Legal Deterrence by Denial: Strategic Initiative and International Law in the Gray Zone

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International security competition in the twenty-first century is likely to remain largely within the "gray zone"—a category of aggressive activities that threaten core aspects of statehood while avoiding the threshold of armed force that has traditionally legitimized military retaliation in self-defense. Gray zone activities lend strategic initiative to the aggressor, confronting defenders with difficult response decisions and often incentivizing them to tolerate relative losses rather than risk escalating conflict. International law and norms have indirectly helped constitute the gray zone, and they can also play a key role in helping to deter future gray zone threats. Combining strategic and legal analysis, this article explores the relationship between international law and the gray zone, develops a strategy of legal deterrence by denial tailored to address the central dilemma of strategic initiative, and lays the foundations for defensive-minded policymakers to undercut revisionist lawfare and deter gray zone aggression.

How can international law help deter gray zone aggression? States have used international law to limit the practice of war for well over a century, developing robust norms including self-defense, military necessity, proportionality, and discrimination between combatants and noncombatants.[1] Yet countless recent episodes have demonstrated that policies short of war can also threaten international security. Consider Belarus facilitating illegal migration into the European Union,[2] China employing commercial fishing vessels to disrupt neighboring states' activities in the South China Sea,[3] or Russia interfering with US elections by spreading disinformation.[4] Such gray zone activities lack the potential destructiveness of war and hence have traditionally attracted less scholarly attention, but they notably appeal to revisionists who would prefer to avoid war themselves (whether due to nuclear deterrence, economic interdependence, or other reasons). As a result, the practical likelihood of facing gray zone aggression for many countries is significantly higher than their risk of facing military invasion. How can those who seek to deter aggression short of war best shape and wield international law to serve that purpose?

To be most effective, international legal responses to gray zone aggression should adopt the logic of deterrence by denial. Gray zone activities undercut core aspects of statehood while avoiding international law's relatively clear red lines regarding the use of armed force. Aggressors use such activities to put defenders on the back foot—confronting them with losses while deterring armed retaliation via the prospect of escalating conflict. International law currently relies for deterrence on the prospect of military retaliation in self-defense or, more recently, on the prospect of leaders who launch wars of aggression being prosecuted by the International Criminal Court (ICC). The logic behind this approach is ill suited to the gray zone, however. Rather than using international law to legitimize post hoc punishments for states that engage in nonwar aggression, legal entrepreneurs should seek

1 See, for example, Oona A. Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster, 2017); Hyeran Jo and Beth A. Simmons, "Can the International Criminal Court Deter Atrocity?" *International Organization* 70, no. 3 (Summer 2016): 443–75.

2 Rafal Niedzielski and Czarek Sokolowski, "Why Poland Says Russia and Belarus are Weaponizing Migration to Benefit Europe's Far-Right," *AP News,* June 4, 2024, https://apnews.com/article/poland-belarus-migrants-russia-ukraine-59d6050c2ea6853de3154150e8c9dcb5.

3 Gregory B. Poling, Tabitha Grace Mallory, Harrison Prétat, and Center for Advanced Defense Studies, "Pulling Back the Curtain on China's Maritime Militia," *Center for Strategic & International Studies,* November 2021, https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/211118_Poling_Maritime_Militia.pdf?VersionId=Y5iaJ4NT8eITSlAKTr.TWxtDHuLIq7wR.

4 Eric Tucker, Matthew Lee, and David Klepper, "With Charges and Sanctions, US Takes Aim at Russian Disinformation Ahead of November Election," *AP News,* September 4, 2024, https://apnews.com/article/russia-justice-department-election-foreign-influence-4888f4bfc61e46173101060ad0321d2f.

to raise the upfront costs of gray zone activities and deny them a clear path to success.

A coherent strategy of legal deterrence by denial consists of three steps: (1) defining a clear legal concept of "gray zone aggression"; (2) criminalizing the unconventional means employed by gray zone aggressors; and (3) developing new collaborative legal mechanisms capable of increasing attribution and streamlining law enforcement across borders. First, international law needs to define gray zone activities and recognize them as forms of aggression that directly threaten the principles of sovereignty, territorial integrity, and political independence, unequivocally delegitimizing such activities and establishing a focal point for collaboration against them. Second, criminalizing specific activities involved in gray zone aggression can hinder the agents conducting these activities, which can force states to either invest greater resources in them or abandon their pursuit. Third, developing new international legal architectures to facilitate intelligence sharing and cross-border law enforcement against gray zone threats can further raise the costs of these activities for aggressors and reduce their likelihood of success.

This article lays the groundwork for this strategy by bringing the study of international law and norms together with the growing literature on gray zone aggression, which has so far primarily involved military strategists and security scholars. This approach should be a natural fit because foundational concepts like war and aggression and practices like deterrence are fundamentally a matter of norms. Which behaviors are generally recognized as acts of war that will meet military retaliation, and which fall below that threshold and hence may be employed with relatively little fear of immediate escalation? International norms, many of which are formalized via international law, are the means by which states answer such questions, and this process shapes policymakers' expectations of the costs and benefits of different courses of action. Rather than taking those answers for granted, scholars and practitioners of international security have much to gain by reintegrating research on international law and norms into broader debates regarding deterrence, aggression, and security.

The discussion that follows proceeds in six parts. The first section defines the gray zone as aggressive actions short of war, fleshing out its core components (unconventional means, ambiguous ways, and limited ends) and considering alternative concepts like hybrid warfare. The second section situates the gray zone amid the legal concepts of war and aggression, observing how international law's current approach to aggression as a subset of war allows the gray zone to function as an area ripe for norm evasion. In order to develop legal mechanisms with real promise of deterring gray zone aggression, the third section digs deeper into how unconventional means, ambiguous ways, and limited ends confront defenders with strategic dilemmas that enable aggressors to undercut core principles of statehood while skirting the legal threshold of war. The fourth section introduces the strategy of legal deterrence by denial, fleshes out the three steps described above, and examines how they can help deter gray zone aggression. The fifth section considers why alternative approaches such as mirroring the laws of war, authorizing military retaliation against gray zone threats, formalizing the common practice of sanctioning violators, or centering another legal principle like non-intervention would be less well-suited to translate the logic of deterrence by denial into international law. Finally, the sixth section assesses the incentives states have to support legal deterrence by denial, its prospects for success, and the implications of failure.

What Is the Gray Zone?

The gray zone can be broadly understood as a category of aggressive actions short of war. This section unpacks this definition, discusses its relevance to modern international security, and compares it to alternative conceptualizations. Gray zone activities entail two key elements: They are aggressive in nature, and they are calibrated to stay below the threshold of war. The concept of the gray zone was developed to account for behaviors that do not qualify as acts of war in the traditional sense yet nevertheless directly compromise other states' sovereignty, territorial integrity, or political independence. "Make no mistake," Hal Brands writes, "gray zone approaches are undoubtedly aggression."[5] These approaches encompass a wide range of potential objectives, from territorial expansion or the dissolution of a regional security arrangement to election interference or the undermining of a government's domestic support. The aggressive nature of gray zone policies is the key reason why, as Philip Kapusta notes, they "rise above normal, everyday peacetime geo-political competition."[6]

Despite meaningfully constituting aggression, gray zone activities stay below the threshold of war by featuring (1) unconventional means, (2) ambiguous ways, and (3) limited ends. Whereas conventional under-

5 Hal Brands, "Paradoxes of the Gray Zone," *Foreign Policy Research Institute*, February 2016, https://ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/brands_-_grey_zone.pdf.

6 Philip Kapusta, "The Gray Zone," *Special Warfare* 28, no. 4 (October–December 2015): 20, https://info.publicintelligence.net/USSOCOM-GrayZones.pdf.

standings of war entail one state's direct application of military force against another (which retaliates in kind), gray zone aggression relies on alternative and *unconventional means* such as propaganda, sabotage, cyberattacks, proxy forces, and insurrections. Such means, which do not rely on conventional military forces, are seen as useful specifically because they fall short of shared understandings of *casus belli*. While some form of retaliation from the adversary may be expected, and the risk of escalation to war is ever-present, gray zone approaches are, as Michael Mazarr writes, "chosen specifically to avoid red lines and escalation."[7] Mazarr continues: "A fundamental implication of gray zone campaigns is to blur the dividing line between peace and war, and between civilian and military endeavors. They are, in a sense, the use of civilian instruments to achieve objectives sometimes reserved for military capabilities."[8]

Achieving these aims without provoking military retaliation often requires targeting peripheral interests where credible commitments are lacking and opportunities for exploitation exist.

Gray zone activities also skirt the threshold of war via *ambiguous ways*—methods that are calculated to avoid attribution. A variety of such approaches exist, including the use of proxy groups, technologies like cyber capabilities that inhibit attribution, and attempts to cover one's tracks or muddy the waters of blame by spreading disinformation. Even if these techniques fail to fully obfuscate the aggressor's role in events (an especially difficult task where it has clear interests or where it faces a suspicious rival), they may succeed enough to provide rhetorical ammunition to domestic and international opponents of escalating conflict.[9] As Bruno Tertrais observes: "A key reason why red lines fail is the classical reason behind why many conflicts start in the first place: a failure of understanding, generally due to a lack of clarity about triggering circumstances or consequences."[10] Ambiguous ways may also generate confusion and turf wars within the adversary's government regarding which agencies are primarily responsible for its reaction.[11] Such ambiguity "delays, deters, or otherwise complicates an adversary's response, providing revisionists time and political space to seize objectives and solidify control."[12]

Finally, gray zone activities pursue *limited ends* calculated to not directly jeopardize an adversary's core interests, thereby offering wide latitude for its policymakers to choose responses short of military retaliation. Accordingly, these activities are a natural fit for "salami tactics" approaches to international expansion—pursuing cumulative and incremental gains slice-by-slice through repeated *faits accomplis*.[13] Gray zone aggression may also aim to more generally degrade an adversary's strategic position by sapping its capabilities, reducing its competitiveness in key arenas, and eroding the credibility of its future deterrent postures.[14] Achieving these aims without provoking military retaliation often requires targeting peripheral interests where credible commitments are lacking and opportunities for exploitation exist. In Raymond Kuo's words, "Gray zone strategies attack the 'seams' of the international order: those issue domains and geographic areas where the robustness, institutionalization, and formalization of interstate agreement are thinnest."[15]

The gray zone concept is particularly relevant to current strategic debates for three main reasons: the decreased likelihood of major war, the importance of

7 Michael J. Mazarr, *Mastering the Gray Zone: Understanding a Changing Era of Conflict* (US Army War College Press, 2015), 39.

