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When the World Watches: Lawfare, State Power, and the Shifting Legitimacy of International Justice

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Abstract

The strategic use of legal proceedings as instruments of statecraft—a phenomenon increasingly termed "lawfare"—has fundamentally altered the landscape of international justice. This article examines how states and non-state actors deploy legal mechanisms not merely to resolve disputes but to project power, shape narratives, and achieve geopolitical objectives. It traces the evolution of lawfare from its origins in military strategy to its current manifestation in international courts and tribunals, analyzing how these practices both challenge and reinforce the legitimacy of the international legal order. Drawing on case studies from the International Court of Justice, the International Criminal Court, and contemporary geopolitical conflicts, this article argues that lawfare represents a double-edged phenomenon: while it can empower weaker states and advance accountability, its instrumentalization risks eroding the normative foundations upon which international justice depends. The article concludes that the legitimacy of international justice in an era of lawfare hinges on the preservation of credibility, procedural integrity, and the perceived impartiality of judicial institutions.

Introduction

In September 2023, Ukraine initiated proceedings against Russia before the International Court of Justice (ICJ), alleging that Russia's invasion violated the

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Genocide Convention by falsely claiming genocide as a pretext for military action. This legal maneuver, while ostensibly a treaty dispute, unfolded against the backdrop of ongoing warfare, diplomatic isolation, and global media scrutiny. It exemplified a phenomenon that has become central to contemporary geopolitics: the use of legal institutions as battlefields for political and strategic objectives².

This practice, commonly termed "lawfare," has emerged as a defining feature of twenty-first-century international relations. Originally coined by U.S. Air Force Colonel Charles Dunlap to describe the use of law as a weapon of war, the term has evolved to encompass a broader spectrum of strategic legal activity³. Today, lawfare operates at multiple levels: states leverage international courts to challenge adversaries; authoritarian regimes manipulate domestic legal systems to suppress dissent; and weaker states turn to legal forums to impose reputational and diplomatic costs on more powerful opponents^{4,5}.

The rise of lawfare raises fundamental questions about the nature and legitimacy of international justice. When legal proceedings serve political ends, do they strengthen or undermine the rule of law? Can international courts maintain their credibility while functioning as arenas for strategic litigation? And what are the implications for states that find themselves subject to legal strategies beyond their control?

This article examines these questions through a critical analysis of lawfare's conceptual evolution, its strategic applications, and its consequences for the international legal order. It argues that while lawfare can serve justice when employed by marginalized actors seeking accountability, its instrumentalization by powerful states and political actors risks eroding the legitimacy of international institutions. The article proceeds in four parts: Part II traces the conceptual development of lawfare; Part III examines its strategic applications across different forums; Part IV analyses the legitimacy challenges facing international justice; and

² Oliveira, José Lauro Motta de. "Lawfare no Domínio Marítimo: A Guerra Jurídica entre Rússia e Ucrânia de 2014 a 2024." *Escola de Guerra Naval*, 2025.

³ Vegh Weis, Valeria. "What Does Lawfare Mean in Latin America? A New Framework for Understanding the Criminalization of Progressive Political Leaders." *Punishment & Society* 25, no. 4 (2023): 909-933.

⁴ https://epaper.dawn.com/DetailImage.php?StoryImage=23_02_2026_114_007

⁵ <https://www.dawn.com/news/1975065/#comments>

Part V concludes with reflections on preserving the integrity of international law in an era of strategic litigation.

Conceptualizing Lawfare: From Military Strategy to Political Instrument

❖ Origins and Evolution

The term "lawfare" emerged at the turn of the twenty-first century within U.S. military and legal circles. Colonel Charles Dunlap, then a U.S. Air Force judge advocate, introduced the concept to describe a phenomenon he perceived as threatening American national security: the manipulation of international law by adversaries to delegitimize U.S. military interventions⁶. In Dunlap's original formulation, lawfare represented a method of warfare in which "law is used as a means of accomplishing a military objective," reflecting a concern that international legal frameworks were being weaponized against U.S. interests⁷.

This initial conceptualization was distinctly negative and defensive. Dunlap and his contemporaries argued that various international actors—including NGOs, academics, and international organizations—were weaving "a web of international law and institutions" that threatened U.S. government interests⁸. The origins of lawfare, in this telling, could be traced to international reactions to the NATO bombing of Kosovo and Serbia in 1999, when the media and international community began using international human rights law to delegitimize military interventions⁹.

