"Lawfare" is Worth Defining

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1. Introduction

What is it, exactly, that we think we perceive upon encountering the word *lawfare*? If our understanding is coloured by its colloquial use in traditional and digital media, it will be inevitable to concur with the Cambridge English Dictionary or the Oxford English Dictionary, which defined *lawfare* as "the use of legal action to cause problems for an opponent" and "legal action undertaken in order to exert power or control, esp. as part of a hostile campaign against a particular country or group", respectively. Such "lexical" definitions undoubtedly reflect the negative connotation *lawfare* has carried since the 1830s,[1] and yet they are not sufficient in terms of framing the scholarly debate surrounding the term which rose to prominence in the late 1990s.

Few would contest that the foremost contribution in this context came from Charles J. Dunlap Jr., who attempted to render *lawfare* a "value-neutral" term by narrowing down its scope: "the strategy of using — or misusing — law as a substitute for traditional military means to achieve a warfighting objective" (Dunlap 2008). It must be noted that this definition denoted a

[1] According to the Oxford English Dictionary, the earliest use of the term lawfare was in the 5 September 1835 issue of the daily *Bucks Herald* from Buckinghamshire, United Kingdom, in reference to particularly hostile legal proceedings.

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

remarkable evolution in Dunlap's thinking, given that Dunlap, as a currently retired officer of the United States Air Force (USAF), had initially framed *lawfare* within a traditional, "Clausewitzian trinity",[2] and addressed the historical opposition of the North American civil rights movement to US aggression in Vietnam and the more recent *potential* investigation of the International Tribunal for the Former Yugoslavia (ICTY) into NATO bombing campaigns in Serbia under the heading of lawfare (Dunlap, 2001). It can be surmised that a key factor in this evolution was Dunlap's perception of law as a *weapon* in achieving an operational objective: thus, law, as any other weapon, could "be used for good or bad purposes" (Dunlap, 2008).

However, as a great English playwright once remarked in the voice of a Danish prince, "there is nothing either good or bad, but thinking makes it so" (Shakespeare 2006). In this light, there is no inherent logical incoherence in — for instance — Dunlap's depiction of unilateral coercive measures as "good" lawfare (Dunlap, 2010) in spite of the emerging consensus as to their illegality under international law (*inter alia* Douhan, 2017; Kurtul, 2022a; De Zayas, 2023). This does not mean, on the other hand, that Dunlap's approach in applying a "value-neutral" concept to real-life disputes and conflicts is wholly impartial — nor does he imply that this is the case. As he admits in a multitude of his works, Dunlap primarily addresses "the doers": legal practitioners and members of the armed forces fighting on the "good" side, i.e., "democracies" (Dunlap 2010). In his words, the use of lawfare "was not — and *is not* — intended to assuage the penchant of academics and policy enthusiasts to put all human activity into some designated theoretical box suitable for explication in university texts" (Dunlap, 2010), and perceived lawfare practices emerging from the People's Republic of China (PRC) are

[2] The "trinity" Dunlap refers to in relation to "lawfare" is not von Clausewitz's *wunderliche Dreifaltigkeit* (or rather, the trinity consisting of violence/passion, chance/probability, and reason/policy), but rather the latter's analysis of the relationship between the military, the government, and the people.

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

viewed as moves that "democracies" need to counter — even if it means lowering the threshold of humanitarian restrictions in warfare to the bare minimum envisaged in international humanitarian law[3] (Dunlap, 2001).

Yet Dunlap has not been the only author to use the term "lawfare" from a highly subjective standpoint. As a matter of fact, a closer inspection of "lawfare literature" can lead any researcher to the conclusion that the definition of "lawfare"—as well as the distinction between "good" and "bad" lawfare — depend on the audience that the author aims to address. Orde Kittrie's influential monograph, *Lawfare* (Kittrie, 2016), is a case in point: while the author makes a significant and laudable attempt to incorporate different interpretations of and approaches in describing "instrumental lawfare",[4] he ultimately seeks to propose a viable "lawfare strategy" for the US Government (Kittrie, 2016, 39), in addition to his scholarly goal of compiling the first comprehensive source on lawfare in the English language. Other authors, like Brooke M. Goldstein and Aaron Eitan Meyer, have arguably instrumentalised the very term "lawfare" by framing (among other things) the International Court of Justice's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory as part of a broader "Islamist lawfare" strategy against Israel (Goldstein and Meyer, 2008), whereas authors like Christi Bartman (2010) and Brad Fisher (2023) offer an exclusively anti-Soviet, anti-PRC, and anti-Russian interpretation, with the latter proposing a new term — Malign Legal Operations — to describe Russian legal actions within the context of international law.

