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MASTER OF MILITARY STUDIES

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**Operationalized Lawfare**

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE  
OF MASTER OF MILITARY STUDIES

**MAJOR GRANT W. McDOWELL, UNITED STATES MARINE CORPS**

AY 2020-21

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## EXECUTIVE SUMMARY

**Title:** Operationalized Lawfare

**Author:** Major Grant W. McDowell, United States Marine Corps

**Thesis:** Structured operationalization of Lawfare across the Department of Defense (DoD), including the creation of an Interagency Task Force, updated doctrine and training, and linking liaison networks, will provide Commanders additional warfighting effects and capabilities.

**Discussion:** Lawfare is the weaponization of law to complement or supplant traditional military means of war. It can be wielded by superpower nations as well as non-governmental actors, and through legal or illegitimate means. Similarly to how the law affects nearly all corners of the world, Lawfare can target and degrade the adversary in innumerable ways. Lawfare can affect long- and short-term goals, active battlefields and non-kinetic spheres, warfighting supply lines and production abilities, a population's will to fight, military expansion plans, and everything in between. By strategically wielding the law as a weapon of war, governments and militaries can effectively hinder their adversaries without the need to utilize conventional military strategies and tactics alone. Although this awesome ability is available and is widely in use, the US and DoD do not use Lawfare strategically and operationally. This is partly due to unfamiliarity with the concept, but also from the lack of planned implementation to provide Commanders the ability to leverage Lawfare against US adversaries and to support partner nations.

**Conclusion:** As the US government shifts effort towards competition rather than conflict with its adversaries, whole-of-government endeavors will at least partially supplant kinetic solutions. One key area that will succeed in this competitive arena is the strategic implementation of operationalized Lawfare. Adversaries such as China and Russia are already taking strides in this area, as are allied partners including France and the United Kingdom. The DoD is already well staffed and structured to implement operationalized Lawfare in this US effort, but is not tasked or provided the intergovernmental assets required to harness Lawfare assets. By creating a Lawfare Interagency Task Force, updating doctrine to include Lawfare principles, educating and training for Judge Advocates and Commanders, and creating liaison networks with clear authorities and task organization, the DoD will add a powerful and efficient targeting effect to its arsenal.

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## PREFACE

The Department of Defense (DoD) is searching for answers on how to incorporate strategies to compete on the whole-of-government battlefield. Planned and operationalized Lawfare is an effective and clear step forward in this arena, which could be accomplished with relative ease, speed, and low cost. Whereas US strategic Lawfare contemplation typically exists in academia, other nations operationally implement Lawfare within their national strategies. To maintain pace with US allies and adversaries alike, the DoD needs to operationalize Lawfare and add it to DoD capabilities. This paper attempts to bridge the gap from scholarly theory to the military pragmatic, conducting an in-depth analysis of Lawfare, its historical application, and potential for DoD operational implementation. My intent is to provide a framework to quickly implement operationalized Lawfare to provide immediate advantage.

As with most things, it takes a village to accomplish big tasks, and many individuals helped me throughout the problem framing and writing process for this paper. I would like to specifically thank Dr. Jill Goldenziel for her support, guidance, and time. I also wish to thank Major Dan Alcantara, USMC for allowing me to bounce my ideas (good and bad) off him and for reviewing this paper. Lastly and most importantly, I would like to thank my wife Kieran, for once again raising the kids alone while I was a geographic-bachelor during the year at Command and Staff, remote schooling the kids, surviving COVID, and giving me the time to focus and devote to this paper – everything I accomplish, per usual, is due to her support.

*Lawfare... is simply another kind of weapon, one that is produced, metaphorically speaking, by beating law books into swords.”*

-Major General Charles Dunlap, U.S.A.F. (retired)<sup>1</sup>

## I. Introduction

Lawfare is the weaponization of the law to complement and supplant traditional military means of war.<sup>2</sup> It can be wielded by superpower nations and non-governmental actors and through legal or illegitimate means.<sup>3</sup> Similar to how law affects nearly all corners of the world, Lawfare can target and degrade the adversary in many ways; Lawfare can affect long and short-term goals, active battlefields and non-kinetic spheres, warfighting supply lines and production abilities, a population’s will to fight, military expansion plans, and everything in-between. By wielding the law as a weapon of war, governments and militaries can effectively hinder adversaries without the need to utilize conventional military strategies and tactics. Although this awesome ability is available and is sporadically used, Lawfare is not strategically and operationally implemented by the US or Department of Defense (DoD). This is partly due to unfamiliarity with the concept, but also from the lack of a planned implementation of operational Lawfare and training on what it could provide Commanders.