However, this early conception of lawfare as a tool used primarily by adversaries against the United States proved too narrow. Over time, scholars and practitioners recognized that lawfare could be deployed by a wide range of actors, including states themselves. Dunlap himself later reconsidered his position, arguing that lawfare should be understood as a neutral tool that could be useful for the United States in defending its own geopolitical interests¹⁰. Similarly, Orde Kittrie distinguished

⁶ See Vegh Weis, Valeria, *supra* note 3, at 32

⁷ Łubiński, Piotr. "Four Conceptual Views of Lawfare." In *International Humanitarian Law and Hybrid Warfare*, Routledge, 2025.

⁸ See Vegh Weis, Valeria, *supra* note 3, at 32

⁹ *Id*

¹⁰ *Id*

between "instrumental lawfare"—using legal tools to achieve effects traditionally obtained through military intervention—and "disparate lawfare compliance-exploitation"—using law to gain advantages within armed conflicts".

This evolution from a pejorative label to a more neutral analytical concept reflects broader intellectual developments in international law and international relations. Scholars increasingly recognized that states and non-state actors alike could strategically deploy legal mechanisms to achieve political, diplomatic, and military objectives.

❖ Divergent Conceptual Frameworks

Contemporary scholarship on lawfare encompasses multiple competing frameworks, reflecting different disciplinary perspectives and geopolitical experiences. Piotr Łubiński identifies four principal approaches to conceptualizing lawfare: as a weapon (an interpretation he disputes), as a method of warfare, as a component of hybrid threats, and as a politicized legal strategy detached from armed conflict¹². This typology highlights the conceptual elasticity of the term and the range of practices it encompasses.

A significant divide exists between Global North and Global South understandings of lawfare. In the United States and Europe, the term often connotes the instrumentalization of international legal mechanisms, whether by state or non-state actors, to achieve strategic objectives^{13,14}. This framing tends to emphasize lawfare as a departure from, or threat to, the rule of law—an abuse of legal processes for ulterior purposes.

By contrast, in Latin America, the term has acquired a distinctly different meaning. Valeria Vegh Weis documents how progressive political leaders in Brazil and Argentina have deployed the concept of lawfare to describe the criminalization of

¹¹ Id

¹² See Łubiński, Piotr, *supra* note 7, at 33

¹³ See Vegh Weis, Valeria, *supra* note 3, at 32

¹⁴ Castan Pinos, Jaume, and Mark Friis Hau. *Lawfare: New Trajectories in Law*. Routledge, 2023.

political opponents through judicial and media campaigns¹⁵. In this context, lawfare refers to the manipulation of criminal prosecutions—often on corruption charges—to delegitimize and exclude progressive political leaders from democratic politics. The term gained prominence in Brazil following charges against former President Luiz Inácio "Lula" da Silva, and in Argentina in cases involving former President Cristina Fernández de Kirchner¹⁶.

This Latin American understanding of lawfare differs from the Global North conception in important ways. Rather than viewing lawfare primarily as an instrument of weaker actors challenging hegemonic power, it emphasizes how domestic judiciaries, mainstream media, and political opposition can coordinate to undermine democratic processes. Vegh Weis describes this as involving three dimensions: judicial warfare, media warfare, and psychological warfare, working in concert to achieve political objectives¹⁷.

A third conceptualization emerges from scholarship on international criminal justice. Oumar Ba argues that states presumed to be weaker in the international system—particularly African states—have strategically used the International Criminal Court (ICC) to advance their security and political interests¹⁸. This framework challenges the "justice cascade" narrative that portrays international criminal justice as an autonomous normative project, instead emphasizing how states actively shape and instrumentalize judicial institutions to serve their interests¹⁹.

❖ Lawfare and Legal Statecraft

Some scholars have sought to distinguish legitimate legal strategy from what might properly be termed "lawfare." Justin Key proposes drawing a conceptual line between ordinary legal statecraft and lawfare as commonly defined, arguing that legal strategies perceived as disingenuous, frivolous, or self-serving tend to be self-

¹⁵ See Vegh Weis, Valeria, *supra* note 3, at 32

¹⁶ *Id*

¹⁷ *Id*

¹⁸ Ba, Oumar. *States of Justice: The Politics of the International Criminal Court*. Cambridge University Press, 2022.