8 Mazarr, *Mastering the Gray Zone*, 62.

9 Rory Cormac and Richard J. Aldrich, "Grey Is the New Black: Covert Action and Implausible Deniability," *International Affairs* 94, no. 3 (May 2018): 477–94, https://doi.org/10.1093/ia/iiy067.

10 Bruno Tertrais, "Drawing Red Lines Right," *Washington Quarterly* 37, no. 3 (Fall 2014): 8, https://doi.org/10.1080/0163660X.2014.978433.

11 Kapusta, "The Gray Zone," 22; see also David Barno and Nora Bensahel, "Fighting and Winning in the 'Gray Zone,'" *War on the Rocks*, May 19, 2015, https://warontherocks.com/2015/05/fighting-and-winning-in-the-gray-zone/.

12 Raymond Kuo, *Contests of Initiative: Countering China's Gray Zone Strategy in the East and South China Sea* (Westphalia, 2020), 6; see also Kathryn Hedgecock and Lauren Sukin, "Responding to Uncertainty: The Importance of Covertness in Support for Retaliation to Cyber and Kinetic Attacks," *Journal of Conflict Resolution* 67, no. 10 (November 2023): 1873–1903, https://doi.org/10.1177/00220027231153580.

13 Richard W. Maass, "Salami Tactics: Faits Accomplis and International Expansion in the Shadow of Major War," *Texas National Security Review* 5, no. 1 (Winter 2021/2022): 33–54, https://doi.org/10.15781/eyt5-2k84; Dan Altman, "By Fait Accompli, Not Coercion: How States Wrest Territory from Their Adversaries," *International Studies Quarterly* 61, no. 4 (December 2017): 881–91, https://doi.org/10.1093/isq/sqx049; James J. Wirtz, "Life in the 'Gray Zone': Observations for Contemporary Strategists," *Defense & Security Analysis* 33, no. 2 (2017): 106–14, https://doi.org/10.1080/14751798.2017.1310702.

14 Mazarr, *Mastering the Gray Zone*, 35; Wirtz, "Life in the 'Gray Zone,'" 107; Thomas C. Schelling, *Arms and Influence* (Yale University Press, 1966).

15 Kuo, *Contests of Initiative*, 9.

contemporary cases, and inherent shortcomings of binary perspectives on war and peace. First, several features of twenty-first-century international relations reduce the likelihood of major war. The spread of nuclear weapons has heightened its expected costs, offering strong incentives for deterrence at the highest level and hence increasing the salience of other forms of aggression.[16] The expected benefits of war have also declined due to economic interdependence and the globalization of supply chains, which have increased both the profits from peace and the potential disruptions from war.[17] Moreover, US policymakers and partners abroad have gone to great lengths to construct an international order that prohibits aggressive wars, institutionalizing that norm not only in major international organizations but also in alliances backed by US military power.[18] Indeed, as Brands observes, the recent focus on "gray zone conflict actually underscores the fact that US military power, alliances, and security guarantees—the structures that have long served as the backbone of the international order—have generally proven quite effective in deterring or punishing such flagrant military aggression."[19]

Second, important contemporary cases of international aggression have employed gray zone tactics, including cyberattacks, misinformation, proxies, and use of nominally civilian or unmarked military assets.[20] Notable examples include Russia's 2007 cyberattacks against Estonia, its 2014 annexation of Crimea, and its interference in the 2016 US elections; China's construction of artificial islands, its leveraging of maritime militias in the South China Sea, and its airspace incursions near Taiwan; and Iran's decades-long use of proxy militant groups in Palestine, Lebanon, Yemen, and elsewhere. Such policies were not widely seen as warranting military retaliation by the United States, yet each policy upsets or erodes the status quo in ways inimical to its interests and those of its regional partners, raising questions about US readiness to deter or confront such challenges in the future.

Third, contemporary gray zone activities have highlighted the longstanding inadequacy of a binary perspective on war and peace. That rigid distinction is ill suited to consider international behaviors that cannot reasonably be labeled peaceful yet also fall short of war. Whereas "traditional war might be the dominant paradigm of warfare," as Kapusta and others have argued, "gray zone challenges are the norm."[21] War's extreme consequences have traditionally made it the primary lens through which policymakers and scholars view international security, and its associated risks merit continued attention, but overemphasizing war can leave strategists underprepared for other forms of competition. As Frank Hoffman writes, "Gray zone conflicts are aimed at a gap in our intellectual preparation of the battlespace . . . a seam in how we think about conflict."[22] Growing concern over behaviors that do not fit cleanly into the categories of either peace or war has raised demand for an alternative concept.

Early conceptualizations of the gray zone envisioned it as a third category set against that traditional binary—in Mazarr's well-known phrase, the "ambiguous no-man's land between peace and war."[23] Critics have questioned that ambiguity, however, by noting wide variations in how the concept has been applied to real-world cases.[24] Some scholars argue that traditional Clausewitzian perspectives on war can amply address gray zone activities, advocating the related concept of "hybrid warfare"—a subset of war that features "a marriage of conventional deterrence and insur-

16 John Mueller, *Retreat from Doomsday: The Obsolescence of Major War* (Basic Books, 1989); Kenneth N. Waltz, "Nuclear Myths and Political Realities," *American Political Science Review* 84, no. 3 (1990): 730–45, https://doi.org/10.2307/1962764.

17 Stephen G. Brooks, *Producing Security: Multinational Corporations, Globalization, and the Changing Calculus of Conflict* (Princeton University Press, 2005); Patrick J. McDonald, *The Invisible Hand of Peace: Capitalism, the War Machine, and International Relations Theory* (Cambridge University Press, 2009).

18 Richard W. Maass, "Enforcing Territorial Integrity: US Support for the Prohibition of Conquest in International Law," in *The United States and International Law: Paradoxes of Support Across Contemporary Issues*, eds. Lucrecia García Iommi and Richard W. Maass (University of Michigan Press, 2022), 37–58.

19 Brands, "Paradoxes of the Gray Zone."

20 Mazarr, *Mastering the Gray Zone*; Brands, "Paradoxes of the Gray Zone."

21 Kapusta, "The Gray Zone," 21; see also Williamson Murray and Peter R. Mansoor, eds., *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present* (Cambridge University Press, 2012); Van Jackson, "Tactics of Strategic Competition: Gray Zones, Redlines, and Conflicts before War," *Naval War College Review* 70, no. 3 (Summer 2017): 39–61, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1069&context=nwc-review.

22 Frank Hoffman, "The Contemporary Spectrum of Conflict: Protracted, Gray Zone, Ambiguous, and Hybrid Modes of War," Heritage Foundation Index of Military Strength (2016), https://www.heritage.org/sites/default/files/2019-10/2016_IndexOfUSMilitaryStrength_The%20Contemporary%20Spectrum%20of%20Conflict_Protracted%20Gray%20Zone%20Ambiguous%20and%20Hybrid%20Modes%20of%20War.pdf.

23 Mazarr, *Mastering the Gray Zone,* 2.

24 Adam Elkus, "50 Shades of Gray: Why the Gray Wars Concept Lacks Strategic Sense," *War on the Rocks,* December 15, 2015, https://warontherocks.com/2015/12/50-shades-of-gray-why-the-gray-wars-concept-lacks-strategic-sense/; Chiara Libiseller and Lukas Milevski, "War and Peace: Reaffirming the Distinction," *Survival* 63, no. 1 (February–March 2021): 101–12, https://doi.org/10.4324/9781003422112; John Arquilla, "Perils of the Gray Zone: Paradigms Lost, Paradoxes Regained," *Prism* 7, no. 3 (2018): 119–28, https://www.jstor.org/stable/26470539.

gent tactics."[25] For instance, Alessio Patalano argues that China's maritime coercion is best classified as hybrid warfare because it deliberately risks military escalation.[26] In essence, the hybrid warfare concept reframes the gray zone not as a realm between peace and war, but as an area of overlap within which the war paradigm should apply to behaviors previously understood as peaceful (see fig. 1). Even as gray zone debates have aimed to address shortcomings of the traditional binary perspective on war and peace, those debates have remained rooted primarily in the relationship between those two concepts.

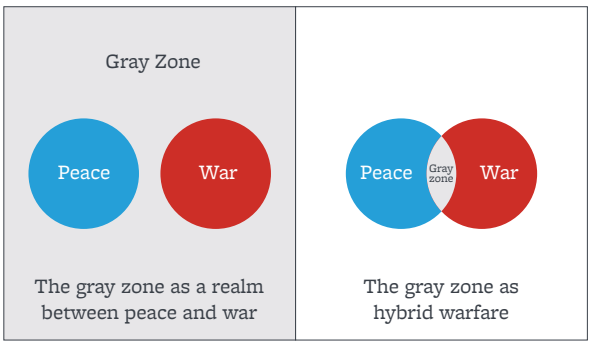

Figure 1. Contrasting conceptions of the gray zone. Figure by author.

Both of these conceptions obscure what is most interesting and challenging about the gray zone: how it undercuts defenders' strategic initiative (this will be discussed below). On one hand, defining the concept as "not war and not peace" generates a "you know it when you see it" universe of cases—an outcome that offers relatively little analytical leverage beyond opening the door to a third category of security dynamics. On the other hand, casting the gray zone as hybrid warfare effectively doubles down on the war-peace binary and risks deepening the militarization of the foreign policy space.[27] While the hybrid warfare concept may be useful for exploring how best to integrate nonmilitary ways and means into military strategies, it can also prove counterproductive when facing nonmilitary vulnerabilities and threats best addressed via economic or diplomatic strategies such as building civil capacity and trust.[28] Defining the gray zone as aggression short of war, in contrast, maintains the notion of a realm between war and peace while grounding it more firmly in a third concept: aggression (see fig. 2).

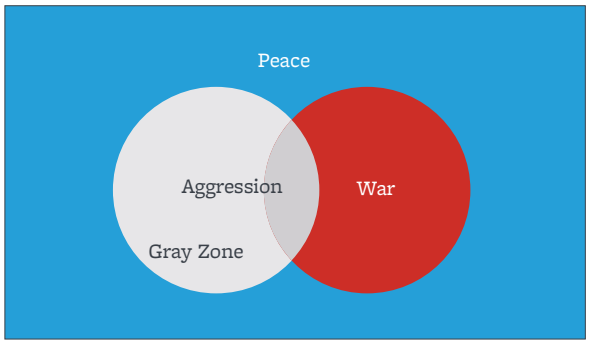

Figure 2. The gray zone as aggression short of war. Figure by author.

