

Implications of International Lawfare for the Global Security Architecture

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Abstract- The article analyses certain implications for global security architecture of using international law as an instrument of power by states in the digital age. The author's point of view is that in conditions of rising geopolitical competition, using international legal warfare to achieve strategic objectives increases the risks and threats for stability of international order. The scientific paper is divided into four sections. In the introduction, the main problem related to international lawfare is defined, including its significance for our international community. The first section defines a legal research methodology that is applied. The second conceptualizes international legal warfare. The third examines different cases of lawfare that have negative implications for global security architecture. The fourth deals with emerging and disruptive technologies that define geopolitical competition and how they relate to lawfare. In the conclusion, an assessment is provided regarding developments of international law, including its normative role for the global security architecture. The paper makes few recommendations for preservation of current international order, which is being challenged by the growing number of legal warfare practices between various geopolitical actors.

Keywords- Arms Control, Emerging and Disruptive Technologies, Global Security Architecture, Lawfare

I. INTRODUCTION

In conditions of resource depletion and changing international order, the strategic competition between states is increasing [1]. New powerful actors emerge in the Global South, which challenge the geopolitical status quo. They demand a greater share in the global governance, as well as a stronger role in the global financial system. Meanwhile, the emerging and disruptive technologies (EDT) are changing the nature of state confrontation, including the means and methods of warfare. International actors are using old and new instruments of national power to achieve strategic advantage [2] over their opponents. International law is instrumentalized and misused in order to consolidate or undermine established relations of power [3].

However, using the international legal system as an instrument of power or as a catalyst to achieve national strategic objectives, undermines the main role and purpose of international law, which is to regulate the relations between states. Since international law is becoming ineffective in resolving interstate issues, countries are increasingly referring to hard power-based mechanisms for resolving their disputes. The implications of this negative trend are an increased militarization of international relations and emergence of new risks and threats to the global security architecture. The most relevant case in point of legal warfare (lawfare) is the intentional dismantlement of several arms control treaties during the last decade by states in order to gain strategic advantage over their competitors. In a digital era of EDT, removing the mutually agreed upon restraints on specific weapons or the infringement of legal norms, related to global security, is even more dangerous than the times of the Cold War, and might cause serious military consequences for the international order and the humankind.

II. MATERIALS AND METHODS

The study applies a legal research methodology, including doctrinal research and legal scholarship. Doctrinal research as a legal method is employed to systematize, interpret, and clarify the law pertaining to several cases of international lawfare by analysing authoritative texts. Primary legal sources include the UN Charter, the UN Convention on the Law of the Sea (UNCLOS), the Outer Space Treaty (OST), the Comprehensive Nuclear-Test-Ban Treaty (CTBT), the Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START), and the Intermediate-Range Nuclear Forces (INF) Treaty, as well as case law of the International Court of Justice (ICJ). Secondary legal sources include the Journal of Strategic Studies, the Journal of National Security Law and Policy, the Journal on Baltic Security, the Journal on the Use of Force and International Law, as well as publications from authoritative think tanks such as the RAND Corporation, the Center for Strategic and International Studies, the

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Stockholm International Peace Research Institute (SIPRI), the Institut français des relations internationales, etc.

The study applies empirical legal scholarship in which qualitative methods from international relations are combined and employed, including content analysis, case selection, and process tracing in order to assess the implications of lawfare for international security system in the 21st century. Empirical arguments are provided in order to highlight the normative points made in the article.

III. RESULTS AND DISCUSSION

A. Defining International Lawfare

International law is the product of aspiration of international community to establish world order, wherein each country is able to realize peacefully its national interests and its full potential, as well as to interact in a constructive manner with other states [4]. In other words, the regulative role of international law is based on the perception and consensus of all states that certain rules and principles must be observed, since the whole global community benefits from this.

