

ARTICLE

CHINESE LAWFARE IN CONFLICT: THE THREAT TO U.S. OPERATIONS

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ABSTRACT

The United States military and intelligence communities are sounding the alarm about the escalating risk of interstate conflict with the People's Republic of China. China is already a premier practitioner of "lawfare" in the context of interstate competition, but the impact of Chinese lawfare in potential active conflict scenarios could be even more profound. Indeed, Chinese lawfare could set the conditions for U.S. or allied forces' defeat before a single shot is fired.

This paper introduces the concept of "operational lawfare" as the application of lawfare during interstate armed conflict. This application contrasts with how China already deploys its lawfare in the context of great power competition. The paper explains how, in a conflict scenario, Chinese operational lawfare will likely pose a significant, real-world threat to U.S. and allied military operations, vastly different from the lawfare U.S. warfighters have experienced previously. The paper also addresses an urgent need for appropriate planning and specialist personnel capable of meeting the operational lawfare threat, as well as a need for a formal defensive strategy to prepare for and contest hostile lawfare. This strategy must balance the need to defend against operational lawfare without playing into the hands of Chinese propagandists who seek to discredit legitimate U.S. efforts to enforce and encourage commitment to the rule of law.

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INTRODUCTION

“Lawfare” is “the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective.”¹ There is, however, no formal U.S. or allied doctrinal definition of lawfare, nor (at least outside of classified fora) is there a clear offensive or defensive lawfare strategy.² This is a problem. Western adversaries—most notably, the People’s Republic of China (PRC)—already systematically use lawfare to achieve national objectives as part of

¹ Charles J. Dunlap, Jr., *Lawfare Today: A Perspective*, 3 YALE J. INT’L AFFS. 146, 146 (2008).

² See, e.g., Jill I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, 106 CORNELL L. REV. 1085, 1094-97 (2021); see also ORDE F. KITTRIE, *Lawfare, China, and the Grey Zone*, in *HYBRID THREATS AND GREY ZONE CONFLICT: THE CHALLENGE TO LIBERAL DEMOCRACIES* 209 (Mitt Regan & Aurel Sari eds., 2024).

great power competition.³ It is highly likely that these states will continue to use lawfare during active conflict, not only as a supporting military effect but also as a main effort in its own right. Though some attention has been given to this “lawfare in competition,” lawfare as applied in interstate conflict has been less well assessed. Such failure to understand how lawfare will be deployed during conflict risks real-world battlefield defeat.

This paper provides an assessment of how the PRC could use lawfare to shape and conduct future conflict and makes recommendations about how the United States, along with allies and partners, can prepare for such a worst-case scenario. In particular, the paper considers existing and likely Chinese lawfare efforts with a particular focus on Chinese lawfare during armed conflict—which this paper refers to as “operational lawfare”—taking at face value Western military and intelligence assessments that the PRC represents, in the words of the 2022 National Security Strategy, a “pacing challenge” over the coming decade.⁴ Section II of the paper begins with a brief review of existing Western literature on the definition of lawfare, as well as a brief discussion of Western experience with operational lawfare on the battlefield, noting that the primary lawfare experience for U.S. and allied warfighters has been in counterterrorism and counterinsurgency operational contexts. Section III then contrasts the Western position with a brief review of the Chinese view of lawfare, which is firmly incorporated into PRC military doctrine and has been practiced in support of strategic objectives during interstate competition.

Section IV provides an assessment of how Chinese People’s Liberation Army (PLA) lawyers and information operators might deploy “operational lawfare.” In kinetic (or conflict) settings, such lawfare is likely to be most effective

³ See, e.g., Goldenziel, *Law as a Battlefield*, *supra* note 2 (in Section II of her article, Goldenziel outlines China’s recent use of lawfare in its global competition with the United States); See also KITTRIE, *Lawfare, China, and the Grey Zone*, *supra* note 2 (describing Chinese use of lawfare in grey-zone (sub-armed conflict threshold) competition, noting that the PRC has been engaged in a sophisticated maritime and aviation lawfare strategy for over a dozen years, and highlighting the success China has enjoyed in achieving its objectives “without firing a shot”).

