

# Lawfare as part of hybrid wars: The experience of Ukraine in conflict with Russian Federation

**Zakhar Tropin**

[zakhar.tropin@gmail.com](mailto:zakhar.tropin@gmail.com)

 <https://orcid.org/0000-0003-2533-6451>

Institute of International Relations, Department of International Law, Taras Shevchenko National University of Kyiv, Melnikova Street, Kyiv, Ukraine

## Abstract

---

*The main objective of the article is to prove the need for the state to have a centralised legal strategy to ensure the protection of state interests on an international level during a hybrid conflict. Centralisation of control and the planning and implementation of legal actions on an international level are core elements of such a strategy, especially for actions under the jurisdiction of international institutions. This article provides an analysis of treaties and of the practice of adjudication in Ukraine during the conflict with the Russian Federation. The findings of the study show that the legal dimension of hybrid conflict has some sub-levels: legal actions of states in hybrid conflicts taken at interstate level; the level of enterprises controlled by the state; and the private level. The practice of Ukraine shows that the exercising of a multilevel legal encounter during a hybrid war faces a number of problems including the intersection of actions (sometimes even direct conflict), even among authorities involved in the legal protection of state interests; and problems with collecting and analysing the information necessary to protect state interests in the legal dimension; state authorities that are not directly involved in a legal encounter may exercise actions which will complicate the legal position of the state. One of the first steps taken by the state in a hybrid conflict is, therefore, to create special authority or entrust an existing one with the coordination of the functions of lawfare. The next step of such an authority is the strategic “programming” of the opponent’s legal actions with the aim of achieving an advantage in the legal dimension of a hybrid conflict.*

---

## Keywords:

lawfare, Russia-Ukrainian War, hybrid warfare

## Article info

Received: 2 November 2020

Revised: 29 December 2020

Accepted: 29 December 2020

Available online: 23 March 2021

DOI: <http://doi.org/10.35467/sdq/132025>



© 2021 Z. Tropin published by War Studies University, Poland.

## Introduction

The issues related to Ukraine's legal encounters with the Russian Federation have been a matter of scientific dispute since Ukrainian independence. The need to investigate this phenomenon was evidently confirmed by numerous examples of international legal actions taken by both states in the international arena. This situation was considered, however, as part of the normal legal encounters between states having international relations. The discussion continued in this direction even after the beginning of the armed conflict in 2014 ([Ukrainian Association of International Law, 2014](#)). At the same time, further activity by the Russian Federation brought into question the crucial legal dimension of an encounter with Russia (together with the need to comprehend lawfare in general and the use of legal means in contemporary state conflicts). Some scholars stated that "lawfare" or "legal operations" are, in essence, special operations of intelligence authorities and that specialists in international relations and international security should investigate them not international lawyers ([Ukrainian Association of International Law, 2016](#)). Subsequent years of the armed conflict demonstrated, however, that the legal dimension of encounters during contemporary international conflicts are important, sometimes even one of foremost importance. Lawfare needs to be investigated from the position of contemporary international law.

### Lawfare as part of hybrid warfare

From the theoretical stand point, investigation of lawfare should be carried out in the general context of hybrid warfare. When speaking about hybrid aggression, a lot of scholars stipulate that one of its distinguishing issues is the unique combination of threats aimed at the most sensitive spheres of activity of the victim of aggression. This unique characteristic is explained by the fact that in each case of hybrid aggression, a specific combination of economic, international, diplomatic, psychological and military pressure is used against the victim ([Hoffman, 2007](#)). Due to this it is hard to make its precise definition. Moreover, some scholars in their overview of contemporary attempts to define "hybrid warfare" state that its comprehending mostly varies over its understanding as fancy and meaningless or revolutionary but evasive in its conceptualization. On their view this term is very broad and it can encompass a lot of elements of modern non-linear threats which can be simple described as contemporary warfare ([Johnson, 2018](#)). Respectively it is not necessary to emphasise on components and definition of "hybrid warfare" as this approach will lead into tactical encounter with this phenomenon and missing of strategic goals in contemporary warfares. Nevertheless, taking into account aim of this investigation it is necessary to mention that in trying to define hybrid warfare, scholars suggest that hybrid warfare is the use by the enemy of political, military, economic and information resources, conventional weapons, guerillas and terrorists, and means of diversion in different combinations. These means can be used as a combination of actions implemented by states and non-governmental institutions ([Glenn, 2009](#)).

Such components are specified as parts of hybrid warfare: information and propaganda; political and diplomatic; economic and trade (for instance, through corruption and lobbying); energy and infrastructure; intelligence, including sabotage and guerilla methods of warfare; operations of regular military forces; and limited usage of tactical nuclear weapons ([Magda, 2018, p. 34](#)).

Summing up these characteristics, Yevhen Magda defines hybrid warfare as a set of prepared and promptly implemented actions of the military, diplomatic, economy-based, and informational type that are aimed at achieving strategic objectives. Its key goals are

the subordination of one nation's interests to another in terms of the formal preservation of the political system of the sacrificial country ([Magda, 2018, p. 34](#)).

On the other hand, Nicu Popescu (2015) defines hybrid warfare as types of military actions in which the aggressor does not use classical invasion but suppresses the opponent by using a combination of secret operations, diversions, cyber warfare and by giving support to rebels active within the territory of the opponent. It may also include the spreading of disinformation, the exercising of economic pressure and threats to the supply of energy resources.