[3] It should be noted that Dunlap prefers to use the term "laws of armed conflict" (LOAC) in lieu of international humanitarian law.
[4] In Kittrie's approach to "lawfare", "instrumental lawfare" is defined as "the instrumental use of legal tools to achieve the same or similar effects as those traditionally sought from conventional kinetic military action". This is distinguished from "compliance-leverage disparity lawfare" which is "designed to gain advantage from the greater influence that law, typically the law of armed conflict, and its processes exerts over an adversary" as an armed conflict ensues on a kinetic battlefield (Kittrie, 2016, 11).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

It follows that "the use or misuse" of the term "lawfare" itself has largely become a battleground for "narrative warfare" akin to the (ab)use of international law terminology in political rhetoric[5] (*inter alia* Maan, 2024, 76). This complements the pre-existing perception of law as a battleground (Goldenziel, 2021) and paves the way for a myriad of "lawfare" accusations devoid of consistency. Such a predicament echoes Raphael Lemkin's remark on how he had transformed his anguish into "a moral striking force" (Akhavan, 2015, 90) in coining and helping define the "crime of crimes" (Schabas 2009): genocide. It is self-evident that the semiotic weight of Lemkin's coinage eclipses that of lawfare, which Tiefenbrun had dubbed a "clever but potentially destructive play on words" based on how both "law" and "war" "enjoyed power" (2010), for "genocide" etymology stems from the *killing* of a *people*. Then, in view of how the use of the term "genocide" has been prone to abuse (Akhavan, 2015; Schabas, 2011; Tekin and Uraz, 2025), one can spot the inherent fallacy in Tiefenbrun's argument that "lawfare" is a destructive construct aimed at swaying public opinion against the United States and Israel, in favour of "tyrants" and "terrorism" (Tieferbrun, 2010).

There is, however, a key difference between the use of terminology pertaining to the realm of international *criminal* law (chiefly "genocide") and that of the term "lawfare". In the former case, legal scholars and practitioners had initially lamented the dearth of legal literature, viewing this as a factor contributing to their reliance on "intuitive rather than reasoned" terminology when addressing the crimes committed in the former Yugoslavia and Rwanda (Schabas, 2009, xi). By contrast, when confronted with the question "is lawfare worth defining?", leading legal scholars and military figures — including William Schabas, Orde Kittrie, Susan Tiefenbrun, and Charles

[5] To further contextualise, Maan's main argument is that "meaning" precedes "truth" in narrative warfare; hence, the (ab)use of the "Responsibility to Protect" doctrine by the United States and NATO to bypass the UN Security Council in militarily interfering in third countries is presented as a viable strategy (Maan, 2024, 78) irrespective of its dubious legality under international law.

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

Dunlap — failed to agree even on whether "lawfare" merited a definition, let alone on what that definition should be (Scharf and Andersen, 2010)[6].

One may therefore infer that the "us" and "them" dichotomy has long shaped the scholarly debate on "lawfare" conducted in the English language — not only through attempts to define the "lawfare" policies of Western "liberal democracies" in contrast to a purportedly nefarious, "illiberal" "Other" accused of constantly abusing the law, but also in the persistent lack of consensus on the term's meaning. Conversely, the authors of scholarly works in neo-Latin languages—notably Portuguese and French — have used the terms *guerra jurídica* and *guerre juridique*[7] in reference to "the strategic use of the law with the purpose of delegitimising, harming or annihilating the enemy" (Martins, Martins, and Valim, 2023) in predominantly (albeit not exclusively)[8] domestic contexts, with focus on the political prosecution of left-wing figures like the current President of Brazil, Luiz Inácio Lula da Silva, and the leader of *La France Insoumise*, Jean-Luc Mélenchon (Dias, 2022).