¹⁹ *Id*

undermining because credibility is currency in the legal domain²⁰. Legal statecraft, in this view, operates within the bounds of legal norms and achieves success through persuasive argumentation, whereas lawfare seeks to manipulate or subvert legal processes for ulterior purposes²¹.

This distinction, while analytically useful, proves difficult to maintain in practice. The boundary between legitimate litigation and strategic abuse is inherently contested, with each party to a dispute characterizing its own legal actions as principled and those of its adversaries as lawfare. Moreover, as international courts have become more prominent arenas for political contestation, the distinction between legal and political objectives has become increasingly blurred.

Strategic Applications of Lawfare

❖ International Courts and Tribunals

International courts have emerged as primary forums for lawfare, reflecting the growing importance of judicial mechanisms in international affairs. The International Court of Justice (ICJ) has experienced a sharp rise in cases, reflecting both increased reliance on judicial mechanisms and a strategic shift in how states use the Court²². While some cases aim solely to resolve legal disputes—particularly in territorial and immunity matters—others serve broader functions, including shaping international narratives, exerting diplomatic pressure, and reinforcing legal norms²³.

The ICJ's evolving role as a forum for lawfare raises questions about the Court's foundational purpose. Onur Uraz examines whether the instrumentalization of the Court for political, moral, and diplomatic objectives aligns with its intended function or necessitates a reassessment of its role in the international dispute settlement framework²⁴. Cases brought under treaties such as the International

²⁰ Key, Justin. "War by Law: Legal Statecraft with International Aims." In *The Routledge Handbook of Lawfare*, edited by ..., Routledge, 2025.

²¹ *Id*

²² Uraz, Onur. "Growing Role of the International Court of Justice as a Field of Lawfare: Perils and Prospects." *Athena* 5, no. 1 (2025): 56-113.

²³ *Id*

²⁴ *Id*

Convention on the Elimination of All Forms of Racial Discrimination and the Genocide Convention have become particularly prominent sites of strategic litigation, as states seek to leverage the Court's jurisdiction to advance political objectives while maintaining the appearance of legal dispute resolution²⁵.

The International Criminal Court (ICC) has similarly become a forum for strategic engagement. Oumar Ba demonstrates that African states have instrumentally and strategically used the ICC to advance their interests, challenging the assumption that international justice operates autonomously from state power²⁶. Self-referrals, complementarity determinations, and the limits of state cooperation reflect how states actively shape the Court's operations to serve their objectives²⁷.

❖ Economic and Trade Lawfare

Beyond international criminal and dispute settlement mechanisms, lawfare increasingly operates in economic and trade domains. States leverage financial systems, sanctions, and regulatory mechanisms to extend influence beyond their borders²⁸. The use of World Trade Organization dispute settlement mechanisms and investor-state dispute settlement (ISDS) processes has become an arena of geopolitical contestation.

Fathan Rafiqi and Ali Maksum examine the transformation of international trade law into a strategic instrument of geopolitical contestation, focusing on the legal rivalry between China and Western countries²⁹. They find that legal platforms originally designed for neutral dispute resolution have been repurposed as tools of statecraft. China's increased legal engagement post-2018 signals a shift toward strategic legalism, where litigation serves as foreign policy, while the United States exercises unilateral legal strategies that undermine multilateral institutions³⁰.

²⁵ Id

²⁶ See Ba, Oumar, *supra* note 18, at 35

²⁷ Id

²⁸ https://epaper.dawn.com/DetailImage.php?StoryImage=23_02_2026_114_007

²⁹ Rafiqi, Fathan, and Ali Maksum. "Law as Strategy: The Weaponization of Trade Dispute Mechanisms in Sino-Western Relations." *Hasanuddin Journal of International Affairs*, 2025.

³⁰ Id

These developments reflect a broader erosion of legal neutrality. Procedural asymmetries in international trade dispute mechanisms disadvantage Global South countries, challenging the foundational purpose of international law as a stabilizing force³¹. Without institutional reform and renewed commitment to procedural justice, international legal mechanisms risk becoming arenas of symbolic dominance rather than fair adjudication.