⁴ See, e.g., WHITE HOUSE, NATIONAL SECURITY STRATEGY 22 (2022), <https://www.dote.osd.mil/Portals/97/pub/articles/2022%20National%20Security%20Strategy%2020221012.pdf?ver=FGtjrh6vAvqCi7iRow97rg%3d%3d> [https://perma.cc/NN5Y-JCLF]. For a discussion of the history and definition of “pacing threat” and “pacing challenge” in the context of U.S.-China relations, see Cameron Carlson et al., *Defining Pacing Threats and Challenges to Homeland Defense and Security*, 7 J. INDO-PACIFIC AFFS. 3, 7 (2024), <https://www.airuniversity.af.edu/JIPA/Display/Article/3820959/defining-pacing-threats-and-challenges-to-homeland-defense-and-security/> [https://perma.cc/CE6V-6P9Z] (proposing that “pacing challenge” be defined as “...an adversary that poses a meaningful risk to U.S. influence, position, and power but does not constitute an immediate military threat. This definition encapsulates the temporal aspect of enduring challenges while emphasizing peacetime competition across the diplomatic, information, military, and economic (DIME) spectrum. It underscores the importance of measured responses to evolving global power dynamics, enabling the United States to strategically allocate its resources, devise effective strategies, forge partnerships, and foster innovations to adeptly confront future challenges and safeguard the homeland during the competitive phase of operations.”) [hereinafter NATIONAL SECURITY STRATEGY].

as a tool—and, perhaps, a major Chinese military priority—to (i) shape and prepare battlespaces ahead of conflict, (ii) delay or deter third parties from entering an imminent or ongoing conflict, (iii) divide potentially hostile coalitions of foreign nations, and (iv) achieve military *fait accompli* while quickly normalizing potential territorial gains. The section underscores the importance of acknowledging the value of long-term planning, narrative building, and consistent messaging on international legal issues. It also highlights the importance of *third-party* audiences, i.e., states and populations not directly involved in hostilities, for interstate lawfare. These takeaways stand in contrast to a lack of a clear Western lawfare strategy, a deficiency that risks any Western response to operational lawfare being reactionary, short-termist, and overly focused on Western legal argumentation that falls flat with the foreign audiences targeted by offensive lawfare efforts.

Section V then proposes ways for the United States and its allies to prepare for and counter Chinese operational lawfare, with the primary and overarching recommendation being the institution of a formal and coordinated *defensive* lawfare strategy. Such a strategy includes a commitment to actively identify and plan against hostile lawfare efforts, building the capability and capacity to contest PRC lawfare narratives around the world. It also ensures that the United States and its allies remain consistent in their own messaging on international legal issues.

Though some scholars advocate for an offensive Western lawfare strategy, this paper argues that only *defensive* lawfare is appropriate. Staying on the defensive avoids playing into Communist Party of China (CPC or, alternatively, Chinese Communist Party or CCP) propaganda by further degrading international law and norms—adherence to which still holds significant strategic value. In fact, consistent adherence to these laws and norms is crucial for the United States’s ability to garner support from its allies and partners and for successful coalition operations. These relationships provide a long-term strategic benefit that may often outweigh shorter term operational and tactical benefits derived from international law defiance.