The term Lawfare evokes a wide range of understandings and reactions.<sup>4</sup> Debates in academic circles regarding Lawfare range from considering the usefulness of weaponizing the law to whether Lawfare is a positive tool or something to be avoided completely, if not condemned. Outside academia, individuals including military Judge Advocates (JAs)<sup>5</sup> encountering the topic of Lawfare may be aware of the subject generally, but more likely will respond with: “you mean the podcast?”<sup>6</sup> or “what’s that?” Regardless of the understandings, or lack thereof, held by any individual on the subject, operationalized Lawfare is occurring globally by the US and its adversaries and allies alike.<sup>7</sup> The use of the law as a weapon of war is not a

new concept and nations have fostered its use effectively for years. From manipulation of international laws, domestic prosecution, intelligence preparation of the battlefield, or empowering allies to recognize and defend against Lawfare, the US and DoD have utilized the law in countless ways for operational benefit. The potential of Lawfare to disrupt adversaries and advance US interests is not hypothetical; Lawfare has demonstrably worked many times and is currently a tool that the US uses through many agencies and international organizations.<sup>8</sup> However, despite the successful application of Lawfare by the US, these efforts are by and large sporadic and short-term efforts. Neither the US government nor DoD has a structured or organized plan to fully leverage Lawfare's effects, advantages, and long-term strategies.

The US and DoD are recognizing new conflicts and competitive challenges against US interests that require a change in direction. Chairman of the Joint Chiefs of Staff, Army Gen. Martin E. Dempsey exemplified this realization by stating the "whole-of-government [approach] is not just desirable --it's actually imperative" and is needed to maintain and defend US advantages.<sup>9</sup> The US military is historically built and structured to fight and win the nation's wars.<sup>10</sup> The DoD is not structured or well organized to fight this whole-of-government approach in this new competition environment. Albeit years behind our adversaries, these deficiencies are beginning to be realized and corrected.<sup>11</sup> The US and DoD are shifting efforts in many areas, specifically in response to counter Russia's hybrid or ambiguous warfare tactics and China's salami-slicing or gray-zone tactics.<sup>12</sup> Countering these "gray zones" is not necessarily something wholly new to the US,<sup>13</sup> but the ways in which these competitive adversaries are challenging US political, economic, informational, and military efforts continue to evolve, and therefore require an evolution of the US's means of combatting them.<sup>14</sup> Although the US and DoD need to catch up with these adversaries in whole-of-government areas, many of which will

require long-term and resource consuming efforts,<sup>15</sup> operationalized Lawfare can be achieved with relative speed, ease, and desired effects due to the existing military JAs, civilian attorneys, and force structure in place.

This paper contributes to the already well fleshed out debate surrounding the successful implementation of Lawfare by US allies and adversaries, by drawing attention to the failings of the US in lacking a pragmatic strategic and structural Lawfare coordination.<sup>16</sup> While the US government has utilized Lawfare against its adversaries occasionally, these efforts were made in stovepiped fashion with certain US or DoD agencies taking individual efforts and actions to further the goals of US interests in policy areas concerning their specific mission. A planned strategic network of attorneys could unleash Lawfare's potential to accomplish long-term and varied legal offense and defense of US goals. The lack of agency networks, resources, training, or knowledge of US legal resource leverage capabilities significantly hinder Lawfare's potential benefits. The DoD is perhaps the US agency that could benefit the most from increased Lawfare efforts, and it is already well positioned and staffed to operationalize and implement Lawfare strategically, operationally, and tactically.<sup>17</sup>

This paper provides a conceptual model of how the DoD could implement Lawfare structurally in a cost-effective, rapid manner to provide Commanders another arrow in their operational quivers. The core concepts behind implementing Lawfare across the DoD include: 1) Lawfare Interagency Task Force creation, 2) doctrinal inclusion of Lawfare principles, 3) education and training for JAs, civilian attorneys, and Commanders, and 4) creation of liaison networks linking these entities. To properly frame the necessity and advantages of implementing these changes this paper provides a clear development of an operationalized Lawfare concept, background surrounding Lawfare development, current international efforts, practical

advantages, and the current state of Lawfare in the US government. The subsequent section will note areas that need to be addressed to implement Lawfare and discuss some prevailing counter arguments against the use of Lawfare. Finally, the paper will conclude by tying together how this conceptualized version would benefit Commanders, the DoD mission, partner nations, and US national security interests.

## II. Background

### A. What is Lawfare?

Although nations have long wielded the law as a means to shape goals and cultural focus, whether internationally or domestically,<sup>18</sup> the planned and coordinated weaponization of law – Lawfare – is a relatively recent military concept.<sup>19</sup> At the forefront of raising awareness of Lawfare was Major General Charles J. Dunlap, Jr., USAF (Ret.) who brought the concept of cognizant weaponization of the law for military use into popular debate and is widely considered to be the first to introduce the term “Lawfare” into mainstream awareness.<sup>20</sup> Over the past two decades, he has provided literature and presentations on the subject and defined Lawfare as “the strategy of using - or misusing - law as a substitute for traditional military means to achieve a warfighting objective.”<sup>21</sup> Then-Colonel Dunlap first developed these concepts, eventually retiring as a Major General, and is currently a civilian professor at Duke Law and is regularly cited and interviewed by Lawfare scholars. His platform brought important attention to Lawfare, noted positive aspects and potential benefits, and attempted to separate negative connotations regarding its uses by terrorists and other bad actors.