In light of the foregoing, international law is a symbol of hope and desire of humankind for peace. Whatever its shortcomings, it exists as a promise to establish justice and as a motivating factor for the realization of political transformation [5] on a global scale. Further, international law provides weaker states with an opportunity to file claims before courts against stronger countries, as well as to compete with them in the legal domain on equal basis. In this regard, it is a standard for criticism against power politics and a means of protecting infringed interests. However, international law is also used as an instrument of power, supporting the realization of national interests and geopolitical ambitions of particular state leaders.

International lawfare corresponds with the last purpose mentioned hereinabove. It is defined as the use of an international legal system to establish, perpetuate, or amend power relations in order to counter an adversary [6] and disrupt its actions. This is achieved by overcoming legal constraints through reinterpreting existing rules of law. Another way is by virtue of creating new norms or by means of using international litigation to achieve a strategic effect. Finally, international law can be utilized to inflict reputational damages to the opponent [6, pp. 10-15]. An important feature of lawfare is that the use or misuse of the international legal system should be a substitute for traditional military means [7] or to complement them. Therefore, in order to define a legal act as lawfare, it is mandatory to be in relation to ongoing military activity. It can be applied on the tactical, operational, and strategic level [8].

Nonetheless, some authors claim that lawfare might have a positive connotation. For instance, using lawfare instead of military means can reduce the destructiveness of war [7] or at least its intensity. Furthermore, lawfare can serve weaker states as a tool for overcoming material and power inequality against their stronger foes. This is

achieved through strategic litigations, since the parties to a lawsuit are equal before the law and before the court.

International law has evolved throughout the time – from practices based on the code of chivalry to becoming a crucial element in defining strategic competition and modern warfare [9] in the 21st century. In the past, it was narrowly used to assess what is permitted and what is forbidden during a conflict. Nowadays, it is often applied by states as a mode of warfare to legitimize or challenge certain activities in condition of strategic competition in order to achieve advantage against their opponents, as well as to justify the use of force (*jus ad bellum*) or the conduct of hostilities (*jus in bello*) in armed conflicts.

Lawfare is often included in information and psychological operations in order to strengthen certain claims and narratives. In other words, nowadays, the legal preparation of the battlefield, as well as using legal systems during the conflict, are of crucial importance for the success of the political and/or military strategy in terms of the ability of the state leadership to legitimize a military operation or a geopolitical project in order to gain societal support. Lawfare leverages activities within the legal “grey zone”, wherein it is extremely difficult to apply basic norms and principles related to strategic deterrence, harnessing cutting-edge technologies or the use of force [10].

Further, EDT has accelerated states’ capabilities to use the legal “grey zone” in order to achieve their national objectives, thus making these legal challenges the norm, rather than the exception [10]. For instance, malicious activities of states in cyber space are highly difficult to attribute to. Moreover, lawfare is employed by states even out of the legal “grey zone”, where international norms and principles are being violated for the sake of strengthening strategic deterrence or improving communication capabilities. However, such cases of international lawfare in conditions of global militarization [11] and EDT generate new risks for the global security architecture.

B. Cases of International Lawfare with Negative Implications for the Global Security Architecture

China has developed the most sophisticated lawfare strategy in the world within the framework of its “Three Warfares” concept. The Chinese leadership perceives legal warfare as an instrument of power that is capable of strengthening the geopolitical initiatives or supporting potential war efforts [12] of the country. For instance, Beijing’s expansionist strategy in South China Sea is based on combination of lawfare tactics and nationalist misinterpretation of history. The Chinese leadership has made several legal claims regarding sovereignty and territorial rights over disputed islands and archipelagos in South China Sea such as the Paracel and Spratly Islands. Meanwhile, Beijing has ignored the South China Sea Arbitration award [13], which concluded that China’s claims have no sufficient legal grounds under the UNCLOS. Further, Beijing is expanding its Exclusive Economic Zone (EEZ) through the creation of artificial islands on top of coral reefs, which subsequently militarizes, thus violating the EEZ of other countries in the region and undermining the limitations stipulated in

UNCLOS. Meanwhile, China claims that according to international law, foreign military activities in its EEZ, such as reconnaissance flights, are forbidden.

