

Research Article

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Russian Lawfare – Russia’s Weaponisation Of International And Domestic Law: Implications For The Region And Policy Recommendations

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Abstract: The attempts by Russia under President Putin to assert its hegemonic ambitions against Ukraine and the other countries in what Russia perceives as its “Near Abroad”, have posed serious challenges to the security of the region and the entire international order of the 21st century. „Lawfare (legal warfare) is a pivotal element of Russia’s hybrid toolbox that has remained under-studied by the analytical community Given Lawfare’s central role in Russia’s comprehensive strategy, NATO must develop a deeper understanding of this Russian hybrid warfare domain, and design a unified strategy to counter this major challenge to the European security architecture.

Keywords: lawfare; legal warfare; hybrid warfare.

1 What is Lawfare?

The attempts by Russia under President Putin to assert its hegemonic ambitions against Ukraine and the other countries in what Russia perceives as its ‘Near Abroad’ have posed serious challenges not only to the security of the region but to the international order of the 21st century. During its ongoing aggression against Ukraine, the Kremlin has used a full range of measures in a comprehensive hybrid warfare campaign comprising non-military (political, diplomatic, economic, information-related and cyber) and military (conventional and covert) tools. Given the prominent role of Russia’s information-related and cyber warfare, those two hybrid warfare domains have received most of the public attention and analytical effort so far. However, there is a third pivotal element of Russia’s hybrid toolbox – ‘lawfare’ (legal warfare), which is critically important and equally dangerous but has remained less studied by the analytical community and is effectively still unknown to the general public. Given lawfare’s central role in Russia’s comprehensive strategy, Russia’s neighbours, North Atlantic Treaty Organisation (NATO) and the West, in general, must develop a deeper understanding of this Russian hybrid warfare domain and design a unified strategy to counter this major challenge to the European security architecture and the entire world order.

The goal of this article is to provide a working definition and an overview of this peculiar hybrid domain, propose a model for mapping its techniques as used primarily against Ukraine and the Baltic States and, based on those examples, offer policy recommendations on how it could be tracked and successfully countered.

2 Definitions of Lawfare

The term ‘lawfare’ was first coined by Major General (retired) Charles Dunlap, former US Judge Advocate General and Professor of International Law at Duke University. In his 2009 paper ‘Lawfare: A Decisive Element of 21st-Century

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Conflicts?’,¹ he defined ‘lawfare’ as ‘a method of warfare where law is used as a means of realising a military objective’. He broadened the definition in 2017 to include ‘using law as a form of asymmetrical warfare’². These original definitions focus on the exploitation of the law primarily for military purposes, which is understandable given that the term ‘hybrid warfare’ did not enter the Western political parlance until the summer of 2014 with its official adoption by NATO. Given the prevalence of non-military over military means (not only in an asymmetric military sense) in Gerasimov’s hybrid warfare model presented in February 2013, it is necessary to revisit and broaden the original definition of ‘lawfare’ in a holistic fashion in order to place Russian lawfare in its proper context as one of the pivotal domains of Russian hybrid warfare. In his 2016 update to his original model, Gerasimov stated that ‘Hybrid Warfare requires high-tech weapons and a scientific substantiation’³. In this regard, Russian lawfare’s primary function is to underpin these efforts by providing them legal foundation and justification. To be precise, the term ‘lawfare’ itself does not exist in Russian, but the 2014 Russian military doctrine recognises the use of legal means among other non-military tools for defending Russia’s interests.⁴ As this paper demonstrates, Russia has been using international law as a weapon since at least the 18th century.

Russian lawfare is the domain that intertwines with, and supports, Russian information warfare, thus providing the (quasi)-legal justification for Russia’s propaganda claims and aggressive actions. To provide further granularity, the legal domain of Russian hybrid warfare can be understood in its entirety only through a comprehensive analysis of the intersection of the areas of law with the various other domains of hybrid warfare of military and non-military nature.