Unfortunately, the Lawfare operational benefits espoused by Maj Gen Dunlap are currently underway strategically in other nations, and not in the US or by the DoD. One key space where Lawfare is regularly implemented is through international law efforts.<sup>22</sup> These

efforts have far reaching implications as international laws and norms shape the world in innumerable ways, many of which are not readily apparent.<sup>23</sup> By manipulating these laws and the information needed to enforce them, nations can influence the environment, or in military terms, the battlefield, in which they operate to their advantage. Creating, curtailing, or placing representatives in institutions to influence these laws and norms cannot only manipulate actions by states, but can change cultures and alter societies over time as well.<sup>24</sup> Some nations have realized how powerful a tool this is militarily and are seeking to shape the global order while also leveraging the mechanisms provided in the international system to their full benefit through coordinated long-term strategic efforts.<sup>25</sup>

Understanding the benefits of what Lawfare can achieve strategically is important to gain support of its operational implementation, but how to pragmatically create an apparatus to advantageously apply Lawfare is still undefined in the US and DoD. Maj Gen Dunlap noted that the rise of “Lawfare has stimulated something of a revolution in military legal affairs that has made Judge Advocate Generals an indispensable part of a Commander’s warfighting team.”<sup>26</sup> Although he notes the JA’s role as an indispensable part of warfighting for Commanders in Lawfare, he discusses this in terms of their role as ensuring warfighting is accomplished through legal means and ensuring the rule of law is respected. While this is true and essential of current JA roles, Maj Gen Dunlap’s articles and speeches do not mention the possible additional functions and tools JAs could provide Commanders in shaping battlefields through a broader interpretation of Lawfare. It is in this vacuum of unexplored functional operational application that further academic research and development is needed and intended by this paper.

## B. Lawfare Applications

Examples of how JAs can apply their legal skills and wield Lawfare for their commanders is documented in numerous scholarly publications in concert with Maj Gen Dunlap's concepts. The most notable academic publication of these is Professor Orde Kittrie's 2016 book *Lawfare: Law as a Weapon of War*<sup>27</sup> which complements Maj Gen Dunlap's military perspective on Lawfare. Professor Kittrie provides a civilian perspective through a singular published source, conceptually overviewing Lawfare's meaning, domestic and international examples of its application, and reasons for its growing importance.<sup>28</sup> His thoroughly researched book provides an invaluable resource for Lawfare practitioners, scholars, and advocates. Professor Kittrie notes within his seminal work that "the book is designed to spur discussion and encourage further analysis by other authors... [i]n order to facilitate future research by other scholars, the book is heavily endnoted..."<sup>29</sup> Subsequent scholars have drawn from many of the examples, ideas, and directions of research in Kittrie's work.

Less complimentary to Lawfare are scholars who have a variety of views of what it is and what it should be, debate whether Lawfare is merely the management of law and war together,<sup>30</sup> and give it other negative connotations.<sup>31</sup> For example, scholars note how Lawfare has been used against a nation's respect for the rule of law, such as the use of human shields by placing military facilities in and around protected persons and places, as proof of how harmful Lawfare can be.<sup>32</sup> Although concerns of misusing the respect of legal restraint are legitimate and in some circles are regarded as "Lawfare," this are not the definition of weaponizing the law for U.S. military use that this paper proposes. That said, even though these types of negative uses of Lawfare are not what the paper proposes, they are areas which require DoD defensive preparations to counter adversary Lawfare efforts. DoD Commanders, JAs, and civilian

attorneys must be prepared to recognize, counter, deter, and train against those abuses of the law by US adversaries. However, beyond the necessity of awareness, any proposed use of Lawfare by the US and DoD would be accomplished through legal means in line with all other military operations, whether through proposed changes to international law, domestic law, requests for authorities, or any other legal action. Despite objections to the term “Lawfare” due to notions considering US adversary usage, the benefits of the DoD implementing Lawfare far outweigh this misperceived naming convention.

Strategic, operationalized Lawfare provides boundless opportunities for the US and DoD. Its possible usage is only limited by the creativity of US and DoD legal minds as the law touches adversaries in countless facets, opening many opportunities for exploitation.<sup>33</sup> Although the applications of Lawfare are extremely broad, it is useful to describe areas in which Lawfare can be applied for the US’s and DoD’s benefit. Five general areas in which actors have typically utilized Lawfare are: 1) Battlefield Exploitation, 2) Instrumental Lawfare, 3) Proxy Lawfare, 4) Information Lawfare and, 5) Institutional Lawfare.<sup>34</sup> Battlefield exploitation is the type of Lawfare where adversaries utilize states’ law-abidingness to their advantage. As stated previously in this paper, battlefield exploitation can be applied illegally (i.e. human shields), but can be applied legally as well.<sup>35</sup> This might be accomplished through changes in zoning to prevent military base expansion, changes in environmental laws to deny non-compliant vehicles, or other shifts in policies that effectively deny freedom of maneuver. Instrumental Lawfare is defined as utilizing legal tools to achieve the same effects of those sought from kinetic military action.<sup>36</sup> Proxy Lawfare is accomplished by leveraging legal means to attack or disrupt assets or people related to the adversary, often through lawsuits against individuals or companies. Information Lawfare typically involves controlling the narrative offensively or defensively to

portray one's own actions as legal and/or the adversary's as illegal or illegitimate.<sup>37</sup> Institutional Lawfare is the development and implementation of laws or institutional organizations which will further one's own interests or prevent or disrupt the adversary's goals.<sup>38</sup>

