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A THEORY OF INTERESTS IN THE CONTEXT OF HYBRID WARFARE: IT'S COMPLEX

Cynthia Alkon¹
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I. INTRODUCTION

In the 2020 British TV series *The Undeclared War*, the Russians launch a series of attacks against the United Kingdom that destabilize key sectors in the UK and (spoiler alert) almost end in a full-scale conventional war.³ In this fictionalized account, the UK only considers fighting back against cyber warfare with cyber warfare. There is no negotiation. Despite knowing who is responsible for these attacks (the Russian government), negotiation is never even considered.

In real life, can or should negotiation be considered in a hybrid warfare context? Take the example of an oil company executive kidnapped by members of an insurgent group. They send a ransom demand to the oil company. How should the oil company handle this demand? Should they meet with the insurgents to understand their interests behind the ransom demand and specific amount? Should the lawyers and oil company executives try to negotiate a reduced ransom? Classical⁴ negotiation theory would suggest that there should be a meeting of some kind and an attempt to gather information to understand the underlying interests of the insurgent group and to come to a resolution that meets their interests while also meeting the oil company's interests in securing the release of their employee and, presumably, not paying too much. But what if the insurgent group was acting on orders from another insurgent group or entity who got its orders from operatives of a foreign government? It is likely the oil company will

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³ *The Undeclared War*, IMDB, <https://www.imdb.com/title/tt7939800/> [<https://perma.cc/5J5M-7URQ>] (last visited Mar. 22, 2023); see *The Undeclared War*, WIKIPEDIA, https://en.wikipedia.org/wiki/The_Undeclared_War [<https://perma.cc/U4H7-PV9F>] (last updated Feb. 26, 2023).

⁴ See Nancy A. Welsh, Sharon Press & Andrea Kupfer Schneider, *Negotiation Theories for Hybrid Warfare*, 24 CARDOZO J. CONFLICT RESOL. — (2023).

never know who might have been behind the order to kidnap their employee. It is also possible that the insurgent group who did the kidnapping does not know who is behind the insurgent group who issued the order. And, they may not be aware that the foreign government is continuing to monitor the negotiation and actions of both insurgent groups and to dictate the outcome.

This is just one hybrid warfare scenario that illustrates the complex negotiating environment which legal professionals and others (such as professional hostage negotiators) may confront.

There are no templates for how to handle such situations and, as we will discuss in this article, negotiators need to be careful to not assume that classical negotiation theory—specifically, interest-based negotiation theory—applies in this context. We will begin with a discussion about how the hybrid warfare context is different from other conflict contexts. We will describe some complexity aspects that make hybrid warfare challenging to negotiators. We will then discuss whether classical negotiation theory prescriptions apply to a hybrid warfare context, especially regarding interests. We will argue that these prescriptions related to classical negotiations are unlikely to work in this context. We will focus our analysis on a subset of hybrid warfare attacks, consisting of short-term, time-sensitive, high-risk crises, where negotiations are possible and necessary, such as ransom demands, rather than on hybrid warfare situations which state actors, diplomats, or security professionals are called to manage.⁵ We will explore how negotiators can better deal with such negotiable crises. We note that such events are likely part of a broader hybrid warfare strategy, and therefore their negotiated conclusion is not the same as the end of hybrid warfare hostilities. Nevertheless, the costs and risks to human life make engagement necessary. We will conclude with suggestions about how negotiators might handle such hybrid warfare crisis situations and that most classical interest-based advice does not help. We hope that our thoughts on how individual negotiators can approach hybrid warfare will contribute to a growing understanding of how to defend our interests in this complex environment.

⁵ An example of the latter is the “spy balloon” trek over the United States territory in January 2023. Another state recognized ownership but made no demands and the response (not a negotiation) came from federal entities including the President, and the Departments of State and Defense. See Katharina Buchholz, *The Chinese Spy Balloon’s Path Across North America*, STATISTA (Feb. 6, 2023), <https://www.statista.com/chart/29242/chinese-balloon-flight-path/> [<https://perma.cc/QTH7-AP5W>].

II. BACKGROUND

A. *How is Hybrid Warfare Different Than Other Conflict Contexts?*

Negotiation is conducted in a variety of contexts. Legal disputes range from traditional to contract negotiations to starting or ending a business relationship. Negotiation is also the means by which we arrive at public decisions and resolve conflicts in planning, policy, public administration, and environmental conflicts. International conflicts also involve negotiations.

For the purposes of our discussion, hybrid warfare is “covert subversion, disinformation, cyberattacks” and various illicit ways of collecting information about opponents.⁶ A number of possible hybrid warfare scenarios fit this broad definition. One example is cyber-attacks that include ransom demands to release databases frozen by malware.⁷ Hybrid warfare attacks could (and do) target key public services such as electricity or water supplies, or other municipality operations,⁸ with profoundly disrupting effects (which can be similar to those caused by natural disasters) on targeted communities. Another example is kidnappings—often of people in key organizational positions or believed to have access to resources.⁹ To contrast hybrid warfare to other negotiation contexts, we will examine scenarios where the direct parties making de-

⁶ Mark Galeotti, *THE WEAPONISATION OF EVERYTHING: A FIELD GUIDE TO THE NEW WAY OF WAR 10* (Yale University Press, 2022); see also Welsh, Press & Schneider, *supra* note 4, for an in-depth discussion of the nature of hybrid warfare.

⁷ See, e.g., Apurva Venkat, *Massive Ransomware Attack Targets VMware ESXi Servers Worldwide*, CSO U.S. (Feb. 6, 2023, 10:44 AM), <https://www.csoonline.com/article/3687095/massive-ransomware-attack-targets-vmware-esxi-servers-worldwide.html> [https://perma.cc/S67V-SLY2] (reporting that over 3200 servers have been impacted in France, Germany, Finland, the United States and Canada); see also *Hackers Target Israel’s Technion Demanding Huge Sum in Bitcoin*, I24 NEWS (Feb. 12, 2023, 5:40 AM), <https://www.i24news.tv/en/news/israel/technology-science/1676198299-hackers-target-israel-s-technion-demanding-huge-sum-in-bitcoin> [https://perma.cc/W3M4-6EBT].

⁸ See, e.g., Ellen Cranley, *8 Cities That Have Been Crippled by Cyberattacks—and What They Did to Fight Them*, BUSINESS INSIDER (Jan. 27, 2020, 10:24 AM), <https://www.businessinsider.com/cyberattacks-on-american-cities-responses-2020-1#:~:text=1%20Ransomware%20attacks%20have%20become%20a%20worryingly%20common,trend%20that%20governments%20must%20prepare%20for.%20More%20items> [https://perma.cc/MUR5-GN5P]; Stefanie Schappert, *Two California Cities Hit with Ransomware in Two Days, Police Forced to Patrol Using Handheld Radios*, CYBERNEWS (Feb. 11, 2023), <https://cybernews.com/news/oakland-modesto-ransomware-attack-old-school-policing/> [https://perma.cc/K82Y-GE22].

⁹ See, e.g., Aine Cain, *11 Times Kidnappers Targeted Millionaires and High Profile Executives Around the Globe*, BUS. INSIDER (Apr. 5, 2019, 3:18 PM), <https://www.businessinsider.com/>

mands are identifiable, their actions go beyond simple criminal behavior, and they may have some kind of state actor or larger political group behind the action.¹⁰ We include cases where the identity of the attackers may not be fully known, as is common in cyber-attacks, but they have made a demand, such as to pay a certain amount of money to secure deblocking a computer system. In a traditional negotiation context, the counterparts are known, as are most or all parameters of the conflict or dispute. In hybrid warfare instances, such as a ransomware attack, we may not have the name, address, or role of the counterparts, or ways to reach out to them outside the parameters they specify. Therefore, at times, victims cannot act in ways beyond those dictated by their attackers and are forced to work within their timeline. Negotiators need to be aware of what to look for, both to realize when they might be in a hybrid warfare context and to devise better strategic decisions about how to handle hybrid warfare negotiations.¹¹ For our comparison of classical versus hybrid warfare negotiations, it is useful to discuss the classical negotiation context.¹²

i. Classical Negotiation Context

A classical negotiation, regardless of its specific context, has a number of hallmark characteristics for which negotiation theory offers prescriptive advice and strategies. We will discuss these characteristics to contrast them with what is, or could be different in a hybrid warfare context.

kidnappings-millionaires-and-business-executives-2019-4 [https://perma.cc/6QP2-7J89] (it is impossible to know whether any or all of these kidnappings were examples of hybrid warfare).

¹⁰ See, e.g., *Hackers Target Israel's Technion*, *supra* note 7 (The ransomware attack on the Technion, Israel's largest scientific research institution, seemed to have political, not simply criminal motives as it was reported that the hackers "punished us for the 'apartheid regime'" when they demanded eighty bitcoins to "free the computers from the ransomware.").

¹¹ Giving clear advice about how to identify a hybrid warfare context is beyond the scope of this article. See generally GALEOTTI, *supra* note 6 (describing how war has moved beyond physical confrontation to a wide array of other actions including cyber warfare).

¹² Although there is no standard negotiation process, we will use this term to refer to negotiations conducted according to norms operative in most settings, including legal, which can (more or less) stand sunshine, and are the object of negotiation theory and its prescriptions. See Roy J. Lewicki, Bruce B. Barry & David M. Saunders, *ESSENTIALS OF NEGOTIATION* (McGraw-Hill Education 2016) (a textbook that refers to such standard negotiation processes).

1. Two or More Identifiable Parties

A classical negotiation context involves two or more identifiable parties.¹³ Once a (legal or other) dispute arises, there are clear parties to the action and those seeking remedies (mostly¹⁴) know whom to talk to.¹⁵ The parties can often gather information about each other to aid in reaching a better settlement.¹⁶ While it is always possible that there are players behind the main parties (“behind the table”),¹⁷ such as a family member or interest group who holds great influence with a particular party, negotiation theory suggests that through information gathering, those influencers can mostly be discovered and managed.¹⁸

2. Rules are Known/Jointly Agreed Upon

Legal disputes happen in a highly defined context with rules that can guide the process and are generally known.¹⁹ Lawyers know when the mandatory settlement conferences are scheduled.²⁰ They also know (or should know) what the law demands in differ-

¹³ See, e.g., CARRIE MENKEL-MEADOW, *NEGOTIATION: A VERY SHORT INTRODUCTION*, 39, 91–112 (Oxford University Press, 2022).