Thus, aside from the evident political divergence in the origins of "lawfare" versus those of *guerra jurídica*, there emerges a new dichotomy: "external / international lawfare", which involves the "use or abuse" of the norms of international law *in lato sensu* to achieve a warfighting objective or to delegitimise a geopolitical adversary for the purpose of gaining political leverage; and "internal / domestic lawfare", denoting the strategic deployment of public (typically criminal) law to suppress opposition to the political system at the national level. Neither of the foregoing forms of lawfare can be deemed to *ipso facto* entail a malicious misinterpretation of

[6] This article was shaped by the contributions made by legal scholars and military officers who attended the symposium on "lawfare" convened at the Case Western Reserve University School of Law on 10-11 September 2010. Due to the application of the Chatham House Rule, the authors of the statements referenced in the article cannot be identified.
[7] Both *guerra jurídica* and *guerre juridique* are usually used as direct translations of "lawfare".
[8] At the time this article was written, there was a growing attention among Francophone legal scholars towards the study of Chinese Falü Zhan (法律战).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

the law and, in today's conflict-ridden world where international crimes are arguably committed on a daily basis, there are convergences between the two forms which require closer inspection.

2. Contemporary Dynamics Between "External / International Lawfare" and "Internal / Domestic Lawfare"

As one may infer from the foregoing, the bulk of lawfare literature in the English language relates to "external / international lawfare". Hence, the scope of the literature has largely entailed international law and its various sub-branches including international humanitarian law (*inter alia* Berkowitz, 2012), international criminal law (*inter alia* Murina, 2010), international law of the sea (*inter alia* Kittrie, 2016, 168), and space law (*inter alia* Kittrie, 2016, 166), with the latter two areas focusing mostly on Chinese practices — albeit with little accuracy[9] (as illustrated by de la Rasilla and Cai, 2024). Over the past decade, there have also been notable scholars who have used the term "lawfare" in the context of international human rights law, apparently influenced by Martins, Martins and Valim's influential work on the proceedings against Luiz Inácio Lula da Silva (2023).

While the human rights aspect of "external / international lawfare" continues to be outweighed by scholarly debates in other areas of

[9] Two of the most common accusations made by US legal scholars and practitioners against China in the context of the law of the sea are China's alleged malign misinterpretation of the EEZ and the norms pertaining to seabed mining (see, *inter alia*, Kittrie, 2016, 167). These can be viewed, at the very least, a poor attempt at *tu quoque*, as the United States is not a party to the UNCLOS and, during the Third United Nations Conference on the Law of the Sea, the part of the draft concerning seabed mining famously was met with strong objection by the United States. By contrast, China has consistently claimed to uphold the "common heritage of mankind" principle proposed by developing countries (Zhang, 2024) and proposed the equity principle as opposed to the equidistance rule without inconsistencies (*ibid*). Kittrie's parallel accusations concerning China's use of lawfare to prepare for warfare in outer space (2016, 168) are also largely devoid of substance, in view of China's contributions to (among other things) the Ad-Hoc Committee on the prevention of an arms race in outer space (in spite of US objections) and the Conference on Disarmament (Vanhullebusch, 2024).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

international law, human rights law has consistently been central to the discourse on "internal / domestic lawfare". Indeed, the aforementioned case of Jean-Luc Mélenchon in France (Da Silva, 2022), as well as the 2025 crackdown on Turkish opposition figures including İstanbul mayor Ekrem İmamoğlu [10] (Erkan, 2025) have at times been framed as "lawfare" by scholars and practitioners, who raised human rights arguments against the misuse of domestic criminal law.

Notwithstanding the differences between these two broad categories—particularly with respect to the fields of law they engage—there are also significant points of convergence. In a geopolitically volatile world, where law is shaped (albeit not silenced) by the sound of arms (Cicero, 53, § 11), it is perhaps unsurprising that international crimes lie at the heart of this intersection.

A particularly prominent illustration of this dynamic can be found in Germany, where "denialism" laws can be traced back to the early-to-mid-1990s when German lawmakers decided to consider a new provision in the *Strafgezetzbuch* (StGB) which would specifically criminalise the denial of the Holocaust (Pech, 2011; Kurtul, 2022b). At the time, this was not an unprecedented step in Europe, as German lawmakers were trailing behind their French counterparts who had enacted the *Loi Gayssot*[11] when Federal Germany was still relying on *streitbare Demokratie* (or "militant democracy") doctrine[12] to combat the apology, denial, or trivialisation of

[10] It is worth noting that two separate words for "lawfare" are used in Turkish legal and political discourse. *Hukuk savaşı* or "war of law" is more commonly used for lawfare applied in international disputes (Uraz, 2022), whereas *düşman hukuku* or "hostile law / law of the enemy / law for the enemy" is used for domestic processes aimed at silencing perceived enemies of the political system (Erkan, 2025). Both terms can be translated as "lawfare".