A Lawfare entity within the US military or government that JAs could provide information to as well as request support from does not exist. Dr. Jill Goldenziel's forthcoming Cornell Law Review article suggests an approach to create such an agency to propel Lawfare from the academic to the pragmatic.<sup>39</sup> With a background in international affairs coupled with a professorship at Marine Corps University, Dr. Goldenziel combines government and military experience with an awareness of Lawfare's potential for the US government. As such, her article encapsulates and further develops Maj Gen Dunlap and Professor Kittrie's efforts (among others) and illustrates tangible proposals. Specifically, she outlines what a US Lawfare strategy could be and proffers the creation of a Lawfare interagency office.<sup>40</sup> This paper's goal is to propose structure and training throughout the DoD which would link into a similar type of entity envisioned by Dr. Goldenziel.

This paper builds upon the work of these and other scholars who created the substantial groundwork for proposing an operational DoD structured Lawfare effort. It is this unexplored area that this paper develops and proposes: 1) Lawfare Interagency Task Force creation, 2) doctrinal inclusion, 3) education and training for Commanders and JAs, and 4) development of liaison networks. Once Lawfare processes and structures are established, Commanders will add another arrow to their quiver to defeat and disrupt US adversaries. The US and DoD are fortunate to be able to learn from our allies and adversaries' successes and failures in Lawfare and build an effective and responsive structure. This paper examines how the DoD can take these lessons and how to implement them structurally and pragmatically. Although the US has

much ground to make up to catch up with its adversaries, a clear DoD Lawfare framework is the first step into matching the efforts our adversaries have already taken.

JAs are well situated to become the eyes, ears, and arms for this Lawfare interagency office from DoD commands at nearly all levels – tactical, operational, and strategic. These JAs serve in billets supporting varying warfighting functions including information, targeting, and warfighting labs, and are located across all geographic combatant commands. They could serve as conduits to a Lawfare interagency to push a Commander’s needs up, as well as inform decisions on the ground from the agency and other parts of the government. A Lawfare-trained JA could accomplish numerous tasks in line with a strategic effort by: 1) anticipating needs to update ROE in face of adversary legal manipulation, 2) identifying circumstances where adversaries are creating legal facts to take advantage in future operations, 3) identifying places to create legal facts towards US advantage, 4) identifying adversary use of international law to prevent weapons creation or use, 5) identifying attempts to block access to areas or materials through legal means, and 6) blocking adversary access to areas or materials with legal mechanisms.<sup>41</sup>

### C. Historical Examples of Lawfare

The most current and well-known cases of successful coordinated Lawfare operations are China’s expansion efforts in the South China Sea and Russia’s seizure of the Crimean Peninsula.<sup>42</sup> Both nations’ concerted efforts to leverage legal tools have brought about further influence and control of areas without kinetic strikes or by limited formal military action. The US is also adept at crafting international laws and utilizing Lawfare to great success. The difference, however, between the US and Chinese/Russian Lawfare efforts is the lack of a long-term, planned, and developed strategy to implement the law as tool to further national interests.<sup>43</sup>

Lawfare is not a weapon only utilized by large nations. Many smaller powers have utilized Lawfare including Israel,<sup>44</sup> the Arab League,<sup>45</sup> and the Philippines. Although smaller nations' and organizations' Lawfare activities are unequal to Chinese or Russian efforts (with perhaps the exception of Israel), these smaller entities have successfully leveraged Lawfare to keep much larger and more powerful states in check – something they could never militarily accomplish alone.<sup>46</sup>

China's use of Lawfare is arguably the most advanced and strategic effort of weaponizing the law by any nation.<sup>47</sup> This can be attributed to the efforts of two PLA Colonels who published a revolutionary treatise in 1999 "Unrestricted Warfare" by Qiao Liang and Wang Xiangsui, pushing Chinese military efforts towards the whole-of-government approach combined with military goals to further national interests.<sup>48</sup> This seminal work fleshes out the concept of using law as a weapon. From this beginning, China's modern whole-of-government approach has included Lawfare as a doctrinal mode of waging war and executed these aims extremely effectively.<sup>49</sup> China's most obvious Lawfare efforts are the building and creation of islands and legal assertions of territorial ownership of maritime regions through "Salami-slicing."<sup>50</sup> China's salami-slicing is the application of a slow-moving series of micro-aggression tactics used to control opposition territory piece by piece. These small actions leave countries off-balance on how to respond and help China to avoid international diplomatic attention. The actions cumulate over time and result in a strategic advantage for the aggressive country, broadly through leveraging legal claims, lawsuits, and assertions. This salami-slicing is an effort that China is now using on its opposite land border against India through encroachments and occupation.<sup>51</sup> China is utilizing existing international law to create new facts to support its claims. It is accomplishing this by taking existing international law regarding what constitutes an island, and