¹⁴ In some public disputes, such as community or environmental, aggrieved parties may not know with whom to negotiate. For example, in the train derailment incident of February 3, 2023, New Palestine, Ohio residents had trouble at the outset in identifying their negotiation counterparts as state and federal agencies each declared quickly that it was not their purview.

¹⁵ We note that in other situations, e.g., community and public disputes, we may know who the key parties are, but are advised to scan for stakeholders who belong in the negotiation (either because their interests are affected, or because they can foil agreements). See, e.g., LAWRENCE SUSSKIND ET AL., *THE CONSENSUS BUILDING HANDBOOK: A COMPREHENSIVE GUIDE TO REACHING AGREEMENT* (Sage Publications, 1999).

¹⁶ See generally, ROGER FISHER ET AL., *GETTING TO YES* 19–41 (Penguin Group 3d ed. 2011) (advising to “separate people from the problem.”).

¹⁷ See, e.g., James K. Sebenius, *Level Two Negotiations: Helping the Other Side Meet Its “Behind-the-Table” Challenges*, 29 *NEGOT. J.* 7 (2013).

¹⁸ See, e.g., Peter Reilly, *Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help*, 24 *OHIO ST. J. DISP. RESOL.* 481, 533 (2009) (“...negotiation is about protecting sensitive information of one’s own (to prevent oneself from being exploited) while extracting information from other parties. Good negotiators must therefore learn how to conduct extensive background research, to engage aggressively and relentlessly in asking questions and digging for answers, and to take other proactive steps to unearth or extract the most (and most accurate) information possible from all parties at the table.”).

¹⁹ See, e.g., Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 *YALE L.J.* 950 (1979) (“We see the primary function of contemporary divorce law not as imposing order from above, but rather *as* providing a framework within which divorcing couples can themselves determine their post-dissolution rights and responsibilities.”).

²⁰ See, e.g., *Settlement Conferences*, SUPER. CT. CA. CNTY. SACRAMENTO, <https://www.saccourt.ca.gov/civil/settlement-conference.aspx> [https://perma.cc/4H63-HJWM] (last visited Mar. 19, 2023) (“Mandatory Settlement Conferences are set during the Trial Setting Process. These conferences are scheduled approximately 30 days prior to trial. . .”).

ent contexts—for example, mandatory child support payments at a certain level based on income in a divorce case.²¹ Disputes arising out of contracts often have already-agreed-on rules which govern, for example, which state law will control both procedures and possible outcomes.²² Contracts may also specify which process, such as arbitration, will be used in the event of a dispute.²³ In these kinds of disputes, while there may be arguments about exactly which rules will apply, there is a general understanding of what the rules are and/or an agreement about what the rules will be. Further, there is a general understanding about how disagreements will be settled—by a judge or arbitrator, or through a negotiation or mediation process. Some rules also govern other contexts, but in their absence the parties are advised to negotiate them at the outset of their negotiation process.²⁴

3. The Time Horizon is Limited and Known

In most cases, the time horizon of a classical negotiation is either limited or known. For example, once a legal case is filed, the lawyers know, at least in general terms, when to expect particular court appearances, when to expect discovery to be compelled, when motions are due, and when settlement conferences, and, if applicable, when mandatory mediation may be ordered.²⁵ Legal disputes can drag on for years, but once a process begins, the general time horizon is limited, at least in the United States.²⁶ All the parties generally know what the time horizon is, what the expected process is, and generally what to expect, although it could be within broad parameters. In other situations, there may be indications of expected timelines—they may be imposed by circumstances, rules, or sometimes negotiated at the outset of the process.

²¹ See, e.g., *Child Support*, N.Y.C. BAR, <https://www.nycbar.org/get-legal-help/article/family-law/child-support/> [<https://perma.cc/7PMQ-WGRA>] (last visited Mar. 19, 2023).

²² See, e.g., *Governing Law Sample Clauses*, L. INSIDER, <https://www.lawinsider.com/clause/governing-law> [<https://perma.cc/995N-QL24>] (last visited Mar. 19, 2023).

²³ See, e.g., Christopher R. Drahozal & Stephen J. Ware, *Why do Businesses Use (or Not Use) Arbitration Clauses?*, 25 OHIO ST. J. ON DISP. RESOL. 433 (2010) (examining the reasons businesses put arbitration clauses in contracts and previous studies on pre-dispute arbitration clauses).

²⁴ SUSSKIND ET AL., *supra* note 15.

²⁵ See, e.g., *supra* note 20.

²⁶ It can take decades for cases to be heard in other countries. For example, India suffers from serious case delays and continuing calls for reform, Vidhi Doshi, *India's Long Wait for Justice: 27m Court Cases Trapped in Legal Logjam*, THE GUARDIAN (May 5, 2016), <https://www.theguardian.com/world/2016/may/05/indias-long-wait-for-justice-27-million-court-cases-trapped-in-a-legal-logjam> [<https://perma.cc/2UUT-YV32>].

4. Expectations

In the traditional negotiation context, if there are agents (such as lawyers), there is a standard set of assumptions about their role. The parties know what to expect these agents will do (even if agents do not always live up to these expectations). This includes the understanding that agents are charged with (and if they are lawyers, ethically bound to) representing the principals' interests.²⁷ Agents and parties alike also expect, in general, that parties want to resolve the conflict and will act, at least broadly, in good faith to move towards resolution.²⁸

5. Intervenors Could be Available

In a traditional negotiation context, intervenors, such as mediators, could be available. The dispute may start with negotiation and then move to mediation which may be, depending on the context, mandatory. Parties often know that they will have other process options that may include neutrals, who can help move the dispute toward resolution.

6. Negotiation is a Way to Gather Information

The negotiation process itself is often described as an information-gathering and exchange process.²⁹ Parties come into the negotiation with the goal of learning more about their counterpart—what they know or don't know, what they care about, and how and why. Underlying this is the idea that gathering more information will help negotiators understand each other's interests beyond their expressed position, which in turn will help them move towards resolution by identifying mutually acceptable agreements.³⁰

²⁷ See, e.g., MENKEL-MEADOW, *supra* note 13 at 118-120, 122-123.

²⁸ This is not to suggest that there is no unethical or dishonest conduct in negotiations, *see generally*, Russell Korobkin, *Behavioral Ethics, Deception, and Legal Negotiation*, 20 NEV. L. J. 1209 (Spring 2020) (examining behavioral ethics literature to “better understand, predict, and potentially combat unethical behavior in legal negotiation.”); Art Hinshaw & Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 HARV. NEGOT. L. REV. 95, 117-18 (2011) (finding that a fifth of their sample of practicing lawyers would not divulge that their client was not ill when they were suing for transmitting a communicable disease); CHARLES CRAVER, *EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT* 409 (7th ed. 2012) (lawyers should assume the lawyers they are negotiating against are not truthful because it is so common).

²⁹ See, e.g., Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 834 (1984); Charles Thensted, *Litigation and Less: The Negotiation Alternative*, 59 TUL. L. REV. 76, 100 (1984).

³⁰ Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754, 778, 806 (1984) (noting that “adversarial negotiation

7. Preparation Matters

In a classical negotiation context, negotiators are advised to be well-prepared. They should have done their research to learn as much as possible about their case, the law that supports (or not) their claims, the other sides, and their interests.³¹ The classical thinking is that negotiation preparation makes for better negotiation outcomes and that better negotiation preparation is possible.

ii. Hybrid Warfare Context

Hybrid warfare presents several challenges, in part because the classical or expected negotiation conditions are unlikely to be present.

1. Parties

In a hybrid warfare situation, the attacked targets are unlikely to know the decision-making parties and their proxies. For example, the anonymous contact behind a ransomware attack may never become known. In an early 2023 ransomware attack targeting servers in multiple countries, the ransomware note said “Security Alert! We hacked your company successfully . . . send money within 3 days otherwise we will expose some data and raise the price.”³² The initial request was for \$23,000 to be paid to a bitcoin wallet.³³ Reportedly, the bitcoin wallet was different in each attack, and there was no website for the group.³⁴ Under these circumstances, it is nearly impossible to find out who the attacker is. What country are they operating from? Is it just one? Are they part of a hacking group in Russia operating with full Russian governmental support, or are they rogue criminals in some other location or locations?³⁵ In a kidnapping, it may be impossible to know

processes are frequently characterized by arguments and statements rather than questions and searches for new information”).

³¹ There are numerous tools to help negotiators to be better prepared, including negotiation preparation forms. For one example, see ROGER FISHER & DANNY ERTEL, *GETTING READY TO NEGOTIATE: THE GETTING TO YES WORKBOOK: A STEP-BY-STEP GUIDE TO PREPARING FOR ANY NEGOTIATION* (Penguin Group 1995); to prepare for a specific type of negotiation, such as a criminal plea bargain, see Cynthia Alkon & Andrea Kupfer Schneider, *How to be a Better Plea Bargaine*, 66 WASH. UNIV. J. OF LAW & POLICY, 65 (2021).

³² Venkat, *supra* note 7.

³³ *Id.*

³⁴ *Id.*

³⁵ See, e.g., Kari Paul & Dan Milmo, *Russian-backed Hackers Behind Powerful New Malware, UK and US Say*, THE GUARDIAN (Feb. 24, 2022), <https://www.theguardian.com/world/2022/feb/23/russia-hacking-malware-cyberattack-virus-ukraine> [<https://perma.cc/3B5Q-DT4L>].

who is behind the kidnapers themselves if the operation seems highly resourced. Who provided their weapons, their safehouses, and their transportation? There may be more than one responsible party or entity, and the relationships may be so layered that it is difficult or impossible to fully, or even partially, unwrap them.