3 The Imperial Origins of Russian Lawfare

The roots of this type of Russian conduct should be sought in the history of the Russian and Soviet interactions with the international system of nation-states, known as ‘the Westphalian order’. At various times in its history, Russia has either been invited to the European Concert of Powers or invaded by some of those Powers. In its formative centuries, the nascent Russian empire did not deal with its neighbouring states as equals but took part in their partition (the Polish–Lithuanian Commonwealth), and the division of Eastern Europe, into spheres of influence. It also regularly acted to suppress ethnic nationalism within its own territories, while – at the same time – encouraging Balkan nationalisms and exploiting the ethno-religious rifts within the Ottoman Empire throughout the 18th and 19th centuries. International law was pivotal for Russia’s expansionist agenda, as it claimed that the 1774 Treaty of Kucuk–Kaynarca with the Ottomans had granted it the right to intervene diplomatically and militarily in the Balkans as the sole protector of the Orthodox Christians.⁵ Based on that fact, 1774 should be regarded as the year of birth of Russian Lawfare. This method for justifying imperial expansionism thrived also during the Soviet era as the Union of Soviet Socialist Republics (USSR) partitioned states, annexed territories and launched overt aggressions and clandestine infiltrations across national borders, in the name of protecting and liberating international workers or in order to impose its limited sovereignty doctrine on its satellite states.⁶

The twisting and permissive reinterpretation of history in support of Russian Lawfare to justify *ex post ante* Russia’s acts of aggression against its neighbours was codified on 24 July 2018 when the Russian Duma adopted a law officially recognising 19 April 1783 as the day of Crimea’s ‘accession’ to the Russian Empire. Catherine the Great’s Manifesto proclaiming the annexation of Crimea is a diplomatic document that had an impact far beyond the borders of Russia and throughout the centuries that followed, and it has regained new relevance in present-day Russian strategy. It is unique also in that Empress Catherine II used arguments from all domains of what we nowadays refer to as ‘hybrid

1 Charles J. Dunlap, Jr., ‘Lawfare: A Decisive Element of 21st-Century Conflicts?’ *54 Joint Force Quarterly*, 34–39, 2009.

2 Charles J. Dunlap, Jr., ‘Lawfare 101: A Primer’, *97 Military Review*, 8–17, May–June, 2017.

3 Valery Gerasimov, ‘Based on the Experience of Syria’, *Military-Industrial Courier*, Issue No. 9, 8 March 2016.

4 ‘The Military Doctrine reflects the attachment of the RF to the use of military means to defend its interests and those of its allies only after having applied political, diplomatic, legal, economic, information and other instruments of non-violent nature.’ *Military Doctrine of the Russian Federation, Provision 5*, 26 December 2014. Russian language original from: <http://static.kremlin.ru/media/events/files/41d527556bec8deb3530.pdf>

5 Roderic H. Davison, ‘The Treaty of Kuchuk Kainardji Reconsidered’, *Slavic Review*, Vol. 35, No. 3 (Sep. 1976), pp. 463–483.

6 For a detailed overview of the history of Russia’s interaction with the European legal system, see Lauri Mälksoo, ‘Russian Approaches to International Law’, *Oxford University Press*, Oxford: 2015.

warfare’ – political, diplomatic, legal, information-related, sociocultural, economic, infrastructural, intelligence-based, as well as military (both conventional and clandestine) – to convince the other Great Powers of Europe using the 18th-century version of strategic communications that Russia had been compelled to step in to protect the local populations in Crimea.⁷ In that regard, 19 April 1783 can be regarded as the official birthdate of Russian hybrid warfare, in its comprehensive, albeit initial form, enriched later by the Soviet traditions of clandestine operations, political warfare and quasi-legal justifications of territorial expansionism. It is noteworthy that the Russian word ‘принятия’ [prinyatiya] used in the text literally means ‘to accept’, and not to annex or incorporate. The authors of the law expressed their confidence that the setting of this new commemoration date for Russia affirms the continuity of the existence of Crimea and the city of Sevastopol as part of the Russian State.⁸ This legal reasoning contravenes the fact that in territorial terms, the Russian Federation (RF) of today is the successor of the Russian Soviet Federative Socialist Republic (RSFSR) as a constituent of the USSR, and not of the Russian Empire, and that the RSFSR only incorporated Crimea from 1922 until 1954.

