opaque when this is not the case.

If we combine the epistemological dimension with the ontological dimension, we end up with four different types of conflict. Let the horizontal dimension below represent the ontological dimension and the vertical dimension represent the epistemological dimension.

	Non-vague	Vague
Transparent	Normal Wars	Transparent and vague conflicts
Opaque	Opaque wars	Opaque and vague conflicts

For present purposes, it is only the upper left corner, which does not qualify as a hybrid war. The types of conflicts in the right column are both vague. The conflict in the lower left corner is not vague, but from the viewpoint of one of the participants it is impossible to make a warranted and true judgment with respect to whether or not it is in a state of war.

A given conflict may obviously move from one category to another. Consider for example, the invasion of Crimea in 2014. In late February of 2014, “little green men” suddenly started to appear in Crimea and gradually started to take control of the peninsula. The then acting Ukrainian President Oleksandr Turchynov initially (on 27 February 2014) described the takeover of governmental buildings in Crimea as an attack by “unidentified people with automatic weapons.” (Saul 2014) President Turchynov may at this point have been unaware of the extent of the Russian involvement in the attack. So perhaps it was natural to describe it as an attack by unidentified persons. A day later he accused Russia of being involved in the attack. However, he failed to describe the attack as an act of war. (Meyer et al. 2014)

It would thus appear that the Crimean invasion of 2014 was initially an attack where the Ukrainian government did not know who the attacker was. At that stage of the conflict, they lacked relevant knowledge of the context in which the attack occurred. After they learned that Russia was involved in the attack, the conflict was still vague, but it was no longer opaque to the Ukrainian government.

In a paper suggesting that there is not much new in hybrid warfare, Merle Maigre points out that the Soviet invasion of Afghanistan “began with hybrid tactics when 700 Soviet troops dressed in Afghan uniforms seized key military and administrative buildings in Kabul” (Maigre 2015, p. 2). Maigre thus describes our lower left corner. There was nothing vague about the Afghanistan War. In retrospect and with knowledge of all relevant contextual facts, it is quite clear that it was no borderline war. But the first day (or rather evening) was indeed characterized by a false flag attack which presumably confused the defenders to the extent that they did not know that they

were under attack from the Soviet Union. Thus, a decent case could be made that the first evening of the Russian War in Afghanistan can best be described as a conflict which was epistemically opaque but ontologically non-vague. Obviously, the conflict quickly moved to being epistemically transparent.

Viewed from the epistemic perspective of the defender, an opaque conflict is consequently as difficult to respond to as a transparent but vague conflict. In both cases, any decision on whether or not to represent the conflict as a war would not be based on knowledge. The difference is that opaque conflicts may be genuinely non-vague conflicts, in which case the unclarity is merely epistemological and not ontological.

So far, I have given a few examples of situations where an international relation between two states moves from being a clearcut case of peace to a vague or opaque form of conflict – a hybrid war. It is however important to note that hybrid wars may also develop out of clear cases of war. Emile Simpson, criticising the traditional concept of war, notes that the Napoleonic Wars “involved relatively long periods of peace” and concludes that this shows the limitations of the traditional concept of war (Simpson 2012, p. 26). This may well be true with respect to the Napoleonic wars, but this type of conflict which moves between intensive and less intensive phases could also involve intermittent hybrid phases. This may for example be true of a conflict which moves from being a non-vague case of war to a borderline case of war and then either to peace or back again to a non-vague case of war. One example of this type of conflict may be the current conflict in the Donbas area which could plausibly be described as moving between phases which are clear cases of war, and phases which can best be described as borderline cases of war.

5. Two kinds of opaqueness and deception in conflicts

I have suggested that a conflict is opaque if one of the parties of the conflict lacks relevant knowledge of the nature of the conflict. Knowledge is however normally taken to require both justification (or “warrant”) and truth. Consequently, a conflict may be opaque both in the sense that one party (normally the defender) lacks evidence to form a justified belief as to the nature of the conflict, and in the sense that the belief formed is false.