In addition, in hybrid warfare, even when negotiators believe they have built a relationship with their counterparts, the relationship is illusory or unreliable due to the absence of expectations on either side that they will meet again and will be able to retaliate if deceived. An anonymous ransomware attacker may never be found. Even when the kidnapers have faces or names, negotiators can't trust any relationship they think they are building.³⁶

2. No Engagement Rules

Unlike in a classical negotiation environment, there are no engagement rules. Hybrid warfare happens across borders and legal systems and largely outside the protections that legal systems can provide, at least in terms of classical rules of engagement. There is no guarantee or way to enforce an agreement. For example, once a ransom is paid, there is no assurance that the attackers will release the data from a frozen computer system³⁷ and no recourse if they do not. The cyber attacker could decide to double the demand or take the money and not release the key to unfreeze the system.³⁸ The lack of rules particularly plagues cases where attackers succeed in remaining anonymous.³⁹

³⁶ Rachel Monroe, *How to Negotiate with Ransomware Hackers*, THE NEW YORKER (June 7, 2021), <https://www.newyorker.com/magazine/2021/06/07/how-to-negotiate-with-ransomware-hackers> [<https://perma.cc/B3FA-PB8G>] (describing how kidnapping negotiation specialists helped to reduce costs and increase success rates through establishing set expectations around kidnapping).

³⁷ *The State of Ransomware: Findings from an Independent, Vendor-Agnostic Survey of 5600 IT Professionals in Mid-Sized Organizations Across 31 Countries*, SOPHOS (Apr. 2022), <https://assets.sophos.com/X24WTUEQ/at/4zpw59pnkpxnhfhgj9bxgj9/sophos-state-of-ransomware-2022-wp.pdf> [<https://perma.cc/3ZD6-79L7>] (“While paying the ransom almost always gets you some data back, the percentage of data restored after paying has dropped. On average, organizations that paid got back only 61% of their data, down from 65% in 2020. Similarly, only 4% of those that paid the ransom got ALL their data back in 2021, down from 8% in 2020.”).

³⁸ *Id.*; see also Andrew Dalton, *Ransomware Hackers Get Their Money, Then Ask for More*, ENGADGET (May 24, 2016, 8:28 AM), <https://www.engadget.com/2016-05-24-ransomware-hackers-get-paid-ask-for-more.html> [<https://perma.cc/EU6N-SUGZ>].

³⁹ Although there might be growing knowledge about standard approaches by, for example, ransomware attacks. See, e.g., *The State of Ransomware*, *supra* note 37; but see Moty Cristal, *Negotiating in a Low-to-No Trust Environment*, NEGOTIATOR'S DESK REFERENCE 231, (Chris Honeyman & Andrea Kupfer Schneider eds., 2017) (discussing the importance of building rap-

3. Time Horizon Unknown and Layered

If the attackers are unknown, then their ultimate goals are unknown, which means the time horizon is also unknown. Hybrid warfare operates with an unknown time horizon which may be layered—part of a broader, longer-term scheme—in unknown ways. A cyber-attack on a water treatment plant could be a first step in such a scheme, testing vulnerabilities and responses that will be foiled in later attacks on other utilities, municipal or state government websites, or databases.⁴⁰

4. Agents May Represent Their Own Interests

Negotiations in a hybrid warfare context may include agents and sometimes self-appointed agents. A known go-between for an insurgent group may negotiate on behalf of kidnappers or cyber-attackers.⁴¹ But are go-betweens fully, or even partially, representing the interests of their principal and guaranteeing that the principal will come through on commitments the agents promise? Or are they benefiting themselves? Duplicitous middlemen in ransomware attacks are so common that attackers have been known to warn their targets against using them.⁴² There are no ethical codes binding the attackers and no organizations such as bar associations to protect principals and to ensure that agents are working on their behalf. They may be, or they may just as well have an

port and respect in an environment where trust is not possible and where there may not be standard rules).

⁴⁰ See e.g., Kevin Collier, *50,000 Security Disasters Waiting to Happen: The Problem of America's Water Supplies*, June 17, 2021, NBC NEWS, <https://www.nbcnews.com/tech/security/hacker-tried-poison-calif-water-supply-was-easy-entering-password-rcna1206>; Cybersecurity & Infrastructure Security Agency, *Cybersecurity Advisory, Tactics, Techniques, and Procedures of Indicated State-Sponsored Russian Cyber Actors Targeting the Energy Sector*, March 24, 2022, <https://www.cisa.gov/news-events/cybersecurity-advisories/aa22-083a> (“The threat actor used the compromised third-party infrastructure to conduct spearphishing, watering hole, and supply chain attacks to harvest Energy Sector credentials and to pivot to Energy Sector enterprise networks. After obtaining access to the U.S. Energy Sector networks, the actor conducted network discovery, moved laterally, gained persistence, then collected and exfiltrated information pertaining to ICS from the enterprise, and possibly operational technology (OT), environments. Exfiltrated information included: vendor information, reference documents, ICS architecture, and layout diagrams.”).

⁴¹ Rachel Monroe, *How to Negotiate with Ransomware Hackers*, NEW YORKER (May 31, 2021), <https://www.newyorker.com/magazine/2021/06/07/how-to-negotiate-with-ransomware-hackers> [<https://perma.cc/27WJ-J5EU>] (describing how private kidnap intermediaries helped to bring about “ransom discipline” to limit the ransom demands of kidnappers of wealthy individuals and corporate executives in the 1970s).

⁴² *Id.* (“[T]he middlemen would secretly negotiate with the hackers [in ransomware attacks] before offering the decrypted files at a mark-up.”).

entirely different agenda. The uncertainty and risks can be overwhelming. However, professional hostage negotiators can be trustworthy agents for the victims.

5. Intervenors Not Available/Reliable

In a ransomware attack or kidnapping by an insurgent group, there may be no option other than direct negotiation under conditions dictated by the attackers. The anonymous ransomware attacker issues a take-it-or-leave-it offer which excludes engaging the services of a mediator (whose work usually depends on the ability to identify the parties' interests—not an option in hybrid warfare) or moving into an arbitration process⁴³ (which also relies on conditions unavailable in hybrid warfare). Intervenors may be available, for example, in a kidnapping by a local insurgent group. But, as with concerns about who agents really work for, those representing themselves as mediators for a kidnapping negotiation may or may not be reliable. They could have an entirely different agenda.

6. Assume Deception, Not Good Faith

Hybrid warfare has the opposite characteristics of good-faith negotiations. It may be difficult or impossible to know what the attackers' final goals are, and they may include intangible elements such as destabilizing a government. In contrast, researchers have found Somalian pirates engaging in criminal kidnapping (for money rather than for larger political goals) could, and reportedly do, rely on "mutual assumption of good faith" as the kidnappers get an "expected rate of return."⁴⁴ Likewise, in criminal ransomware attacks, there might be an increasing regularization of the practices; hacker groups, in response to criticism, have even promised not to target schools, hospitals, or non-profits.⁴⁵ But whatever "standard" practices may emerge around some of these criminal practices, negotiators cannot rely on them holding true in every case when these same acts (kidnapping or ransomware attacks) are actually acts of hybrid warfare. Just as there are no ethical rules, codes, or licensing bodies to enforce rules in hybrid warfare scenarios, there should be no expectation that parties will operate in good faith. Instead, negotiators should prepare for and assume their counterparts are likely to be deceptive and are not bound by

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

concerns about trust or reputation that could temper behaviors in other contexts.

7. Preparation Possibilities are Limited

Due to all the unknowns—counterparts, rules of engagement, time horizon, agent and intervenor trustworthiness—negotiators cannot expect that they can prepare for a hybrid warfare negotiation as well as they might in classical negotiations. Moreover, in many hybrid warfare situations, negotiators have to assume deception and bad faith from their counterparts. All combined, this is a negotiation environment that does not lend itself to traditional preparation since the information which skilled negotiators usually seek (such as indications of the counterparts' interests) is mostly unavailable. This does not mean that negotiators shouldn't fully prepare, but the information they should seek will be different. They should strive to be as prepared as possible to face these kinds of situations.⁴⁶ They should know their objectives, what they can agree to (i.e., the real monetary limits to ransom pay-offs), and bottom lines, if any. For example, in a ransomware attack, there might be a point at which the demands exceed the value of the blocked data or the cost of functional recovery by other means. Negotiators should also know as much as possible about the decision factors under their control. Negotiators should know the full range of options available to them, as well as what is out of their reach. However, they face serious limitations in terms of how prepared they can be going into a hybrid warfare negotiation regarding their counterparts and anyone beyond themselves and the party they are representing. And since each hybrid warfare attack is different, negotiators cannot draw on precedent or best practices as they can more reliably in classical negotiations.

Having compared traditional and hybrid warfare negotiations, we now turn to a discussion of the reasons why the latter are so challenging and resistant to analysis and preparation.

III. HYBRID WARFARE IS COMPLEX

Hybrid warfare is not complicated but rather complex. Although it might seem like a distinction without a difference, *com-*

⁴⁶ See Nancy A. Welsh, Sharon Press, and Andrea Kupfer Schneider, *Negotiation Theories for Hybrid Warfare*, 24 *CARDOZO J. CONFLICT RESOL.* --- (2023).

plicated and *complex* are not interchangeable terms for describing social systems, situations, and actions. The distinction is meaningful in general and also in the specific case of hybrid warfare.

Social systems have numerous multidimensional interactive components (for example, economic, political, and cultural), which we frequently consider separately for conceptual tractability, although they are intricately interrelated. Individuals, public and private organizations, and governments at all levels of such systems have agency: they can make and implement decisions seemingly independently in the physical and social space. However, outcomes of these decisions accrue jointly to many or all members of society. We observe and experience the joint outcomes of all such moves over time. We also observe that similar decisions at different locations and times result in different outcomes, reducing predictability.⁴⁷

The complexity of social systems is a key contributor to obstacles to effectively addressing hybrid warfare situations, and in particular to using classical negotiation prescriptions. Complexity enables hybrid warfare and makes responses to it difficult. To understand why *complex* is the right term to describe the nature of hybrid warfare, it is useful to first understand the differences between what is *complicated* and what is *complex*. Then, we describe in more detail the hallmarks of *complex* situations and argue that hybrid warfare fits firmly under this definition. Finally, we discuss why it is important for negotiators to understand that hybrid warfare is *complex* and not simply *complicated*.