After the Soviet collapse, the use of lawfare allowed Russia to justify the following: its involvement in Moldova, which created Transnistria in 1992; the 2008 and 2014 invasions of Georgia and Ukraine; and the 2014 annexation of Crimea, including the 2016 Russian involvement in Syria, as these were all presented as essentially humanitarian peacemaking efforts. In all of those cases, Russia has claimed that friendly local populations or governments have turned to Russia for help, and that Russia had felt compelled to answer that call and take those populations under its ‘protection’, thus also assuming control over their ethnic territories and domestic politics. The successful operationalisation of this lawfare tool poses serious future dangers for all of Russia’s neighbours, as it codifies a quasi-legal justification of Russia’s ‘peacemaking operations’, which no longer requires only the presence of ethnic Russians or Russian speakers for the Russian State to intervene – it can also be used to ‘protect’ any population declared Russia-friendly, regardless of its ethnic origin.

All these examples clearly demonstrate how Russia has been trying to amalgamate international and domestic law with categories often as vague and contested as history and culture, for the purposes of implementing the Russian hybrid expansionist agenda. While these are nothing more than elaborately fabricated pretexts for Russian aggression, the fact that they are allowed to stand de facto enables Russia to continue using them against its various nation-state targets.

4 The Kremlin Regime’s Perception of ‘Colour Revolutions’: A ‘Kronos Syndrome’?

When it comes to international law, the dominant views within the ranks of the Russian regime members is that Russia is a target of Western hybrid offensive, with international humanitarian and other legal norms applied selectively against Russia in the form of Western ‘lawfare’, in particular to foment and trigger the so-called ‘Colour Revolution’ aimed at disrupting the Russian constitutional order and toppling the regime from within. This threat perception of the ruling elite in Russia of the so-called ‘Colour Revolution’ can be dubbed the ‘Kronos Syndrome’ (after the ancient Greek god Kronos/Cronus, who feared that his children, the gods of Olympus, would overthrow him). It can be defined as the pre-emptive fear of violent regime change among elites in countries that are historically prone to revolutions and coups. This fundamental insecurity results in the regime’s attempts to stifle and suppress the societal forces its policies have generated (for example, the demands for political change and democratisation of the Russian middle class and the youth). These Russian threat perceptions have been reflected clearly on numerous occasions, e.g. reflected clearly

⁷ ‘Manifesto of Catherine the Great on the Accession of Crimea’, 19 April 1783, *Complete Collection of Laws of the Russian Empire*, Vol. XXI, available from the Russian Federation (RF) Presidential Library at: <https://www.prilib.ru/en/node/358615>.

⁸ RF Duma communique, ‘The day of accession of Crimea into the Russian Federation has become a new notable date’ [‘Den’ prinyatiya Kryma v sostav Rossijskoj Imperii stal novoj pamyatnoj datoj’], *State Duma of the Russian Federation State Assembly*, 24 July 2018, <http://duma.gov.ru/news/27704>; the Russian original of the law is available from: ‘Draft Law № 495245-7’ [‘Zakonoproekt № 495245-7’], *Sozd Beta*, 2018, <http://sozd.parliament.gov.ru/bill/495245-7>.

during the Moscow Security Conference of 27 April 2016, during which the ‘Colour Revolutions’ were portrayed as tools of ‘Western hybrid warfare’ aimed at the regional destabilisation of Russia, Eurasia and the Middle East. Earlier, in December 2014 and 2015, the Russian security strategy and the military doctrine effectively presented Russia itself as the target of Western hybrid efforts to destabilise it.