building up features in an attempt to meet these international standards – i.e. island building. Separately, to better its chances at regional dominance and compliance, China is placing officials in key international positions and creating international organizations to further its influence as illustrated when influencing United Nations agencies to block cooperation with Taiwan, exclude representatives of the Uyghur minority community from a UN meeting, and promoting China’s 5G telecommunication security risks on other countries.<sup>52</sup> Each of these actions are forms of Lawfare, and China is effectively accomplishing it through concerted efforts across its government in support of what are traditionally considered military goals and missions by the US and its allies.

Russia is also effectively leveraging Lawfare, though its efforts are less coordinated than China’s, but still significantly more organized than the US’s.<sup>53</sup> Although there are numerous examples of successful Russian Lawfare, the most well-known efforts were the supportive actions in advance of, and subsequent actions surrounding, the seizure and annexation of Crimea.<sup>54</sup> Clearly the seizure of the Crimean peninsula was not bloodless; however Russia successfully invaded and annexed a large geographic area—the largest land seizure since WWII—without far greater kinetic strikes, international confrontation, and engagement than would be expected. These efforts were possible because of a well-planned and coordinated Lawfare attack. The Lawfare efforts were in line with the foundation of the Gerasimov and now Primakov doctrines, which formulated the Russian military’s hybrid warfare efforts.<sup>55</sup> In Crimea, Russia created “facts” on the ground (“unknown” little green men posing as local Crimean forces, who were in fact Russian soldiers) to support legal claims that the Russian government was merely incorporating regions that wished to become part of their nation and protect that population.<sup>56</sup> These fabricated “facts” of local Ukrainians in Crimea legally voting

in support of secession from Ukrainian control, and requesting annexation, provided the legal subterfuge Russia required to “legally” intervene to protect those people who wished to become part of Russia.<sup>57</sup> Eventually Russia admitted to the false reports, or at least no longer feigns the false narratives. However, the seizure is now complete and Crimea remains under Russian control.<sup>58</sup> Other factors and efforts, specifically information operations, played key roles in these Russian efforts. However, Lawfare was essential in facilitating and legitimizing before the Russian public and the world each aspect of the seizure and subsequent annexation.

China and Russia are generally considered to be the two largest peer threats to the US, and the US must devote resources to counter their Lawfare efforts. Driving home the point of how the US is being left behind in Lawfare operational efforts, allies such as France and the United Kingdom are already developing Lawfare strategically and structurally.<sup>59</sup> The 2020 United Kingdom Integrated Operating Concept specifically lays out Lawfare as a key element of the strategy.<sup>60</sup> By contrast, neither the US nor DoD has a strategic structure or direction for Lawfare coordination.<sup>61</sup> Regardless of the time advantages of adversaries and allies already developing Lawfare, the US is still in an advantageous position due to the intellectual quality and numbers of Judge Advocates and civilian lawyers to implement Lawfare strategically to catch up, provided a structured doctrine is developed and promulgated.<sup>62</sup> The US needs to make further efforts to catch up and compete in the whole-of-government gray zone beyond, and as the US takes action in these other areas, Lawfare should be viewed in the forefront of new US and DoD strategic efforts in the whole-of-government approach.<sup>63</sup>

### III. Discussion

#### A. Lawfare Interagency Task Force Creation

To unleash the potential of Lawfare, the DoD must, first and foremost, create a Lawfare Interagency Task Force.<sup>64</sup> This proposed Lawfare Interagency Task Force would serve as not only the lead, but as the coordinating and deconflicting effort across the DoD and all US government agencies. All other actions and structural implementation will ultimately coordinate with this entity.

Currently, the offices and individuals that wield the power to leverage the law in certain areas, or hold the specific expertise in specific legal fields, are widely distributed throughout US government agencies, and throughout the US private sector.<sup>65</sup> Ironically, the US's massive legal resource is a capability that China lacks and could give the DoD an advantage when waging Lawfare.<sup>66</sup> Chinese President Jinping is concerned about a lack of legal talent to defend China's interests abroad over international disputes, even noting this deficit as 'a security risk.'<sup>67</sup> The DoD has thousands of JAs spread throughout the services and geographically around the world, with expertise in myriad areas of law, although their expertise and ability to use Lawfare are currently limited by their positions and authority in their respective branches.<sup>68</sup> Due to the dispersed nature of the US departmental agency legal resources, JAs lack the resources needed to leverage these tools. The inability to reach and control these spread-out resources is what requires a specified Lawfare Interagency Task Force. This singular authority could direct support from US agencies to DoD Combatant Commanders and facilitate the application of Lawfare against US adversaries.