A. *Complicated*

Complicated entities have direct, clear cause-and-effect relationships, although not everyone may necessarily understand them. For example, the average person doesn't understand spaceships as well as rocket scientists do. However, we trust that the scientists do since we have seen these vehicles function as designed because their components interact in ways predictable to their designers and transport astronauts into space. Mechanics and computer scientists, as well as those less skilled, can solve even some difficult

⁴⁷ See, e.g., SANDA KAUFMAN, *Complex Systems, Anticipation, and Collaborative Planning for Resilience*, RESILIENT ORGANIZATIONS: SOCIAL LEARNING FOR HAZARD MITIGATION AND ADAPTATION, 61-98, MIT Press (2011).

(mechanical) problems by following rules and processes after a rational assessment (or running a trouble-shooting program).

A complicated system is controllable; even if we don't understand its workings. In our modern lives, we regularly interact with complicated systems that can only be understood and managed by professionals in the area. For example, laws and administrative rules may be complicated in their structure and application to various cases, but they can be understood by law and regulatory professionals who specialize in these areas. These examples share a commonality: complicated objects have components lacking agency, which function predictably. Moving from a complicated to a complex mindset is a rather difficult paradigm shift.⁴⁸ We need to go there even when conducting classical negotiations in complex situations and perhaps even more so in dealing with hybrid warfare. Not doing so corresponds to what Dörner⁴⁹ has called “a logic of failure,” which entails focusing on fixing only some components of a complex system (as if it were merely complicated) and drawing faulty cause-effect conclusions on which we base responses that fail.

B. *Complex*

Complexity is a feature of systems whose elements (even when few and when making simple moves) interact dynamically, so their cumulative outcomes cannot be predicted with any degree of certainty from looking at their rules. Complexity characterizes social, political, and economic systems and does not necessarily increase with a system's scale; however, construed—as the number of people affected or participating, territory, number and size of organizations involved, or duration. For example, environmental conflicts are complex across scales, from the smaller community level to the larger national level. So are intranational and international conflicts.

A few examples might be helpful to highlight the difference between complex and complicated: assembling a bowl of fish is (not even) complicated, while the movements of fish inside it are complex; an airplane engine is complicated, while air traffic control

⁴⁸ See generally AARON DIGNAN, *BRAVE NEW WORK: ARE YOU READY TO REINVENT YOUR ORGANIZATION?* (2019).

⁴⁹ Dietrich Dörner, *The Logic of Failure*, 327.1241 *PHIL. TRANSACTIONS OF THE ROYAL SOC'Y OF LONDON. SERIES B, BIOLOGICAL SCI.* 463 (1990).

is complex; designing and building a hospital is extremely complicated, while the functions inside a hospital are complex.

A term used to describe complex social systems and the problems they generate is *wicked*.⁵⁰ A wicked problem or system is unpredictable, and it may be nearly impossible to unequivocally⁵¹ link causes—such as plans and decisions—to their effects. By the time we observe some changes, so many system elements and relationships may have shifted that we cannot be sure what caused the changes and whether, if we took the same actions, we would obtain the same outcomes again.⁵²

One challenge posed by wicked systems is that they undermine our ability to learn what works and what doesn't, thereby undermining our ability to develop best practices. In part, this is because even simple interactions among components can quickly yield chaotic, unpredictable, unintended, and at times irreversible outcomes.⁵³ For example, in the 1960s, urban renewal projects aimed to clear derelict housing in poor neighborhoods and replace them with livable homes or apartments. However, instead, these projects destroyed communities and the relationships which sustained them—an unintended and unpredicted consequence from which many cities are still trying to recover.⁵⁴ Brownfield redevelopment has stringent National Environmental Policy Act (NEPA) environmental rules which impede infill development⁵⁵ in cities. As a result, developers turn to so-called green fields (pristine unde-

⁵⁰ Horst W.J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4.2 POL'Y SCIS. 155 (1973).

⁵¹ The need for strong causal links between actions and outcomes derives from the moral imperative to use limited resources wisely. This requires some degree of certainty that expending them will yield at least some of the results we seek, with minimal negative side effects. For example, when implementing costly policies to mitigate climate change—the epitome of a complex system—we need to expect with a fair amount of certainty that they will work in the long term, with negative consequences relatively smaller than the problem we are trying to prevent.

⁵² Dörner, *supra* note 49, has warned against the widespread tendency to address complex problems by seeking “one cause-one effect” (and then responding with one solution) which also contributes to the logic of failure.

⁵³ Nigel Goldenfeld & Leo P. Kadanoff, *Simple Lessons From Complexity*, 284 SCIENCE 87 (1999).

⁵⁴ Isabella M. Lami, *The Context of Urban Renewals as a ‘Super-Wicked’ Problem*, in 1 NEW METROPOLITAN PERSPECTIVES: LOCAL KNOWLEDGE AND INNOVATION DYNAMICS TOWARDS TERRITORY ATTRACTIVENESS THROUGH THE IMPLEMENTATION OF HORIZON/E2020/AGENDA 2030—VOLUME 1 (Francesco Calabrò, Lucia Della Spina & Carmelina Bevilacqua eds., 2019).

⁵⁵ Infill development consists of reusing vacant city land between buildings, with several beneficial effects. See, e.g., Annette Steinacker, *Infill Development and Affordable Housing: Patterns from 1996 to 2000*, 38.4 URB. AFF. REV. 492 (2003).

veloped locations), taking open spaces and agricultural lands—hardly the intent of the NEPA rules.⁵⁶

While complexity has been understood for decades, handling it in human affairs has remained a challenge due to how we think and how we tend to separate the inseparable in order to analyze and predict.⁵⁷ For example, research in social disciplines such as economics and social psychology and negotiations often examine changes in one factor, *ceteris paribus*⁵⁸ (all else being equal)—something which never occurs in complex systems. Increasingly, scholars are developing tools for researching complex social systems in a non-*ceteris paribus* manner.⁵⁹

i. Network of Interacting Entities Across Scales

Complex systems consist of interacting elements. The linkages exist horizontally, within an organization, as well as between organizations, and with entities at higher/larger scales, such as state and federal government agencies. With highly developed communication technologies, organizations can even link with partners or compete across continents. The linkages are dynamic and adaptive, altering the parties' incentives and affecting their interests across the scales. If a system could start out repeatedly at the same point (initial conditions), it would likely result in unexpected and different patterns and outcomes in time. That is because the elements in the system are in flux over time, affecting each other and the outcomes at each turn in different ways.

Like fractals,⁶⁰ social systems and their conflicts are different from each other and complex from organizations to communities and states to countries. In organizations, the terms *volatility, un-*

⁵⁶ See, e.g., Michael E. Lewyn, *How Environmental Review Can Generate Car-Induced Pollution: A Case Study*, 14 SUSTAINABLE DEV. L. & POL'Y 16 (2014).

⁵⁷ We tend to quickly reach cognitive overload when dealing with several factors, as we must, and are prone to numerous judgmental biases. See, e.g., Dörner *supra* note 49; see, e.g., DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).

⁵⁸ See, e.g., Daniel M. Hausman, *Ceteris Paribus Clauses and Causality in Economics*, 1988.2 PSA: PROC. OF THE BIENNIAL MEETING OF THE PHIL. OF SCI. ASS'N 308 (1988).

⁵⁹ See, e.g., Calin-Adrian Comes, *Analysis of the Quality of Life Through Caeteris Non Paribus Methodology*, 32 PROCEEDIA ECON. AND FIN. 56 (2015); Miron Kaufman, Sanda Kaufman & Hung T. Diep, *Statistical Mechanics of Political Polarization*, 24.9 ENTROPY 1262 (2022).

⁶⁰ See Marat Akhmet & Milad Alejaily Ejaily, *Abstract fractals*, ARXIV PREPRINT ARXIV:1908.04273 (2019): "Fractals are class of complex geometric shapes. . . One of the main features of the objects is self-similarity. . . the property whereby parts hold similarity to the whole at any level of magnification." A frequent example is a snowflake.

certainty, complexity, and ambiguity (VUCA⁶¹) describes not only intra-organizational controlling difficulties but also an organization's relationship with its environments—national and international clients and competitors along the supply chains, markets, regulatory structures, and social concerns. Accordingly, those who manage organizations should not think/strategize in the same ways for VUCA systems as they did in the past when organizations were viewed as static systems. The claim is that businesses whose managers are able to make the mental switch to complexity (aka VUCA) tend to be more successful.⁶²

Interestingly, a key prescription regarding VUCA systems—not to chase targets⁶³—is quite similar to what social-ecological systems scholars have proposed: do not chase (long-term) objectives with zero probability of their attainment. Such objectives are often no more robust than wishful thinking (e.g., the climate change target of a two-degree Celsius increase in temperature 75 years from now; or the zero-carbon target by 2050, which has come and gone—it is now impossible).⁶⁴ Instead, say the social-ecological scholars, we need to act to avoid bad outcomes on the way to the far future.⁶⁵

VUCA is an apt description for hybrid warfare too. It tends to be volatile—nimble and quickly shifting modalities to avoid detection and attain objectives; it actively seeds *uncertainty*, especially through covert activities; it is *complex*, as we hope to have made the case so far; and it thrives on *ambiguity*, leaving victims in doubt about source, methods, and objectives in order to defeat any opposition. Arguably, it is the complexity that gives rise to volatility, uncertainty, and ambiguity, which should be expected in any complex situation, including hybrid warfare. In our ransomware and kidnapping examples, victims are uncertain about their attackers' motives, means, real intent, and the likelihood that, when their de-

⁶¹ See, e.g., Nathan Bennett & James Lemoine, *What VUCA Really Means for You*, HARV. BUS. REV. 92.1/2 (2014); see also Sathiabalan Murugan, Saranya Rajavel & Amarjett Singh, *Volatility, Uncertainty, Complexity and Ambiguity (VUCA) in Context of the COVID-19 Pandemic: Challenges and Way Forward*, INT'L J. HEALTH SYS. & IMPLEMENTATION RSCH. 4.2: 10-16 (2020).