Gray zone activities are not a form of war, but they bring the possibility of war directly into view. Instead of extending the war paradigm over nonmilitary activities, adopting this conceptualization constitutes the gray zone as a realm of unconventional, ambiguous, and limited aggression that undermines another state's sovereignty, territorial integrity, or political independence, thereby heightening the risk of escalation toward war. Thinking about the gray zone in this way can generate useful leverage for policymakers who seek to deter such aggression while also avoiding war. A deeper interdisciplinary conversation with scholarship on international law and norms can help strategists capitalize on that leverage.

International Law, Norms, and the Gray Zone

The very existence of the gray zone is a product of international norms, although that may not seem readily evident from its emerging literature among military analysts and security scholars. Defined as "standard[s] of appropriate behavior for actors with a given identity," norms delineate the boundaries

25 Alexander Lanoszka, "Russian Hybrid Warfare and Extended Deterrence in Eastern Europe," *International Affairs* 92, no. 1 (January 2016): 176, https://doi.org/10.1111/1468-2346.12509; see also Frank Hoffman, *Conflict in the 21st Century: The Rise of Hybrid Warfare* (Potomac Institute for Policy Studies, 2007). Still others introduce alternative terminology like Mira Rapp-Hooper's "competitive coercion," which similarly "seeks to diminish alliances' effectiveness and to exploit gaps in alliances by advancing adversary aims in ways that do not trigger treaty provisions." See Mira Rapp-Hooper, *Shields of the Republic: The Triumph and Peril of America's Alliances* (Harvard University Press, 2020), 12.

26 Alessio Patalano, "When Strategy Is 'Hybrid' and Not 'Grey': Reviewing Chinese Military and Constabulary Coercion at Sea," *Pacific Review* 31, no. 6 (2018): 811–39, https://doi.org/10.1080/09512748.2018.1513546; see also Chiyuki Aoi, Madoka Futamura, and Alessio Patalano, "Hybrid Warfare in Asia: Its Meaning and Shape," *Pacific Review* 31, no. 6 (2018): 693–713, https://doi.org/10.1080/09512748.2018.1513548.

27 Gordon Adams and Shoon Murray, eds., *Mission Creep: The Militarization of US Foreign Policy?* (Georgetown University Press, 2014); Robert M. Gates, "The Overmilitarization of American Foreign Policy: The United States Must Recover the Full Range of Its Power," *Foreign Affairs,* July/August 2020, https://www.foreignaffairs.com/articles/united-states/2020-06-02/robert-gates-overmilitarization-american-foreign-policy.

28 Janine Davidson, "Local Capacity Is the First Line of Defense Against the Hybrid Threat," *German Marshall Fund of the United States Policy Brief,* September 2015, https://www.jstor.org/stable/resrep18784; Arsalan Bilal, "Hybrid Warfare—New Threats, Complexity, and 'Trust' as the Antidote," *NATO Review,* November 30, 2021, https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html.

between legitimate and illegitimate behavior in the international system.[29] Some norms are constitutive (identifying and labeling sets of behaviors to render them legible for explanation, negotiation, and potential regulation), while others are regulative (prescribing or proscribing certain behaviors).[30] International law represents the most formal version of such norms, recognized by governments through customs and treaties.[31] Backed by a rule-of-law ideology that appears to depoliticize policy choices, international law has become the currency of legitimacy in the modern international system, leaving behind alternative doctrines "such as divine right, economic exigency, self-preservation, ethnic self-determination, claims to modernity, and scientific racism."[32] International law and norms have shaped how policymakers differentiate between legitimate and illegitimate security behavior (often interpreting the latter as signaling threatening intentions or inherent depravity), as well as how states engage in warfare.[33] Much as shared understandings of the rules constitute sports or board games and govern their play, so too have shared understandings of organized interstate violence constituted war and influenced its execution.[34]

Recent scholarship has emphasized that international norms are continually subject to erosion or reinforcement via contestation.[35] Formal rules inevitably clash with practical experiences, generating debates over existing norms' "substantive content (which acts are prohibited, permitted, or required)," scope of applicability, descriptive dimensions such as their "formality, specificity, and authoritativeness," and the extent to which they legalize interactions via "precision, obligation, and delegation."[36] The increasing prominence of gray zone activities among contemporary security concerns has begun generating precisely such debates, which offers a ripe opportunity for international legal innovation. Yet even when normative movements appear to carry significant momentum (for example, women's rights during the 1970s, anti-whaling movements during the 1980s, or LGBT rights during the 2000s), contestation can arouse the competing interests of numerous domestic and transnational groups, which can thereby spark reactionary efforts even against norms that many now take for granted (for example, racial equality, gender equality, or the norm against torture).[37]

To substantiate the gray zone as nonwar aggression, this section examines how international law treats its two conceptual ingredients: war and aggression. Regarding the former, states have largely abandoned the practice of formally declaring war, so international humanitarian law instead relies on the operative legal concept of "armed conflict" to

29 Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 891, https://doi.org/10.1162/002081898550789; see also Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no. 2 (1999): 379–408, https://doi.org/10.1162/002081899550913.

30 John Gerard Ruggie, "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," *International Organization* 52, no. 4 (Autumn 1998): 871–74, https://doi.org/10.1162/002081898550770.

31 Lucrecia García Iommi and Richard W. Maass, eds., *The United States and International Law: Paradoxes of Support Across Contemporary Issues* (University of Michigan Press, 2022).

32 Ian Hurd, *How to Do Things with International Law* (Princeton University Press, 2017): 2, 54–55.

33 See, for example, Charles L. Glaser et al., "Correspondence: Can Great Powers Discern Intentions?" *International Security* 40, no. 3 (2016): 197–215; Stacie E. Goddard and Paul K. MacDonald, "From 'Butcher and Bolt' to 'Bugsplat': Race, Counterinsurgency, and International Politics," *Security Studies* 32, nos. 4–5 (2023): 714–47.

34 Tal Dingott Alkopher, "The Social (and Religious) Meanings that Constitute War: The Crusades as Realpolitik vs. Socialpolitik," *International Studies Quarterly* 49 (2005): 715–37, https://doi.org/10.1111/j.1468-2478.2005.00385.x; Christian Reus-Smit, "The Constitutional Structure of International Society and the Nature of Fundamental Institutions," *International Organization* 51, no. 4 (Autumn 1997): 555–89, https://doi.org/10.1162/002081897550456. Scholarly literature on the causes of war is extensive; see, for example, John A. Vasquez, ed., *What Do We Know About War?,* 2nd ed. (Rowman & Littlefield, 2012); Jack S. Levy and William R. Thompson, *Causes of War* (Wiley-Blackwell, 2010).

35 Antje Wiener, *Contestation and Constitution of Norms in Global International Relations* (Cambridge University Press, 2018); Antje Wiener, *A Theory of Contestation* (Springer, 2014); Lucrecia García Iommi, "Norm Internalisation Revisited: Norm Contestation and the Life of Norms at the Extreme of the Norm Cascade," *Global Constitutionalism* 9, no. 1 (2019): 76–116, https://doi.org/10.1017/S2045381719000285; Nicole Deitelhoff and Lisbeth Zimmermann, "Norms Under Challenge: Unpacking the Dynamics of Norm Robustness," *Journal of Global Security Studies* 4, no. 1 (January 2019): 2–17, https://doi.org/10.1093/jogss/ogy041; Wayne Sandholtz, *Prohibiting Plunder: How Norms Change* (Oxford University Press, 2007); Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2006).

36 Wayne Sandholtz and Kendall W. Stiles, *International Norms and Cycles of Change* (Oxford University Press, 2009), 7; Nicole Deitelhoff and Lisbeth Zimmermann, "Things We Lost in the Fire: How Different Types of Contestation Affect the Robustness of International Norms," *International Studies Review* 22 (2020): 51–76, https://doi.org/10.1093/isr/viy080; Kenneth W. Abbott et al., "The Concept of Legalization," *International Organization* 54, no. 3 (2000): 401–19, https://doi.org/10.1162/002081800551271.

37 Lisa Baldez, *Defying Convention: US Resistance to the UN Treaty on Women's Rights* (Cambridge University Press, 2014); Jennifer L. Bailey, "Arrested Development: The Fight to End Commercial Whaling as a Case of Failed Norm Change," *European Journal of International Relations* 14, no. 2 (2008): 289–318, https://doi.org/10.1177/1354066108089244; Fernando G. Nuñez-Mietz and Lucrecia García Iommi, "Can Transnational Norm Advocacy Undermine Internalization? Explaining Immunization Against LGBT Rights in Uganda," *International Studies Quarterly* 61 (2017): 196–209, https://doi.org/10.1093/isq/sqx011; Zoltán I. Búzás, "Racism and Antiracism in the Liberal International Order," *International Organization* 75 (Spring 2021): 440–63, https://doi.org/10.1017/S0020818320000521; Mona Lena Krook and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1 (2010): 103–27, https://doi.org/10.1177/1354066110380963; Averell Schmidt and Kathryn Sikkink, "Breaking the Ban? The Heterogeneous Impact of US Contestation of the Torture Norm," *Journal of Global Security Studies* 4, no. 1 (January 2019): 105–22, https://doi.org/10.1093/jogss/ogy036.

functionally distinguish between war and peace.[38] Doing so serves two major purposes. First, it constitutes peace as the default relationship between states. Extensive negotiations, literatures, and bodies of case law have limited the circumstances under which states can legitimately undertake armed conflict (*jus ad bellum*) to either self-defense (whether individual or collective) or authorization by the United Nations Security Council (UNSC).[39] While this relative precision has not eliminated the role of subjective interpretation, it has recast efforts to legitimize military operations by requiring that all cases lacking UNSC authorization be justified in terms of self-defense.[40]

Second, the legal concept of armed conflict facilitates efforts to limit its destructive violence via regulative norms regarding conduct in warfare (*jus in bello*). International law demands that all uses of armed force meet the standards of discrimination, military necessity, and proportionality, and it further details protections for noncombatants including civilians, prisoners of war, medical facilities, cultural artifacts, and the environment. These norms, each of which has undergone its own history of contestation, are triggered by decisions to undertake military operations, supervening broader peacetime standards such as human rights law (*lex specialis*).[41] In contrast, peacetime modes of international competition such as economic rivalries for market dominance are not subject to the laws of war. Constituting shared expectations of legitimate behavior during armed conflict in this way provides focal points for condemnation by governments, domestic opposition parties, and nongovernmental organizations when those expectations are not met.