❖ **Asymmetric Lawfare: The Weapon of the Weak**

While much lawfare scholarship focuses on state power, the concept also encompasses the strategic use of law by weaker actors. Jaume Castan Pinos and Mark Friis Hau examine how civil society actors employ legal instruments to uphold their rights in asymmetric lawfare, demonstrating that lawfare is not exclusively a tool for hegemonic actors³². Cases involving Indigenous communities, environmental activists, and human rights defenders illustrate how legal strategies can empower marginalized groups and challenge powerful interests³³.

This "weapon of the weak" dimension of lawfare highlights the double-edged nature of strategic legal engagement. On one hand, lawfare can advance accountability and justice when used to empower marginalized groups or hold powerful actors accountable³⁴. On the other hand, when exploited to suppress opposition or exhaust adversaries through prolonged litigation, it erodes public trust and weakens institutional legitimacy³⁵.

Legitimacy Under Strain: The Fragility of International Justice

❖ **Structural Vulnerabilities**

International justice systems face profound structural vulnerabilities that lawfare practices both exploit and exacerbate. These vulnerabilities can be grouped into

³¹ Id

³² See Castan Pinos, Jaume, and Mark Friis Hau, *supra* note 14, at 34

³³ Id

³⁴ See <https://epaper.dawn.com/>, *supra* note 28, at 35

³⁵ Id

three categories: erosion of legitimacy, design flaws, and limited budgetary sustainability³⁶.

Erosion of Legitimacy. The international legal order depends largely on the political will of states to accept and comply with rules they have created. When court decisions prove inconvenient, governments question their authority, reinterpret their obligations, or withdraw from international systems entirely. Venezuela's withdrawal from the American Convention on Human Rights in 2012, following adverse rulings, exemplifies this dynamic³⁷.

Legitimacy has also been challenged by perceptions of selectivity. The Rome Statute grants the UN Security Council the power to refer situations to the ICC, even when events occur in non-party states, while also allowing the Council to request suspension of investigations. This design reflects the dominance of states with greater political power within the international system. The veto has been used to block investigative initiatives in cases such as Syria and Myanmar, while referrals have been pushed forward in situations primarily involving African countries, reinforcing perceptions that international justice does not operate on neutral ground³⁸.

Design Flaws. International courts lack their own enforcement mechanisms. Unlike national systems, they have no direct coercive power; compliance with rulings depends entirely on state cooperation. This inability to enforce rulings weakens courts' credibility and fuels perceptions that their judgments are aspirational rather than effective³⁹. Operational problems further affect effectiveness and proximity to victims, including geographical centralization (with decisions concentrated in The Hague) and linguistic barriers that create a gap between the discourse of universality and the actual experience of access to justice⁴⁰.

Limited Budgetary Sustainability. International courts depend almost exclusively on state contributions, creating structural instability. The expansion of mandates and

³⁶ <https://www.dejusticia.org/en/international-justice-as-fragile-as-it-is-necessary/>

³⁷ Id

³⁸ Id

³⁹ Id

⁴⁰ Id

caseloads has not been accompanied by proportional resource increases. This dependence opens the door to politicization through voluntary contributions that direct resources toward certain investigations, while delays or non-payment of mandatory contributions serve as means of exerting pressure.

❖ The Credibility Currency

Key argues that credibility is currency in the legal domain. Legal strategies perceived as disingenuous, frivolous, unreasonable, or self-serving tend to be self-undermining⁴¹. This insight has profound implications for lawfare: while legal strategies can produce effects against low-capacity targets or in tandem with information warfare, overreliance on lawfare risks undermining the potency of international law altogether⁴².

The relationship between legal ambition, legal effect, and credibility suggests that lawfare may ultimately prove self-defeating. When states or other actors cynically manipulate legal processes for political ends, they may achieve short-term strategic gains while eroding the normative foundations that make international law valuable in the first place. This dynamic is particularly acute in the context of international justice, where perceived impartiality and legitimacy are essential to institutional effectiveness.

❖ Politicization and Selectivity

The perception of politicization and selectivity poses a fundamental challenge to the legitimacy of international justice. Critics argue that international law reflects the interests of powerful states, with selective adherence to international norms placing the rules-based order under significant strain⁴³. The focus on investigations in countries of the Global South, combined with reluctance to pursue cases involving powerful states, reinforces perceptions that international justice operates in a space marked by power imbalances rather than neutral principles⁴⁴.