[11] Named after French deputy Jean-Claude Gayssot from the French Communist Party who first drafted the bill in 1990, this French legislation amended the 1881 Act on the Freedom of the Press with a new provision on the "denial of crimes against humanity as defined under the Statute of the Nuremberg International Military Tribunal", effectively criminalising Holocaust denial.

[12] As one may observe in the landmark decision of the European Commission of Human Rights in the *German Communist Party* case (App no 250/57), this prevailing constitutional

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

Nazi crimes, as such acts were interpreted as a threat to Federal German constitutional order (Pech, 2011). After the infamous "Auschwitz lie" case (*ibid*), however, German lawmakers were convinced that a more specific criminal provision was necessary, thereby conceiving Section 130 of the StGB, which criminalised, among other things, "denying or downplaying (international crimes)[13] committed under the rule of National Socialism".

Thus, when contemporary German lawmakers moved to expand the scope of Section 130 StGB, citing obligations under EU law stemming from the well-known Council Framework Decision 2008/913/JHA[14], one might have assumed that the new "denialism" offence would cover *past* genocides, crimes against humanity, and war crimes — as is the case in most other EU Member States (Kurtul, 2022b). However, the parliamentary debates in both the *Bundestag* and the *Bundesrat* in 2022 focused heavily on the ongoing Russian military intervention in Ukraine. Indeed, these discussions unsurprisingly anticipated — and were soon echoed by — the *Bundestag*'s subsequent resolution recognising the 1931–1933 famine in Ukraine as a "genocide" perpetrated by Soviet officials[15] (Kurtul, 2022c). Consequently, despite efforts by the German Ministry of Justice to clarify that courts must "unequivocally determine" that the object of denial constituted an

doctrine in the Federal Republic of Germany bestows significant discretion on German authorities (both judicial and executive) in combating expressions and associations deemed "contrary to the liberal democratic order".

[13] The specific phrase used in the provision is "acts of the kind referred to in Sections 6 to 12 of the Code of Crimes against International Law". These provisions refer to the "core international crimes" in international law; namely, genocide, crimes against humanity, and war crimes.

[14] Officially named "Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law", this instrument of EU law envisions, among other things, the criminalisation of racial discrimination (including hate speech) and the denial of the commission of core international crimes.

[15] Some historians and politicians refer to this tragedy as "Holodomor", a man-made famine targeting Ukrainian nationhood (*inter alia*, Graziosi, Hajda, Hryn, 2014). However, there is no consensus on whether the famine was "man-made" (*inter alia*, Tauger, 1991; 2015), let alone whether the act described in this narrative constitutes the crime of genocide (Kurtul, 2022c).

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

international crime in order to establish the *actus reus* of the offence,[16] it was clear that the recognition of the 1931–1933 famine as "genocide" — and the earlier legislative attempt to criminalise "denialism" — could not be viewed as independent from the German government's broader policy of military support to Ukraine and hostility towards Russia. In this light, German lawmakers' "legislative activism" entails the use of legislative functions to delegitimise a geopolitical adversary in the context of an ongoing armed conflict and, at the same time, generates an internal chilling effect[17] among critics of German foreign policy on the ongoing war — thereby epitomising modern lawfare.

Of course, the aforementioned German example is not an isolated one in terms of invoking international crimes for the purpose of pursuing a geopolitical or military objective in the context of lawfare. Indeed, the declarations of former Vice President of the International Court of Justice (ICJ), Kirill Gevorgian,[18] and another prominent judge of the ICJ, Xue Hanqin[19] in the ongoing case between Ukraine and Russia on the application of the Genocide Convention demonstrate how the Convention may be misused to obtain a ruling on *jus ad bellum* with a "reverse compliance" argument. The position of Gevorgian and Xue is firmly rooted in the ICJ's earlier decisions in relation to submissions filed by the former Federal Republic of Yugoslavia and its continuing state, Serbia and Montenegro,

[16] Bundesministerium der Justiz und für Verbraucherschutz, 'FAQ zu § 130 StGB' (*BMJV*, 28 October 2022) <https://www.bmjv.de/SharedDocs/Meldungen/DE/2022/1028_Paragraph130_FAQ.html> date accessed 5 July 2025.

[17] In this context, it is necessary to stress that the threshold for legitimate interferences with political speech in "denialism" cases (excluding Holocaust denial) is quite high under Europe's regional human rights regime. See *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) and *Mercan and Others v Switzerland* App no 18411/11 (ECtHR, 28 November 2017).