5 Russia’s Use of Lawfare in the 21st Century: The Challenges

International law dealing with conflict between states has evolved to prevent war through the use of negotiations and agreements; regulate the right to go to war and set the rules of engagement; and normalise postwar relations through ceasefires, armistices and peace treaties. International law, in its modern interpretation, was not intended to sanction and justify the invasion and annexation of territories, the way it is used by Russia in ongoing aggression against Ukraine. The main systemic challenge that Russian Lawfare poses is that customary international law is threatened: international law is not carved in stone; because it also develops from the practices of the world’s states, in many ways, it is ultimately what the states make of it. This fluid, interpretative aspect of international law is being used by Russia extensively and in the most creative ways to assert its numerous territorial, political, economic and humanitarian claims against Ukraine, as well as to harass its neighbours in the regions that it perceives as its post-Soviet ‘Near Abroad’. So far, the existing international system based on treaties and international institutions has failed to shield Ukraine from the aggressive resurgence of Russian hegemony. Ukraine has submitted claims against Russia at the International Court of Justice on the grounds that Russia’s activities in Donbas and Crimea support terrorism and constitute racial discrimination, but it has not been able to challenge Russia on the fundamental issues of Crimea’s occupation and illegal annexation, as well as the invasion of Donbas.

While Russia does not have full control over the international legal system, and thus is not capable of changing its rules *de jure*, it is definitely trying to erode many of its fundamental principles *de facto*. The primary one is the inviolability of national borders in Europe that were set after World War II, codified at Helsinki in 1975, and recognised after the end of the Cold War, including by the RF. Another legal principle that Russian lawfare severely challenges is the obligation to adhere to international treaties, *pacta sunt servanda*, although the Russian leadership constantly pays lip service to it and regularly accuses other signatories of international treaties and agreements (the US, Ukraine) of violations or non-compliance. The full domestic and international sovereignty of nation-states, which is the cornerstone of the existing international system based on Westphalian principles, is yet another fundamental principle eroded by Russia’s actions. To compound things, the universally recognised right of self-determination is used by Russia to subvert Ukraine’s unity as a nation-state by elevating the status of the Russian ethnic and Russian-speaking Ukrainian citizens in Crimea, Donbas and elsewhere to that of separate ‘peoples’.

The Russian lawfare actions range from strategic down to tactical, depending on the specific Russian objectives at every point in time. Some specific examples since the beginning of the aggression against Ukraine have included, among others, a draft amendment to the law on the admission of territories into the RF that claimed to allow Russia to legally incorporate regions of neighbouring states following controlled and manipulated local referenda.⁹ This particular draft law was removed from the Duma agenda on 20 March 2014 by the request of its authors following the Crimea referendum of 16 March 2014. Nevertheless, the fact that it was submitted to the Russian Duma on Friday, 28 February 2014, barely a day before the overt appearance of ‘little green men’ in Crimea and its subsequent occupation, is indicative of the high level of coordination between the military and non-military elements of Russian hybrid efforts, especially in the lawfare and information domains.

The legislative onslaught continued in April 2014 with a draft amendment proposing to grant Russian citizenship based on residency claims dating back to the USSR and the Russian Empire, as it was targeting primarily Ukrainians. The annexation of Crimea and the invasion of Eastern Ukraine in the spring of 2014 enabled Russia to expand another subversive practice — the giving away of Russian passports in order to boost the number of Russian citizens in

⁹ Opinion on ‘Whether draft federal law No. 462741-6 on amending the federal constitutional law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law’, Venice Commission, 98th Plenary Session, 21–22 March 2014, available from: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29004-e>.

neighbouring states (also known as ‘passportisation’). This lawfare technique was used against Georgia in order to portray the occupations and forced secession of Abkhazia and South Ossetia as a legitimate action in response to the will of the local ‘Russian citizens’, coupled with the newly redefined Russian right of ‘responsibility to protect’. The scope and definitions of that particular right have proven to be extremely flexible since it was proclaimed in the ‘Medvedev Doctrine’ of 2008. The initial intent to protect Russian citizens ‘abroad’ later expanded to include the protection of ethnic Russians in Crimea and, then, of Russian speakers in Eastern Ukraine in 2014, until, in June 2014, Vladimir Putin postulated the concept of the ‘Russian World’ (*Russkiy Mir*) – a supranational continuum comprising people outside the borders of Russia who are to be bound to it not only by legal and ethnic links, but by cultural ones too. Thus, Russia proclaimed its right to tie the affinity for the Russian culture writ large (Russian poetry, for instance) of any category of people to their right to legal protection by the Russian state, understood as Russian military presence.