⁴¹ Key, Justin. "War by Law: Legal Statecraft with International Aims." In *The Routledge Handbook of Lawfare*, edited by ..., Routledge, 2025.

⁴² Id

⁴³ See <https://epaper.dawn.com/>, supra note 28, at 35

⁴⁴ See <https://www.dejusticia.org>, supra note 36, at 39

Yet the picture is more complex than simple narratives of hegemonic domination would suggest. As Ba demonstrates, African states have actively shaped the ICC's operations to serve their interests, challenging the assumption that they are merely passive subjects of international justice⁴⁵. Similarly, the proliferation of lawfare by states across the geopolitical spectrum reflects the extent to which international legal institutions provide opportunities for strategic engagement, even for relatively weaker actors⁴⁶.

Conclusion: Preserving Legitimacy in an Era of Lawfare

The intersection of lawfare, state power, and international justice presents a profound challenge to the international legal order. On one hand, the strategic use of legal proceedings can advance accountability, empower marginalized actors, and provide mechanisms for resolving disputes that might otherwise escalate into armed conflict. On the other hand, the instrumentalization of international law for political purposes risks undermining the normative foundations that make law valuable as an alternative to brute force.

This article has argued that the legitimacy of international justice in an era of lawfare depends on preserving the credibility and impartiality of judicial institutions. Legal strategies perceived as disingenuous or manipulative tend to be self-undermining, eroding the very norms they seek to exploit. International courts can maintain their authority only to the extent that they operate with transparency, procedural integrity, and perceived even-handedness.

Preserving this legitimacy requires attention to both institutional design and state practice. Reform efforts should address structural vulnerabilities—including enforcement deficits, resource constraints, and perceptions of selectivity—while states must resist the temptation to treat international legal institutions as mere instruments of geopolitical advantage. The international community must also grapple with the double-edged nature of lawfare, recognizing that while strategic legal engagement can serve justice, its overuse risks corroding the normative foundations upon which international law depends.

⁴⁵ See Ba, Oumar, *supra* note 18, at 35

⁴⁶ See Uraz, Onur, *supra* note 22, at 36

Ultimately, the question of whether international justice can survive the age of lawfare turns on whether states and other actors can maintain the distinction between strategic advocacy within legal bounds and the instrumentalization of law for ulterior purposes. The credibility that is currency in the legal domain is not infinitely renewable; once expended, it may prove impossible to recover.

Bibliography

Ba, Oumar. *States of Justice: The Politics of the International Criminal Court*. Cambridge: Cambridge University Press, 2022.

Bílková, Veronika, and Federica Cristani. "Mechanisms of International Justice to Fight Impunity: International Tribunals, Universal Jurisdiction and Transitional Justice Processes." *European Parliament*, 2025.

Castan Pinos, Jaume, and Mark Friis Hau. *Lawfare: New Trajectories in Law*. Abingdon: Routledge, 2023.

Key, Justin. "War by Law: Legal Statecraft with International Aims." In *The Routledge Handbook of Lawfare*, edited by . . . Abingdon: Routledge, 2025.

Łubiński, Piotr. "Four Conceptual Views of Lawfare." In *International Humanitarian Law and Hybrid Warfare*. Abingdon: Routledge, 2025.

Oliveira, José Lauro Motta de. "Lawfare no Domínio Marítimo: A Guerra Jurídica entre Rússia e Ucrânia de 2014 a 2024." *Escola de Guerra Naval*, 2025.

Rafiqi, Fathan, and Ali Maksum. "Law as Strategy: The Weaponization of Trade Dispute Mechanisms in Sino-Western Relations." *Hasanuddin Journal of International Affairs* (2025).

Uraz, Onur. "Growing Role of the International Court of Justice as a Field of Lawfare: Perils and Prospects." *Athena* 5, no. 1 (2025): 56-113.

Vegh Weis, Valeria. "What Does Lawfare Mean in Latin America? A New Framework for Understanding the Criminalization of Progressive Political Leaders." *Punishment & Society* 25, no. 4 (2023): 909-933.

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