International law also has a long history of condemning aggression. States signed nonaggression pacts well before the twentieth century, when major ordering projects sought to formally delegitimize such behavior. Article 10 of the League of Nations Covenant pledged its members "to respect and preserve against external aggression the territorial integrity and existing political independence of all Members."[42] Though it did not precisely define the term, the Covenant clearly framed aggression as an assault on two other principles that would become centerpieces of modern international law: territorial integrity and political independence. The UN Charter similarly declared a central purpose of the United Nations "to maintain international peace and security, and to that end . . . the suppression of acts of aggression or other breaches of the peace."[43] The Charter remained somewhat ambiguous as to whether only armed attacks constituted aggression—for example, Article 39 grants the Security Council authority to "determine the existence of any threat to the peace, breach of the peace, or act of aggression"—but it arguably implied as much by prominently pledging members to "refrain . . . from the threat or use of force against the territorial integrity or political independence of any state."[44]

Contemporary international law more clearly conceptualizes aggression as a crime committed by state leaders who deploy armed force offensively. Building on the Nuremburg and Tokyo tribunals and—most directly—UN General Assembly Resolution 3314 (1974),[45] Article 8 of the International Criminal Court's Rome Statute (updated by the 2010 Kampala amendments) defines an "act of aggression" as "the use of armed force by a State against the sovereignty, territorial

38 Common Article 2 of the 1949 Geneva Conventions; ICRC, "International Armed Conflict," https://casebook.icrc.org/a_to_z/glossary/international-armed-conflict; see also ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts in 2011," December 1, 2011, chapter 2, https://casebook.icrc.org/case-study/icrc-international-humanitarian-law-and-challenges-contemporary-armed-conflicts-2011; Tanisha M. Fazal, *Wars of Law: Unintended Consequences in the Regulation of Armed Conflict* (Cornell University Press, 2018).

39 Christian Henderson, *The Use of Force and International Law* (Cambridge University Press, 2018); Joel Westra, *International Law and the Use of Armed Force* (Routledge, 2007).

40 See, for example, Aaron Schwabach, "The Legality of the NATO Bombing Operation in the Federal Republic of Yugoslavia," *Pace International Law Review* 11, no. 2 (1999): 405–18, https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1240&context=pilr. Even within the UN Security Council, international law shapes prominent modes of justificatory discourse; see Ian Johnstone, "Security Council Deliberations: The Power of the Better Argument," *European Journal of International Law* 14, no. 3 (2003): 437–80, https://doi.org/10.1093/ejil/14.3.437. Of course, states have still sought to stretch international law to suit their strategic goals; see Rebecca Sanders, *Plausible Legality: Legal Culture and Political Imperative in the Global War on Terror* (Oxford University Press, 2018); Michael Poznansky, *In the Shadow of International Law: Secrecy and Regime Change in the Postwar World* (Oxford University Press, 2020).

41 Rebecca Sanders, "Contemporary US Targeted Killing: Expanding the Legal Boundaries of Warfare to Facilitate State Violence," in *The United States and International Law: Paradoxes of Support Across Contemporary Issues*, eds. Lucrecia García Iommi and Richard W. Maass (University of Michigan Press, 2022), 212–34. On the historical contestation of international humanitarian law, see Helen M. Kinsella and Giovanni Mantilla, "Contestation Before Compliance: History, Politics, and Power in International Humanitarian Law," *International Studies Quarterly* 64 (2020): 649–56, https://doi.org/10.1093/isq/sqaa032.

42 The Covenant of the League of Nations, article 10, https://www.ungeneva.org/en/about/league-of-nations/covenant.

43 UN Charter, article 1, https://www.un.org/en/about-us/un-charter/full-text.

44 UN Charter, article 2(4).

45 UNGA Resolution 3314, article 1, https://legal.un.org/avl/ha/da/da.html; Charter of the International Military Tribunal, *United Nations—Treaty Series*, no. 251 (1951), 288, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf; Charter of the International Military Tribunal for the Far East, *Multilateral Agreements 1946–1949,* 22, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf.

integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations." This document further identifies the "crime of aggression" as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Specified examples include invasion, military occupation, forcible annexation, bombardment, blockade, attacks on military forces, hosted forces breaching their mandates, allowing territory to be used by third parties undertaking acts of aggression, and sending irregular forces to commit violence.[46] In contrast to the League Covenant's relative ambiguity, then, international law now clearly defines aggression as a subset of war (see the left side of fig. 3).

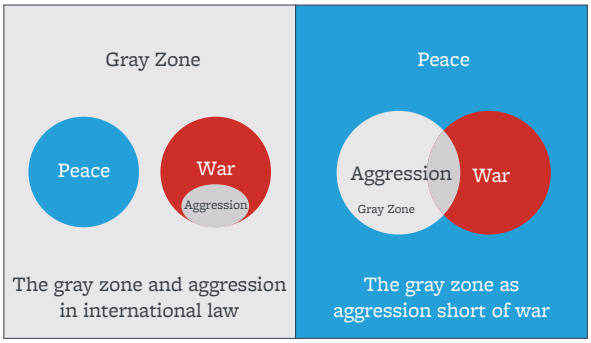

Figure 3. Reconceptualizing aggression and the gray zone in international law. Figure by author.

This conceptualization leaves international law ill-prepared to address gray zone activities: If an "act of aggression" requires "the use of armed force," then aggression short of war cannot logically exist. Yet contemporary cases have demonstrated many ways in which states may undermine each other's sovereignty, territorial integrity, or political independence without using armed force. Accordingly, if the intent behind the international legal concept of aggression is to preserve those aspects of statehood for all UN members, then the gray zone constitutes an important domain of what Zoltán Búzás has called "norm evasion"—wherein states obey the letter of the law while violating its underlying purpose.[47] International law's focus on condemning aggressive uses of armed force has thus had the side effect of constituting the gray zone as a separate category of unarmed activities that nevertheless undercut core principles of statehood. The next section explores the central dilemma that classification poses to policymakers, the role of international law in that dilemma, and the implications for deterrence.

Strategic Initiative and Deterrence in the Gray Zone

Policymakers seeking to prevent gray zone aggression face a formidable challenge: how to deter activities that are not typically seen as valid grounds for a military response. Simply put, not much good recourse exists for states targeted by activities that are aggressive—that infringe on their sovereignty, territorial integrity, or political independence—but do not meet the international legal standard for "armed conflict."

The key to understanding this challenge is the concept of strategic initiative, as defined by R. G. Cherry: "the power of making our adversary's movements conform to our own" rather than vice versa.[48] In other words, who enjoys more freedom to maneuver—aggressors or defenders—and whose decisions are more reactionary and constrained by the perils of potential escalation? Gray zone activities frustrate policymakers because they lend the power of strategic initiative to aggressors, which disincentivizes defenders from retaliating with military force for fear of provoking a costly war. Accordingly, gray zone conflicts become "contests of initiative" as defenders struggle to avoid relative losses without being stuck with an undesirable escalation decision, like the loser of a dangerous game of hot potato.[49]

This dilemma arises because gray zone aggression undercuts the logic of traditional perspectives on military deterrence. Colloquially known as "deterrence by punishment," this approach aims to persuade the adversary not to attack for fear of devastating retaliation—in essence, "threatening war to avoid it."[50] If policymakers can credibly establish their ability and willingness to retaliate against a potential attack

46 International Criminal Court, *Rome Statute of the International Criminal Court* (2011), 7, https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf.

47 Zoltán I. Búzás, *Evading International Norms: Race and Rights in the Shadow of Legality* (University of Pennsylvania Press, 2021); Zoltán I. Búzás, "Evading International Law: How Agents Comply with the Letter of the Law but Violate Its Purpose," *European Journal of International Relations* 23, no. 4 (2017): 857–83, https://doi.org/10.1177/1354066116679242.

48 R. G. Cherry, "The Initiative in War," *RUSI Journal* 66, no. 461 (1921): 87, https://doi.org/10.1080/03071842109421936; see also Kuo, *Contests of Initiative*, 7.

49 Kuo, *Contests of Initiative*, 2.

50 Erik Gartzke and Jon R. Lindsay, *Elements of Deterrence: Strategy, Technology, and Complexity in Global Politics* (Oxford University Press, 2024), 21, 24. Of course, deterrence by punishment may also threaten nonmilitary retaliation, including economic or diplomatic sanctions, though as discussed above the shadow of war helps constitute the gray zone.

with enough force, adversaries should rationally decide not to act on their revisionist ambitions.[51] For example, some nuclear strategists advise that wherever possible the United States should maintain "escalation dominance"—demonstrable superiority at every level of conflict—thereby eliminating any chance that an adversary might anticipate victory through aggressive action.[52] The 2022 *Nuclear Posture Review* reflected this logic in its approach to deterring any potential use of nuclear weapons by North Korea, declaring, "There is no scenario in which the Kim regime could employ nuclear weapons and survive."[53] Similarly, one of the most prominent conceptual legacies of the Cold War—Mutual Assured Destruction—is often referenced as a prototypical example of deterrence due to the utter irrationality of courting annihilation, which specifically invokes the logic of deterrence by punishment.[54]

If policymakers can credibly establish their ability and willingness to retaliate against a potential attack with enough force, adversaries should rationally decide not to act on their revisionist ambitions.

International law has bolstered the credibility of deterrence by punishment by imbuing the line between peace and war with a special gravity: Both aggressors and defenders understand that initiating a war of aggression will mobilize publics to resist, rally partners abroad, and impose severe costs (even if all sides strictly follow the laws of armed conflict, which is never guaranteed).[55] Article 51 of the UN Charter specifically preserves "the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations."[56] This "armed attack" standard draws a clear red line, raising potential aggressors' expectations of punishment and constraining their decision-making. But what if aggressors find ways to pursue their ambitions without crossing that red line? The dynamic flips: Defenders must now decide whether to forcibly retaliate, which opens the door to war along with all of its costs and risks. Gray zone activities frustrate policymakers because they threaten core principles of statehood without the armed attacks that conventionally trigger legitimate uses of force in self-defense, which makes it harder to rally publics and partners and hence harder to credibly threaten punishment. In short, the same normative line intended to deter wars of aggression also deters wars of retaliation.