Research scholars are unanimous in agreeing that hybrid warfare is an objective phenomenon of contemporary international relations with a lot of components and there is no sense in ignoring it ([Almang, 2019](#); [Caliskan, 2019](#); [Rajkovic, 2020](#)).

Among the proposed definitions and components of hybrid warfare, it is necessary to emphasize two issues that are general and important for our future investigation. Firstly, hybrid warfare can be implemented on different levels: the interstate level and by using non-governmental institutions. Secondly, it may embody a unique combination of actions in different spheres of social relations. The scholars do not generally state that lawfare is a separate element of hybrid warfare. However, some investigations separate lawfare in the actions of some states ([Lee, 2014](#)).

## Lawfare: its components and levels

In contemporary international relations, lawfare is an integral part of hybrid warfare ([McKeown, 2015](#)). The understanding of "lawfare" is not uniform, however, and needs to be clarified. The first definition in the scientific literature was proposed by Charles J. Dunlap, namely that lawfare is a strategy for the use or misuse of law instead of conventional legal means that aims to achieve operational advantages ([Lawfareblog, no date](#)), in other words, the use of law as a weapon of war ([Munoz and Bachmann, 2016](#)). Charles J. Dunlap expanded this idea and suggested understanding lawfare as the exploitation of real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting a superior military power ([Scharf and Andersen, 2010](#)). There are a lot of notions in contemporary science that consider lawfare in this way. For example, lawfare is a misuse of the law to achieve a military objective and to undermine the legal framework ([Beck, 2014](#)).

These definitions actually try to represent lawfare in a narrow sense: these ideas are limited only by international humanitarian law and the use of legal means in the context of military activity alone. As an example of an attempt to define lawfare through other spheres of interstate encounters, it is necessary to mention that lawfare is the use of international law and legal procedures with the strict aim of making a claim against another state, especially in spheres connected with national security ([Scharf and Andersen, 2010](#)). In other words, in this case, we are talking about the manipulation of law – its usage for purposes for which it was not created.

It appears that it is better to define lawfare in the broad sense as use of law aimed at delegitimising the actions of an opponent (or legitimising one's own) and to tie up the time and resources of the opponent and achieve advantages in military activity or in any sphere of social relations. Contrary to other notions of lawfare, which (as was stated) are limited only by international humanitarian law, the proposed definition refers to general usage of law in international relations as lawfare. Taking into account the experience of the Ukraine – Russia armed conflict, this understanding of lawfare seems to be more

appropriate. Advantages in military actions are not a single aim of lawfare. It may try to achieve other goals and also be a totally separate dimension of hybrid warfare ([Mosquera, Bachmann and Bravo, 2019](#)).

As previously mentioned, hybrid warfare can take place on different levels: the interstate level and with the involvement of non-governmental institutions. This division is also applicable for lawfare. Contemporary practice shows that both dimensions can be used in lawfare, which, taking into account the peculiarities of international legal relations, can be divided on three levels: legal actions on the interstate level; legal actions on the level of state enterprises; and legal actions among private persons. The last two levels are counterparts of the dimension of hybrid warfare with the involvement of non-governmental institutions and taking into account the peculiarities of the legal status of said persons in national legal systems. In addition, lawfare can be implemented on the international legal level and on the level of national legal systems, with the involvement of adjudicational and other international and local institutions.

### **Lawfare as an objective international legal phenomenon. Positive and negative connotation of the notion**

The investigations mentioned put forward two additional questions: is it necessary to investigate such a phenomenon as lawfare? and what connotation does it have – positive or negative? It appears that in practice, these discussions do not take into account that lawfare is an objective phenomenon which needs to be investigated per se without its essence being qualified. In national legal systems (especially in procedural branches) there is a widely used term – legal sabotage. This notion is understood as distractive actions performed via misuse of procedural rights that complicate the position of the opponent in a legal dispute as much as possible with the aim of winning the legal dispute or damaging the opponent's interests. An example is a practice which is widely used by Ukrainian lawyers – presentation of a counter-memorial on the day of court hearing that creates an obstacle for the plaintiff to normally defend its position in the court. In precedent systems of law, “burying of evidence” can be presented as a similar example – providing of evidence together with a huge quantity of irrelevant accompanying materials that makes it hard for the opponent to evaluate the case properly. These practices are widely used in national legal systems, without us analysing whether they are positive or negative. The only issue under discussion is that such actions are not transformed into a manifest legal offence ([Filho, Farias and Oliveira, 2017](#)). When we are talking about lawfare on the interstate level, actions implemented by states that embody the essence of this practice are an objective phenomenon that needs to be investigated impartially, for instance without analysis of whether they are positive or negative, and especially taking into account that the main aim of lawfare is to prove that any actions of state are within international law. Any discussions on the positive or negative connotation of lawfare will therefore lead us far from the real analysis of the essence of this phenomenon.

In this context, it is worth remembering that states always try to ground their activity in international relations in accordance with international law. Historically, even in circumstances of armed conflicts, states try to justify their activity. The concept of “just war” is a good example of such practice ([Robinson, 2003](#)). It is nothing but an attempt to justify ones aggression.

To date, lawfare in this or that form is a standard state practice in international relations. It was previously considered as part of diplomatic encounters between states or the activity of international arbitration and court institutions (as peaceful means of settlement of

international disputes). This is explained by the fact that reference to international means of adjudication is possible only after all parties have consented to the dispute. Those states willing to initiate a procedure in court or arbitration are thus forced to find disputes that would be covered by existing consents for the application of such procedures. To a certain extent, this can be interpreted as manipulation or misuse of international law. This may be the reason why many definitions of hybrid warfare do not refer to lawfare as an integral part (referring instead to diplomatic means of hybrid warfare).