In the military sphere, the exploitation of loopholes within the existing verification regime set by the Organisation for Security and Co-operation in Europe (OSCE) Vienna Document of 2011 has proven to be particularly advantageous for Russia and difficult for NATO to counter effectively. The most notorious lawfare technique that Russia has been applying since 2014 is the launching of no-notice readiness checks (‘snap exercises’) involving tens of thousands of Russian troops. Such Russian military activities obviate the Vienna Document and run contrary to its spirit and the intent to increase transparency and reduce tensions in Europe. Paradoxically, this is made possible by the loophole contained in Provision 41, which stipulates that, ‘Notifiable military activities carried out without advance notice to the troops involved are exceptions to the requirement for prior notification to be made 42 days in advance.’¹⁰ In this case, the Russian modus operandi involves having a major Russian news agency issue a communique on the very morning of the exercise stating that President Putin had called the Minister of Defence Sergei Shoigu in the early hours of that morning to order him to put the Russian troops on full combat alert – a simple but very powerful technique combining lawfare with information warfare. Russia has also been circumventing the requirement to invite observers to large exercises by reporting lower numbers than the observation threshold of 13,000 troops (the number it provides to the OSCE always miraculously revolves around 12,700) or by referring to Provision 58, which allows the participating states to not invite observers to notifiable military activities that are carried out without advance notice to the troops involved unless these notifiable activities have a duration of more than 72 hours. In that case, when it comes to reporting those, Russia simply breaks down the larger exercises into separate smaller ones with shorter duration.

Russia has also long been exploiting international law through organisations, such as the United Nations (UN) and the OSCE, for a range of purposes, such as blocking adverse UN resolutions through its veto power; garnering international support for its actions or portraying itself as a force of stability and a peacemaker in Ukraine and the Middle East. Russia also reportedly uses these structures for influencing operations or for intelligence gathering, for instance by having the Russian observers in the OSCE provide reconnaissance of the Ukrainian military’s disposition in Donbas. Other examples include the Russian attempts in 2014 to use the UN Security Council to sanction the opening of ‘humanitarian corridors’ in the Donbas; the use of the cases of Kosovo and Libya as legal precedents for Russian actions; the sentencing of high-ranking Ukrainian officials *in absentia* by Russian courts; and the multiple Russian allegations that the Ukrainian authorities have triggered a humanitarian catastrophe in the Donbas, in an attempt to justify the overt deployment of Russian troops under the guise of ‘peacekeepers’.

6 The Russian Leadership and Russian Lawfare

All these historical patterns are clearly manifested in the policies used by Russia vis-à-vis its neighbours nowadays. The power of historical tradition is boosted by the mere fact that many of Russia’s key decision-makers, to begin with – President Putin and Prime Minister Medvedev, have an educational background in the legal disciplines, thus proving true the maxim that ‘in the eyes of the hammer all problems look like nails’. Thus, ‘making it all legal’ is of primary concern to President Putin, as well as to the Russian government and legislature that essentially serve to rubberstamp the Presidential policies, especially in the field of national security and defence. An important role is also played by the

¹⁰ *Vienna Document 2011*, Provisions 41 and 58, pp. 21 and 26. Organisation for Security and Cooperation in Europe, 22 December 2011, available from: <https://www.osce.org/fsc/86597>.

RF Ministry of Foreign Affairs, as it adds its diplomatic weight and network of contacts and institutional representation overseas to promote the expanded use of Russian compatriots abroad, or to put diplomatic pressure on countries viewed as hostile to Russia, such as Ukraine or the Baltic States, at various international organisations, be it by accusing them either of being pro-Nazi and pro-Fascist or of discriminating against their ethnic Russian minorities.