Applying a norm-based analytical lens to gray zone aggression's three core elements sheds further light on the relationship between international law and this strategic dilemma. Unconventional means, in this sense, include any means that do not legitimize military retaliation under prevailing norms. For example, while propaganda, sabotage, and cyberattacks contravene the principles of sovereignty and non-intervention, these actions are not usually considered acts of war—especially when employed via ambiguous ways in service of limited ends. As a result, military responses to such activities are usually seen as escalatory, which incentivizes nonmilitary responses in all but the most extreme circumstances. Unconventional means thus tap into international law's by-design bias against warfare, lending normative ammunition to the aggressor and others who may wish to delegitimize potential armed retaliation.[57]

51 See, for example, James J. Wirtz, "How Does Nuclear Deterrence Differ from Conventional Deterrence?" *Strategic Studies Quarterly* (Winter 2018): 58–75; Glenn H. Snyder, *Deterrence and Defense: Toward a Theory of National Security* (Princeton University Press, 1961).

52 Robert S. Ross, "Navigating the Taiwan Strait: Deterrence, Escalation Dominance, and US-China Relations," *International Security* 27, no. 2 (Fall 2002): 48–85, https://doi.org/10.1162/016228802760987824; Evan Braden Montgomery and Eric S. Edelman, "Rethinking Stability in South Asia: India, Pakistan, and the Competition for Escalation Dominance," *Journal of Strategic Studies* 38, nos. 1–2 (2015): 159–82, https://doi.org/10.1080/01402390.2014.901215; Aaron Miles, "Escalation Dominance in America's Oldest New Nuclear Strategy," *War on the Rocks,* September 12, 2018, https://warontherocks.com/2018/09/escalation-dominance-in-americas-oldest-new-nuclear-strategy/.

53 US Department of Defense, *2022 Nuclear Posture Review,* 12, https://media.defense.gov/2022/Oct/27/2003103845/-1/-1/1/2022-NATIONAL-DEFENSE-STRATEGY-NPR-MDR.pdf.

54 Recent work has revealed that Mutual Assured Destruction was far more delicate than conventional accounts suggest; see Brendan Rittenhouse Green, *The Revolution that Failed: Nuclear Competition, Arms Control, and the Cold War* (Cambridge University Press, 2020); Keir A. Lieber and Daryl G. Press, *The Myth of the Nuclear Revolution: Power Politics in the Atomic Age* (Cornell University Press, 2020).

55 Norms surrounding nuclear weapons have developed analogously, with the first use of nuclear weapons widely understood as crossing a line that opens the door to nuclear retaliation, and hence many states issuing no-first-use pledges. See, for example, Aditya Ramanathan and Prakash Menon, eds., *The Sheathed Sword: From Nuclear Brink to No First Use* (Bloomsbury, 2022).

56 UN Charter, article 51.

57 For example, in their analysis of justifications for international uses of force deposited with the UN Security Council between 1945 and 2018, Lauren Sukin and Allen S. Weiner find that "nearly all communications in our dataset involve claims that states are engaging in counterattacks in response to adversary attacks"; see Sukin and Weiner, "War and the Words: The International Use of Force in the United Nations Charter Era," in *Is the International Legal Order Unraveling?*, ed. David Sloss (Oxford University Press, 2022), 143–83.

Similarly, ambiguous ways represent revisionist pathways that, under prevailing norms, issue no clear warrant for military retaliation. One such path involves escaping attribution: If an action cannot be reliably attributed to a specific actor, defenders lack legal standing to retaliate (especially with force).[58] Covert actions, cyberattacks, and proxy groups each promote such obfuscation with varying degrees of success, demanding continuous efforts to bolster attribution capabilities via intelligence and technological innovation. Another form involves normative shielding: International legal principles often conflict with each other, which enables aggressors to take advantage of those inconsistencies by using one valued principle to shield actions that violate another. For example, the principle of self-determination is often invoked to justify territorial changes (even where externally incited), and the concept of freedom of speech complicates efforts to mitigate disinformation (even in the context of election interference). Unlike wars of aggression, then, "gray zone campaigns create a vague, ambiguous environment for legal standards and judgment."[59] Moreover, muting opposition to an ambiguous aggression raises the likelihood that any armed response would spark public demand for the aggressor to react in kind (painting itself as the victim), which heightens the risk of escalating conflict.

Finally, we may reconceive the limited ends associated with gray zone aggression as goals that, under prevailing norms, would not clearly justify defensive war. Discrete actions targeting peripheral interests stand in stark relief against the shadow of a potential war that would bring national homelands under fire, making threats of military retaliation appear disproportionate and lack credibility. This makes gray zone aggression particularly appealing in territories that are clearly delimited and relatively remote, where borders are disputed or unclear, where policy contexts lack clear norms, or where policymakers have previously retreated from red lines.[60] If escalating conflict would impose externalities abroad, moreover, other actors may end up serving the aggressor's purposes by pressuring the defender to accept relatively minor losses rather than pursue a destructive conflict. In short, where gray zone activities can undercut the possibility of credible deterrence, aggressors are likely to anticipate their success.[61]

Those who wish to deter gray zone aggression without escalating conflict thus find themselves between a rock and a hard place. By delegitimizing and disincentivizing the prospect of armed retaliation required for deterrence by punishment, "short-of-war strategies" can enable aggressors "to sidestep deterrent threats."[62] For this reason, scholars increasingly favor approaches rooted in a different logic—"deterrence by denial"—that aims to reduce the appeal of aggression by rendering it more costly upfront and less likely to succeed.[63] Instead of threatening post hoc punishment, denial strategies aim to deter aggression by moving its goal out of reach. Depending on the nature of the gray zone threat, this approach may entail reinforcing territorial defenses and early-warning systems, bolstering cybersecurity collaboration, promoting public transparency and electoral confidence, and other measures designed to enhance resilience, as well as diplomatic and legal measures to prevent the subsequent legitimation of the results of gray zone aggression.[64] Taking these steps makes the initial decision to undertake gray zone activities less appealing by reducing the likelihood of achieving political objectives at reasonable cost. Moreover, since deterrence-by-denial strategies do not rely on future policy decisions—that is, promises to retaliate which may be broken—they are less subject to credibility concerns than deterrence-by-punishment strategies. As Raymond Kuo writes, "Rather than meet ambiguity with further ambiguity, status quo actors are better served by solidifying their security relations and responses through more extensive and comprehensive coordination."[65] Policymakers seeking to harness international law to deter gray zone aggression should adopt a similar mindset.

58 Where tensions run high enough, of course, a target may be willing to retaliate without legal standing; see, for example, Keir A. Lieber and Daryl G. Press, "Why States Won't Give Nuclear Weapons to Terrorists," *International Security* 38, no. 1 (Summer 2013): 80–104.

59 Mazarr, *Mastering the Gray Zone,* 66.

60 Dan Altman, "Advancing Without Attacking: The Strategic Game Around the Use of Force," *Security Studies* 27, no. 1 (2018): 58–88.

61 Maass, "Salami Tactics," 37–41.

62 Wirtz, "Life in the 'Gray Zone,'" 107. See also Michael C. McCarthy, Matthew A. Moyer, and Brett H. Venable, *Deterring Russia in the Gray Zone* (US Army War College Press, 2019); Jahara W. Matisek, "Shades of Gray Deterrence: Issues of Fighting in the Gray Zone," *Journal of Strategic Security* 10, no. 3 (Fall 2017): 1–26, https://www.jstor.org/stable/26466832; Stacie L. Pettyjohn and Becca Wasser, *Competing in the Gray Zone: Russian Tactics and Western Responses* (RAND Corporation, 2019); Michael Green et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence* (Center for Strategic & International Studies, 2017).

63 Maass, "Salami Tactics"; Brian Blankenship and Erik Lin-Greenberg, "Trivial Tripwires?: Military Capabilities and Alliance Reassurance," *Security Studies* 31, no. 1 (2022): 92–117, https://doi.org/10.1080/09636412.2022.2038662; Dan Reiter and Paul Poast, "The Truth About Tripwires: Why Small Force Deployments Do Not Deter Aggression," *Texas National Security Review* 4, no. 3 (Summer 2021): 33–53, http://dx.doi.org/10.26153/tsw/13989.

64 Richard W. Maass, Paul Pepi, and Jared Sykes, "NATO's Enlargement: An Opportunity to Enhance Collective Resilience," NATO OPEN Publications 8, no. 6 (2023), https://issuu.com/spp_plp/docs/open_publication_nato_s_enlargement_an_opportunity?fr=xKAE9_zU1NQ.

65 Kuo, *Contests of Initiative,* 10.

Legal Deterrence by Denial

Following the logic of deterrence by denial, legal efforts to prevent gray zone aggression should aim to raise its upfront costs and lower its likelihood of success. While this is often easier said than done, international law offers a broad toolkit of constitutive and regulative devices, backed by the legitimating power of rule-of-law ideology.[66] In particular, policymakers should utilize international law's considerable advantages when it comes to harmonizing legal standards, facilitating cross-border coordination, and delegitimizing condemned practices. Although a comprehensive legal regime is beyond the scope of one article, this section develops a basic recipe for consolidating diverse ongoing efforts into a coherent strategy of legal deterrence by denial. This strategy leverages both constitutive and regulative norms, and consists of three steps:

1. implementing a clear legal concept of "gray zone aggression" to delegitimize such activities and establish a focal point for collaboration against them;
2. criminalizing the unconventional means employed by gray zone aggressors to hinder their agents and reduce their likelihood of success; and
3. developing new collaborative legal mechanisms to increase attribution and streamline international law enforcement.

The first step involves constituting a clear legal concept of "gray zone aggression." Building on the existing UN/ICC definition of aggression, such a concept might identify an "act of gray zone aggression" as "the use of *unarmed* means by a State against the sovereignty, territorial integrity, or political independence of another State." The "crime of gray zone aggression" might accordingly be defined as "the planning, preparation, initiation, or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of *gray zone aggression* which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Like the ICC's Rome Statute, such a definition might go on to list examples including election interference, disinformation, cyberattacks, sabotage, weaponizing migration, and fomenting insurrection. Whereas efforts to create an entirely new concept may struggle to develop an effective vocabulary free from prior legal baggage, branching the gray zone concept directly out from the established definition of aggression would take advantage of what Richard Price has called "grafting"—solidifying a new norm's legitimacy through its relationship to already accepted norms.[67]

There are two main reasons why aggression offers a strong root concept for legal efforts to tackle the gray zone. First, international law clearly prohibits aggression. Inheriting that stigma via normative grafting would unequivocally mark gray zone aggression as similarly illegitimate. This approach, in turn, would help discourage potential aggressors from anticipating that the international community may eventually accept the results of gray zone activities. The ultimate success of most revisionist objectives requires acquiescence from others involved, which helps justify sustained campaigns of lawfare like China has recently attracted attention for pursuing.[68] Rather than targeting any activities that threaten state sovereignty, however, international law currently encourages lawfare that aims to reinforce the line between peace and war as the line between legal and illegal aggression. Directly linking gray zone activities to the legal concept of aggression would highlight the notion of "legal aggression" as an obvious oxymoron, thereby denying gray zone aggressors a key legitimation narrative.