In a situation of actual hybrid conflicts, international legal justification of state actions is crucial. This can be explained by the main peculiarity of such conflicts, namely indirect or hidden application of force among states in circumstances of total international legal prohibition of use of force and threat of force. States are forced to be very cautious implementing such activity in order for them not to be blamed for violating international law (Rajkovic and Vennesson, 2012). As an example, we can mention that even the Russian Federation (understanding the lawlessness of its actions) is always trying to present legal arguments in support of its actions which will justify them or at least prove that they do not constitute violation of international law. Such “free” interpretation of international law led to the understanding of such practice as the specific approach of the Russian Federation towards international law and the imposition of this approach on the whole international community (Zadorozhnyi, 2015). One is to understand that such an approach threatens the essence of international law, taking into account that methods of lawfare used by the Russian Federation undermine the basis of generally accepted concepts of international law (Voyger, 2018).

In this context, it is necessary to mention the main peculiarity of lawfare on the interstate level. When we are talking about private legal conflicts, we should understand that they are limited within national legislation and cannot violate measures established by states in their local systems of law. But speaking about interstate relations and conflicts, states are the subjects who are creating law (i.e. measures regulating their relations) and, in this case, we have a rather vague situation regarding the qualification of state activity as to whether it is: lawful use of international law; misuse of international law (namely lawfare activity); creation of international law; or violation of international law. In other words, sometimes it is hard to correlate real state actions with one of these categories and to qualify them as an act of lawfare, e.g. such a phenomenon as “humanitarian intervention” (Mises Institute, 2011). Scholars have debated whether this is violation of international law, creation of a new concept of international law, lawful action, or misuse by states of the possibilities provided by international law. China’s establishment of a so-called Air Defence Identification Zone (Vanhullebusch and Shen, 2016) and the territorial dispute in the South China Sea (Hsiao, 2016) cause the same doubts. All these issues complicate research into lawfare because, additionally, it is necessary to distinguish it from the above-mentioned qualifications and use additional criteria for this (Jones, 2016).

## Episodes of lawfare in Ukraine – Russia armed conflict

The above considerations about the definition, place and composition of lawfare are confirmed by the practice of Ukraine in armed conflict with the Russian Federation. In addition, the said practice proves it is necessary to distinguish lawfare from other elements of hybrid warfare.

An example of connecting lawfare with other dimensions of hybrid warfare was the mutual blocking of international carriage by the Russian Federation and Ukraine in 2016. It is necessary to remember that individuals started to block movement of trucks from

Russia to the territory of Ukraine ([Kyivpost, 2016](#)). In response, the Russian government decided to prohibit transit of Ukrainian cargo through the territory of the Russian Federation ([BBC, 2016](#)). Ukraine referred to the mechanisms for the settlement of international disputes within the World Trade Organisation stating that the Russian Federation had violated the principle of freedom of transit ([WTO, 2019](#)). In this case, Ukraine at least received an informational and economic advantage due to the fact that the Russian Federation responded to the actions of individuals (non-governmental persons) with a legislative act, which (contrary to the acts of individuals) can be challenged within the system of the WTO.

The discussion of peacekeeping operations in the east of Ukraine can be mentioned as an example of how Russia deals with international institutions. The Russian Federation proposed a draft resolution to the UN Security Council on this issue ([Euroactiv, 2017](#)). It was manifestly an unacceptable document for Ukraine, as it stated that there is an internal conflict within the territory of Ukraine. In other words, Ukraine was put into a position where it had to start negotiating on the basis of this document (which meant it was weakened in negotiation from the very beginning, as the main standpoint of this draft dictated the whole trend of the discussion) or to reject it (in which case it meant that Ukraine looked as if it was not willing to settle the armed conflict). In this situation, Ukraine chose third option which was procedurally available – Ukraine stated that discussion on this issue should be started on the basis of the Ukrainian application to the UN Security Council which was provided much earlier ([International Crisis Group, 2018](#)). This application was made by Ukraine due to the events in the east of Ukraine and Crimea and named the Russian Federation as an aggressor. This statement actually put the Russian Federation into a situation in which it had wanted to put Ukraine by playing with UN procedural rules – the initial application of Ukraine was totally unacceptable for the Russian Federation as it qualified events as an international conflict and the Russian Federation as the aggressor.

An additional example of the use of international institutional mechanisms is the situation involving the distribution of Crimea's international dialling code. The Russian Federation intentionally increased the number of its representatives in the International Telecommunication Union before it met. Due to these actions, Ukraine failed to obtain prohibition from the ITU for Russia to use its international code for Crimea ([NKRZI, no date](#)). This is used by the Russian Federation as one of the indirect arguments for Crimea belonging to the Russian Federation.

Inspections of ships under the Ukrainian flag in the Azov Sea can be used as an example of the Russian Federation to legitimising its actions. In this context, Russia pushes the main legal arguments to justify its actions: if the actions under discussion took place near the Crimean shore, this is violation of the territorial waters of the Russian Federation; if the actions under discussion took place in the Kerch Strait, these issues are safeguarded ([BBC, 2018](#)). Moreover, such inspections are carried out intentionally, protractedly, and manifestly thoroughly without formal violation of international rules regulating the carrying out of such actions. By these means, Russia actually blocks Ukrainian shipping vessels in these waters.