⁶² DIGNAN, *supra* note 48.

⁶³ *Id.*

⁶⁴ See, e.g., Roger Pielke, *The Biden Administration Abandons RCP8.5*, THE HONEST BROKER (Feb. 17, 2023), <https://rogerpielkejr.substack.com/p/the-biden-administration-abandons> [<https://perma.cc/V8Y8-PR4L>].

⁶⁵ Brian Walker, Lance Gunderson, Ann Kinzig, Carl Folke, Steve Carpenter & Lisen Schultz, *A Handful of Heuristics and Some Propositions for Understanding Resilience in Social-Ecological Systems*, ECOLOGY & SOC'Y 11.1 (2006).

mands are satisfied, they will uphold their side of the bargain. There is ambiguity in attacker-victim communications. Each situation is volatile in the sense that external factors and events can quickly alter the attackers' plans even while negotiations seem to unfold relatively smoothly. There may be a change of plans or a sudden loss of resources for those sponsoring the attacks, or strife may occur among the direct attackers—just some examples of what could cause quick changes and foil the negotiations.

Do the VUCA/social-ecological systems prescriptions regarding the vain pursuit of specific objectives apply to hybrid warfare situations such as ransomware and kidnappings? We propose that they do, in the sense that negotiators involved in the short-term resolution of crises should focus on the immediate tasks rather than concern themselves with any long-term consequences of their tactics or of the agreements they are able to secure. The former are concrete achievements, while any long-term ramifications are volatile, uncertain, complex, and ambiguous (VUCA) and, therefore, tantamount to a high-stakes gamble.

ii. Unpredictable

Within complex systems, small actions can yield huge and unpredictable reactions, while great interventions may end up making no difference or going in unintended and different directions. As Aaron Dignan observed, “every 5-year plan, every annual budget, and every fixed target is a public confession that we don’t understand the nature of our organizations [here we can substitute hybrid warfare]. Our desire for control blinds us to the truth.”⁶⁶ Complex systems confound the best forecasts. Their problems cannot be solved—at most, they can be managed.⁶⁷ Often the best we can do is to positively influence these systems and avoid some pitfalls or, as Donella Meadows of “Limits to Growth” fame put it, learn to dance with them.⁶⁸

C. *Hybrid Warfare is Complex*

The first challenge of hybrid warfare can be recognizing that we are dealing with hybrid warfare. It is conducted in ways that

⁶⁶ DIGNAN, *supra* note 48.

⁶⁷ Roberto Poli, *A Note on the Difference Between Complicated and Complex Social Systems*, CADMUS (2013).

⁶⁸ Donella Meadows, *Dancing with Systems*, 13 SYSTEMS THINKER 2-6 (2002).

may make attacks seem to be accidents, simple crimes, or individual initiatives of the moment rather than intentional moves against an opponent.

All interactions—such as negotiations—occur within social systems, which are complex. However, not all situations are plagued by acute VUCA. In hybrid warfare, complexity means that traditional negotiations are not possible or likely to succeed, but preparation is still necessary in different ways. It may have different objectives, such as determining if an attack is hybrid warfare or some isolated rogue criminal action. If it is hybrid warfare, because of the complexities, negotiators should expect extreme VUCA features: an acute lack of information, ambiguity, and deep uncertainty about who is behind the action and what objectives they are pursuing. As we have discussed, negotiators may be able to identify some actors, but even these actors may not know whom they serve. Even if there is a negotiation “table” or forum, several layers of invisible actors are apt to be behind it.⁶⁹ Those posing as agents may play their own game—along with pursuing the principals’ objectives or not—as may any self-appointed interveners.⁷⁰ In this context, deception replaces good faith. Negotiators should prepare accordingly and withhold the trust they might place in their counterparts in classical negotiations.

Time matters, but differently than in traditional negotiations. As already mentioned, in hybrid warfare, some play a very long-range game and may position themselves mostly covertly until they choose to deploy their capabilities, which, however, they may have developed and positioned for years and even decades. This strategy makes it difficult to go back in time and link various past incidents to the opponents who caused them. For example, the Chinese government’s acquisition of cobalt mines in Africa⁷¹ can be a shrewd economic move ahead of an expected large-scale conversion to electric cars (whose batteries depend on cobalt and other rare metals), or it can be a slow hybrid warfare positioning to strangle transportation in the Western World⁷² by refusing to sup-

⁶⁹ See, e.g., James K. Sebenius, *Level Two Negotiations: Helping the Other Side Meet its “Behind-the-Table” Challenges*, 29.1 NEGOT. J. 7-21 (2013).

⁷⁰ SANDA KAUFMAN & ERIC BLANCHOT, *THE NEGOTIATOR’S DESK REFERENCE* (C. Honeyman & A. Schneider eds.) Ch. 45, Vol. 1, 621-643 (2019).

⁷¹ See, e.g., Andrew L. Gulley, Erin A. McCullough & Kim B. Shedd, *China’s Domestic and Foreign Influence in the Global Cobalt Supply Chain*, 62 RES. POL’Y 317, 317-323 (2019).

⁷² European countries are debating the wisdom of switching to electric cars rapidly, e.g. Nathalie, Ortar & Marianne Ryghaug, *Should All Cars be Electric by 2025? The Electric Car Debate in Europe*, 11(7) SUSTAINABILITY 1886 (2019).

ply the metals they own once the conversion is completed. Other countries already involved in armed conflicts, such as Russia and Iran, may engage in more short-range hybrid warfare attacks, for instance, by using social media and cyber means to support their ongoing conventional wars.

Context matters in hybrid warfare,⁷³ as it does in all conflict situations. Some of the difficulties in dealing with hybrid warfare can be traced to the complexity of the contexts in which hybrid warfare is waged. For example, the same conflict situation in terms of actors plays out differently in good and bad economic times, or in peaceful times versus moments when global hostilities are rising. Hybrid warfare actors can destabilize countries more quickly when internal strife is already raging, as did in France over the past years.⁷⁴

For these reasons, those who engage in negotiations over hybrid warfare attacks where specific demands are made need to discard classical negotiation prescriptions. Instead, they need to assume wickedness (aka complexity), and recognize the acute VUCA characteristics. This is more difficult than it might seem. Not only are classical negotiation prescriptions well entrenched through training and practice, but they also fit with our shared moral and ethical principles. Abandoning them means, for example, admitting that transparency is not a virtue but a liability in hybrid warfare, and that promises negotiators make can be breached. It amounts to becoming more like the attackers than like the negotiators we would like to be. It also means that negotiators need clarity about their objective and whether it is worth trading some cherished principles to attain them—whether saving a human life or enabling the functioning of vital systems for a community (which also saves lives).

IV. CLASSICAL INTEREST-BASED NEGOTIATION THEORY AND ITS USEFULNESS IN A HYBRID WARFARE CONTEXT

Classical negotiation theory posits that negotiators who understand both their own interests and the interests of their counterparts arrive at better agreements in a negotiation.⁷⁵ The idea is

⁷³ Kaufman, *supra* note 70.

⁷⁴ E.g., Peter Wilkin, *Fear of a Yellow Planet: The Gilets Jaunes and the End of the Modern World-System*, 26 *J. WORLD-SYS. RSCH.* 70, 70–102 (2020).

⁷⁵ See generally, FISHER ET AL., *supra* note 16.

that negotiators will do better if they move beyond positions and instead understand their counterparts' underlying interests and attempt to accommodate them in order to obtain what they seek. In contrast to zero-sum or "fixed-pie" bargaining, this approach "expands the pie" by enlarging the space of possible options to satisfy the underlying interests.⁷⁶ In this section, we will start by discussing the basic ideas regarding the role of interests in classical negotiations and why they matter. Next, we will examine why hybrid warfare is different in terms of interest-based negotiations and why classical negotiation theory is, therefore, less than helpful in this context.

A. *Getting To Yes and the Importance of Uncovering the Interests Behind Positions*

Getting to Yes starts by claiming that negotiators should not "bargain over positions"⁷⁷ because positional bargaining "produce[s] unwise outcomes,"⁷⁸ specifically less satisfying than they could be. *Getting to Yes* prescribes what negotiators should do instead and cautions that an approach insisting on positions locks negotiators in for the following reasons: "The more you clarify your position and defend it against attack, the more committed you become to it. The more you try to convince the other side of the impossibility of changing your opening position, the more difficult it becomes to do so. Your ego becomes identified with your position."⁷⁹

Getting to Yes gives additional reasons why negotiators should not argue over positions: doing so is inefficient (it leads to suboptimal outcomes compared to what could be obtained) and can undermine ongoing relationships.⁸⁰ Instead, the authors argue that negotiators should adopt a four-point approach to what they call principled negotiation. One of those points is to focus on interests rather than positions.⁸¹ This is a parsimonious framework, and interests are central to it.

⁷⁶ *Id.*

⁷⁷ *Id.* at 3–15.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.* at 4–5.

⁸⁰ *Id.* at 6–7.

⁸¹ FISHER ET AL., *supra* note 16, at 11. The four points are People, Interests, Options, and Criteria.