On the domestic lawfare front, the regime's top legal team features Aleksander Bastrykin, the Chairman of the RF Investigative Committee, who – in 2015 – postulated the inherent supremacy of the Russian constitution over the norms of international law and promoted the views of international law as a Western hybrid warfare tool that needs to be countered, including by tightening the social, informational and financial control. Yuriy Chayka, the RF General Prosecutor, has also been instrumental in these reverse accusations, by claiming that the Ukrainian 'Right Sector' movement was attempting to organise a coup in Russia and by advocating the prevention of social unrest by blocking social media. Last, but not the least, the RF Ombudsman, Major General Moskalkovska, who previously served as the Head of the Legal Department of the Russian Ministry of the Interior, has stated that human rights is a theme exploited by the West to destabilise Russia, that Russia should respond by expanding the protection of Russian compatriots abroad and that the RF Ombudsman's objective is to protect not only the individual but mostly the system of values in Russia.

7 Russian Lawfare: Vulnerable Areas and Relevant Responses

The areas that continue to be vulnerable to the effects of Russian Lawfare are primarily the territories in Ukraine under Russian occupation, such as Crimea and Donbas, but also the so-called 'frozen conflicts' in Transnistria, Ossetia and Nagorno-Karabakh. They all contain multiple intertwined, and often mutually exclusive, historical narratives based on complex sociocultural realities, which provide fertile ground for Russia's presence and involvement under the quasi-legal pretext of stabilisation efforts.

Ukraine has also recognised the power of historical narratives as a counter-lawfare tool. According to a recent poll of Ukrainian public opinion, more than 70% of Ukrainians stated that Ukraine, and not Russia, is the rightful successor of Kievan Rus.¹¹ The Ukrainian state must capitalise on these social trends and leverage them to develop a coherent strategy targeting domestic and international audiences and institutions, in order to counter the malicious exploitation of its history by Russia for the purposes of disinformation and lawfare-based expansionism.

Similar cultural claims have been used as pretexts by Russia to put pressure even on its traditional allies such as Belarus. The 2014 Russian military doctrine refers to it as 'Belorussia', its Russian and Soviet imperial name, and the Russian military has been pushing to expand its presence in Belarus by requesting additional bases on its territory. The majority of the population in Belarus uses the Russian language for daily interactions and communication, and in the age of Russian hybrid warfare – when culture is used to fabricate legal pretexts, the Belarusian leadership has recognised that very real threat and is taking steps to improve its population's cultural awareness and language skills.

Unresolved border disputes with Russia also pose potential threats, as those can be exploited by Russia for infiltrating NATO territory or for claiming that NATO troops are provocatively close to Russian territories. Russia has been using border negotiations as tools of influence against its neighbours, in particular, Estonia, whose attempts to sign a border treaty with Russia extend over 2 decades. On 18 February 2014, the Russian Duma announced that it would ratify the bilateral treaty after negotiations lasting since 1994, a move that came less than 2 weeks before the infiltration and occupation of Crimea by Russian forces and was likely an attempt by Russia to secure its Western borders with NATO prior to launching its operation in Ukraine. As recently as the summer of 2018, the issue of the Russian–Estonia border has again been raised as Russia reneged on its commitment to ratify the treaty, explaining it as a result of the 'anti-Russian' attitudes of Estonia.

Russia, of course, does not enjoy free reign in the sphere of international law, and it can prove to be a double-edged sword when the targets of Russian Lawfare, in particular, the Baltic States and Ukraine, decide to use it proactively to defend themselves with legal arguments of their own. The recent announcement by the Ministers of Justice of both

¹¹ 'The dynamic of patriotic sentiment among Ukrainians: August 2018', ['Dinamika patriotichnyh nastroy ukrainciv: serpen' 2018'] Rejting, 21 August 2018, http://ratinggroup.ua/research/ukraine/dinamika_patrioticheskikh_nastroeniy_ukraincev_avgust_2018.html.