It is also worth mentioning the attempts of the Russian Federation to use international treaty mechanisms to delegitimise actions of other states. In relation to the poisoning incident in Salisbury and in response to accusations from the United Kingdom, the Russian Federation made a request for cooperation and the provision of documents in accordance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ([Roth, 2018](#)). The United King-

dom refused, which gave grounds for the Russian Federation to blame it for not fulfilling the provisions of the said convention and, additionally, violation of human rights and the Vienna Convention on Consular Relations. By taking this action, Russia shifted discussion of the topic in the media to violation of international law rules by the United Kingdom instead of suspicions of Russian participation in the events.

The examples above show that the Russian Federation uses legal mechanisms to put pressure on Ukraine and other states within the scope of hybrid warfare. Another possible conclusion is that to date Russian Federation uses lawfare to support other dimensions of hybrid warfare through legitimisation of its own actions or delegitimising the actions of other states. Russia's actions in the legal dimension are an intermediate chain aimed at achieving advantages in other spheres of hybrid warfare, especially in information.

The most prominent example of such actions is firing on Ukrainian military forces in the east of Ukraine from residential areas and claiming that returned fire as is a Ukrainian violation of international humanitarian law ([International Partnership for Human Rights, 2017](#)); the position of the Russian Federation in respect of the MH-17 catastrophe (providing of fake evidence that such actions were committed by a Ukrainian fighter or Ukrainian missile ([UNIAN, 2019](#))); the shifting of the discussion in the media towards the Ukrainian governmental authorities not closing its air space in the area and that such actions constitute violation of international air law ([Sharkov, 2016](#)) etc. In all these examples, the Russian Federation was the originator of the actions. In addition, there was supporting legal argumentation with pointed coverage in the media aimed at persuading people that Ukraine was a grave violator of international law.

## Examples of programming actions of opponent state via means of lawfare

In legal practice when there is a confrontation of private persons, lawyers (or invited counsellors) devise complex strategies aimed at winning such an encounter. This phenomenon is very popular in precedent systems of law where two principles are equally fundamental: the principle of justice and the competitive principle. The implementation of the second principle together with the concept of a 'day in court' (namely the advantage of hearing a case in court over several days, instead of continuous investigation of evidence and case files, which is a distinctive feature of continental law systems) leads to the popularity of such procedural strategies in this system of law. Such strategies, together with procedural legal diversions (such diversions are mostly legitimate in their essence, although they are often very close to illegal acts), contain non-legal actions. For example, creating mass media pressure, supporting psychological specialists aimed at achieving the necessary effect on the audience and specialised selection of a jury.

By involving the wider population in a discussion about international relations, states cannot simply apply international law in contemporary interstate conflicts. This statement is especially accurate when we are talking about hybrid warfare, which forces states to elaborate and implement international legal strategies as sufficient actions in the course of lawfare or as a means of support for other dimensions of hybrid warfare aimed at protecting their international interests and sovereignty.

While using lawfare as a means of contemporary hybrid warfare, it is not enough to react to the actions of the opponent and act within the limits stipulated by international law. It is necessary to create events or legal situations which can be used subsequently on international and local levels in favour of achieving advantages in lawfare or other dimensions of hybrid warfare. It does not mean that every state should copy the tactics

of the Russian Federation and carry out manifest violations of international law. Within the limits established by international law, Ukraine might, for example, exercise actions in legal and other spheres aimed at provoking a specific legal reaction from the Russian Federation, which would be beneficial for Ukraine for the protection of its sovereignty and territorial integrity.

In some cases, Ukraine is already implementing such actions. We previously looked at the example of the Russian Federation blocking cargo on the territory of Ukraine. In this case, the Russian Federation was actually cited as a violator of WTO rules. One question remains – whether these actions were planned by Ukrainian governmental authorities or Ukraine simply took advantage of the existing situation.

Another example of such actions is the situation in the Azov Sea which started from the Ukrainian detention of the fishing boat ‘Nord’ and members of its crew on 25 March 2018 ([Interfax, 2018b](#)). From the international law and local legislation perspectives, the actions of Ukraine were completely legitimate: the boat was registered on the territory of the Autonomous Republic of Crimea (legally territory of Ukraine); it went to sea without documents necessary under Ukrainian legislation; and members of the crew (legally citizens of Ukraine) only had Russian passports, which are not recognised by Ukraine. Putting aside the question of whether this detention was planned or spontaneous, it is necessary to mention that these actions of Ukraine placed Russia in a complicated legal trap. If Russia exercised any legitimate activity aimed at protecting this boat and members of its crew, the Russian Federation would recognize the above statements, namely that the boat and members of its crew were under the jurisdiction of Ukraine. In other words, the Russian Federation would indirectly recognise that Crimea was still an integral part of Ukrainian territory. That is why the situation came to a dead end. Russia actually refused to take any actions in the legal dimension for the release of the boat and members of its crew.

Having no legal means to resolve the situation, Russia started to capture and inspect (manifestly, continuously and in a rude manner) all ships going through the Kerch Strait and Azov Sea into Ukrainian ports, and to detain (actually steal) Ukrainian fishery boats and members of their crews ([Interfax, 2018a](#)). This situation culminated in a ram attack and the chasing and shooting of Ukrainian warships and members of their crews on 25 November 2018. These events became the subject of arbitration in accordance with the United Nations Convention on the Law of the Sea ([ITLOS, no date](#)).