Second, the UN/ICC definition of aggression specifically emphasizes the principles of sovereignty, territorial integrity, and political independence—the same principles threatened by gray zone aggression. Those principles represent what Jeffrey Lantis and Carmen Wunderlich call a resilient "norm cluster," offers a relatively firm normative basis for new legal mechanisms.[69] While any new legal concept will be subject to contestation, building on such a widely accepted foundation can help reinforce those principles (which is, after all, the goal) by focusing debate on the gray zone's scope. As Nicole Deitelhoff and

66 Shirley Scott, "International Law as Ideology: Theorizing the Relationship Between International Law and International Politics," *European Journal of International Law* 5, no. 3 (1994): 212–25, https://doi.org/10.1093/oxfordjournals.ejil.a035873; Michael Byers, ed., *The Role of Law in International Politics* (Oxford University Press, 2000); Jeffrey L. Dunoff and Mark A. Pollack, eds., *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press, 2013); Hurd, *How to Do Things with International Law.*

67 For example, the campaign to ban antipersonnel landmines built on prior bans on biological and chemical weapons; see Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* 52, no. 3 (1998): 627–31, https://doi.org/10.1162/002081898550671.

68 Jill I. Goldenziel, "Law as a Battlefield: The US, China, and the Global Escalation of Lawfare," *Cornell Law Review* 106, no. 5 (2021): 1085–1171; Congyan Cai, *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (Oxford University Press, 2019).

69 Jeffrey S. Lantis and Carmen Wunderlich, "Resiliency Dynamics of Norm Clusters: Norm Contestation and International Cooperation," *Review of International Studies* 44, no. 3 (July 2018): 570–93, https://doi.org/10.1017/S0260210517000626. On the robustness of norms embedded with other norms, see Sarah Percy, "What Makes a Norm Robust: The Norm Against Female Combat," *Journal of Global Security Studies* 4, no. 1 (January 2019): 123–38, https://doi.org/10.1093/jogss/ogy044.

Lisbeth Zimmermann have found, debating "whether (1) a given norm is appropriate for a given situation . . . (2) which actions the norm requires in the specific situation and (3) which norm must be prioritized in a specific situation if several norms apply" keeps attention on instrumental questions, reinforcing consensus on the underlying normative premises.[70] In other words, rooting the legal concept of gray zone aggression directly in sovereignty, territorial integrity, and political independence would focus debate where it belongs: on how best to safeguard those principles.[71]

The diversity of gray zone activities necessitates equally diverse countermeasures involving many public and private actors, which international law can help assemble into a more cohesive deterrent system.

The second step toward legal deterrence by denial involves using the new concept as a focal point to spur regulative efforts capable of meaningfully hindering gray zone activities. Just as security scholars have recommended ways to impede territorial *faits accomplis* (for example, by bolstering defensive training and fortifications, deploying allied forces that meaningfully contribute to local defense rather than minimal tripwires, and building resilience into local infrastructure),[72] so should international legal efforts seek to impede non-forcible ways and means that undercut sovereignty, territorial integrity, and political independence. The diversity of gray zone activities necessitates equally diverse countermeasures involving many public and private actors, which international law can help assemble into a more cohesive deterrent system. For example, the development of shared standards for cybersecurity due diligence and multilateral instruments such as the United Nations cybercrime treaty can help coordinate various corporate and governmental efforts to impede cyberattacks.[73] Similarly, governments and corporations are currently wrestling with how to handle the ease of spreading disinformation within the digitized public square, where further legal efforts are sorely needed.[74]

The development of international standards for criminalizing specific gray zone activities would raise the likelihood that individual agents will be identified and arrested or sanctioned. Mirroring counterterrorism strategies based on criminal justice, the prosecution of such agents forces them to invest more time and effort in avoiding detection rather than executing operations.[75] States operating in the gray zone would therefore need to hire more personnel, compensate them at higher rates given the associated risks, and weigh the prospect of policymakers themselves facing international arrest warrants or other sanctions.[76] While many states have laws targeting practices like cyberattacks and sabotage, international criminal law has largely focused on heinous crimes like genocide, war crimes, and crimes against humanity (prohibited by *jus cogens* principles and subject to universal jurisdiction). Building on recent momentum in specifying "individual criminal

70 Deitelhoff and Zimmermann, "Things We Lost in the Fire," 57; see also Jutta Brunnée and Stephen J. Toope, "Norm Robustness and Contestation in International Law: Self-Defense Against Nonstate Actors," *Journal of Global Security Studies* 4, no. 1 (January 2019): 73–87, https://doi.org/10.1093/jogss/ogy039; Adam Bower, "Contesting the International Criminal Court: Bashir, Kenyatta, and the Status of the Nonimpunity Norm in World Politics," *Journal of Global Security Studies* 4, no. 1 (January 2019): 88–104, https://doi.org/10.1093/jogss/ogy037; Aurel Sari, "Norm Contestation for Strategic Effect: Legal Narratives as Information Advantage," *Heidelberg Journal of International Law* 83, no. 1 (2023): 119–54.

71 This is not to say that results are guaranteed, as antipreneurs seek to narrow the scope of norms; see Alan Bloomfield, "Norm Antipreneurs and Theorising Resistance to Normative Change," *Review of International Studies* 42 (2016): 310–33, https://doi.org/10.1017/S026021051500025X; Jamal Barnes, "The 'War on Terror' and the Battle for the Definition of Torture," *International Relations* 30, no. 1 (March 2016): 102–24, https://doi.org/10.1177/0047117815587775. Commitment to international law is a complex and messy process at both the domestic and international levels, and different paths to commitment may generate differing results in compliance; see Audrey L. Comstock, *Committed to Rights: UN Human Rights Treaties and Legal Paths for Commitment and Compliance* (Cambridge University Press, 2021).

72 Blankenship and Lin-Greenberg, "Trivial Tripwires?"; Reiter and Poast, "The Truth About Tripwires."

73 Scott J. Shackelford and Rachel D. Dockery, "The United States and Cybersecurity Due Diligence: A Continuing Dialogue for International Cyber Norms," in *The United States and International Law: Paradoxes of Support Across Contemporary Issues*, eds. Lucrecia García Iommi and Richard W. Maass (University of Michigan Press, 2022), 279–99; https://www.unodc.org/unodc/en/cybercrime/ad_hoc_committee/home.

74 M. R. Leiser, "Regulating Computational Propaganda: Lessons from International Law," *Cambridge International Law Journal* 8, no. 2 (2019): 218–40; Ashley C. Nicolas, "Taming the Trolls: The Need for an International Legal Framework to Regulate State Use of Disinformation on Social Media," *Georgetown Law Journal* 107 (2018): 36–62.

75 See, for example, Louise Richardson, *What Terrorists Want: Understanding the Enemy, Containing the Threat* (Random House, 2006); Alex S. Wilner, "Deterring the Undeterrable: Coercion, Denial, and Delegitimization in Counterterrorism," *Journal of Strategic Studies* 34, no. 1 (February 2011): 3–37.

76 Mongolia's failure to execute Putin's ICC arrest warrant shows that such measures are hardly a panacea, but that does not mean they impose no cost. See Ketrin Jochecová, "Sorry Not Sorry, Says Mongolia After Failure to Arrest Putin," *Politico,* September 3, 2024, https://www.politico.eu/article/mongolia-failure-arrest-vladimir-putin-international-warrant-international-criminal-court/; Courtney Hillebrecht and Scott Straus, "Who Pursues Perpetrators? State Cooperation with the ICC," *Human Rights Quarterly* 39, no. 1 (February 2017): 162–88.

responsibility for 'international crimes,'" legal entrepreneurs should work to develop lower echelons of international crimes.[77] Whether through the ICC, separate multilateral treaties, or both, developing shared constitutive norms can help states coordinate their ongoing efforts and meaningfully raise the upfront costs of gray zone aggression.

Futility can be an even more powerful deterrent than expense, so the third step in legal deterrence by denial involves reducing gray zone activities' chances of success through new collaborative mechanisms that focus on increasing attribution and streamlining law enforcement. While intelligence gathering is often understood as intentionally unregulated by international law due to its importance for national security, international legal institutions can usefully facilitate intelligence sharing.[78] Given the decentralization of agency from recognized government actors to private militarized groups, cyber criminals, and others, the effective attribution of responsibility for gray zone activities may often require supplementing individual governments' limited resources in human intelligence (HUMINT), signals intelligence (SIGINT), open-source analysis, and so forth. The "Five Eyes" partnership (between the United States, United Kingdom, Canada, Australia, and New Zealand) offers arguably the deepest example of such intelligence cooperation, though one that has struggled with the tradeoffs of expanding further.[79] Even limited efforts to broaden intelligence sharing can play an important role, though—given the gray zone's reliance on ambiguous ways, every step that makes attribution more likely (or, alternately, that increases the cost of achieving ambiguity) should help reduce its appeal.

Regarding enforcement, international law's ability to establish public focal points and shared legitimacy standards can help coordinate diverse law enforcement agencies, signal resolve, and establish reputational costs.[80] Even as domestic agencies retain primary enforcement functions, international courts can play a useful role given the transnational character of gray zone aggression. Extradition agreements and other joint arrangements can further serve as a force multiplier for domestic law enforcement, especially for states facing asymmetric threats or relatively porous borders.[81] Broadly speaking, regulations that make law enforcement easier, cheaper, more routine, and more transnational will reduce the gray zone's ability to impose relative losses in the shadow of war, which will in turn dampen aggressors' strategic initiative. Notably, while one might see the prospect of law enforcement as relying on deterrence-by-punishment logic at the individual level, aggregating the likely arrests of numerous agents can nevertheless contribute to deterrence by denial at the foreign policy level by raising the costs for government leaders pursuing a given policy and reducing its likelihood of success.