[18] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation), Provisional Measures* (Order of 16 March 2022) [2022] ICJ Rep 2022, 211.

[19] *Ibid*.

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https://doi.org//10.6092/issn.2724-6299/22381

against NATO Member States regarding the extensive bombing campaign conducted in former Yugoslav territory. Indeed, in these cases, the ICJ had taken an approach that clearly contradicted its recent Orders and Judgment in relation to the war in Ukraine, as it had stressed that the use of force in itself could not "constitute an act of genocide within the meaning of Article II"[20] of the Genocide Convention, which also meant that the ICJ could not previously claim *prima facie* jurisdiction on these grounds. Regardless, in assessing Ukraine's submissions, the ICJ took a different path which, combined with the apparent lack of neutrality and objectivity in the majority of Article 63 interventions [21] filed at the preliminary objections stage, consolidated the possibility for the use of the ICJ as "a field of lawfare" (Uraz, 2025) in future cases.

Another evolving element in the dynamics between "external / international lawfare" and "internal / domestic lawfare" is the role of human rights law in the execution of lawfare. The starting point of this evolution, however, is not very recent: indeed, the judgment of the European Court of Human Rights[22] (ECtHR) in the inter-state case between Cyprus and Turkey was treated as a political victory by the authorities of the applicant State while authorities of the respondent State viewed it as a ruling marred by prejudice in view of the perceived anti-Turkish bias of the Council of Europe in relation to the Cyprus issue (Özersay and Gürel, 2008). Thus, dissenting opinions on the majority's assessment regarding whether Northern Cypriot courts could provide effective remedies [23] and practical questions pertaining to the determination of moral damages in the context of just satisfaction [24] (Pustorino, 2014) have been overshadowed by (geo)political debates

[20] *Legality of Use of Force (Yugoslavia v Belgium), Provisional Measures* (Order of 2 June 1999) [1999] ICJ Rep 1999 (I), 137.
[21] In this context, Article 63 refers to Article 63 of the Statute of the International Court of Justice.
[22] *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001).
[23] See the partially dissenting opinions of judges Marcus-Helmons, Fuad, Palm, Jungwiert, Levits, Pantiru, and Kovler.
[24] *Cyprus v Turkey* App no 25781/94 (ECtHR, 12 May 2014).

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https://doi.org//10.6092/issn.2724-6299/22381

inevitably linked to Turkish military actions (and Greek Cypriot reaction thereof) in Cyprus.

It scarcely requires emphasis that the war in Ukraine has taken the use of the Strasbourg court as "an ICJ-like field of lawfare" to a new level. No case exemplifies this evolving phenomenon better than Ukraine's application against Russia regarding Crimea, as the judgment of the European Court of Human Rights in this case has been hailed as a "clear and undeniable victory for Ukraine" (Dzehtsiarou, 2024), given that the ECtHR ruled against the respondent State on grounds of almost every substantive and procedural right enshrined in the European Convention on Human Rights (ECHR). There were, however, a procedural ambiguity and a jurisdictional grey area which had to be interpreted against the respondent State in order to realise this decisive victory: i.e., the absence of submissions by Russia due to its withdrawal from the Council of Europe, and challenges *ratione materiae* in the context of international humanitarian law. With regard to the former, Russia was deprived of a list of *ad hoc* judges who qualified to sit in proceedings where Russia appeared as the respondent State, as Russia was no longer a High Contracting Party, even though it could be held responsible for Convention violations which occurred prior to its withdrawal. Consequently, there was a grey area as to what extent Russia could benefit from the procedural guarantees in the Rules of Court, in accordance with the adversarial principle. Furthermore, with regard to the alleged violation of the right to a fair trial, the Strasbourg court referred to the realm of international humanitarian law in holding that the courts established by the occupying power could not be deemed established by law.[25] While the ECtHR had taken a similar approach in *Cyprus v Turkey* in light of the ICJ's Advisory Opinion in the Namibia case,[26] it had faced significant opposition from dissenting

[25] *Ukraine v Russia (re Crimea)* Apps nos 20958/14 and 38334/18 (ECtHR, 25 June 2024) paras 913, 914, 915, 916.
[26] *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001) para 90.