Above all, this paper is a call to action for both the military and international legal communities: if there is a chance of great power conflict in the late 2020s and early 2030s, then failure to understand lawfare as a tool for shaping future battlefields, enabling enemy warfighters, delaying U.S. and allied military and diplomatic responses, and maintaining illicit gains risks consigning U.S. and allied forces to defeat before the fight has even begun. Passively ceding ground within the international legal system to actors who conduct cynical lawyering to gain zero-sum national advantages risks the widespread abandonment of that system in the long run. On the other hand, engaging in cynical offensive lawfare risks normalizing the practice of weaponizing the law, rule of law, and rules-based order while encouraging a view of the international system as little more than a cover to allow the “strong to do what they can.”⁵ Paradoxically, therefore, complete failure

⁵ The Melian dialogue, from which these words are derived, may be seen as an illustration of Athens’s embrace of a brutal and realist international politics where might makes right. Thucydides may have used the dialogue to preview Athens’s ultimate decline and defeat, which

to formally engage with lawfare or conduct effective counter-lawfare will harm the international rules-based order while exposing defenders of that system to a greater chance of real-world battlefield defeat in conflict, but over-zealous offensive lawfare also risks damaging the international legal system while inflicting strategic harm on U.S. interests. There is, therefore, a lawfare sweet spot that the United States and like-minded allies must seek in countering adversarial operational lawfare.

I. WHAT IS LAWFARE?

Lawfare is no longer a new concept. Charles Dunlap first defined the concept in Western legal academia in 2001 as “a method of warfare where law is used as a means of realizing a military objective.”⁶ In 2008, he revised that definition, articulating it instead as “the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective.”⁷ Orde Kittrie drew on this later definition to identify two distinct types of lawfare: (1) “compliance-leverage disparity lawfare,” meaning the use of an adversary’s own compliance with domestic or international law and rules of engagement to constrain that adversary and so obtain battlefield advantage;⁸ and (2) “instrumental lawfare,” or using legal tools in place of conventional military action to achieve a military objective.⁹ Jill Goldenziel expanded these definitions further in a 2021 article, wherein she provided two alternative descriptions.¹⁰ According to Goldenziel, lawfare is either:

- 1) the purposeful use of law taken toward a particular adversary with the goal of achieving a particular strategic, operational, or tactical objective, or
- 2) the purposeful use of law to bolster the legitimacy of one’s own strategic, operational, or tactical objectives toward a particular adversary, or to weaken the legitimacy of a particular adversary’s particular strategic, operational, or tactical objectives.¹¹

was in part hastened by a series of revolts by member states of the Delian League. The League was initially a voluntary league of city states led by Athens and united in the interest of self-defense. Over time, however, Athens increasingly forced member states to remain in the League and pay tribute. Athens’s heavy-handed approach made it increasingly fearful of retribution from its subjects—and thus more desperate to dominate them. Eventually, this, as Athens feared, led to revolt, the collapse of the League, and, ultimately, Athens’s defeat in its war with Sparta.

THUCYDIDES, 5 HISTORY OF THE PELOPONNESIAN WAR, ch. 89.

⁶ Charles J. Dunlap, Jr., *Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts* 4 (2001), <https://people.duke.edu/~pfeaver/dunlap.pdf> [<https://perma.cc/BWG8-EBDZ>].

⁷ See Dunlap, *Lawfare Today*, *supra* note 1.

⁸ See ORDE F. KITTRIE, *LAWFARE: LAW AS A WEAPON OF WAR* 18–25 (2016).

⁹ *Id.* at 12–17.

¹⁰ See Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1085.

¹¹ *Id.* at 1097.

Crudely, therefore, Dunlap first identified and defined lawfare as a concept for English-speaking practitioners, Kittrie explored lawfare methodology, and Goldenziel highlighted lawfare's role in impacting popular legitimacy.