Estonia and Latvia that they are exploring the legal options to demand compensations from Russia as the legal successor of the USSR for the Soviet occupation damages comes as a timely example of how this internationally recognised Russian legal status can also be leveraged for counterclaims by its affected neighbours.¹²

Apart from history and culture, Russian lawfare has also integrated and used skilfully the domain of science, in particular geology, chemistry and oceanography, in the area of the Arctic and the High North. The 2014 Russian military doctrine clearly identifies ‘securing the Russian national interests in the Arctic’ as one of the main tasks of the Russian Armed Forces in peacetime. After ratifying the International Convention of the Law of the Sea in 1997, Russia began to proactively exploit the loophole provided by Article 76 to push for the expansion of the Russia Exclusive Economic Zone from 200 to 350 nautical miles based on the claim that the Lomonosov Ridge, which stretches for 1,800 km under the Arctic Ocean, is a natural extension of Russia’s continental shelf. The legal and scientific debates over the geological definition and chemical composition of that shelf threaten to have huge ramifications, because, if the Russian claim ultimately succeeds, it would result in the accession of an area of more than 1.2 million square kilometres (with its vast hydrocarbon deposits) to Russian Arctic sovereignty.¹³ While waiting for the legal case to be adjudicated by the UN, Russia has been gradually expanding its military presence in the Arctic in a clear attempt to combine legal with lethal arguments in its ongoing quest to dominate this strategic region of the world as the effects of global warming open its routes for global navigation.

8 The Utility of Tracking Russian Lawfare

Lawfare provides numerous advantages to Russia, as, so far, it has proven to be less recognisable than its counterparts in the information and cyber domains; it successfully exploits the loopholes of international legal regimes, it uses diplomatic negotiations as a delay tactic and it is capable of creating dissent and confusion among allies by exploiting legal ambiguities.

On the other hand, observing the patterns of Russia’s weaponisation of the law as an element of its comprehensive hybrid strategy against target nations, such as Ukraine, Georgia and Moldova, can help NATO identify early signs of similar actions aimed against other countries in its neighbourhood, in particular, its Baltic member-states. The primary utility of tracking and analysing Russian legal developments is that lawfare moves, by default, cannot remain completely secret. They are meant first and foremost to justify Russia’s actions on the international arena and, therefore, they must be used overtly —as a Russian legal claim, as a new law promulgated by the Russian Parliament, as a decree issued by the Russian presidency or as troop deployment request approved by the Russian Senate.

While such inevitable overtness may appear paradoxical for a society such as the Russian one, where secrecy and conspiracies have traditionally substituted public policy-making, the fact is that when it comes to the ‘legal preparation of the battlespace’, secret laws cannot serve the Russian leadership in defending their aggressive moves internationally or in mobilising domestic support. In addition, since the preparation of these highly creative legal interpretations and pushing draft bills through the Russian legislation requires certain technological time and procedural efforts, if identified sufficiently early, the whole process can serve as an advance warning indicating the direction of the future political or military steps to be made by the Russian leadership, both domestically and internationally. To achieve this, the Western analytical community would have to clearly recognise lawfare as a domain of Russian hybrid warfare and thereafter track and analyse Russian legal developments on a continuous basis. The expansion of the original DIME model, comprising the Diplomatic-Information-Military-Economic elements of national power, to DIMEFIL by adding Financial, Intelligence and Legal elements, is definitely a step in the right direction, but ‘L’ also has to be added to the political, military, economic, social, infrastructure, and information systems (PMESII) analytical framework, which describes the effects of the comprehensive preparation of the environment/battlefield through DIMEFIL actions.

¹² ‘The Estonian and Latvian Ministers of Justice underscore the importance of obtaining the compensation for Soviet occupation from Russia’ [‘Minjusty Estonii i Latvii podcherknuli vazhnost’ vzyskanija s Rossii usherba za sovetskiju okkupaciju’], Err. ee, 21 August 2018, <https://rus.err.ee/855366/minjusty-jestonii-i-latvii-podcherknuli-vazhnost-vzyskanija-s-rossii-uwerba-za-sovetskiju-okkupaciju>.