Legal deterrence by denial is not a panacea, but it does hold promise. It cannot eliminate peripheral interests—where credibly establishing extended deterrence is most challenging and where the gray zone thrives—but it can help build shared security perspectives.[82] Universal norms may be impossible given divergent international perspectives, but international law also empowers local and regional approaches that can generate strong incentives for vulnerable outsiders to seek membership (for example, NATO's post-1991 desirability in Eastern Europe). Efforts to develop a new legal concept should rigidly distinguish between armed aggression (which legitimizes war in self-defense) and gray zone aggression (which does not) in order to avoid complicating current mechanisms designed to prevent wars of aggression or making war more likely by encouraging armed retaliation against gray zone threats. New regulative norms will also require careful calibration to safeguard civil liberties given the close resemblance between some gray zone activities and protected behaviors (for example, propaganda versus political speech).[83] With these caveats in mind, constituting a new legal concept of gray zone

77 Beth A. Simmons and Hyeran Jo, "Measuring Norms and Normative Contestation: The Case of International Criminal Law," *Journal of Global Security Studies* 4, no. 1 (January 2019): 18, https://doi.org/10.1093/jogss/ogy043.

78 Glenn Sulmasy and John Yoo, "Counterintuitive: Intelligence Operations and International Law," *Michigan Journal of International Law* 28 (2007): 625–38.

79 Brad Williams, "Why the Five Eyes? Power and Identity in the Formation of a Multilateral Intelligence Grouping," *Journal of Cold War Studies* 25, no. 1 (Winter 2023): 101–37, https://doi.org/10.1162/jcws_a_01123.

80 See, for example, Barbara Koremenos, *The Continent of International Law: Explaining Agreement Design* (Cambridge University Press, 2016); Alexander Thompson, "The Rational Enforcement of International Law: Solving the Sanctioners' Dilemma," *International Theory* 1, no. 2 (2009): 307–21, https://doi.org/10.1017/S1752971909990078; George W. Downs and Michael A. Jones, "Reputation, Compliance, and International Law," *Journal of Legal Studies* 31, no. S1 (January 2002): S95–S114.

81 Helmut P. Aust and Georg Nolte, *The Interpretation of International Law by Domestic Courts* (Oxford University Press, 2016).

82 Do Young Lee, "Strategies of Extended Deterrence: How States Provide the Security Umbrella," *Security Studies* 30, no. 5 (2021): 761–96, https://doi.org/10.1080/09636412.2021.2010887; Gartzke and Lindsay, *Elements of Deterrence*, 200–7.

83 Henning Lahmann, "Infecting the Mind: Establishing Responsibility for Transboundary Disinformation," *European Journal of International Law* 33, no. 2 (May 2022): 411–40, https://doi.org/10.1093/ejil/chac023; Björnstjern Baade, "Fake News and International Law," *European Journal of International Law* 29, no. 4 (November 2018): 1357–76, https://doi.org/10.1093/ejil/chy071.

aggression and developing regulative norms aimed at criminalizing gray zone activities and streamlining law enforcement can help raise its likely costs and reduce its likelihood of success, thereby effectively contributing to deterrence by denial.

Weighing the Alternatives

How does the promise of legal deterrence by denial compare with major alternatives? This section weighs the shortcomings of four alternate approaches: mirroring the laws of war, authorizing armed retaliation against gray zone aggression, formalizing retaliatory sanctions, or centering another principle such as non-intervention.

First, some may look to build on international law's clear prohibition of aggressive war by mirroring that perspective in the gray zone. While countries from the United States to the Netherlands, Norway, and France have dedicated increasing attention to cyber competition, for example, their strategic thinking on the matter has been "predominantly wrapped in the language of armed conflict and military operations"—recognizing its continuous impact yet leaving a considerable "strategic vacuum" regarding actual responses.[84] As discussed above, the laws of war have a long history of regulating decisions to use armed force (*jus ad bellum*) and conduct while doing so (*jus in bello*).

As with military retaliation, however, the deterrent value of threatening post hoc economic and diplomatic sanctions is only as strong as the state's credibility.

Accordingly, legal entrepreneurs might aim to define the conditions under which a state may or may not legally engage in gray zone activities (*jus ad griseum*) and how their agents should conduct themselves while doing so (*jus in griseo*). While such an approach might appear well suited to utilize normative grafting, it would also suffer notable downsides. If we accept that "aggression" represents an entirely illegitimate form of international activity, then logically there should be no circumstances under which states might legitimately undertake aggression short of war. As a result, *jus ad griseum* becomes an irrelevant—indeed, oxymoronic—category of potential law. Indeed, creating such a category—even if narrowly defined—would enable interpretations providing legal cover for interventionist policies rather than delegitimizing them. Efforts to regulate gray zone conduct under a *jus in griseo* paradigm would suffer similar issues, focusing debate on which specific activities to delegitimize and implicitly lending legitimacy to others.

A second approach might countenance military retaliation against gray zone threats by holding that the right to use force in self-defense should be triggered not only by the UN Charter's "armed attack" standard but also by severe episodes of election interference, sabotage, proxy operations, or other activities that meaningfully threaten a state's sovereignty, territorial integrity, or political independence.[85] While that standard is no stranger to contestation (for example, over the requirements for invoking collective self-defense, undertaking preemptive measures, and defending citizens abroad),[86] this approach to raising the costs of gray zone aggression would remain dependent on deterrence-by-punishment logic. Gray zone activities are already most useful in situations where defenders do not want war, and legally authorizing undesirable escalation decisions will not alter that strategic calculus. Broadening self-defense norms would also open new pathways to future conflict by generating pressure for preemptive action, heightening first-mover advantages and security dilemmas, and offering a new pretext for abuses of power in circumstances where revisionists themselves face a plausible gray zone threat.[87]

A third approach might seek to bolster the existing practice of levying economic and diplomatic sanctions against aggressors rather than uses of force. Such measures have typically been implemented on an ad hoc basis by coalitions of willing states. International law might go further here and clarify what types of sanctions represent proportionate responses to various gray zone activities, secure advance commitments from potential

84 Tobias Liebetrau, "Cyber Conflict Short of War: A European Strategic Vacuum," *European Security* 31, no. 4 (2022): 507, https://doi.org/10.1080/09662839.2022.2031991.

85 For example, Shane Fischman, "Redefining Law of War in the Wake of Gray-Zone Conflict's Ubiquity," *University of Pennsylvania Journal of International Law* 41, no. 2 (2019): 491–540.

86 The United States prominently contested the requirements for collective self-defense while intervening in Nicaragua during the 1980s and for preemptive uses of force when invading Iraq in 2003. Defending co-nationals abroad was central to Russian justifications for its 2014 annexation of Crimea, among other cases.

87 Robert Jervis, "Cooperation Under the Security Dilemma," *World Politics* 30, no. 2 (January 1978): 167–214, https://doi.org/10.2307/2009958.

participants in a sanctions regime, and reduce domestic opposition to such measures, or streamline the practical implementation of sanctions.

As with military retaliation, however, the deterrent value of threatening post hoc economic and diplomatic sanctions is only as strong as their credibility. Legalization would not change the fact that sanctions impose costs on sanctioners as well as targets, which fuels familiar collective action problems that incentivize states to violate their commitments (especially where aggressors threaten costly counter-sanctions).[88] While international organizations can be useful vehicles for states to commit enforcement resources in advance, policymakers are disincentivized from taking costly measures to counter uncertain future threats until the emotions of their publics have been roused, which makes them unlikely to pre-commit enough resources to actually deter gray zone aggression.[89] Notably, even the sanctions coalition responding to Russia's 2022 full-scale invasion of Ukraine—as brazen a violation of international law as any—included only a small minority of the world's states.[90]

Finally, a fourth alternative approach might seek to rally international legal reforms around the principle of non-intervention, instead of developing a new legal concept of gray zone aggression. Defined by the International Court of Justice (ICJ) as "the right of every sovereign State to conduct its affairs without outside interference," the non-intervention principle is simultaneously central to international law (as a direct implication of state sovereignty) and squishy in its practical implications (given the many legitimate forms of interaction across borders).[91] For example, the principle remains relatively ambiguous to what extent non-intervention should prohibit activities like propaganda or funding transnational organizations, and to what extent other concerns such as human rights may override it.[92] Accordingly, as Maziar Jamnejad and Michael Wood note, "it was at no point proposed that a violation of the non-intervention principle (as opposed to aggression) should be included as a crime in the Rome Statute of the International Criminal Court, and there is no basis for suggesting that, as a matter of current international law, such a violation

88 Daniel W. Drezner, "Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive?" *International Organization* 54, no. 1 (Winter 2000): 73–102.

89 See, for example, government spending on pandemic preparedness pre- and post-COVID.

90 Russia's annexation of Crimea stood little risk of being reversed until it subsequently launched a full-scale invasion of Ukraine in February 2022, thereby abandoning its prior gray zone strategy in favor of naked military aggression. See also Tanisha M. Fazal, "The Return of Conquest? Why the Future of Global Order Hinges on Ukraine," *Foreign Affairs* (May/June 2022), https://www.foreignaffairs.com/articles/ukraine/2022-04-06/ukraine-russia-war-return-conquest.

91 *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep 14, 106, https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf; see also Maziar Jamnejad and Michael Wood, "The Principle of Non-Intervention," *Leiden Journal of International Law* 22 (2009): 358, 371.

92 Jamnejad and Wood, "The Principle of Non-Intervention," 368–76.

itself involves international criminal responsibility."[93] Non-intervention's roots in territorial sovereignty also make it relatively poorly suited to regulate activities involving information and cyberspace.[94] While the non-intervention principle offers a potentially useful supplementary rationale, then, international law's clear prohibition of aggression offers a firmer foundation to delegitimize the gray zone.[95]

Conclusion: Change on the Horizon?

Gray zone aggression ranks among the most vexing challenges to international security in the twenty-first century, as it not only undercuts core principles of statehood but also takes advantage of the normative line between war and peace to sidestep military deterrence. As discussed above, international law has played a central role in constituting the gray zone, and it also has a central role to play in delegitimizing it. Contestation over international ordering principles has accelerated amid the growing rivalry between the United States and China,[96] and some states have already begun applying international law to the gray zone. In 2015, for example, the Philippines brought a successful case to the Permanent Court of Arbitration against China's practices in the South China Sea, and Australia has similarly pursued a "normative approach to upholding maritime order."[97] As like-minded states seek to shape and wield international law against gray zone aggression, a strategy of legal deterrence by denial offers the most promising approach because it undercuts the upfront appeal of gray zone activities instead of relying on threats of post hoc armed retaliation that lack credibility.