Nor can U.S. and allied militaries claim ignorance of the use of lawfare as a tool of statecraft. The British Ministry of Defence has referred to the threat posed by lawfare in reports, joint concepts, and official speeches with increasing frequency since 2015.¹² While it is true that there are almost no official U.S. Department of Defense (DoD) public references to "lawfare," unofficial academic publications by U.S. personnel and affiliates from the last five years make frequent reference to the term, including in criticism of the United States's lack of a formal lawfare doctrine.¹³ Similarly, although NATO doctrine—which can influence the development of U.S. doctrine—and official NATO publications are largely silent on lawfare, NATO-affiliated academic publications have discussed the concept, particularly in the context of "hybrid warfare."¹⁴ It is clear, therefore, that parts of the Western military academe are well aware of the growing importance of lawfare in interstate competition and conflict. Nevertheless, without an operational lawfare strategy for times of interstate conflict, warfighters and planners are at risk of failing to timely and sufficiently prepare for a serious and potentially decisive threat.

A. Lawfare in counter-terror campaigns: the Western experience of hostile lawfare in conflict

Meanwhile, Western warfighters are historically most familiar with lawfare in the context of non-international armed conflicts (NIACs) between states on the

¹² See, e.g., Rupert Schulenburg, *The Rise of 'Lawfare' in the UK Examined: How Parliament Turned the Law into a New Battleground*, ACTION ON ARMED VIOLENCE (Apr. 5, 2021), <https://aoav.org.uk/2021/the-rise-of-lawfare-in-the-uk-examined-how-the-ministry-of-defence-and-parliament-turned-the-law-into-a-new-battleground/> [<https://perma.cc/N7L2-HFR9>].

¹³ See, e.g., Charles J. Dunlap Jr., *A Warfighter's Perspective on Lawfare in an Era of Hybrid Threats and Strategic Competition*, LAWFIRE (Mar. 13, 2020), <https://sites.duke.edu/lawfire/2020/03/13/a-warfighters-perspective-on-lawfare-in-an-era-of-hybrid-threats-and-strategic-competition/> [<https://perma.cc/X8Q2-RXYW>] (reproducing remarks by Major General Barre R. Seguin, Deputy Chief of Staff, Strategic Employment Supreme Headquarters Allied Powers Europe); see also Dan Schiffman, *Great Power Use of Lawfare: Is the Joint Force Prepared?*, 107 JOINT FORCE Q. 15 (2022); see also Jessica Williams, *Legitimizing and Operationalizing US Lawfare: The Successful Pursuit of Decisive Legal Combat in the South China Sea*, 4 J. INDO-PAC. AFF. 298 (2021); see also Jessica Williams, *Lawfare in the Context of Hybrid Warfare*, 16 MIL. REV. 1 (2021), <https://media.defense.gov/2021/Mar/07/2002595020/-1/-1/1/16%20WILLIAMS.PDF> [<https://perma.cc/Z76P-8ZWD>]; see also Jill Goldenziel, *The U.S. is Losing the Legal War Against China*, FORBES (Aug. 3, 2021), <https://www.forbes.com/sites/jillgoldenziel/2021/08/03/the-us-is-losing-the-legal-war-against-china/> [<https://perma.cc/UDN3-VRQY>]; see also Grant W. McDowell, *Operationalized Lawfare*, (Masters of Military Studies thesis, USMC Command and Staff College), Apr. 14, 2021, <https://apps.dtic.mil/sti/trecms/pdf/AD1178111.pdf> [<https://perma.cc/YK4P-9JCX>].

¹⁴ See, e.g., Andrés B. Muñoz Mosquera & Sascha-Dominik Bachmann, *Understanding Lawfare in a Hybrid Warfare Context*, NATO LEGAL GAZETTE (2016), https://www.act.nato.int/wp-content/uploads/2023/05/legal_gazette_37.pdf [<https://perma.cc/5LVA-YVHG>].