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https://doi.org//10.6092/issn.2724-6299/22381

judges who argued that the non-recognition of domestic courts in the Turkish Republic of Northern Cyprus could hinder the access of both Turkish Cypriots and Greek Cypriots to the ECtHR[27]—which apparently did not apply to the Russians of Crimea as Russia had already withdrawn from the Council of Europe. Moreover, Russia's withdrawal arguably resulted in a judicial monologue, as most Ukrainian arguments were readily accepted by the Court in the absence of an adversary, and the Court delivered its judgment without any qualms as to the relationship between Russia and the Council of Europe (Dzehtsiarou, 2024).

Despite Dunlap's earlier allusions (Dunlap 2010), there is another key dynamic between contemporary "external / international lawfare" and "internal / domestic lawfare" which must be discussed in a new light: unilateral coercive measures. As the author of this foreword had pointed out in an earlier piece published in *Athena* (Kurtul 2022a), the employment of comprehensive unilateral coercive measures against other sovereign states has been widely viewed as a violation of the principle of non-intervention, especially when the purpose of the measures is to enforce regime change without resorting to open warfare. More recently, however, experts[28] in the fields of international human rights law and public international law have also drawn attention to human rights implications of targeted unilateral coercive measures, i.e., unilateral coercive measures targeting natural or legal persons (colloquially referred to as "Magnitsky sanctions"), with focus on the right to a fair trial and the right to an effective remedy (see, *inter alia*, Douhan, 2017; 2021 [29]). Outright denial of such procedural rights — ostensibly for geopolitical goals — has unfortunately become very common since Russia's military intervention in Ukraine, as journalists have frequently been

[27] See footnote no. 23.
[28] Including, but not limited to, Alfred Maurice De Zayas (2023) and Alena Douhan (2017).
[29] This refers to Douhan's report on the notion, types and qualification of unilateral coercive measures, in her capacity as the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (UN Doc A/HRC/48/59).

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https://doi.org//10.6092/issn.2724-6299/22381

sanctioned by governments and supranational organisations for reporting "on the wrong side of the conflict", with restricted avenues for redress.[30]

One of the most recent (and poignant) examples of this evolving phenomenon is the case of Turkish citizen Hüseyin Doğru, who has been subjected to unilateral coercive measures by the Council of the European Union[31] and the German Government (More and Murray, 2025) on grounds of his alleged participation in Russia's destabilising actions in the European Union, which the German Government tried to substantiate by claiming that Doğru's media company and state-owned Russia Today were closely linked (*ibid*). Regardless, one could argue that this was a politically convenient explanation for German authorities, as the rationale offered by the Council of the European Union also referenced Doğru's reporting of pro-Palestinian protests in Germany,[32] which also included footage of police brutality (Vračar, 2025).

Regardless of some of the grim examples provided above, it is necessary to underline that not all forms of modern lawfare constitute a grave violation of human rights in a domestic sphere, or the manipulation of international law for geopolitical purposes. In other words, "lawfare" does not mean a lack of legal grounds or legal reasoning, for it typically entails the employment of a sound legal strategy to overcome an adversary, be it home or abroad. It follows that, in defining and "identifying" lawfare with intellectual integrity,

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[30] In the context of EU law, a natural or legal person subjected to unilateral coercive measures may challenge the decision of the Council before the General Court in Luxembourg; however, this is typically preceded by a request to the Council to review its decision. As the procedure effectively reverses the burden of proof while implementing *de facto* penalties in a manner akin to criminal law, it is very difficult to argue that the right to a fair trial and the right to an effective remedy are fully respected.

[31] See Council of the EU, 'Russian hybrid threats: EU lists further 21 individuals and 6 entities and introduces sectoral measures in response to destabilising activities against the EU, its member states and international partners' (*Council of the EU*, 20 May 2025) <https://www.consilium.europa.eu/en/press/press-releases/2025/05/20/russian-hybrid-threats-eu-lists-further-21-individuals-and-6-entities-and-introduces-sectoral-measures-in-response-to-destabilising-activities-against-the-eu-its-member-states-and-international-partners/> date accessed 3 July 2025.

[32] Council Decision (CFSP) 2025/966 of 20 May 2025 amending Decision (CFSP) 2024/2643 concerning restrictive measures in view of Russia's destabilising activities [2025] OJ L, 2025/966.

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

legal scholars need to think beyond the perceived "duty" to "overcome the adversary", which is brilliantly illustrated by our contributors, Dr Eric Loefflad and Dr Onur Uraz.