How likely are we to see this strategy implemented? Normative change requires the backing of dedicated entrepreneurs within and beyond governments, who may eventually mobilize sufficient numbers of international stakeholders to trigger a "norm cascade," wherein pressures for social conformity and recognition of a legitimation opportunity drive a new norm's widespread acceptance.[98] Scholars of international norms are not under any illusions regarding the role of power in this process: Strong states regularly wield their military might, economic resources, and diplomatic capital to influence others into accepting or contesting new norms.[99] Within such centers of power, individual policymakers can leverage their privileged positions to marshal effective movements for change, as US President Franklin Roosevelt did in leading the creation of the United Nations and as British First Secretary of State William Hague did in working to prevent sexual violence in conflict.[100] Yet norms are not merely dictated by the powerful; indeed, their ability to attract broad acceptance among weaker states is what makes legal regimes preferable over martial ordering approaches.[101] Many states currently share strong incentives to delegitimize gray zone aggression, though it remains to be seen whether they can overcome longstanding currents pushing the opposite direction.

The primary constituency for deterring gray zone activities includes all states that are more likely to be targets than to see value in pursuing such activities. From Eastern Europeans facing Russian cyberattacks and Southeast Asian fishers bullied by China's maritime militia to stability-minded leaders in Africa, the Middle East, and Latin America, gray zone aggression represents a widespread concern. There is also growing sentiment that the United States has more to lose than to gain from a vibrant gray zone—having long since shed any interest in territorial expansion, being as concerned as any country with cybersecurity, and witnessing its own vulnerabilities to disinformation

93 Jamnejad and Wood, "The Principle of Non-Intervention," 359.

94 Steven Wheatley, "Election Hacking, the Rule of Sovereignty, and Deductive Reasoning in Customary International Law," *Leiden Journal of International Law* 36 (2023): 675–98.

95 Steven Wheatley, "Foreign Interference in Elections Under the Non-Intervention Principle: We Need to Talk about 'Coercion,'" *Duke Journal of Comparative and International Law* 31 (2020): 161–97.

96 Shucheng Wang, *Law as an Instrument: Sources of Chinese Law for Authoritarian Legality* (Cambridge University Press, 2022); Harold H. Koh, *The Trump Administration and International Law* (Oxford University Press, 2019).

97 Rebecca Strating, "Norm Contestation, Statecraft and the South China Sea: Defending Maritime Order," *Pacific Review* 35, no. 1 (2022): 3, https://doi.org/10.1080/09512748.2020.1804990; see also Krista E. Wiegand and Erik Beuck, "Strategic Selection: Philippine Arbitration in the South China Sea Dispute," *Asian Security* 16, no. 2 (2020): 141–56, https://doi.org/10.1080/14799855.2018.1540468.

98 Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 887–917, https://doi.org/10.1162/002081898550789.

99 Hurd, *How to Do Things with International Law*, 9–11.

100 Maass, "Enforcing Territorial Integrity," 45; Sara E. Davies and Jacqui True, "Norm Entrepreneurship in Foreign Policy: William Hague and the Prevention of Sexual Violence in Conflict," *Foreign Policy Analysis* 13, no. 3 (July 2017): 701–21, https://doi.org/10.1093/fpa/orw065.

101 Phillip Stalley, "Norms from the Periphery: Tracing the Rise of the Common but Differentiated Principle in International Environmental Politics," *Cambridge Review of International Affairs* 31, no. 2 (2018): 141–61, https://doi.org/10.1080/09557571.2018.1481824. The negotiations that produced the ICC's Rome Statute offer a good example of a negotiating forum empowering weaker states' interests over those of a powerful objector; see Nicole Deitelhoff, "The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case," *International Organization* 63, no. 1 (2009): 33–65, https://doi.org/10.1017/S002081830909002X.

and election interference.[102] Even as China and Russia attract criticism for their own gray zone activities, moreover, it is widely known that both Xi Jinping and Vladimir Putin fear potential scenarios in which outside interference may spark their removal from power in a "Color Revolution."[103] Even as the daunting prospect of war may advantage powerful states in the gray zone, then, there remains substantial room for mutual benefits in regulating gray zone activities. The remainder of this section considers several pros and cons of such an approach for policymakers in the United States, its main geopolitical adversaries, and states throughout the Global South.

US support for a new legal regime against gray zone aggression would go a long way given its military and economic heft, its numerous international partnerships, and its historical leadership in developing modern international law. That said, the United States also has a long history of employing gray zone activities in its own foreign policy, refusing to tie its own hands too tightly via international law, and shielding its own citizens from international prosecution—a double standard that reflects its exceptionalist self-image.[104] US support is not required for international legal innovations (see, for example, the ICC), but its animosity can seriously impair such undertakings (see, again, the ICC).[105] Leading the way on delegitimizing, criminalizing, and collaboratively enforcing international law against gray zone aggression offers an opportunity for US policymakers to pressure others to follow suit, assuage skeptics of US foreign policy, and promote the open and stable global order its policymakers have routinely trumpeted.

US adversaries like China, Russia, and Iran have relied on gray zone activities to expand their influence in the shadow of potentially catastrophic war. As noted above, a path to engagement may exist insofar as the leaders of these countries see an opportunity to mitigate the risk of outside interference in their own domestic authority, though likely not without substantial human rights costs. Moreover, that path may be limited in the short term given significant differences on constitutive norms like identifying foreign agents (used recently to expel potential outside influences).[106] To the extent that they remain committed to revisionist goals and see no more promising approach, moreover, those states may be unlikely to support international legal efforts to delegitimize the gray zone. If robust local or regional efforts to implement legal deterrence by denial can reduce the gray zone's appeal as a cost-effective revisionist approach, however, the effectiveness of these efforts for those participating may open the door to more global engagement.

Finally, a legal deterrence-by-denial strategy focused on delegitimizing and impairing gray zone activities via criminalization and cooperative law enforcement would stand a higher chance of acceptance in the Global South than an attempt to legally authorize armed retaliation against gray zone threats. Many states that stand to gain from deterring gray zone aggression nevertheless harbor considerable skepticism toward international law, seeing its long history of facilitating European imperialism as implicating international law in persisting inequalities of wealth and influence.[107] Military invasions and proxy violence justified by purportedly good intentions (for example, imperial defense, civilizing missions, Cold War security, or humanitarianism) have generated a deep well of suspicion toward international legal initiatives that might be used to license further interventions. The Responsibility to Protect doctrine offers a ready example, its lofty rhetoric used to legitimize the disastrous 2011 intervention in Libya.[108] Similar skepticism would likely doom any

102 Richard W. Maass, *The Picky Eagle: How Democracy and Xenophobia Limited US Territorial Expansion* (Cornell University Press, 2020); Jens David Ohlin, *Election Interference: International Law and the Future of Democracy* (Cambridge University Press, 2020).

103 Robert Person and Michael McFaul, "What Putin Fears Most," *Journal of Democracy* 33, no. 2 (April 2022): 18–27; Kawashima Shin, "Perception of a 'Color Revolution' in China Under the Xi Jinping Regime and National Security Implications," *Asia-Pacific Review* 30, no. 3 (2023): 79–98.

104 García Iommi and Maass, *The United States and International Law*; Richard W. Maass, "Whitewashing American Exceptionalism: Racialized Subject-Positioning and US Foreign Policy," *International Studies Quarterly* 68, no. 3 (September 2024): sqae085, https://doi.org/10.1093/isq/sqae085; Natsu Taylor Saito, *Meeting the Enemy: American Exceptionalism and International Law* (New York University Press, 2010); Charlie Savage, "Pentagon Blocks Sharing Evidence of Possible Russian War Crimes With Hague Court," *The New York Times*, March 8, 2023, https://www.nytimes.com/2023/03/08/us/politics/pentagon-war-crimes-hague.html.

105 Dapo Akanda, "International Law Immunities and the International Criminal Court," *American Journal of International Law* 98, no. 3 (July 2004): 407–33; Judith Kelley, "Who Keeps International Commitments and Why? The International Criminal Court and Bilateral Nonsurrender Agreements," *American Political Science Review* 101, no. 3 (August 2007): 573–89.

106 Mercedes Malcomson, "'So Whose Agents Are We?' Defining (International) Human Rights in the Shadow of the 'Foreign Agents' Law in Russia," *Birkbeck Law Review* 7, no. 1 (2020): 122–53.

107 Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018); Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800–1850* (Harvard University Press, 2016); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2004); Siba N. Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (University of Minnesota Press, 1996).

108 Alan J. Kuperman, "A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign," *International Security* 38, no. 1 (Summer 2013): 105–36, https://doi.org/10.1162/ISEC_a_00126; Jennifer M. Welsh, "Norm Robustness and the Responsibility to Protect," *Journal of Global Security Studies* 4, no. 1 (January 2019): 53–72, https://doi.org/10.1093/jogss/ogy045.

international legal proposal that seeks to legitimize military responses to gray zone threats, which makes approaches based on cooperatively enhancing local resilience far more promising.

While developing an effective regime will take time, effort, and a willingness to submit to shared norms, several ongoing efforts suggest that it may be feasible. The aforementioned UN cybercrime treaty offers the prospect of meaningful international legal action in that area. International reactions to Iran-backed militant groups throughout the Middle East have shown an increased willingness to treat proxies as the responsibility of a state sponsor. NATO responded to Russia's 2022 full-scale invasion of Ukraine by embracing deterrence-by-denial logic in a new Strategic Concept, pledging to "deter and defend forward with robust in-place, multi-domain, combat-ready forces, enhanced command and control arrangements, prepositioned ammunition and equipment and improved capacity and infrastructure to rapidly reinforce any Ally, including at short or no notice."[109] Translating such approaches into the legal realm can help policymakers wield international law's considerable strengths against gray zone aggression. Failure to do so will continue to constitute the gray zone as the Wild West of twenty-first-century international security competition, and will incentivize revisionists to continue exploiting fears of escalating conflict to undercut security in other ways.

Countering gray zone activities requires meaningfully scrutinizing the dilemmas of strategic initiative that they impose on defenders. Accordingly, policymakers should set aside threats of military retaliation based on deterrence-by-punishment logic and instead pursue legal deterrence by denial: using international legal mechanisms to raise the upfront costs of gray zone aggression and reduce its likelihood of success. Rooting such efforts in the principles of sovereignty, territorial integrity, and political independence can shore up normative support for those core elements of statehood, and establishing gray zone activities as forms of aggression can undercut revisionist lawfare that seeks to legitimize their results. International law has a key role to play in either enabling or deterring future gray zone threats, and legal deterrence by denial offers the most promising strategy to ensure that it does the latter.

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Image: *Chinese fishing vessels head out to sea from Zhoushan in Zhejiang Province, China. (China Foto Press via SeaLight)*[110]

109 NATO, "NATO 2022 Strategic Concept," June 29, 2022, 6, https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/290622-strategic-concept.pdf.

110 For the image, see https://www.sealight.live/posts/gray-zone-tactics-playbook-swarming