The purpose of China's lawfare strategy regarding UNCLOS is to consolidate Beijing's control over South China Sea [14] and its abundant resources. However, this approach in a region of geostrategic importance such as South China Sea, might have enormous negative military consequences, since Chinese lawfare is directed towards challenging the USA military presence in the area, thus increasing the risk of serious incidents between two nuclear powers [3, p. 13-17].

Another case of lawfare is China's active engagement in establishing the legal framework that will govern outer space activities in the next decades. Beijing perceives it as a strategic domain for future competition with other states such as Russia and the USA, where harnessing advanced space technologies will lead to advantages [15]. Space activities are governed by the OST, which only stipulates the main principles and basic rules of law. It defines the exploration and utilization of outer space to be for the benefit and in the interests of the humankind. As per the OST, outer space shall be free for exploration and use by all countries and shall not be a subject to national appropriation by claims of sovereignty. Furthermore, OST prohibits the placement of nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies. Therefore, the limited body of international law in this field provides China with opportunities to engage and shape the normative dialogue regarding future space regulations in its own interest.

By virtue of lawfare, China's assertion of sovereignty over outer space above its national territory aims at countering or controlling the satellites overflown over the state [16]. However, claims of "vertical sovereignty" is in contradiction to OST [17, p. 168], since it restricts the freedom of action of other states in outer space. Furthermore, on false legal grounds of self-defence (art. 51 of the UN Charter), Beijing is actively improving its counterspace weapons capabilities and has implemented reforms to integrate more effectively cyberspace, space and electronic warfare into joint military operations [16, p. 464].

The Chinese perception of sovereignty also extends to cyber security, thereby including the protection of both the technology and the actual data transmitted and stored across the Internet. The government has imposed strict regulations in order to control and monitor the internet resources and data traffic. However, this approach goes in contradiction to China's practice of harvesting data from other states, conducting cyber operations, thereby establishing a double-standard that makes it difficult to predict if Beijing is going to comply or not with international law [18]. Moreover, the Chinese leadership has refused on many occasions to recognize that international law, including *jus ad bellum* and *jus in bello*, applies to cyberspace [17, p. 169].

The gravest challenge for the international order in the 21st century stems from Russia's pursuit of great power status through force and use of legal warfare. In order to achieve its geopolitical objectives, the Kremlin is undermining basic legal principles such as the obligation to comply with international treaties and the inviolability of national borders in Europe [19]. Moscow is also eroding nuclear norms and institutions [20].

Russia has used on several occasions lawfare to make territorial, political, and economic claims against its neighbouring countries (Moldova, Georgia, Ukraine). The Russian leadership has tried to advance a legal justification for its use of force against Ukraine in order to receive support from the international community and its own population. However, the Russian legal claims (self-defence, humanitarian intervention, etc.) failed on multiple grounds. The Russian "special military operation" in Ukraine constitutes an unlawful use of force [21], which can be defined as an act of aggression and a grave breach of article 2 (4) of the UN Charter which is a *jus cogens* norm with *erga omnes* effects. In terms of *jus in bello*, during the armed conflict, Russia has perpetrated a wide range of war crimes, including the intentional targeting of civilians and critical infrastructure [22].

Furthermore, Moscow has ignored the ICJ provisional measures order to immediately suspend its military operations in the territory of Ukraine [23], as well as ICJ's judgement, confirming Russia's international law breaches, including the failure to investigate terrorism financing and the suppression of Ukrainian language and culture in Crimea [24]. Moscow has also ignored the International Criminal Court's (ICC) arrest warrants against representatives of the Russian military and political leadership on the grounds that the Kremlin does not recognize the ICC's jurisdiction. In accordance with the responsibility of states for internationally wrongful acts, the West has taken collective countermeasures against Russia, including but not limited to the blocking of around \$300 billion of sovereign Russian assets [25]. Moscow has tried to unblock a significant part of them by virtue of lawfare, including through strategic litigation, but to this day its attempts are unsuccessful [26].