3. "Lawfare as a Discourse" and "Lawfare as the Strategic Use of Law"

The two "lawfare" contributions in this issue approach the subject from fundamentally different — though not opposing — standpoints, each situated within the broader categories of "external / international lawfare" and "internal / domestic lawfare" outlined above. The first piece, written by Dr Eric Loefflad, offers a novel understanding of lawfare as a discourse rather than a strategic use of law in the strict sense. In doing so, he departs from the affective assumptions attached to the use of the term lawfare, with focus on the fear of moral injury connected with the term in US and Israeli literature. Within this framework, he draws inspiration from more "traditional" interpretations of lawfare, and deconstructs these views in underscoring a common concern among US and Israeli authors: i.e., the use of "lawfare" by the non-Western adversary which could portray the US or Israel as violators of (for instance) international humanitarian law, thereby affecting the morale, cohesion, and legitimacy of the military as an institution in the eyes of the public.

The second piece, written by Dr Onur Uraz, departs from the idea that lawfare is "the strategic use of legal norms, instruments and mechanisms not only for the resolution of legal disputes or the maintenance of legal order and justice, but also, or alternatively, for the achievement of political, military, moral or strategic objectives." Uraz draws his definition from his study of "traditional" lawfare literature within the framework of "external / international lawfare" and carefully formulates his proposition with a view to encompass all previous definitions of lawfare in the context of international law. Uraz then applies this definition to pending cases "of high politics"

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

before the ICJ, including those relating to the field of international human rights law—specifically, the application of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

One may therefore assume, at first view, that Uraz's piece builds on and contributes to the ongoing debate on "lawfare as a weapon" in the broad sense, especially since he uses Kittrie's definition of "instrumental lawfare" as a starting point and focuses more on legal practice. However, the novelty of Uraz's piece lies in its impeccable intellectual honesty and objectivity within the context of "traditional" lawfare literature, which is evident in his argument that lawfare practised before the ICJ may also help reinforce international norms and the peaceful resolution of disputes. In the latter context, Uraz further contends that such an outcome would bolster the perception of the ICJ as a legitimate and efficient forum—which could, in turn, render the "World Court" a viable platform for "weaker" states seeking to use international law "as a shield" in face of "egregious violations of the most basic principles of international law" as epitomised by Israeli actions in Gaza.[33]

According to Loefflad, on the other hand, such an outcome is exactly what more potent states like the United States (or Israel) might fear. Indeed, Loefflad's piece illustrates how the landmark judgment of the ICJ in *Nicaragua v United States*[34] led "Reaganites" to view international law as a threat to the United States, thereby influencing the position of the Reagan administration in relation to the Additional Protocols of the Geneva Convention, which they refused to submit to the US Senate for ratification. In this respect, Loefflad also addresses how the "special relationship" between the United States and Israel—forged by shared traumatic legacies and political ideologies — influences the affective genealogy of lawfare, as

[33] In this regard, one could cite (among other things) the recent report by Francesca Albanese, UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (UN Doc A/HRC/59/23).
[34] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States), Jurisdiction and Admissibility* [1986] 1984 ICJ Rep. 392.

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he draws parallels between the US' fear of international cases and Israeli views on Palestinians' right to self-determination under international law.

However, as Uraz notes in relation to the "traditional" lawfare literature, the use of lawfare also carries significant risks — particularly within the frameworks of international criminal law and international human rights law. In the latter context, he highlights (among other things) the submissions made before the ICJ by Armenia and Azerbaijan against one another under the ICERD, illustrating how both recently belligerent states have invoked human rights arguments to advance moral and political goals. In a similar vein, Uraz also stresses that the Genocide Convention is prone to be misused in the context of lawfare, citing the aforementioned submission made by Ukraine. A noteworthy observation that Uraz makes in this respect is that "the general political situation determines the course of lawfare, while lawfare contributes to the political discourse", which complements Loefflad's point on how the internal contradictions of liberalism regarding the perception of international law fuel the discourse of lawfare.

In sum, despite methodological differences, both authors recognise that lawfare can be effectively employed by weaker parties in a dispute or conflict and may even produce positive outcomes — a view that runs counter to its prevailing portrayal in much of the English-language literature on lawfare. In this regard, Uraz's detailed study falls within the category of "external / international lawfare"; he adopts a doctrinal and practice-oriented approach to assess both the advantages and potential risks of deploying such strategies within international legal frameworks. Loefflad, by contrast, engages with both "internal / domestic" and "external / international" dimensions from a more theoretical standpoint — though with a particular emphasis on the latter and its influence on legal scholarship and political discourse emanating from the United States and Israel.