one hand, and non-state armed groups (NSAGs) on the other, often as part of the Global War on Terrorism (GWOT). A feature of these conflicts—especially those between Western democratic nations and various extremist Islamic groups in the Middle East—has been the real or perceived exploitation of Western adherence to the law of armed conflict (LOAC), international law, domestic law, and strict rules of engagement.¹⁵ Such exploitation is a prime example of Kittrie’s “compliance-leverage lawfare.” For example, in seeking to abide by strict LOAC rules on distinction, Western military personnel deployed to Afghanistan were restricted from targeting Taliban fighters preparing for attacks or conducting unarmed reconnaissance during attacks, due to their civilian garb and concealment of weaponry.¹⁶ In a different theater, British personnel deployed to Iraq were also subjected to a form of lawfare in the form of years of litigation alleging abuse and serious criminal behavior; these personnel were ultimately cleared of wrongdoing but British authorities believe the suits may have “interfere[d] with operational effectiveness on the ground.”¹⁷ Furthermore, by using human shields to constrain Western targeters, the Islamic State of Iraq and Syria (ISIS) also exploited

¹⁵ See, e.g., Charles J. Dunlap Jr., *Lawfare: A Decisive Element of 21st-Century Conflicts?*, 54 JOINT FORCE Q. 34 (2009),

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6034&context=faculty_scholarship (“[T]oo frequently [U.S.] opponents use an exploitative form of lawfare along the lines of that arising in Abu Ghraib’s aftermath. In fact, lawfare has emerged as the principal effects-based air defense methodology employed by America’s adversaries today. Nowhere is this truer than in Afghanistan, where the Taliban and al Qaeda are proving themselves sophisticated and effective lawfare practitioners. Specifically, the Taliban and al Qaeda are attempting to demonize the air weapon through the manipulation of the unintended civilian casualties airstrikes can produce.”) [<https://perma.cc/VFZ3-MFPX>]; see also SWJ Staff, *Counterlawfare in Counterinsurgency*, SMALL WARS J. (Dec. 14, 2011), <https://smallwarsjournal.com/2011/12/14/counterlawfare-in-counterinsurgency/> (“[I]t can be argued that law has become a key ‘center of gravity’ in modern conflict . . . [a]lthough the United States is not likely to lose militarily on the battlefield, [it] is far more vulnerable in the world court of public opinion. Knowing that our society so respects the rule of law that it demands compliance with it, our enemies carefully attack our military plans as illegal and immoral and our execution of those plans as contrary to the law of war.”) (internal citations omitted) [<https://perma.cc/KN4W-GGWK>].

¹⁶ See, e.g., KITTRIE, *LAWFARE*, *supra* note 8 at 19 (noting that Taliban lawfare tactics succeeded in causing U.S. forces to self-impose restraints that would render [U.S. forces] less effective while eroding popular support for the war).

¹⁷ See Schulenburg, *supra* note 12. See also HC Deb (Jan. 7, 2016) (604) col. 177 (in which British parliamentarians debate the impact of lawfare in the context of Iraq, with James Gray MP noting that “[l]awyers have been trawling around Iraq in particular, finding people who allege some form of abuse by our armed forces in Iraq 10 or 15 years ago. That has been highlighted in particular with the lawyers, Leigh Day, which behaved very badly in the al-Sweady inquiry, wasting £31 million of public money in pursuing a case that should not have been pursued in the first place. A whole variety of other lawyers are doing similar work in Iraq today. We must be very aware of that issue because it does not only affect our veterans. It must be terribly worrying for large numbers of our veterans from Iraq and Afghanistan when they did things perfectly correctly under orders and behaved naturally, but some lawyers for their own financial reasons are seeking to investigate what they did. That must also have an effect on the operational capabilities of our forces today. Any soldier doing something might have to think, ‘What would happen if I got this wrong? What would happen if I breach some rule? What will happen if, in 10 or 15 years’ time, the law changes and the law comes back and haunts me and seeks to arrest me or prosecute me for something that I should have perfectly happily been doing under the law?’”).