Another example is the blockade of Crimea ([Financial Times, 2015](#)) and separate parts of Donetsk and Lugansk regions ([Reuters, 2017](#)). From the stand point of international law, these territories are an integral part of Ukraine which are occupied by another state. Any actions taking by Ukraine in respect of them are an internal question for Ukraine. In this dimension, the Russian Federation cannot produce any material argument. It is therefore not surprising that Russia is shifting discussion about these issues from the actual situation and the right of Ukraine to implement these actions towards alleged violations by Ukraine of international human rights law ([Ukraine Crises Media Center, 2020](#)).

## **Hypothetical actions within lawfare aimed at programming the actions of an opponent state**

Taking into account the logic of this investigation, it is necessary to indicate hypothetical lawfare actions, which could be or can be implemented by Ukraine in circumstances of hybrid warfare against the Russian Federation. The main goal of these proposals is to illustrate that existing legal instruments can be applicable in a situation of interstate conflict with the aim of achieving advantages of any kind.

Ukraine might, for example, use provisions of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. Both Ukraine and the Russian Federation are signatories of this document. In accordance with article 13 of the Convention, official documents issued in one state are recognised on the territory of other states. On the other hand, and in accordance with part 3 of the Convention, court decisions of one state are recognised and are subject to enforcement on the territory of other states ([Minsk Convention, 1993](#)). For confirmation of the Ukrainian citizenship of the Crimean population (e.g. people who became victims of political repression promoted by the governmental authorities of the Russian Federation), Ukraine may adopt regulations on the issuance of a special certificate verifying Ukrainian citizenship or initiate some procedures in Ukrainian courts to establish who holds Ukrainian citizenship. The Russian Federation will have two options: to recognise such certificates or court decisions; or disregard them and denounce the Convention. The second action will constitute violation of international law because the Convention is automatically renewed every five years. Denunciation is possible only by a notification deposited twelve months prior to the end of the respective five-year period. Ukraine previously made a mistake – it did not object to similar cases initiated by Ukrainian citizens on the territory of occupied Crimea. Crimean courts obviously refused to consider such cases. It makes judicial confirmation of Ukrainian citizenship for such people almost impossible in the future.

Another example can be found in the huge scandal which took place in the Ukrainian media regarding the criminal responsibility of members of Ukrainian voluntary battalions for different offences committed during the armed conflict in the east of Ukraine ([Ukraine Crises Media Center, 2017](#)). It seems that in this situation, the state authorities and media had to facilitate such an activity. Leaving aside the question of the real responsibility of said persons for the mentioned violations, it is necessary to remember that after recognition of the jurisdiction of the International Criminal Court and if there is respective application, Ukraine will be obliged to transfer such people for criminal prosecution in that international court. In this case, the existence of judgments of Ukrainian courts against participants of Ukrainian voluntary battalions will become a serious argument for non-fulfilment of such applications due to the principle of complementarity (one of the basic principles of ICC) and the general legal principle *non bis in idem* – it would appear that such persons were already brought to criminal responsibility for the committed offences. In addition, by exercising criminal prosecution in these cases, Ukraine will have an opportunity to define the scope of responsibility of such people and the methods for carrying out sentencing on its own.

Another fantastic example exists which will clearly show that it is time for Ukraine to create circumstances under which the Russian Federation will be obliged to start negotiations and act within the limits established by international law. Let's imagine the consequences if Ukraine digs across the Isthmus of Perekop and makes a shipping channel from the Black Sea to the Azov Sea, both shores of which will be under the control of Ukraine, in other words transforms Crimea into island. Firstly, Ukraine will receive a shipping channel to the Azov Sea beyond the control of the Russian Federation. Secondly, Russia will be forced to react in the political & legal dimension or to start direct and full-scale military action against Ukraine. Second option is less probable because it will be considered as direct aggression against Ukraine. Ukraine can also minimise such a possibility and can perform all works by means of a concession agreement with the participation of US and UK companies. If the Russian Federation reacts in the political and legal dimension, Ukraine will have serious advantages. It will be possible for Ukraine to stipulate the conditions for settling this dispute, e.g. the return of all Ukrainian ships and members of their crews which are illegally captured by the Russian Federation, ensure free passage through the Kerch Strait, delimitation of the Azov Sea, and the return of Crimea to the jurisdiction of Ukraine.

## Centralisation of lawfare activity

The measures discussed above and the general effective activity of the state in conditions of lawfare are impossible without their coordination. Firstly, planning and implementing such actions should be carried out by specialists who are not bound by day-to-day legal maintenance of state interests. The volume of day-to-day legal work within state authorities will become a serious obstacle for in-house specialists to struggle effectively with other states in the legal dimension. Secondly, implementation of lawfare measures needs the broad coordination of state authorities together with the involvement of the media and civil society. Such coordination cannot be achieved as part of the ordinary course of activity of state authorities.