Getting to Yes suggests ways for negotiators to ferret out and understand the interests of their counterparts. For example, negotiators should ask their counterparts questions about the “why” and “why not” behind their demands. There are optimistic underlying assumptions to this approach, including that interests are discoverable/disclosable, that negotiators can understand their counterparts, and that their counterparts will share information. The theory is that it is up to the negotiators themselves to understand the importance and task of discovering underlying interests and that they should take the time and have the skill, to do so.⁸²

According to *Getting to Yes*, once a negotiator moves beyond positional bargaining and understands the underlying interests of their counterpart and themselves, the negotiators can move on to “invent options for mutual gain.”⁸³ This entails generating ideas about other ways of meeting the interests than the initially stated positions or demands. This becomes possible precisely because of the understanding of the parties’ interests and their relative priorities. *Getting to Yes* posits that this approach will lead to better negotiation outcomes because moving away from positions to the underlying interests will better address the needs and wants of all parties through mutually beneficial tradeoffs.⁸⁴

B. *Focusing on Interests in a Hybrid Warfare Context is Problematic*

There are a number of reasons why adopting an interest-based approach to negotiations in the context of hybrid warfare is less useful and may, in fact, put negotiators at a disadvantage in high-stakes situations where lives might be in play. These include the challenge of not knowing who all the parties are, not being able to discover the underlying interests, and the challenging international dimension. In addition, some classical negotiation assumptions may not apply in the hybrid warfare context.

Since we may not know who all the parties or decision-makers are in a hybrid warfare context, we need to adopt strategies that take this into account. Those who present themselves for negotiation may not know the full extent of who is actually sitting behind the table and pulling the strings. Take the example of an oil com-

⁸² *Id.* at 45-57.

⁸³ *Id.* at 58.

⁸⁴ FISHER ET AL., *supra* note 16, at 42-57, 72-77.

pany executive who has been kidnapped by an insurgent group. The insurgent group may have the leadership to whom it reports within the country, and they may or may not know about other foreign actors who may, in fact, be controlling the decision to kidnap and release the executive. The local cell that executed the kidnapping task may want to keep their true identity secret due to concerns about what will happen if they are later captured or if there is a later peace agreement. The insurgent group may use false names and disguise their faces and identities.

If negotiators do not know whom they are negotiating with, they are unlikely to be able to find out the interests behind the positions. In the oil executive kidnapping example, negotiators may never find out why the insurgent group has selected a ransom of \$5 million US Dollars. Is it to purchase a property? Is it to buy more weapons? Is it to feed the local village? Is it a combination of all of these? And, if negotiators want to conceal their true identity, they are unlikely to answer truthfully the prescribed “why” or “why not” questions when posed. They may, instead, react badly to being pushed to reveal information they do not want to reveal, which they might think puts them in danger. Simply knowing the identity of who is in an insurgent group could put that person’s family in danger in addition to the insurgents themselves. Hybrid warfare can be a dangerous context, and all parties may seek to preserve their anonymity to protect their lives. In this context, it is unlikely that asking a few good open-ended questions, as classical negotiation theory proposes, will result in gaining a deeper understanding.

Hybrid warfare is, by definition, international and often involves state actors. This reduces even more the ability to know exactly who negotiators are facing and to engage in the discovery of underlying interests. North Korea has had numerous semi-conventional negotiations for the release of westerners whom they have detained and imprisoned.⁸⁵ This deeply closed society, led by three generations of dictators from the same family, challenges even skilled negotiators with experience in the country to understand what is going on in North Korea.⁸⁶ There is no free flow of

⁸⁵ Bill Richardson, *Bill Richardson: America's Hostage Negotiation Strategy is Broken*, THE WASH. POST (June 22, 2017), <https://www.washingtonpost.com/news/posteverything/wp/2017/06/22/bill-richardson-americas-hostage-negotiation-strategy-is-broken/> [https://perma.cc/83SE-QYT4].

⁸⁶ *Bill Richardson: 'It's Difficult to Deal with North Korea'*, CNN.COM (Jan. 11, 2003, 6:59 PM), <https://www.cnn.com/2003/US/01/11/richardson.cnn/> [https://perma.cc/4TK4-JWAR].

information in North Korea, and the population understands the serious consequences, including multi-generational punishment, that can come from divulging information.⁸⁷ In authoritarian countries, information is a dangerous commodity. People learn from an early age to be careful about what they say and to whom. These are not countries or cultures with a penchant for sharing and revealing anything about themselves or the internal situation. Moreover, in such places, usually ruled by dictators, sharing even seemingly innocuous information can be extraordinarily difficult and can be punishable. Additionally, hybrid warfare's covert nature makes it difficult for negotiators to even know whether they are in a hybrid warfare situation. It may be impossible to figure out which state actor is behind a particular attack—or if it is rogue elements within the foreign state conducting the operation.⁸⁸

C. *Moving Beyond Classical Negotiation Theory Assumptions*

Classical negotiation theory advises that we should try to take an interest-based approach to negotiation in hopes that we will arrive at better agreements. However, the assumptions underlying this advice do not match the hybrid warfare context. They are:

- Negotiations are conducted in settings where all parties want to reach mutual-gain solutions;
- Whether a dispute involves two or more parties, it is possible to know who they are;
- Through thoughtful information exchanges, it is possible to improve understanding of the other parties and their underlying interests;
- Parties' interests are discoverable and mixed-motive, making mutually advantageous tradeoffs possible;
- Interests remain relatively stable during most negotiations.

Since these assumptions do not apply to the context of hybrid warfare, negotiators should adopt what we might call a different *hybrid warfare mindset*. In such a situation, they should check the validity of their thinking about what they can and should do and

⁸⁷ U.S. DEP'T OF STATE, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 2021 HUMAN RIGHTS REP. 1, 2, 15 (2021), https://www.state.gov/wp-content/uploads/2022/03/313615_KOREA-DEM-REP-2021-HUMAN-RIGHTS-REPORT.pdf [<https://perma.cc/7JCA-VQ6N>].

⁸⁸ For example, in the incident of the Chinese spy balloon overflying the United States, analysts have debated the possibility of a military initiative which took the Chinese government by surprise.

their expectations about what is possible. This includes rethinking the classical advice about the importance and role of interests, the objectives, the time frames, and whether it is necessary, possible, or useful to look to the root causes of a dispute in order to arrive at durable agreements.

In hybrid warfare interactions, only positions may be apparent. An insurgent group engaged in kidnapping or ransomware may only communicate a ransom demand and the channels through which ransoms are to be paid. The hackers may demand payment within a short time frame to release data or a server. They may refuse to discuss terms or to meet face-to-face. If they give any names, these are likely fictitious. This leaves the entities under attack—companies, utilities, municipalities—with few options: pay the ransom or risk having their executive killed or their data inaccessible, publicly released, or destroyed.

Unlike in classical negotiations, in hybrid warfare, negotiators need to understand that they are operating in an opaque environment with lots of unknowns, many of which may remain unknowable, as well as knowns that are not what they seem to be. No matter how skilled they might be in other contexts in following classical negotiation prescriptions, such as building rapport and asking open questions, these skills are unlikely to work in hybrid warfare. In this context—even more than others—negotiators should be aware that counterparts could be familiar with the prescriptions and the classical negotiation language and approaches and may adopt them appearing to be “nice” or to seek a “win-win” resolution. Such deceptive devices should not be trusted: hybrid warfare remains adversarial.

In hybrid warfare contexts, negotiators need to understand the consequences of working with limited information. The temptation may be great to add assumptions and beliefs where information is sorely lacking. This is perilous. However, having limited information about the other side doesn’t mean that negotiators shouldn’t fully understand their own side—a classical negotiation prescription that remains valid. Negotiators should have clarity about their own interests and should be careful about falling into the ego traps which can happen during positional bargaining, as *Getting to Yes* warns. They should also keep an unwavering eye on their own objectives (for example, saving the life of their oil executive) as well as their bottom line when even without a BATNA, they need to walk away. The difference in hybrid warfare negotiations is that, just like their counterparts, negotiators should be prepared to ad-

just and shift strategies and tactics in response to the opponents' moves rather than follow a fixed plan. This may also be necessary for classical negotiations, but perhaps not in the same way or at the same speed.

Just as it may not be possible to learn the opponents' underlying interests or even who they all are, it may not be possible to understand their real time frame. For example, is the kidnapping really about the one oil executive, or is this one of many attacks that could stretch out over years or decades? After all, there are still American citizens held for years in countries that use kidnapping to create exchange currency for their demands. Particularly in the United States, however, we tend to work with relatively short time frames for several reasons, including our attitude towards time and the nature of our democratic political system and management style, and because key decision makers change their positions in organizations and government agencies frequently. Perhaps with the exception of climate change, where the time horizon exceeds 75 years,⁸⁹ we do not tend to plan over the longer term, and certainly not multi-generationally.⁹⁰

In contrast, those engaging in hybrid warfare may be playing a long game, perhaps because they tend to have lifetime positions in dictatorships. Russian hackers posting on Facebook and Twitter with the goal of stirring up resentment and undermining trust in western governments and western elections are playing the long game, as are other dictatorial governments. How long does it take to destabilize democracy? Hybrid warfare attacks are not one-off acts but rather part of a long-term strategy. Therefore, negotiating for the end of one attack may not solve the long-term problem if that one attack was only a component of the entire plan.

⁸⁹ See Roger Pielke, *The Biden Administration Abandons RCP8.5*, SUBSTACK: HONEST BROKER BY ROGER PIELKE JR., (Feb. 17, 2023), <https://rogerpielkejr.substack.com/p/the-biden-administration-abandons> [<https://perma.cc/V8Y8-PR4L>] (displaying EPA scenarios of projected net annual global emissions of carbon dioxide run to the year 2300). Our complexity discussion should alert readers to how implausible such projections are, and how easily they can be invalidated by even current events, let alone future ones at a closer time range.

⁹⁰ This is not unwise, as it might seem, since we do not know what the future might bring for future generations. To see this, check what technologies we would not have guessed to be possible even 30 years ago. The first smart phone, for instance, was made only in 1994, and the first iPhone came about in 2007.

One common approach in attempts to end terrorism,⁹¹ human trafficking,⁹² homelessness,⁹³ and even drug addiction⁹⁴ is to seek the root causes of each problem in hopes that addressing it will fix the current problems we believe they have generated. In all these complex situations, however, as in hybrid warfare, this quest is less useful. Although root causes make sense to many of us, they are illusory due to complexity of the systems they affect. We cannot reliably link causes from the past to current problems, even if the links appear to make sense. Even if we believe that we understand how what factors from the past caused the problems, enough was different that fixing the past will not work. Therefore, we need to address the problems where they are now. Although there may be a desire to look for wider-ranging causes and solutions, negotiators need to be cautious with this approach because it may not be realistic in hybrid warfare, where even the opponents themselves are not known. Instead, negotiators need to accept that they may never know or be able to know the underlying interests, causes, timeframes, and parties to any given negotiation. As we will discuss below, this means the negotiators need to think differently about their tactics, strategy, and even goals.