compliance leverage lawfare during Western operations to liberate the cities of Mosul¹⁸ and Raqqa.¹⁹ And in perhaps the best covered use of lawfare, Hamas and aligned Gazan NSAGs have based much of their military strategy around using civilian infrastructure²⁰—including mosques, schools, and hospitals—and human shields²¹ to goad Israeli Defense Force (IDF) commanders and targeteers to either limit the military effectiveness of Israeli strikes; commit to slower and, for IDF personnel, more dangerous ground operations; or accept the risk of higher civilian casualties.²² In many cases, the IDF accepted this latter risk, prioritizing military effectiveness but allowing resulting Gazan casualties to be successfully exploited

¹⁸ See, e.g., Press Release, U.S. Central Command, Allegation of Civilian Casualties in West Mosul (Mar. 25, 2017), <https://www.centcom.mil/DesktopModules/ArticleCS/Print.aspx?PortalId=6&ModuleId=1231&Article=1130282> [https://perma.cc/4SVF-BL53].

¹⁹ See, e.g., MICHAEL J. MCNERNEY ET AL., *UNDERSTANDING CIVILIAN HARM IN RAQQA AND ITS IMPLICATIONS FOR FUTURE CONFLICTS* 17 (2022), https://www.rand.org/content/dam/rand/pubs/research_reports/RRA700/RRA753-1/RAND_RRA753-1.annex.pdf (“ISIS deliberately commandeered primary and secondary educational institutions for its military operations. ISIS fighters established themselves in school buildings to hide from coalition strikes and used children and teachers as human shields. CJTF-OIR strike releases [did] not identify whether coalition air strikes during the battle for Raqqa specifically targeted educational institutions, only that they eliminated ‘fighting positions.’ But the highly targeted nature of the strikes resulted in minimal satellite-visible damage to adjacent buildings, suggesting that coalition forces were seeking to avoid excessive damage to civilian property and life.”) [https://perma.cc/LG6R-ZNWA].

²⁰ See, e.g., Joseph Votel & Claire O. Finkelstein, *Why the ICJ Ruling Misses the Mark: Mitigating Civilian Harm With An Enemy Engaged in Human Shielding*, JUST SEC. (Jan. 29, 2024), <https://www.justsecurity.org/91517/why-the-icj-ruling-misses-the-mark-mitigating-civilian-harm-with-an-enemy-engaged-in-human-shielding/> [https://perma.cc/8FH9-5WF2]; see also Adam Klein, *Making Sense of Casualty Counts in the Israel-Hamas War*, LAWFARE (Nov. 17, 2023), <https://www.lawfaremedia.org/article/making-sense-of-casualty-counts-in-the-israel-hamas-war> [https://perma.cc/D3S5-D6H4].

²¹ See, e.g., Benjamin Jensen, *Hamas Isn't the First Military Group to Hide Behind Civilians as a Way to Wage War*, AM. UNIV. (Nov. 16, 2023), <https://www.american.edu/sis/news/20231116-hamas-isnt-the-first-military-group-to-hide-behind-civilians.cfm> [https://perma.cc/YCP6-BFC4]; see also Max Fisher, *Yes, Gaza Militants Hide Rockets in Schools, but Israel Doesn't Have to Bomb Them*, VOX (July 17, 2014), <https://www.vox.com/2014/7/17/5912189/yes-gaza-militants-hide-rockets-in-schools-but-israel-doesnt-have-to> [https://perma.cc/9KP2-8DEU]; Nidal Al-Mughrabi, *Hamas Command Centre, Weapons Found at Gaza Hospital, Israeli Military Says*, REUTERS (Nov. 15, 2023), <https://www.reuters.com/world/middle-east/israel-raids-gaza-al-shifa-hospital-2023-11-15/> [https://perma.cc/C4QU-CZVQ]; Jason Willick, *We Can't Ignore the Truth that Hamas Uses Human Shields*, WASH. POST (Nov. 14, 2023), <https://www.washingtonpost.com/opinions/2023/11/14/hamas-human-shields-tactic> [https://perma.cc/2SBL-NJWK]; Peter Beaumont, *What Is a Human Shield and How Has Hamas Been Accused of Using Them?* GUARDIAN (Oct. 30, 2023), <https://www.theguardian.com/world/2023/oct/30/human-shield-israel-claim-hamas-command-centre-under-hospital-palestinian-civilian-gaza-city> [https://perma.cc/KN3J-5U8Q]; Matthew Rosenberg et al., *A Tunnel Offers Clues to How Hamas Uses Gaza's Hospitals*, N.Y. TIMES (Feb. 12, 2024), <https://www.nytimes.com/interactive/2024/02/12/world/middleeast/gaza-tunnel-israel-hamas.html> [https://perma.cc/WGH9-Y3VK].