Such centralisation is absent in Ukraine. It leads to a number of problems even in the sphere of representation of state interests in international adjudication institutions. For example, to date, Ukraine, Ukrainian state enterprises and private persons from Ukraine are participating in dozens of arbitral and court cases against the Russian Federation and people affiliated with it. Due to the absence of coordination of these proceedings, the legal positions of Ukraine are sometimes in contradiction in different cases. It complicates the protection of Ukrainian interests in each and every case. It is necessary to mention that Ukrainian scholars proposed making such centralisation at least in specific directions of encounters with the Russian Federation ([Glavcom, no date](#)). Sporadic recent attempts to implement such centralisation have appeared in Ukrainian practice. The Ministry of Foreign Affairs, for example, implemented an online platform for coordination of international actions for releasing Ukrainian political prisoners ([KMU, 2020](#)). In addition, it was announced that Ukraine will provide an online platform for interactive information about all court and arbitral cases of Ukraine against the Russian Federation.

It would be logical for Ukraine, and aiming to centralise lawfare actions against the Russian Federation, to use the mechanisms of the National Security and Defence Council of Ukraine. The status of this institution and existing provisions of Ukrainian Constitution and Law “On the National Security and Defence Council of Ukraine” make it possible to ensure a sufficient level of coordination of the state authorities for the effective preservation of Ukrainian interests.

## Class actions as a means of lawfare

In terms of lawfare with the Russian Federation, it is necessary to consider the possibilities of the cooperation of Ukraine with other states and international organisations. To illustrate this approach, such a proposal may be considered: establishment, together with the European Union, of joint control over the gas pressure and its volume that transits from the Russian Federation to the EU through the territory of Ukraine. Such a mechanism would eliminate the constant attempts of the Russian Federation to delegitimise Ukrainian actions in this sphere ([Prokip, 2020](#)).

The initiating of a joint application from Ukraine and Romania to the International Court of Justice requesting an interpretation of the decision of this institution on delimitation of the continental shelf in the Black Sea as of 3 February 2009 ([ICJ, no date](#)) can be considered as a hypothetical means of lawfare in the form of international class action. In taking this action, Ukraine may obtain additional indirect confirmation that Crimea is still an integral part of Ukrainian territory.

Such cooperation can be implemented on a permanent basis. For example, in accordance with the EU–Ukraine Association Agreement, the Association Council was created in

addition to the possibilities of consultations under this agreement. It is also possible to create Association Committees ([EU –Ukraine Association Agreement, no date](#)). All these mechanisms can be used as a means to coordinate the actions of Ukraine and the EU in a lawfare encounter with the Russian Federation. A successful recent example of reference to these means exists – in 2018, when the Russian Federation lowered the gas pressure in the main pipeline, Ukraine referred to the consultancy mechanisms of the EU – Ukraine Association Agreement. As a result of these actions, the attempts of the Russian Federation to label Ukraine as an unreliable gas transit state were ruined.

## Conclusion

In contemporary international relations and in conditions of the actual application of hybrid warfare, lawfare needs to be investigated separately as an integral part of it. It is obvious that lawfare can be used independently and together with other elements of hybrid warfare (economic, diplomatic, military, information etc.).

Lawfare can be defined as usage of law aimed at delegitimizing the actions of an opponent (or legitimising one's own) and tying up the time and resources of the opponent and achieving advantages in military activity or in any sphere of social relations.

The investigation of state actions during the Ukraine – Russia armed conflict proves that lawfare is an objective phenomenon of contemporary international encounters and part of hybrid warfare. The Ukrainian practice of participation in lawfare revealed a lot of practical problems related to its implementation, however, and the main one is absence of centralised coordination of the actions of state authorities for the effective protection of state interests.

### **Funding**

This research received no external funding.

### **Data Availability Statement**

Not applicable.

### **Disclosure statement**

No potential conflict of interest was reported by the authors.