Although a DoD Lawfare strategy needs whole-of-government support for success, every US government agency would also benefit from including it in its policies to achieve goals and

defend US interests.<sup>69</sup> However, each agency brings its own skills and abilities to legally fight for its interests, but lacks the direction, training, or networking to leverage its power for other US organizations, including the DoD. For example, the Department of Justice (DOJ) alone brings legal expertise to a multitude of areas of law. These include antitrust division, ATF, Office of Legislative Affairs, DEA, Attorney General, Tax Division, INTERPOL, FBI, and the Financial Fraud Enforcement Task Force, among many others.<sup>70</sup> The brain trust from the attorneys at the DOJ alone could open many avenues of shaping or wielding the law to advance DoD interests, working together with the Lawfare Interagency Task Force. Determining every agency that would need coordination with the Lawfare Interagency Task Force is beyond the scope of this paper, but merely providing this example illustrates the vast array of areas the DoD could leverage Lawfare to attack, defend, and apply direct pressure to our adversaries. This encompasses a wide area including the ability to affect adversary proxies and to shape laws to deny battlefield advantages.

The logical agency to lead the Task Force is the Department of State (DoS) due to its ability to shape and coordinate international efforts. The DoS's Office of the Legal Adviser already advises on implementation of international and domestic law.<sup>71</sup> This entity is well suited to provide the DoD and all US agencies a logical central office to coordinate and implement their efforts.<sup>72</sup> Regardless of how the Lawfare Interagency Task Force is sourced or which entity leads it, at a minimum the Task Force needs access to implement foreign policy, affect changes in international law, and coordinate domestic issues in line with DoD efforts. The DoD would then provide intents and recommendations to this Task Force to support its missions. These requests could come in the form of creating new international law or economic sanctions. Alternatively, this office could provide direction to departments outside the DoD to obtain

information for Combatant Command areas of operations in order to counter adversarial Lawfare efforts to support US and DoD goals.

## B. Doctrinal Inclusion

DoD doctrine must be updated throughout the services to support and coordinate Lawfare efforts.<sup>73</sup> Calls for doctrinal updates to compete with new military challenges in the competitive environment are occurring in domains including cyber, informational, and law enforcement.<sup>74</sup> Military doctrine influences how the DoD conducts operations to achieve national objectives and it is key in developing coordination of civilian and military relationships.<sup>75</sup> The DoD will not change to incorporate the use of Lawfare without updated doctrine specifying its inclusion. Without doctrinally mandated change, any Lawfare Interagency Task Force would be unutilized by the DoD and inconsistently supportive of any requests from the Task Force. Only through updated doctrine that recommends and specifies how Lawfare will be managed within and throughout the DoD will its benefits be implemented and fully realized.

Doctrine plays an important role in focusing the military on areas critical to success. It directs organizations and people to shift resources to support missions, provides guidance on how to fight, and focuses members of DoD organizations.<sup>76</sup> There are numerous publications and doctrinal directives provided through each service, and throughout the DoD. As this shift will affect many DoD areas of effort, the direction to update doctrine should come from the highest levels including the Secretary of Defense and individual Service Chiefs. By offering areas in which Lawfare's inclusion is logical, and suggesting what those updates should be, a roadmap provided to each service will move towards the successful operational implementation of Lawfare.

The US and DoD need to specify using the law as a weapon as imperative to further our national interests and commit resources toward its operational inclusion. In this effort, much can be learned from the successful implementation of whole-of-government approaches by other states to wage Lawfare and further their national interests. Applying these doctrinal lessons, at a minimum the National Security Strategy (NSS) should specify Lawfare as a strategic tool that must be leveraged in the whole of government competitive environment against US peer adversaries, as well as against non-state actors.<sup>77</sup> The NSS informs the DoD by providing: 1) endorsement by the head of government – a key element needed for Lawfare due to its debated role and legitimacy, 2) clear articulation of national interests, 3) declaration of a strategic vision that would provide Lawfare direction and assist in long term strategic efforts, 4) identification and assessment of future legal challenges, 5) an overview of required resources that will help shape the creation of the Lawfare Interagency Task Force mentioned above and the liaison networks mentioned below, and 6) basic implementation guidance.<sup>78</sup>

A NSS incorporating Lawfare as a tool to be used by the US and DoD will inform the National Defense Strategy (NDS).<sup>79</sup> The NDS, in turn, will provide a clear roadmap for the DoD service components. Each would include this vision to incorporate the implementation of Lawfare through joint publications and individual branch directives.<sup>80</sup> JAs from all services are already in place within most command structures and would be able to implement and coordinate the strategic efforts in line with their Commander's direction. This would require updates to each service's legal support documents, operational handbooks, and mission statements.<sup>81</sup> This would affect countless publications, but a holistic top-down directive to include Lawfare would permeate many areas JAs already occupy. These include operational and international law to domestic operations, rule of law training and education, information operations to authority

requests, and cyber law to environmental law, just to name a few of the wide-ranging fields that Lawfare opens for Commanders. The areas Lawfare can affect are near limitless and will therefore affect many core areas of expertise already mastered by JAs and civilian attorneys throughout the DoD.