Russia employs lawfare as part of its strategic deterrence policy against the West. For instance, on 19 November 2024, the Kremlin approved new nuclear doctrine, lowering the nuclear threshold as a signal to the West [27]. Further, the Kremlin withdrew its ratification of the CTBT, which prohibits all nuclear explosions, whether for military or for peaceful purposes. It suspended the New START treaty last year, which reduces nuclear arms between the US and Russia, and establishes a limit on deployed strategic warheads. Before that Moscow breached the INF Treaty, which had stipulated the prohibition of all US and Soviet missiles with ranges between 500 and 5,500 kilometres.

In light of the foregoing, Russia's lawfare in arms control undermines nuclear institutions and norms, including nonproliferation, nonuse, and nontesting [20, p.

4], thus increasing the risks for the global security architecture. On the other hand, Russia continues to pretend that it is adhering to arms control treaties, while modernizing its nuclear capabilities and escalating nuclear threats in order to advance its objectives in the war in Ukraine [28].

Through lawfare Russia exploits successfully UNCLOS norms in order to increase its influence and sovereignty rights in the Arctic area. Moscow perceives the region as being of strategic importance for its defence planning and economic development, thus rebuilding its military capabilities and modernizing its regional military infrastructure [29]. Meanwhile, the Kremlin had made a claim to the Commission on the Limits of the Continental Shelf (CLCS) regarding North Pole territory. These claims have significantly increased its limits of the continental shelf beyond 200 M from the baselines in respect of the Arctic Ocean. While the CLCS did not approve the entirety of the approximate 2 million square kilometres claimed by the Russian Federation, the submission to a great extent was approved in February 2023, rejecting only approximately 300 000 square km of claimed entitlement [30]. The Russian claim collides with sovereignty demands of Greenland/Denmark and Canada, especially regarding the Lomonosov Ridge area. Even though the dispute is not resolved, and the recommendations of CLCS are not legally binding, they have normative value, since the Kremlin's claim is recognized by the highest international authority in the field.

Russia's lawfare strategy is aimed at influencing the polar governance in its favour in the long-term, including the ability to exercise control, claim sovereignty rights over the Northern Sea Route, and generate denial capabilities [29]. However, this highly securitized and militarized approach to the Arctic area has direct negative consequences for other polar nations such as Canada, Denmark, Finland, Norway, Sweden, and US, which have experienced infringement of their maritime rights by Russia and are being engaged in another area of competition.

Furthermore, the Kremlin applies lawfare in the UN Security Council (UNSC) to advance its own interests. For instance, Moscow's decision to exercise a veto in March 2024 against the United Nations' renewal of the panel of UN experts blocks the ability of the international community to monitor North Korea's compliance with international sanctions. Deepening Russia-North Korea relations, including via a new revised security alliance [31], would encourage Pyongyang to continue endangering the global security architecture by virtue of nuclear threats and the development of long-range ballistic missiles.

While the US does not have a clear lawfare strategy like China or Russia, it has resorted to legal techniques in order to deal with foreign policy challenges in the past. In fact, there are several attempts to conceptualize, operationalize and legitimize lawfare in the US in order to create legal combat capabilities [32]. The decision of Washington to withdraw from the Treaty on Open Skies in 2020 and from the INF treaty in 2019 is an example of lawfare which

aimed at addressing non-compliance issues with Russia. The Treaty on Open Skies allowed the parties, including the US and Russia, to operate unarmed observation flights over one another's territory. Even though Washington's actions had been provoked by Russia's intentional and systematic violations of these treaties, they had a huge negative impact on the arms control efforts of the international community.

