

Briefing paper

Lawfare in Hybrid Wars: The 21st Century Warfare

Bachmann, S.D. and Mosquera A. B. M., 2016. *Journal of International Humanitarian Legal Studies* 7, p.63-87.

Hybrid Warfare is an old, multifaceted method of war where different actors, state and non-state, aim to reach their political or military goals by using a mix of conventional and non-conventional, or irregular, methods, as well as kinetic and non-kinetic means. Hybrid Warfare has become increasingly sophisticated, and deadly (often involving cyberwarfare, propaganda and non-state adversary) and the methods used has a long history of successful employment. Similarly, Lawfare (the use of law as a weapon) is defined as “the strategy of using or misusing law as a substitute for traditional military means to achieve an operational objective”. Lawfare therefore encompasses both affirmative as well as malicious use and has a goal of manipulating law by changing legal paradigms.

Outline of research

This paper focuses on Hybrid Warfare and Lawfare and tries to foster discussion and thought on how to use Lawfare affirmatively and how to prevent opponents successfully using law maliciously to achieve their objectives. This paper also examines recent development in Hybrid Warfare including North Atlantic Treaty Organization NATO’s open source perspectives on ‘Hybrid Threats’. Another focus of this paper is to discuss about Lawfare and examine several examples where it has been used maliciously to erode and delegitimize the opponent by ignoring or abusing law in order to create confusion in public opinion.

Key findings and impact

- Hybrid warfare uses overt and covert activities which can include military, paramilitary, irregular and civilian actors targeted to achieve (geo) political and strategic objectives.
- Russia used hybrid warfare in Crimea and the Donbas region of Ukraine, with its deployment of ‘little green man’ namely, soldiers wearing unmarked uniforms.
- NATO, in 2010, used the term ‘Hybrid Threats’ which was revised in 2011 as ‘Concept of Hybrid Threats’. With a resolution to prepare for Russia’s use of Hybrid Warfare and threats, in 2015 NATO announced the cooperation on aspects of a new Hybrid Warfare program and a new Hybrid Warfare Strategy.
- Lawfare thrives on legal ambiguity and exploits legal thresholds and fault line. It presents challenges to international peace and security by questioning the validity of existing public international law rules thus leading to emergence of “asymmetric warfare by abusing laws”.



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- There are cases (such as the Taliban using civilians to protect themselves from NATO in a conflict in Afghanistan) where certain parties use Lawfare as a “necessary element of mission accomplishment” in Hybrid Warfare situations, but the other party will transform any adherence to the rule of law by its adversary into a ‘legal boomerang’. To act against such boomerangs, counter- Lawfare action, which is comprehensive and holistic, should be used to establish right perception among internal and external public opinions.
- In 2015, Russia used Lawfare maliciously with the aim of confusing public opinion by debasing law. In this case, Russia used Lawfare to negate the validity of treaty (Budapest Memorandum) and is a ‘abuse of right’.

Conclusion

Lawfare has become an integral element of any Hybrid Warfare strategy and its affirmative use should become an element of Western military thinking and planning. Although Lawfare is used unscrupulously by state or non-state actors, this shouldn’t discourage international actors from continuing to act in compliance with international law. Lawfare is taking a necessary and central role as a main component of current Hybrid Warfare. The role of democratic societies is governed by rules and adherence to the rule of law. By opting for affirmative Lawfare within legal constraints we ensure our choice of responding to Hybrid Warfare will be successful and legitimate.