⁹¹ See e.g., Bekir Çinar, *The root causes of terrorism*. (2009); Alex P. Schmid, *Root causes of terrorism: Some conceptual notes, a set of indicators, and a model*. DEMOCRACY AND SECURITY 1, no. 2: 127-136 (2005); Tore Bjørgo & Andrew Silke, *Root causes of terrorism*. In ROUTLEDGE HANDBOOK OF TERRORISM AND COUNTERTERRORISM, pp. 57-65. Routledge (2018).

⁹² See e.g., Kevin Bales, *What predicts human trafficking?* INTERNATIONAL J. OF COMPARATIVE AND APPLIED CRIMINAL JUSTICE 31, no. 2 269-279 (2007); Elaine J. Alpert & Sharon E. Chin, *Human trafficking: Perspectives on prevention*. " HUMAN TRAFFICKING IS A PUBLIC HEALTH ISSUE: A PARADIGM EXPANSION IN THE UNITED STATES 379-400 (2017); Farhan Navid Yousaf, *Forced migration, human trafficking, and human security*. CURRENT SOCIOLOGY 66, no. 2 209-225 (2018).

⁹³ See e.g., Anne B. Shlay & Peter H. Rossi, *Social science research and contemporary studies of homelessness*. ANNUAL REVIEW OF SOCIOLOGY 18, no. 1 129-160 (1992); C. James Frankish, Stephen W. Hwang, & Darryl Quantz, *The relationship between homelessness and health: An overview of research in Canada*. FINDING HOME: POLICY OPTIONS FOR ADDRESSING HOMELESSNESS IN CANADA 1: 21 (2009); Doug A. Timmer, & D. Stanley Eitzen, *The root causes of urban homelessness in the United States*. HUMANITY & SOCIETY 16, no. 2 (1992): 159-175.

⁹⁴ See e.g., Alexander, Bruce K. *The roots of addiction in free market society*. CANADIAN CENTRE FOR POLICY ALTERNATIVES (2001); Dimy Fluyau & Thomas E. Charlton, *Drug Addiction*. (2019); R. J. Lamb, Haidyn G. Stark & Brett C. Ginsburg, *Implications of there being many paths to addiction and recovery*. PHARMACOLOGY BIOCHEMISTRY AND BEHAVIOR 211: 173299 (2021).

V. MAKING THE SWITCH TO A HYBRID WARFARE MINDSET

We hope we made the case that negotiators need to switch to a hybrid warfare mindset and move away from the assumptions underlying classical negotiation theory prescriptions, especially about the role of interests, which do not apply smoothly or at all to hybrid warfare. Negotiations conducted during hybrid warfare attacks need to adapt some of the classical prescriptions and/or rely on new prescriptions, tailored to several specific kinds of attacks. For example, ransomware situations are meaningfully different from hostage situations, though both are conducted under severe time pressures either to save endangered lives or to restore function to some vital network. Prescriptions, if any, have to take into account context specifics in addition to all the characteristics of hybrid warfare we have described. We need to abandon some cherished values and tenets of classical negotiation theory, such as expectations of honesty, (building) trust and relationships, fairness, keeping promises, respect, or regard for precedent.

We might call hybrid warfare *multi-issue zero-sum conflict*, a contradiction in terms since in most other contexts, multi-issue conflicts have integrative potential while in hybrid warfare integrative outcomes may not be possible and probably should not be sought. Instead, hostile moves are the norm, as opponents aim for damaging each other or even dominating each other. Even if the root causes of a conflict were known, there is no time to address them in the midst of hybrid warfare, and it would likely not make a difference, since the context has shifted and is constantly in flux. Instead, negotiations may need to be conducted in a protection/defense mode.

Hybrid warfare requires us to switch away from the negotiation prescriptions we usually teach and use, often to the exclusion of adversarial strategies. But how? Negotiation scholars and teachers have been quite successful in persuading ourselves and others about the merits of seeking integrative outcomes and ways to increase the likelihood of reaching them. This may make hybrid warfare negotiations even more difficult for us than they already are. Not only do we have to negotiate under serious time constraints and avoid ruinous agreements, but we also have to act differently than much of what we have been taught.

In hybrid warfare, mutually hostile parties position themselves to attack or respond to attacks or to send a message about capabilities to inflict losses. That is the equivalent of threats, possibly fol-

lowed by demands in other fora. These moves can occur even while parties negotiate traditionally to covertly undermine possible agreements. Examples in which various hostile acts occur in parallel to ongoing negotiations efforts include Iran attempting to kidnap a writer living in the U.S.,⁹⁵ Russia sending an American basketball player to a labor camp,⁹⁶ Russia and the United States trading accusations of sabotage of the Nord Stream pipeline,⁹⁷ North Korea firing ballistic missiles over Japan,⁹⁸ China aircraft circling Taiwan,⁹⁹ Russia and China conducting joint war games in South Africa,¹⁰⁰ and Russian airplanes recently flying perilously close to the Alaskan air space.¹⁰¹

Negotiations in a classical mode can still be conducted, among those on the same side having shared interests, within and between interrelated networks: government and private, professional communities, service networks (utilities), and allied countries. These networks are now linked intricately, so failures can cascade through them. At times when hybrid warfare attacks are difficult to recognize as such, the responses can be delayed, especially when they need to be coordinated among several parties, which may lead to irreversible damage. Therefore, we need to figure out our own

⁹⁵ See Benjamin Weiser, *Iranian Operatives Planned to Kidnap a Brooklyn Author, Prosecutors Say*, N.Y. TIMES (July 13, 2021), <https://www.nytimes.com/2021/07/13/nyregion/iran-masih-alinejad-kidnapping.html> [<https://perma.cc/6LMZ-NCM8>].

⁹⁶ See Travis Caldwell, *Basketball Star Brittney Griner is the Latest American to be Detained in Russia as Supporters Work Desperately to Free Them*, CNN (Mar. 17, 2022, 9:56 PM), <https://edition.cnn.com/2022/03/09/world/brittney-griner-russia-arrest-trevor-reed-paul-whelan/index.html> [<https://perma.cc/T9BK-E5NV>].

⁹⁷ See Lindsay Isaac & Sophie Tanno, *Explosive Traces Found at Nord Stream Pipeline Indicate 'Gross Sabotage,' Sweden says*, CNN (Nov. 18, 2022, 2:43 PM), <https://www.cnn.com/2022/11/18/business/nord-stream-explosive-traces-sweden-intl/index.html> [<https://perma.cc/E8J4-FQXD>].

⁹⁸ See Hyonhee Shin, Josh Smith & Kantaro Komiya, *North Korea Conducts Longest-Range Missile Test Yet Over Japan*, REUTERS (Oct. 4, 2022, 5:44 PM), <https://www.reuters.com/world/asia-pacific/nkorea-fires-missile-towards-east-skorea-military-2022-10-03/> [<https://perma.cc/QLV6-H9KN>].

⁹⁹ See Eric Cheung, Jessie Yeung & Emiko Jozuka, *China Carries Out Military Exercises Near Taiwan and Japan, Sending 47 Aircraft Across Taiwan Strait in 'Strike Drill'*, CNN (Dec. 26, 2022, 2:23 AM), <https://www.cnn.com/2022/12/25/asia/taiwan-china-aircraft-incursions-intl-hnk/index.html> [<https://perma.cc/4QU4-NJ7Z>].

¹⁰⁰ See Sara Carter, *Russia, China and South Africa Start Military Drills Amid Ukraine War, But Russia Says No Hypersonic Missile Test*, CBS (Feb. 22, 2023, 11:59 AM), <https://www.cbsnews.com/news/russia-china-south-africa-military-exercise-during-ukraine-war-no-hypersonic-missile-test> [<https://perma.cc/HQ28-5AR8>].

¹⁰¹ See Luis Martinez, *US Intercepts Russian Bombers Off Alaska For 2 Straight Days*, ABC (Feb. 16, 2023, 2:14 PM), <https://abcnews.go.com/US/us-intercepts-russian-bombers-off-alaska-2-straight/story?id=97260923> [<https://perma.cc/88JU-Z3E7>].

interests and who our allies are and negotiate with them joint defense strategies, which can be activated quickly. We also should follow rules only if they work to our advantage. This is challenging because we care about our rules and values, even during hybrid warfare.

One critical tool in preparing for hybrid warfare is imagining scenarios about consequences of observed or suspected hybrid warfare moves and then preparing responses, including who is responsible for which move and when. This approach will likely not suffice and will not eliminate surprises, but it will contribute to preparedness. To generate such scenarios, we could draw inspiration from what we might do if we wanted to conduct hybrid warfare against an opponent. It will go some way to diminishing the response time we face now when confronted with hybrid warfare attacks to reduce the likelihood of acting too late to be effective. Another source of scenarios is the past, with events recognized in retrospect as having been hybrid warfare instances. One drawback to this approach is that it reinforces our tendency to protect ourselves from past attacks,¹⁰² which may not be repeated instead of imagining what new means an opponent might use.

Whatever approaches we choose for generating them, scenarios can enhance our response capabilities as they have in other situations with similarities to hybrid warfare (unpredictability, uncertainty, etc.), such as natural hazards and environmental accidents. These too have unexpected timing and other surprise elements, and they are complex in nature and consequences immediately as well as in time, involving numerous decision-makers in the public and private sectors. One advantage we have in imagining hybrid warfare attack scenarios—compared to assembling natural disaster scenarios,¹⁰³ for example—is that the former are frequent and diverse, and the damage is often visible and memorable. A recent environmental accident has been the toxic chemical spill following the derailment of a Norfolk Southern freight train in

¹⁰² Also known as “preparing for, and fighting the last war” e.g., Barbara Tuchman Tuchman: “Dead battles, like dead generals, hold the military mind in their dead grip and Germans, no less than other peoples, prepare for the last war.” Barbara W. Tuchman, *The Guns of August: The Outbreak of World War I* (Random House 1994).