## References

- Almang, J.** (2019) 'War, vagueness and hybrid war', *Defence Studies*, 19(2), pp. 189–204. doi: [10.1080/14702436.2019.1597631](https://doi.org/10.1080/14702436.2019.1597631).
- BBC** (2016) *Russia-Ukraine road blockades hit trade*. Available at: <https://www.bbc.com/news/world-europe-35577726> (Accessed: 20 October 2020).
- BBC** (2018) *Ukraine-Russia sea clash: Who controls the territorial waters around Crimea?* Available at: <https://www.bbc.com/news/world-46345317> (Accessed: 20 October 2020).
- Beck, A.** (2014) 'China's strategy in the Arctic: a case of lawfare?', *The Polar Journal*, 4(2), pp. 306–318. doi: [10.1080/2154896X.2014.954886](https://doi.org/10.1080/2154896X.2014.954886).
- Caliskan, M.** (2019) 'Hybrid warfare through the lens of strategic theory', *Defense & Security Analysis*, 35(1), pp. 40–58. doi: [10.1080/14751798.2019.1565364](https://doi.org/10.1080/14751798.2019.1565364).
- EU – Ukraine Association Agreement** no date *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part*. Available at: [https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc\\_155103.pdf](https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf) (Accessed: 20 October 2020).
- Euroactiv** (2017) *Russia asks UN to set up mission for east Ukraine*. Available at: <https://www.euroactiv.com/section/europe-s-east/news/russia-asks-un-to-set-up-mission-for-east-ukraine/> (Accessed: 20 October 2020).
- Filho, G., Farias, A., and Oliveira, G.** (2017) 'Considerações sobre o Instituto do Lawfare', *Line Revista Multidisciplinar e de Psicologia*, 10(33), pp. 363–369. doi: [10.14295/online.v10i33.661](https://doi.org/10.14295/online.v10i33.661).
- Financial Times** (2015) *Ukraine imposes economic blockade on a blacked-out Crimea*. Available at: <https://www.ft.com/content/d5487eaa-9203-11e5-bd82-c1fb87bef7af> (Accessed: 20 October 2020).
- Glavcom** no date. *Proposals of "Maritime expert platform" on urgent measures for de-occupation of Crimea and struggle with occupation of Black and Azov Seas*. Available at: [https://glavcom.ua/pub/pdf/49/4935/2\\_propoziciya.pdf?fbclid=IwAR3YWSSX1G\\_SUu6AC8UV7TWpmIY2CXyClyMVK4mfCuPzH6zHihxDd6MRo5g](https://glavcom.ua/pub/pdf/49/4935/2_propoziciya.pdf?fbclid=IwAR3YWSSX1G_SUu6AC8UV7TWpmIY2CXyClyMVK4mfCuPzH6zHihxDd6MRo5g) (Accessed: 20 October 2020).
- Glenn, R.** (2009) 'Thoughts on "Hybrid" Conflict', *Small Wars Journal*, pp. 1–8. Available at: <https://smallwarjournal.com/blog/journal/docs-temp/188-glenn.pdf> (Accessed: 20 October 2020).
- Hoffman, F. G.** (2007) *Conflict in the 21st century: the rise of hybrid wars*. Arlington, TX: Potomac Institute for Policy Studies.
- Hsiao, A.** (2016) 'China and the South China Sea "Lawfare"', *Issues & Studies*, 52(2), pp. 1–42. doi: [10.1142/S1013251116500089](https://doi.org/10.1142/S1013251116500089).
- ICJ** no date *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*. Available at: <https://www.icj-cij.org/en/case/132> (Accessed: 20 October 2020).
- INTERFAX** (2018a) *Russia illegally detains 93 vessels heading to Ukrainian ports in Sea of Azov since April 29*. Available at: <https://en.interfax.com.ua/news/general/517112.html> (Accessed: 20 October 2020).
- INTERFAX** (2018b) *Video of attempt by Russian diplomats to take Nord vessel crew out of Ukraine posted on Internet*. Available at: <https://en.interfax.com.ua/news/general/497742.html> (Accessed: 20 October 2020).

**International Crises Group** (2018) *Peacekeeping in Ukraine's Donbas: Opportunities and Risks Ukraine*. Available at: <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/donbas-peacekeeping-opportunities-and-risks> (Accessed: 20 October 2020).

**International Partnership for Human Rights** (2017) *Attacks on Civilians and Civilian Infrastructure in Eastern Ukraine: period covered March 2014–November 2017*. Brussels, Belgium.

**ITLOS** no date. *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures*. Available at: <https://www.itlos.org/en/main/cases/list-of-cases/case-concerning-the-detention-of-three-ukrainian-naval-vessels-ukraine-v-russian-federation-provisional-measures/> (Accessed: 20 October 2020).

**Johnson, R.** (2018) 'Hybrid War and Its Countermeasures: A Critique of the Literature', *Small Wars & Insurgencies*, 29(1), pp. 141–163. doi: [10.1080/09592318.2018.1404770](https://doi.org/10.1080/09592318.2018.1404770).

**Jones, C.** (2016) 'Lawfare and the juridification of late modern war', *Progress in Human Geography*, 40(2), pp. 221–239. doi: [10.1177/0309132515572270](https://doi.org/10.1177/0309132515572270).

**KMU** (2020) *MFA launches Platform to Coordinate Actions on Release of the Ukrainian Political Prisoners by Russia*. Available at: <https://www.kmu.gov.ua/en/news/mzs-zapuskaye-platformu-shcho-koordinuvati-miz-hnarodni-diyi-zi-zviltennya-rosiyeyu-ukrayinskih-polityvazniv> (Accessed: 20 October 2020).

**Kyivpost** (2016) *Svoboda Party report resumption of blockade of Russian truck transit in Ukraine*. Available at: <https://www.kyivpost.com/article/content/ukraine-politics/svoboda-party-report-resumption-of-blockade-of-russian-truck-transit-in-ukraine-408928.html?cn-reloaded=1> (Accessed: 20 October 2020).

**Lawfareblog**. *About Lawfare: A Brief History of the Term and the Site*. Available at: <https://www.lawfareblog.com/about-lawfare-brief-history-term-and-site> (Accessed: 20 October 2020).

**Lee, S.** (2014) 'China's "Three Warfares": Origins, Applications, and Organizations', *Journal of Strategic Studies*, 37(2), pp. 198–221. doi: [10.1080/01402390.2013.870071](https://doi.org/10.1080/01402390.2013.870071).

**Magda, Y.** (2018) *Russia's Hybrid Aggression: Lessons For the World*. Kyiv: Kalamar.

**McKeown, R.** (2015) 'Legal asymmetries in asymmetric war', *Review of International Studies*, 41(1), pp. 117–138. doi: [10.1017/S0260210514000096](https://doi.org/10.1017/S0260210514000096).

**Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters** (1993). Available at: <http://www.cisarbitration.com/2017/02/03/minsk-convention-on-legal-assistance-and-legal-relations-in-civil-family-and-criminal-matters/> (Accessed: 20 October 2020).

**Mises Institute** (2011) *Marko Marjanovic: Is Humanitarian War the Exception?* Available at: <https://mises.org/library/humanitarian-war-exception> (Accessed: 20 October 2020).

**Mosquera, A., Bachmann, S. D. and Bravo, J.** (2019) 'Hybrid Warfare and the Legal Domain', *Terrorism and Political Violence*, 31(1), pp. 98–104. doi: [10.1080/09546553.2018.1555975](https://doi.org/10.1080/09546553.2018.1555975).