Let us take a closer look at these two kinds of opaqueness. First, a party of the conflict might have insufficient evidence for making a warranted judgment as to the nature of the conflict. This seems for example to have been the Ukrainian dilemma during the first hours of the Crimean conflict. They did not know the identity of the “little green men” that started to take over key government buildings in Crimea.

A successful false flag attack on the other hand is best characterized in a different way. If an attack is a false flag attack, the defender actually has sufficient (but not conclusive) evidence for making a warranted judgment with respect to the identity of the attacker. Thus, for example, if the false flag attack in Afghanistan was indeed a success with respect to its deceptive dimensions, the defenders would have had evidence that justified a judgment to the effect that the attackers operated on behalf of some part of the Afghan military.

In the false flag case however, the evidence supplied to the defender would have been false. And the judgment would, while justified, also be false. If you see troops dressed in Afghan uniforms you are normally justified in believing that they serve the Afghan military. But while the evidence justifies this judgment it is inconclusive and does not

entail that the judgment is true. It merely makes it likely that the judgment is true. And in this particular case, the judgment was false.

A successful false flag attack is consequently characterized by the defender having erroneous beliefs about what is going on, rather than having insufficient evidence for making a warranted judgment with respect to the nature of the conflict or the identity of the attacker. The epistemic situation for the defender is however in one important respect the same in both cases. The defender does not know the nature of the conflict or the identity of the attacker. The difference is that in one case the defender is aware of his or her epistemic limitations. In the other case, the defender is misled and led to believe something that is false.

Even when an attacker in a hybrid conflict – as in the case of Crimea – takes active measures to worsen the epistemological situation of the defender, the opaqueness of the situation rarely persists for more than a few hours or a day or two. Rare is the case in the history of warfare where a defender has not found out the identity of the attacker after a few hours or a day or two.

It is true that it is difficult to conceal the identity of the attacker of a “normal” attack with military force for more than a few hours or a day. The frequent use of special operations and cyber-attacks in hybrid conflicts however means that there is a dimension to such conflicts where it is possible to conceal both the identity of the attacker and the extent of the attack for a longer time.

Consider for example an attack by one country on another country that begins by extensive cyber-attacks and covert operations such as sabotage and terrorism. Let us also assume that both the extent of the cyber-attack (information pertaining to which systems are penetrated) and the identity of the attacker is concealed. Similarly, the acts of terrorism and sabotage are false flag attacks. If this is the case, we might have a situation where one state attacks another state without the latter state knowing either the extent of the attack or the identity of the attacker.

If this attack is followed by a more traditional military attack, albeit a low-intensity attack on a par with the invasion of Crimea, the defender would need to know the extent of the preliminary operations (the cyber-attacks, the sabotage and the terrorist acts) and the identity of those responsible for the attack in order to correctly assess the nature of the military attack. If, for example, the defender erroneously believes that the state responsible for the military attack was not responsible for the preceding preliminary operations, the defender would obviously lack information relevant to ascertaining whether or not the military attack is of a sufficient intensity to qualify as an act of war or not. Even if the preceding operations are not acts of war themselves, they pertain to the contextual factors that help determine whether or not the outbreak of more traditional military hostilities qualifies as a war or not.

We might obviously go even further and assume (pace Rid 2012) that a cyber-attack actually might qualify in itself as an act of war. Consequently, we could in the future see genuine cases of (cyber) wars where the identity and extent of the attacker is concealed from the defender and where the defender is supplied both evidence that misleads her with respect to the extent of the attack and identity of the attacker.

In traditional wars, it is difficult to mislead a defender with respect to the identity and extent of an attack for more than a very short time. Cyber-attacks are however more difficult to analyse both with respect to their extent and with respect to the

identity of the attacker. It is thus quite possible that a defender might persist in a state of epistemic opacity for a much longer time with respect to cyber-attacks than with respect to ordinary “kinetic” attacks.

In this kind of scenario, we might have a situation where the evidence clearly points at one state (or organization) as responsible for the attack, even though this state is innocent. Consequently, the situation might be one where the defender is at an epistemological disadvantage, but does not even know that it lacks relevant knowledge of the context in which the attack occurs. This kind of attack is obviously not that uncommon in the history of terrorism; if cyberspace is opened up as a dimension to fight wars in, we might also see this kind of conflict in ordinary wars.