¹⁰³ Natural disasters, especially the rare kind occurring once in every generation, are difficult to imagine because no one who experienced them is still around to remind us of the damage. See, e.g., Deborah F. Shmueli, Connie P. Ozawa & Sanda Kaufman, *Collaborative Planning Principles for Disaster Preparedness*, 52 INT’L J. DISASTER RISK REDUCTION (2021).

East Palestine, Ohio, in February 2023.¹⁰⁴ During the first week, when reaction speed mattered, we saw in real time the problem of several federal, state, and local government agencies and the Norfolk Southern railroad company with overlapping responsibilities, communicating that the accident was under someone else's purview and that it needed someone else's response. There was no protocol (or scenario) for who should do what in such circumstances, although chemical spills are not rare.¹⁰⁵ Reflecting on the pervasive lack of preparedness, a first responder from a neighboring county explained in an interview that to respond effectively to such unpredictable and life-threatening occurrences, his team generates scenarios of possible consequences and then imagines actions they need to take to mitigate the effects. We might say that preparedness is the one traditional negotiation prescription that remains valid in hybrid warfare, though the paths to it are different.

We note that a meaningful difference exists between natural hazards and disasters and hybrid warfare. Disasters are increasingly predictable (if not preventable) due to advances in several technologies. This allows people in the path of a hurricane to evacuate, and building structures to resist complete destruction during earthquakes. Preparation is critical in both cases, both to reduce damage and to aid in recovery, and it has been happening. Earthquakes with the same intensity cause little or no damage in Japan, while destroying entire settlements in locations which do not prepare as Japan does.¹⁰⁶ Similarly, hurricane material losses have consistently dropped in the US also due to preparation.¹⁰⁷ Hybrid warfare attacks, although expected, are not predictable. Nevertheless, those vulnerable to such attacks can and should strengthen

¹⁰⁴ See Rebekah Riess, Hannah Sarisohn & Christina Maxouris, *Train Derailment in North-eastern Ohio Sparks Massive Fire*, CNN (Feb. 4, 2023, 10:17 PM), <https://www.cnn.com/2023/02/04/us/east-palestine-ohio-train-derailment-fire/index.html> [<https://perma.cc/P6VQ-JNPH>].

¹⁰⁵ See Morgan Phillips, *'There Are Roughly 1,000 Cases a Year of a Train Derailing': Pete Buttigieg Appears to Downplay Ohio Disaster – as Republican Shows 'Chemicals' Bubbling to Surface of a Creek*, DAILY MAIL (Feb. 16, 2023, 7:20 PM), <https://www.dailymail.co.uk/news/article-11760173/There-roughly-1-000-cases-year-train-derailing-Pete-Buttigieg-says.html> [<https://perma.cc/R7RQ-Y8SR>].

¹⁰⁶ See, e.g., Alex Greer, *Earthquake Preparedness and Response: Comparison of the United States and Japan*, 12.3 LEADERSHIP AND MANAGEMENT IN ENGINEERING 111-12 (2012).

¹⁰⁷ See, e.g., Roger Pielke Jr., *What the Media Won't Tell You About . . . Hurricanes*, THE HONEST BROKER SUBSTACK (June 1, 2022), <https://rogerpielkejr.substack.com/p/what-the-media-wont-tell-you-about> [<https://perma.cc/H9F7-B5QA>].

their defenses. This may be possible especially against ransomware.¹⁰⁸

VI. SUGGESTIONS FOR NEGOTIATORS

We hope this article will lead to the development of some specific and useful advice for individual negotiators facing immediate crisis negotiations in a hybrid warfare context and that we will be part of starting a process to help negotiators do better in this highly complex form of negotiation. We have nine initial suggestions for negotiators.

1. Adopt a Complexity (Acute VUCA) Mindset: Assume the Situation is Complex and Not Reducible to Classical Negotiation Strategies and Tactics

This means that negotiators accept that they will not know everything they deem necessary, that they cannot reliably predict the impact of their actions, and that their instincts of what works may be partly to absolutely wrong. A complexity mindset requires that negotiators get comfortable with the uncertainty, the ambiguity, and the unknown and still move towards some kind of resolution to protect that which matters to them and their clients. It also requires that negotiators move beyond the interest-based approach.

2. Not the Hour for “Nice”—Hybrid Warfare is Adversarial

By definition, hybrid warfare is adversarial, with no integrative potential. Negotiators need to accept that their negotiation skills will not move the situation from adversarial to integrative negotiation. Besides, unlike in classical negotiation settings, we may not wish to help opponents achieve their objectives. In hybrid warfare it is unlikely that the other side will ever give enough trustworthy information (or time) to move towards an integrative solution.

3. Accept that it is a Zero-Sum Game—Focus on Winning

Hybrid warfare is akin to a zero-sum game. As such, negotiators need to focus on winning, not understanding or building rela-

¹⁰⁸ See, e.g., Sanda Kaufman, *How Should the Whole-of-Society Respond to Hybrid Warfare?* 30 *ONTRACK* 43-53 (2023).

tionships (since negotiators cannot expect to meet again and even if they do it will be another adversarial encounter). If a life is at stake, or a computer system that runs emergency services in a community is jeopardized, compromise is not an option. There are no mutually advantageous tradeoffs. It is all about winning to protect life, or vital systems under threat.

4. Focus on Context Specifics—Best Practices Do Not Go Very Far

Negotiators in a hybrid warfare context need to focus on the specifics of the situation at hand. Perhaps one result of this effort to build our knowledge in this area is that we will eventually have some best practices that negotiators can look to in different types of hybrid warfare scenarios. But for now, our best advice is for negotiators to accept that they need to understand their own context and work within it, to win.

5. It is Positional Negotiation

Hybrid warfare negotiations are positional negotiations. If all a negotiator faces, for example, is a ransom demand and a take-it or leave-it offer, and no idea who is behind the demand, it is not possible to move off the positions. As much as it might go against what many of us have taught and hold dear, positional negotiation is often the only option in hybrid warfare.

6. Understand the Other Side is Likely Playing Without Our Rules, or Without Any Rules, With Values Different from Ours (We May Have to be Underhanded)

Negotiators need to accept that they may be dealing with counterparts who do not respect (our) rules, or are bound by a different set of rules. For example, laws and regulations may not hold any sway—particularly if they are from another country. A kidnapper or computer malware attacker may not care that these acts violate any laws. They are a means to an end which is far more important to them than infringing on laws or ethics—they are at war. They may view those who follow laws as “suckers” who can be easily taken advantage of. In addition, not every society considers protecting life as the highest value. For example, for some, honor is more important. Fear can also be a motive, if they or their families are threatened unless they deliver. Because these warriors may be unknown, it is not possible to know what, if any, rules they

respect, or what their values are. The consequence for negotiators is that they should not assume the other side is bound by constraints and will behave as negotiators might expect someone from their own country or organization to behave. Negotiators should accept that hybrid warfare is lawless.

7. Defend Interests (Positions)

Negotiators in hybrid warfare should defend their own interests. To do so means they must first understand what their interests are—as in classical negotiations. Defending interests in a hybrid warfare context may best be achieved by reducing the interests to specific positions.

8. Prevent Damage, Whether to Life or to the Functioning of Our Life-Sustaining Systems

The ultimate objective of negotiators in a hybrid warfare scenario is to prevent damage or more damage. Negotiators in a kidnapping seek to save the life and freedom of the kidnapped person. Negotiators in a ransomware attack want to protect the system under attack to limit the harm done, so that the hospital doesn't have to shut down, that 911 services are still operating. . .etc. This doesn't mean that there shouldn't also be preventive efforts to minimize the possible harm of these kinds of attacks and to build in better systemic protections. However, once preventive protections have failed and negotiators are involved, their primary job is to limit the damage and that alone may be a win.

9. Help Others Who Might Have to Negotiate in the Midst of Hybrid Warfare Crises

Finally, we should collectively work to help those who may find themselves in a hybrid warfare crisis. This symposium is an important step in that direction. Preventive and communication work by academics, practitioners, non-profits, intergovernmental organizations, and governments is necessary to improve our understanding of hybrid warfare and responses. Vulnerable communities and entities likely to be targeted should not first hear about hybrid warfare and possible responses when confronted with a 48-hour window to pay a ransom.

As educators who teach negotiation theory and skills, we need to move beyond the classical negotiation training approach and help those we train to also develop skills to maneuver in this highly complex negotiating environment. We should make sure that our

students are prepared both to engage skillfully in integrative and competitive/adversarial negotiations. As hard as it may be for us, and as much as it may force us into a worldview we dislike, it is important that we not close our ears and eyes to reality: hybrid warfare is a zero-sum, adversarial, high-stakes game.

VII. CONCLUSIONS

Hybrid warfare is now everywhere. We are becoming increasingly aware of numerous attempts our enemies make to weaken or even destroy the systems and networks which sustain our lives. What seem to be accidental disruptions in communication networks turn out to be attacks directed at testing and overcoming our defenses.

We have set out to examine the match between classical negotiation theory prescriptions, with its focus on the key interest-based plank, and hybrid warfare conditions. We conducted a comparison of characteristics of classical negotiations and hybrid warfare contexts. We found that although all social contexts in which both occur are complex, hybrid warfare is more *wicked*. Its covert, adversarial nature, together with its objectives and the ways in which it is conducted make it a poor candidate for classical negotiations. Therefore, classical negotiation theory and its prescriptions, especially regarding the role of interests, are not compatible with the kinds of hybrid warfare in which negotiations take place, such as ransomware and kidnapping.

Based on our analysis, we have generated a set of recommendations for negotiators. Our advice is for negotiators to adopt a complexity mindset while abandoning some of the most cherished tenets and strategies of interest-based negotiations.