The US employs lawfare by targeting geopolitical competitors with financial and economic sanctions [3], including China, Iran, Cuba, Venezuela, Russia, etc. These coercive measures have a significant negative effect on GDP growth and consumption in the targeted countries, as well as on their trade and foreign direct investments [33]. However, sanctions on such a scale as observed nowadays, might cause negative shocks within the world economy, capable of disrupting global supply chains and increasing costs for consumers and businesses the world over.

Lawfare has also been used by weaker states against their stronger competitors. For instance, during the war, Ukraine has employed strategic litigation against Russia as a lawfare tactic. It has filed two cases at the ICJ and two arbitrations before the International Tribunal for the Law of the Sea. ICC investigations are also underway, as well as efforts to isolate Moscow from international institutions. Ukraine is also using domestic courts to prosecute Russian war criminals and to provide the international community with information regarding Russia's violations of *jus in bello*. Furthermore, certain steps are being taken towards creating a Special Tribunal for the Crime of Aggression against Ukraine, within the framework of the Council of Europe.

Another example of lawfare is Palestine's inter-State communication against Israel before the Committee on the Elimination of Racial Discrimination with regard to Israel's conduct in the Occupied Palestinian Territory (OPT). Moreover, in a nonbinding advisory opinion, in July 2024, ICJ ruled out in favour of Palestine that Israel's continued presence in the OPT is unlawful [34] and must be ceased.

The abovementioned cases of lawfare do not occur in a vacuum. They are interrelated and emerge in a digital era of fast-paced technological development, wherein states compete and cooperate with each other in order to secure resources and new technologies, including in the military domain.

C. Lawfare in Conditions of Emerging and Disruptive Technologies

Technological progress has defined every aspect of our lives. In the digital age, EDT such as big data, artificial intelligence (AI), blockchain, cloud-based solutions, and automation, have a profound effect on the business, economy, interstate relations, and on human interactions all over the world. On the one hand, these technologies can contribute for the realization of global sustainable development goals. In reference to security and defense, EDT are perceived as crucial components of national, institutional and economic growth, contributing to the

realization of strategic autonomy, technological and digital sovereignty, necessary for survival of the state [35].

On the other hand, EDT are capable of eroding global security architecture if applied for malicious purposes. States are engaged in a competition in the field of innovation and breakthrough capabilities [36]. As a result, certain risks from the application of EDT have emerged for the global security architecture, as well as new dilemmas regarding strategic deterrence [37, p. 5]. EDT are defined as cutting-edge technological innovations capable of resolving sophisticated security and defence matters and providing strategic, operational or tactical advantage against the competitor [38], thus revolutionizing military affairs.

Lawfare and EDT are intertwined. States wage lawfare to create and/or influence governing mechanisms that are meant to deal with EDT in the future. The main objectives might include securing better positions in terms of creating new and interpreting existing rules of law, which govern contested domains such as cyber or outer space; protecting own high-tech companies; ensuring better access to global supply chains, thus ensuring the flow of critical materials and resources necessary for technological development [39], [40].

Meanwhile, the application of EDT by states in most of the cases is situated within the “grey zone” of international law, since rules of engagement are weak or do not exist. In other words, while there is no international legal framework that govern disruptive technologies [41], different geopolitical actors are exploiting this opportunity. For instance, cyber-attacks, initiated by Russia and China, against digitalized critical infrastructure, are difficult to attribute. And if successfully attributed, there is no law-enforcement mechanism to be applied against them. Further, there is no comprehensive legal framework, regulating “dual activities” in outer space, examples of which are Beijing’s pursuit of space and counterspace capabilities [42] and its exploitation of maritime “grey” zone situations in South China Sea [43]. There is no universal consensus on a legal regime governing the use of generative AI, which can be exploited for spreading disinformation and propaganda by states such as China [44] and Russia.

As part of EDT, the development of quantum computing capabilities can also be subsumed under the “grey zone” of international law. Harnessing the potential of quantum technologies can provide a state with the ability to read encrypted information transferred over the internet, thus obtaining access to critically sensitive information and securing strategic advantage over its opponents [45].