One of the most important areas of doctrinal updates to incorporate Lawfare is related to information and intelligence operations.<sup>82</sup> JA involvement is already considered in these information operations in their processes to ensure applicable laws and regulations are adhered to during planning processes.<sup>83</sup> Therefore, updates would not create new JA presence in warfighting functions, but merely open consideration for new targeting, planning, and advising considerations. Further changes would acknowledge the expanded JA's role in these processes to incorporate Lawfare planning and recommendations, offensively affecting adversaries, or realizing and defending against Lawfare tactics affecting US and DoD interests. Beyond intelligence and information operations, other areas which would logically expand with JA Lawfare roles include targeting and operational planning design.<sup>84</sup>

### C. Education and Training

Regardless of the areas in which JA involvement will expand, the creation of a robust education and training curriculum is necessary to inform Lawfare application. Commanders, JAs, civilian attorneys, and key decision makers need education and training on what Lawfare is, what it can do, and how to accomplish these goals. Lawfare implementation will likely face resistance without proper education.<sup>85</sup> As stated previously, even JAs are generally unaware of what Lawfare is, and the concept itself has a somewhat muddled identity. To ensure the US and DoD implements Lawfare in line with doctrine and obtains "buy-in" from all required players in

the process, creation of robust training and education is needed throughout the services and for the Lawfare Interagency Task Force.

For the DoD, the essential individuals requiring Lawfare application education and training are the Commanders, JAs, and civilian attorneys. The tailored training would be provided for each of their roles. The common training areas for Lawfare would be to describe the interagency process and structure, awareness of tactics used by adversaries, and areas for DoD Lawfare application. The interagency process needs clear delegation and explanation of operational, administrative, and tactical control to address any Commander concerns of outside influence. Commanders need clear understanding to alleviate and understand all micromanagement concerns. This will require specified tasking authority, defined supporting versus supportive relationships, stipulated authority “arbitrators” for conflicts of interest between the DoD and other agencies or competing interests between Combatant Commanders. JAs and civilian attorneys need clear awareness of the resources, tools, and contact information available to them when requesting actions by the Lawfare Interagency Task Force to support their Commander’s mission, as well as realizing the resources available to advance novel Lawfare tactics. Not only will this require basic training courses, but also mission specific Lawfare preparation for deploying JAs.

Beyond awareness of what Lawfare is, and what it can contribute to the fight, useful tactics and effective strategies will need to be shown through historical context of successful utilization. These successful contexts will provide examples of how to use Lawfare as an offensive weapon for the DoD and what defensive tactics the US and allies need to defend against adversarial Lawfare. This requires reviewing known Lawfare efforts by US adversaries and successful efforts by the US, allies, non-state actors, and neutral nations.<sup>86</sup> Fortunately,

many scholars have documented these historical efforts, and have essentially already created the “curriculum” and after-action reports from previous uses of Lawfare.<sup>87</sup> This Lawfare training should be targeted to the types of strategic, operational, and tactical missions the DoD JAs will encounter.

Strategically, Combatant Commands can implement defensive Lawfare by training allies through international law creation, preventing adversary base expansion or weapons usage, and through lawsuits to attack adversary proxies. Operationally, Commanders can utilize laws to prevent the movement of enemy equipment and personnel,<sup>88</sup> obtaining authorities in anticipation of adversary actions, creating facts on the ground to defend action and control the legal narrative, and document illegal actions by the adversary. Tactically, Lawfare can be implemented through consistent training and defense of the Rule of Law with partner nations and allies. JA structure is already well-positioned to coordinate these efforts for their Commanders and no additional personnel would be required to ensure this crosstalk and coordination occurs.

The services have established law centers and schools and continuously update education,<sup>89</sup> which can train Commanders, JAs, and civilian attorney within the DoD.<sup>90</sup> These schools serve as training venues and have established repositories for lessons learned, from which Lawfare tools and processes could be continually documented and developed for future.<sup>91</sup> Commanders already attend mandatory Senior Leader Legal Courses when selected for Command. Adding Lawfare training to these events will ensure Commanders are aware of the tools and resources that Lawfare will provide.<sup>92</sup> As a new warfighting skill for Commanders and JAs, this will require a DoD-wide effort to learn from and build on successful use of Lawfare. The Lawfare Interagency Task Force will also serve this function, but since that entity would be

responsible for not only the DoD, DoD entities should logically hold and manage DoD-lessons learned.

#### D. Interagency Network and Liaison Team Creation

Ensuring that DoD Lawfare operationalization successfully supports military Commanders requires formal network liaison between DoD entities, Commanders, and the Lawfare Interagency Task Force. Many linchpins to tie DoD units to the Task Force and the interagency to the supporting agencies throughout the government are necessary to ensure effectiveness and utility of Lawfare. Discussing all mechanisms for US agencies to work with the Task Force lies beyond the scope of this paper. However, these abilities will span the spectrum across all legal fields. JAs are already well structured to liaison within the DoD and the individual branches to support reporting and implementation of Lawfare.