²² See, e.g., Klein, *supra* note 20.

by Hamas and Iran-aligned information operations for significant strategic effect.²³ Such actions, therefore, not only led to a humanitarian crisis in Gaza but also contributed to a strategically undermined Israel.²⁴

Four defining characteristics link all these (and other) examples of recent lawfare *in armed conflict*. First, they are generated from *tactical* situations (*i.e.*, the exploitation of rules of engagement to gain tactical advantage during firefights in Afghanistan; litigation related to the conduct of troops on the ground in Iraq; and the exploitation of law and public opinion to constrain militaries seeking to target NSAGs in urban areas). Second, they leverage compliance with *jus in bello*, or the “laws regulating the conduct of parties engaged in an armed conflict.”²⁵ Third, they all arise from conflicts between NSAGs and Western states. Fourth, they generally derive their effectiveness from a chilling effect on operational activity, induced either by the state party’s fear of perceived or actual loss of political legitimacy for ongoing conduct of hostilities,²⁶ or from fear on the part of individual combatants

²³ See, e.g., Todd C. Helmus & William Marcellino, *Lies, Misinformation Play Key Role in Israel-Hamas Fight*, RAND (Oct. 31, 2023), <https://www.rand.org/pubs/commentary/2023/10/lies-misinformation-play-key-role-in-israel-hamas-fight.html> (“Perceptions of civilian casualties in Gaza are, in strategic military parlance, the center of gravity for the conflict. High civilian casualties will dissipate Israel’s international support and risk limiting the destruction they can rain on Hamas. Each side knows this and will attempt to shape perceptions, in some cases through any means necessary, and false information will play a key role.”) [<https://perma.cc/6SN9-M93G>]; see also Charles J. Dunlap, Jr., *Five Ideas to Counter Hamas’ Lawfare Strategy... and Why*, LAWFIRE (Oct. 15, 2023), <https://sites.duke.edu/lawfire/2023/10/15/five-ideas-to-counter-hamas-lawfare-strategy-and-why/> [<https://perma.cc/36QJ-WVR7>] (discussing Hamas’s lawfare strategy and noting that “as Arabs watch civilian casualties, they will feel a rage similar to what Israelis felt [in October 2023] after the slaughter of civilians by Hamas terrorists”). Dunlap also draws attention to commentary at the beginning of the conflict arguing (as it would turn out, correctly) that “if Israeli Prime Minister Benjamin Netanyahu ‘conducts a war that punishes Palestinian civilians, rather than Hamas, he might lose global support and undermine his mission.’” *Id.* (internal citation omitted).

²⁴ See, e.g., Daniel Byman, *A War They Both Are Losing: Israel, Hamas and the Plight of Gaza*, IISS (June 4, 2024), <https://www.iiss.org/online-analysis/survival-online/2024/06/a-war-they-both-are-losing-israel-hamas-and-the-plight-of-gaza/> [<https://perma.cc/R3KL-XF7V>] (“The deaths of tens of thousands of Palestinian civilians in Gaza also constitute an immense blot on Israel’s international reputation, which was not sterling to begin with. High civilian casualties in Gaza were inevitable, as it is one of the most densely populated places in the world and Hamas fighters intentionally blended in with the population, making it impossible to target Hamas without imperiling civilians. But Israel took this difficult situation and made it worse. Israeli military rules of engagement reportedly allow the killing of up to [twenty] civilians to take out a single junior Hamas fighter, 100 for a senior leader. By comparison, the United States put the ratio at [thirty]-to-one for Saddam Hussein... Israel has blocked or slow-rolled humanitarian aid, with far less getting into the strip than is needed to ensure basic health... Since the Gaza war began, demonstrations against Israel have roiled many European cities... In the United States, approval of Israel’s actions fell from over 50 [percent] in November to 36 [percent] in March.”)