Together, these contributions offer a clear departure from the one-sided and antagonistic perspectives that have characterised much of the existing

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

literature in English, thereby broadening the interpretive horizon of lawfare scholarship.

4. Transcending the "us" and "them" Dichotomy: The Future of Lawfare and International Crimes

As the great Antonio Gramsci had observed in a prison cell in 1930, a great variety of morbid symptoms emerge in a state of interregnum where the old is dead, yet the new cannot be born (Gramsci, 2015, 311; my translation). The bellicose climate we are experiencing can be deemed such a symptom: one hardly needs to point out that we are at the end of Fukuyama's "end of history" (1992) and Hardt and Negri's "Empire" (2000), as the unipolar world envisioned by these authors has gradually transformed into a multipolar world which inherited the same inherently war-prone socio-economic system and contradictions thereof (*inter alia* Lenin, 1963; Guérin, 1938).

Yet this is not merely a repetition of Cicero's maxim *silent enim leges inter arma* — as cited earlier (Cicero, 53, § 11). What we witness more frequently in this interregnum is not simply the silencing of law, but rather the widespread disregard for international law on the global stage and the weaponisation of domestic law to undermine the rule of law at the national level. These developments do not displace the strategic use of law to overcome adversaries; instead, they operate alongside it, compounding the legal fragmentation of the current moment.

One should recognise, in any event, that attempts to judicially resolve international disputes are frequently perceived as lawfare by respondent parties, irrespective of the intent of the claimants. As the reader will observe in the contributions to this issue, Israel and the United States are glaring examples of this phenomenon in a contemporary context, but it would be wrong to assume that all examples are inherently and exclusively malign. As a matter of fact, due to the overtly Western — or, as Anghie (2004) illustrates, imperialistic — origins of modern international law, early 20th century

ISSN 2724-6299 (Online)
https://doi.org//10.6092/issn.2724-6299/22381

international lawyers in Republican Turkey (Kurtul and Uraz, 2025) and China (Zhang, 2024) were suspicious towards Western legal actions due to previous experiences with capitulations and unequal treaties granting Western powers and their subjects a privileged status within Ottoman and Qing jurisdictions.

Notwithstanding these deeply ingrained perceptions and contemporary contradictions rooted in unipolarity, a multipolar world provides us with the opportunity to transcend this "us" and "them" dichotomy — at least at an intellectual (or scholarly) level. This task is by no means an easy one, as legal and diplomatic practice evolves in the opposite direction: a case in point is the very recent creation of the "Special Tribunal for the Crime of Aggression against Ukraine" under the auspices of the Council of Europe, with the support of the NATO Parliamentary Assembly[35] and the European Union.[36] Irrespective of the illegality of Russia's military intervention, such unsophisticated and blatant acts of lawfare are unlikely to contribute to the peaceful resolution of the ongoing conflict, deliver justice to victims, or effectively prosecute international criminals. Instead, a more likely outcome is the weaponisation of international crimes to pursue geopolitical and military objectives, which will inevitably cast doubt on the legitimacy of the conceptualisation of international crimes in the eyes of the broader international community, leading to normative or practical gaps in preventing and punishing some of the most atrocious crimes in existence.

[35] NATO Parliamentary Assembly, *Resolution 479 – NATO Post-Madrid* (NATO PA, 2022 Madrid Annual Session, 21 November 2022) https://www.nato-pa.int/download-file?filename=/sites/default/files/2022-11/RESOLUTION%20479%20-%20%20NATO%20POST%20MADRID%20.pdf date accessed 3 July 2025.

[36] European Commission, 'Statement by President von der Leyen on Russian accountability and the use of Russian frozen assets' (30 November 2022) <https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7307 date accessed 3 July 2025; European Parliament, 'Ukraine war: MEPs push for special tribunal to punish Russian crimes' (Press Release, 19 January 2023) https://www.europarl.europa.eu/news/en/press-room/20230113IPR66653/ukraine-war-meps-push-for-special-tribunal-to-punish-russian-crimes date accessed 3 July 2025.

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https://doi.org//10.6092/issn.2724-6299/22381

In spite of such evident challenges, the valiant efforts to define lawfare — exemplified by the contributions of Dr Loefflad and Dr Uraz — offer a pathway for legal scholarship to look beyond the conflict and reassert the centrality of the international rule of law. Achieving this, however, necessitates a sustained and candid dialogue among scholars situated on both "sides" of the divide. It is hoped that the present issue constitutes a meaningful step towards fostering such engagement.

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