6. Hybrid war and the defender's dilemma

The indeterminate nature of hybrid wars leads to a dilemma for the defender. If a state is the subject of an attack where it is indeterminate whether or not the attack counts as an act of war, the defending state may have a reason to represent the conflict as an act of war. But if the defending state represents the conflict as a war, then the contextual parameters of the conflict is changed. And that may well lead to an escalation – which it might be in the interest of the defender to avoid. Let us unpack this dilemma more closely.

A state that is the subject of an attack by another state has a good reason to defend itself. If the state is the subject of an attack that qualifies as an act of war, then it has the right to use force in order to defend itself. The United States, for example, had a *casus bello* against Japan after the attack on Pearl Harbor. The latter attack gave the United States a good reason to authorize its armed forces to use force against Japan.

It is important to point out that the reason mentioned is a legal reason. A state that is the subject of an act of war by another state acquires a legal reason to respond in kind. That is to say, the attacked state may acquire a right to use force in response. Under other circumstances a state may also acquire an obligation to use force. To give but one example, a state that is the subject of an act of war may invoke international treaties such as the UN Charter which gives it a right to use force in self-defence. And it may also appeal to its allies, if it has any, which may be treaty-bound to help in the event of war, but presumably not in the event of mere unrest.

Opting to represent a grey-zone attack as an act of war however, alters the contextual parameters of the conflict. We have seen that the contextual parameters of a conflict involve various institutional facts, including how the parties of the conflict conceive of it. If the defending party chooses to represent the attack as an act of war, the contextual parameters of the conflict change. It may actually turn the conflict from a grey-zone conflict, to a conflict that is clearly a war.

A shift in the context may be sufficient to turn the conflict from one that is indeterminate with respect to whether it is a war or not, to one that is determinately a war. If the context is shifting, the range of application shifts as well. A conflict with a given intensity may be in the range of application for where it is arbitrary whether it qualifies as a war or not. Once context is shifted however, the same conflict with the same intensity may be outside the range of application. It may have become a clear case of war. In some conflicts, the fact that one party starts representing a conflict as a war, may actually turn the conflict from a borderline case of war to a clear case of war.

Representing a conflict as a war, could thus lead to an escalation of the conflict. If the defender classifies the attack as an act of war, the situation changes not only for the defender, but also for the attacker. If the defender starts to represent an attack as an act of war, that may turn a grey-zone conflict into a real war. But then obviously the attacker will escalate as well.

The threat of escalation seems to have been a factor in the Ukrainian response to the Russian invasion of Crimea. During the invasion of Crimea, Russia held a massive military exercise along the border of Ukraine. The force involved was so huge that it functioned as a plausible threat to Ukraine. (Rácz 2015, p. 74, Norberg et al. 2014, p. 41) If Ukraine declared that Russia had invaded Crimea, it would thus have to risk a major conflict with this force. Any declaration to the effect that Ukraine was at war with Russia would obviously increase the risk of the open use of force by Russia against Ukraine. Thus, the decision of how to classify a hybrid attack was in this case a political decision and like other political decisions various parties tried to influence which decision was ultimately taken. Ukraine in the end opted not to represent the attack as an act of war by Russia – the main reason was presumably the fear of escalation.

The type of strategy that I have described may perhaps best be described as a strategy of lawfare, in the sense that law is used as a tool for strategy. In this particular context, the vagueness of the word “war” and the representation-dependence of the nature of the conflict can be used by the attacker against the defender. Any representation – valid or not – of a grey-zone attack as an act of war by the defender threatens an escalation of the conflict that the defender rarely wants. However, any refusal to classify the attack as an act of war severely limits the type of responses available to the defender. That is in essence the defender’s dilemma in this type of conflict.