¹³ Eric Hannes, ‘Russia’s Arctic Ambitions: Russia is making moves to expand in the Arctic, and it could soon have the force of international law behind it’, *US News and World Report*, 14 March 2017, from: <https://www.usnews.com/opinion/world-report/articles/2017-03-14/russia-is-making-a-land-and-resource-grab-in-the-arctic>.

Defending against Russian lawfare, of course, is not solely the task of analysts, as a comprehensive strategy to counter its tools and impact can only be elaborated and applied successfully by the coordinated efforts of political and military leaders, legal and academic experts, as well as the institutions they represent across borders and multiple domains. This would require constant and firm emphasis to be placed on upholding and strengthening the peremptory norms of international law at all levels – from the UN level through the international courts system to the various universities’ law departments. The political leadership and the media organisations of the NATO and partner nations must constantly seek to expose proactively (hand in hand with the experts in countering Russian information warfare) the ulterior motives and aggressive purposes behind Russia’s ‘peacemaking’ campaigns, vehemently oppose Russia’s claim to its own ‘responsibility to protect’ in its self-perceived spheres of interest, incessantly seek opportunities to close existing loopholes in international agreements exploited by Russia and, as a rule of thumb, always approach negotiations with Russia as a multidimensional chess game that requires constant awareness that Russia’s moves involve many steps ahead across all domains.

9 The Lawfare Defence Network: Countering Russian Lawfare in Theory and Practice

Given that lawfare is a pivotal element of the overall Russian hybrid warfare against Ukraine and the West, the response to it also must be holistic and comprehensive in nature. It would require the building of a network of lawfare study programmes (the ‘Lawfare Defence Network’) at various universities and think tanks – first and foremost in Ukraine, but also throughout Eastern, Central and Southern Europe – Estonia, Latvia, Czechia, Serbia, Georgia, as well as in the US and the UK. This network’s ultimate goal would be to generate interest and support among the NATO and EU member-states’ legislators, political leadership and the public to establish a Lawfare Centre of Excellence (COE), just like the ones dealing with Strategic Communication (Riga), Cyber Defence (Tallinn), Energy Security (Vilnius) and so on. It could be based in a NATO or EU member-state or in an aspirant country, such as Ukraine. Regardless of its exact future location, Ukraine and the Baltic States must be at the forefront of this initiative – morally, given the fact that they have been the primary target of Russian lawfare for many centuries, and practically – by performing the main body of research and analysis of the ongoing Russian lawfare activities. Once all these programmes are established and fully operational at various think tanks and universities, they can focus on their specific country’s lawfare challenges, in order to better leverage their national capabilities. The future Lawfare Centre of Excellence will then compile and analyse all that national input and provide practical feasible recommendations to the national governments and NATO, as a whole.

10 Conclusion

The continuous evolution of Russian lawfare is a proof of Russia’s legal creativity in bending and reinterpreting international law in order to achieve its strategic objectives. While Russia has publicly been demonstrating ostentatious respect of international law, it has undoubtedly espoused a revisionist view of international law based on the concept of Great Powers’ spheres of influence and a self-proclaimed right of intervention, which challenge the main tenets of the security arrangements in Europe and beyond. If its lawfare activities continue unchecked, Russia will be emboldened to continue applying those methods to justify its expansionist and interventionist policies in all areas that it regards as legitimate spheres of interest. Quite inevitably, other great and regional powers have already followed suit and are resorting to lawfare tools to lay claims on contested areas (China) or justify their presence in volatile regions (Iran). The Middle East, Africa and Asia, of course, are particularly vulnerable to the application of lawfare, given the disputed, even arbitrary, nature of many state borders there, but some NATO members are also not immune, especially those with sizeable Russian-speaking populations or with unresolved border disputes with Russia. Russia’s use of lawfare as a primary domain of its comprehensive hybrid warfare strategy poses structural challenges to the stability of the international security system and the foundations of the international legal order as a whole, and therefore, a cohesive Western response is needed to successfully counter it.