**Munoz, A. and Bachmann, S.** (2016) 'Lawfare in Hybrid Wars: The 21<sup>st</sup> Century Warfare', *Journal of International Humanitarian Legal Studies*, 7(1), pp. 63–87. doi: [10.1163/18781527-00701008](https://doi.org/10.1163/18781527-00701008).

**NKRZI** no date. *ITU published the communication on Ukraine's denial of illegal actions of the Russian Federation when using telephone codes in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol and a statement of the Secretary-General of ITU on supporting Ukraine's sovereign right to regulate*

*telecommunications sector within its internationally recognized borders*. Available at: <https://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=1603&language=en> (Accessed: 20 October 2020).

**Popescu, N.** (2015) 'Hybrid Tactics : neither new nor only Russian', *ISSU Alert*, pp. 1–2. Available at: [http://web.archive.org/web/20161030001921/http://mercury.ethz.ch/serviceengine/Files/ISN/187819/publicationdocument\\_singledocument/8a1ac8d8-2722-4245-82db-b18f13deb3be/en/Alert\\_4\\_hybrid\\_warfare.pdf](http://web.archive.org/web/20161030001921/http://mercury.ethz.ch/serviceengine/Files/ISN/187819/publicationdocument_singledocument/8a1ac8d8-2722-4245-82db-b18f13deb3be/en/Alert_4_hybrid_warfare.pdf) (Accessed: 20 October 2020).

**Prokip A.** (2020) 'A New Era of Gas Wars between Ukraine and Russia', *Wilson Center*. Available at: <https://www.wilsoncenter.org/blog-post/new-era-gas-wars-between-ukraine-and-russia> (Accessed: 23 November 2020).

**Rajkovic, N.** (2020) 'Performing "Legality" in the Theatre of Hostilities: Asymmetric Conflict, Lawfare and the Rise of Vicarious Litigation', *San Diego International Law Journal*, 21(2), pp. 435–446.

**Rajkovic, N. and Vennesson, P.** (2012) 'The Transnational Politics of Warfare Accountability: Human Rights Watch versus the Israel Defense Forces', *International Relations*, 26(4), pp. 409–429. doi: [10.1177/0047117812445450](https://doi.org/10.1177/0047117812445450).

**Reuters** (2017) *Ukraine bans all trade with rebel-held territory, as separatists seize assets*. Available at: <https://www.reuters.com/article/us-ukraine-crisis-blockade-cargo-idUSKBN16M14T> (Accessed: 20 October 2020).

**Robinson, P.** (2003) *Just War in Comparative Perspective*. London: Routledge.

**Roth, A.** (2018) 'Russia demands nerve agent samples in standoff with UK over poisoned spy', *the Guardian*, 13 March. Available at: <https://www.theguardian.com/uk-news/2018/mar/13/russia-demands-nerve-agent-samples-uk-deadline-spy-poisoning> (Accessed: 20 October 2020).

**Scharf, M. and Andersen, E.** (2010) 'Is Lawfare worth defining? Report of the Cleveland Experts Meeting, September 11, 2010', *Case Western Reserve Journal of International Law*, 43(1), pp. 11–27.

**Sharkov, D.** (2016) 'Russia Claims Ukraine Open Airspace Led to MH17 Crash', *Newsweek*, 29 September. Available at: <https://www.newsweek.com/russia-claims-ukraine-not-closing-airspace-led-mh17-crash-504222> (Accessed: 20 October 2020).

**Ukraine Crises Media Center** (2020) *Crimea: water supply becoming a tool for political pressure*. Available at: <https://uacrisis.org/en/74909-crimea-water-supply> (Accessed: 20 October 2020).

**Ukraine Crises Media Center** (2017) *What you need to know about the case of former Tornado battalion servicemen*. Available at: <https://uacrisis.org/en/55087-need-know-case-former-tornado-battalion-servicemen> (Accessed: 20 October 2020).

**Ukrainian Association of International Law** (2014) *Ukrainian Revolution of Dignity, RF Aggression and International Law*. Kyiv: K.I.S.

**Ukrainian Association of International Law** (2016) *Panel discussion on international legal issues of hybrid wars*. Available at: <https://youtu.be/aCiODI83AV4> (Accessed: 20 October 2020).

**UNIAN** (2019) *Russian TV propagandist Ernst on fake MH17 footage: "We made a mistake"*. Available at: <https://www.unian.info/politics/10789058-russian-tv-propagandist-ernst-on-fake-mh17-footage-we-made-a-mistake.html> (Accessed: 20 October 2020).

**Vanhullebusch, M and Shen, W.** (2016) 'China's Air Defence Identification Zone: Building Security through Lawfare', *China Review*, 16(1), pp. 121–150.

**Voyger, M.** (2018) 'Russian Lawfare – Russia's Weaponisation Of International And Domestic Law: Implications For The Region And Policy Recommendations', *Journal of Baltic Security*, 4(2), pp. 35–42. doi: [10.2478/jobs-2018-0011](https://doi.org/10.2478/jobs-2018-0011).

**WTO** (2019) *Russia — Measures Concerning Traffic in Transit*. Available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm) (Accessed: 20 October 2020).

**Zadorozhnyi, O.** (2015) *Russian doctrine of international law after the annexation of Crimea*. Kyiv: K.I.S.