For DoD purposes, the majority of Lawfare operations will occur outside of the continental US. As such, the Combatant Commands should each have direct liaisons with the Lawfare Interagency Task Force through their JAs.<sup>93</sup> The JAs can coordinate direction from the commands below the Combatant Command level to avoid and limit confusion and redundant efforts. All the subordinate commands within the Combatant Commands will thus source their Lawfare actions through a singular command and track short and long-term efforts. This will ensure the forces are in sync with each other. This structure will also safeguard that the Lawfare Interagency Task Force office will not undermine the Combatant Commands' intent. During deployments, JAs would report through their chain of commands to an established point that would have direct coordination with the Lawfare Interagency Task Force. The different chain of command structures is necessitated by the more immediate and rapid responses typically needed during deployment.

The benefit of maintaining the structured networks through the DoD JA chain provides for coordination of Lawfare efforts and unity of effort. By keeping these efforts consistent and coordinated, this bureaucracy protects long-term Lawfare efforts, even during political changes.<sup>94</sup> Many Lawfare initiatives, especially those involving changes to international law or training allies, will require lengthy commitments and consistency. Maintaining Lawfare efforts and planning for DoD implementation within the Combatant Commands will provide a bulwark against shifting political efforts.

#### IV. Counter Arguments

Despite the clear benefits, Lawfare is not a tool of war that everyone agrees upon.<sup>95</sup> Adversaries may manipulate the law for reprehensible purposes and the creation of falsehoods, but these are not the proposed DoD use of the law for Lawfare. However due to these concerns, the term Lawfare carries significant baggage, and therefore, efforts to operationalize Lawfare across the DoD may face resistance. To counter these concerns, robust education and training is needed to inform Commanders, JAs, and civilian attorneys as to exactly what Lawfare will mean for US and DoD implementation, and what it will not do.<sup>96</sup> Regardless of individual opinions on Lawfare which prevent implementation, US adversaries are using highly effective Lawfare whether we agree with it or not. The longer the DoD delays in structurally implementing Lawfare offensive and defensive planning, the further they will fall behind and become more susceptible to its effects.

A potential concern regarding Lawfare effectiveness is US adversaries' respect for any actual legal penalty or for international law standards. This argument assumes that if a state does not respect international norms, laws, or penalties, then the effects of any Lawfare actions will not actually disrupt their plans. This argument fails for at least two reasons, 1) Lawfare actions

can affect our adversaries regardless of their compliance – through proxy actions, or through international condemnation, and 2) Lawfare actions are happening against US and DoD interests already, and therefore training is needed to recognize and act against these efforts. Undercutting this assumption as well, is the fact that US adversaries are concerned about international sanctions, negative publicity, and cannot always escape Lawfare just because they do not respect the law.<sup>97</sup> Non-state actors may or not care about the law, but they do strive for legitimacy and backing of actors that do, and therefore are wary of running afoul of international norms. Similarly, state actors who are widely considered to be uninterested in the rule of law, take great strides to appear legitimate, whether holding “lawful” and legitimate elections, or avoidance of international condemnations. Due to these realities and rational concerns, regardless of whether US adversaries adhere or respect international laws or rulings, their actions considering legal ramifications and fallout are affected and therefore considered.

## V. Conclusion

Operational Lawfare is underway across the globe. Near peer adversaries and US allied nations have either taken or are taking steps to strategically, operationally, and tactically apply law as a weapon of war. Their efforts have produced demonstrable effects in advancing national interests which, historically, would have required traditional military actions. Unfortunately, the US has failed to maintain pace with these nations despite significant premonitions, efforts, and contributions from academic and military scholars documenting the Lawfare gaps in US strategy. Fortunately, the DoD is prepositioned and logistically structured with the requisite expertise and manpower to quickly make up ground to bring Lawfare warfighting abilities to Commanders.

Unbridling the law as a weapon for the DoD will require efforts outside of military institutions. The main agency that will require Lawfare buy-in is the DoS, but further

coordination across US agencies will also be necessary. As with the DoD, those agencies are also well-structured and manned with lawyers to implement Lawfare. The DoD actions and mechanisms required to feed into this Lawfare Interagency Task Force will require structure and resources, specifically, inclusion of Lawfare in doctrine, education and training resources, and development of liaison networks. The JA communities in all services are well positioned to support these efforts and merely need to be tasked to create and implement operationalized Lawfare.

Much literature is devoted to DoD's implementation of the whole-of-government approach. These efforts rightfully include linking diplomatic, information, and economic efforts with military actions. Lawfare touches many, if not all, of these other efforts. By structurally including Lawfare in military operations, Commanders across the DoD will add a new warfighting ability to use against adversaries and to support allies. The DoD and the JAs within its structure possess the talent and legal expertise to step out smartly and weaponize the law for Commanders. With purposeful strategic efforts to include Lawfare across the DoD, the US will gain another weapon in its whole-of-government arsenal, in support of its allies and to the detriment of its adversaries.

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