IV. CONCLUSIONS

International law has structural problems that should be addressed in an urgent manner. At the moment, the UN system is not capable of managing global security matters. Key UN institutions such as the ICJ and the UNSC are unreformed since 1945, as well as the UN Charter provisions on the peaceful settlement of disputes [46]. As a

result, the propensity of states to refer to hard power-based methods and violence instead of international law to solve their contested matters is increasing. Revisionist powers such as Russia, China, and North Korea demonstrate willingness and resoluteness to undermine international law or misuse it for their own benefit. Meanwhile, the US is ready to wage lawfare in order to deter them.

Although there is a notion that lawfare can operate as a positive “good” [7], the author’s point of view is that the more often states refer to legal warfare to achieve their strategic objectives, the greater the risks and threats become for the stability of international order. This applies especially in times of increasing geopolitical competition between leading powers, as we are witnessing today. This hypothesis has been tested and proven by the factual impact on the global security architecture of the aforementioned cases of Russian, Chinese, and American lawfare, as well as by the numbers from SIPRI’s Military Expenditure Database.

First, Russia’s legal warfare is likely to have the strongest negative impact on nuclear norms and institutions, as well as on the prohibition of the use of force in international relations. The Chinese lawfare gravely affects the maritime order that preserves the freedom of the seas, while the American legal warfare disrupts supply chains and create trade barriers on a global scale.

Second, the increasing number of legal warfare cases during the last decade indicates that more states perceive international law as an instrument of power, which is not effective enough or capable of resolving interstate disputes in security, economy, maritime matters, etc. As a result, geopolitical actors more often refer to hard power-based methods to deal with their enemies and competitors. This negative trend has been statistically proven by the fact that the world military expenditure increased for the ninth consecutive year in 2023, reaching a total of 2 443 billion USD [11].

Overall, the potential for a global catastrophic risk has been increasing in recent years and appears likely to increase in the coming decade [47]. International law should be reinvented and legal culture has to be improved in order to meet these challenges and to manage the tectonic geopolitical shifts in the balance of power, including the strategic competition between the leading states of the day. Critical institutions of the UN system must be reformed in order to receive more legitimacy. At the moment, a lot of states are no longer believing in the absolute benefits of global cooperation, but are increasingly concerned that they are gaining less from the international order than others [48].

A good starting point for reforms should be to transfer more powers related to security matters from the UNSC to the UN General Assembly in order to overcome the current deadlock [48]. Furthermore, an entirely new structure within the UN system, dealing with risk escalation management, based on global consensus, should be established and enabled as soon as possible. Last but not least, the international community has to create a legal

framework for the initiation of a dialogue on strategic stability between all nuclear powers.

In an era of fast-paced technological developments and geopolitical competition, international law should be a driving force in defining a legal and ethical framework to minimize the negative effect of EDT on the global security architecture. International legal regimes and standardization are necessary in the fields of big data, quantum technologies, generative AI, bio-, nano-, geospatial technology, blockchain, cloud-computing, FinTech, etc. The “Soft Law” instruments should play an important role in this process, since they are more flexible than “hard law” in achieving consensus on such contested matters.

Further, states must strengthen the concept of compliance (rule of observance) in international law. They should make extra efforts to uphold and reinforce nuclear norms in order to address the risk of weakening arms control in the context of EDT [20]. Moreover, new rules and principles of law protecting the development of technical standards in EDT, from malicious influence should be created and respected.

The international community should achieve consensus on the existence and validity of jus cogens norms with universal legal force and legally binding effect. Well-timed and resolute collective countermeasures must be adopted all the time, when states decide to wage lawfare and perpetrate grave breaches of these norms. This would have a legitimizing and strengthening effect on international law. However, ignoring one’s systemic violations of imperative international rules and principles might motivate others to follow suit, which has the potential to bring the humankind back to the Hobbesian state of nature.

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