7 Concluding words

I have suggested that conflicts can be assessed with respect to determinacy along two dimensions, an ontological dimension and an epistemological dimension and that hybrid wars are conflicts which are borderline cases of war. They can be borderline cases in both an ontological sense and an epistemological sense. Hybrid wars are ontological borderline cases when there is no non-arbitrary answer with respect to whether or not a conflict qualifies as a war. In this case the conflict is vague. Hybrid wars can however also be epistemological borderline cases. If this is the case, at least one party – normally the defender – is denied knowledge pertaining to the context in which the attack occurs. Consequently, she does not know whether the conflict qualifies as a war or not, or even whether or not the conflict is a borderline case or not. The nature of the conflict is opaque for one of the parties.

This leaves us with at least four types of conflict. Conflicts can be borderline cases of war in the ontological sense, in the epistemological sense, in both senses at once, or in none. But it is possible to make even finer distinctions. A non-vague conflict may for example qualify as a war, but it may also qualify as a peaceful conflict. So we have in reality three separate ontological alternatives – peace, war and borderline cases. We can also distinguish between two very different kinds of opacity. Conflicts may be opaque both in the sense that one of the parties lacks relevant evidence with respect to the nature of the conflict and in the sense that one of the parties is misled with respect to the nature of the conflict.

Given this analysis, we can see that there are no fewer than nine types of conflict, only two of which fail to qualify as hybrid conflicts. I am thinking here of those conflicts which are epistemically transparent and clear cases of either war or peace. All other seven options are in one sense or another characterized by epistemic opaqueness or ontological vagueness.

It goes beyond this paper to further analyse these various types of conflicts and the challenges they pose for defenders and attackers alike. Suffice it for present purposes to note that the challenges faced by a state that faces a non-vague war but is misled with respect to the nature of the war is different from the challenges posed by a state which has a transparent view of the conflict and is forced to conclude that it is a borderline case of war. Both states are however involved in hybrid wars.

Notes

- 1 Authors using the term “hybrid war” in the widest possible sense so as to include not merely the military dimension but also the informational and economic dimension, include McCuen (2008), Scheipers (2016). Jonsson and Seely describe the same phenomenon, but prefer the term “full-spectrum conflict” instead of “hybrid war”. (Jonsson and Seely 2015).
- 2 For the opposite kind of objection, see Fridman (2017) who objects that the term “hybrid war” is given too restrictive a use in the literature, and opposes it to the Russian term “gibridnaya voyna,” which encompasses political, cultural and economic dimensions as well as a military dimension. Duncan (2017) is of a similar opinion and argues that it fails to adequately describe the Russian way of war.
- 3 This is the definition for war used by the Correlates of War Data project, (cf Sarkees 2000).
- 4 I should immediately stress that this is not a criticism of the definitions made by the Correlates of War Data project. For scientific purposes it is perfectly legitimate to draw these kinds of sharp but arbitrary boundaries. But these definitions do not correspond to the way the term “war” is normally understood in international law or by the policymakers themselves. Thus, for example, the conflict between Georgia and Russia in 2008 is normally conceived of as a war, but is not classified as one in databases requiring 1000 battle-deaths a year (Cf Harbom and Wallenstein 2009).
- 5 For studies applying vagueness to law, see in particular Endicott 2000 and the papers in the anthology edited by Keil & Poscher (2016).
- 6 The number of casualties is unclear; estimates range from 60–140 Soviet soldiers and 39–800 Chinese soldiers. However, there can be no doubt that this was a significant military conflict. On the Fifteenth of March for example, Chinese forces involved in the conflict numbered 2000 and the Soviet Union committed 50 tanks and armoured personal carriers as well as aircrafts and artillery. (Gerson 2010, p. 26).
- 7 For a different take, see Echevarria (2016, p. 33), who concludes that grey-zone wars lie below the threshold for war. If my argument is correct, this would be an erroneous characterization. If they lie clearly below the threshold for war, they are not in the borderline between peace and war.

Acknowledgments

Thanks are due to Alexander Almér, Randi Almäng, Lars Aurdal, Henrik Friberg Fernros, William Mandrick and Christer Svennerlind for comments on previous versions of the paper.

Disclosure statement

No potential conflict of interest was reported by the author.

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