²⁵ See, e.g., *What Are Jus ad Bellum and Jus in Bello?*, INT’L CMTY. RED CROSS (Jan. 22, 2015), <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0> [<https://perma.cc/R87F-BD2Y>].

²⁶ Loss of political legitimacy might be manifested in the form of international censure, loss of diplomatic influence, legal proceedings against the state or participants in hostilities, popular protest, or electoral harm to a democratic government.

who may be afraid of potential international or domestic legal proceedings or the loss of moral authority and potential moral injury. Ultimately, the Western experience of lawfare in actual conflict has been one defined by counterterrorism operations (CT), irregular warfare²⁷ (IW), and counterinsurgency²⁸ (COIN), in which compliance leverage lawfare has been the principle lawfare tool in the arsenal of enemy forces. Though often effective, its scope is likely to differ from operational warfare carried out by well-resourced conventional militaries and funded by nation states.

This is *not* to imply that these are the only observed or studied instances of lawfare. They are not. Several studies and reports have identified, for example, instances of interstate “instrumental lawfare,” with the PRC playing the leading role in this arena. Specifically, the PRC has employed legal tools to capture elites and global international institutions,²⁹ leverage foreign legal systems,³⁰ and reshape international laws and norms to reflect more China-friendly positions. A salient example of the latter is China’s efforts to reshape the UN Convention on the Law

²⁷ Historically, U.S. doctrine (including Doctrine for the Armed Forces of the United States, and JP 3-0, Joint Operations) defined irregular warfare (IW) as a violent struggle among state and nonstate actors for legitimacy and influence over the relevant population(s). *See* DEP’T OF DEFENSE, *JOINT PUBLICATION 3-05: SPECIAL OPERATIONS* II-1 (July 16, 2014). More recently, however, IW has been defined as “a form of warfare where states and non-state actors campaign to assure or coerce states or other groups through indirect, non-attributable, or asymmetric activities, either as the primary approach or in concert with conventional warfare,” *see* DEP’T OF DEFENSE, *JOINT PUBLICATION 1: DOCTRINE FOR THE ARMED FORCES OF THE UNITED STATES* II-7 (2013), or the “overt, clandestine, and covert employment of military and non-military capabilities across multiple domains by state and non-state actors through methods other than military domination of an adversary, either as the primary approach or in concert with conventional warfare,” *see* DEP’T OF THE ARMY, *FIELD MANUAL 3-0: OPERATIONS* 1-9 (2022).

²⁸ An insurgency is a form of intrastate conflict, and COIN is used to counter it. COIN is the combination of measures a government—whether that of the U.S. alone or with partner support—undertakes to defeat an insurgency. Effective COIN operations make use of “all instruments of national power to integrate and synchronize political, security, legal, economic, development, and psychological activities carried out by the host nation (HN) and applicable [U.S. government] and multinational partners to create a holistic approach aimed at weakening the insurgents while simultaneously bolstering the government’s legitimacy in the eyes of the contested population.” DEP’T OF DEFENSE, *JOINT PUBLICATION 3-24: COUNTERINSURGENCY* X (2018).

²⁹ *See, e.g.*, ALEX JOSKE, *SPIES AND LIES: HOW CHINA’S GREATEST COVERT OPERATIONS FOOLED THE WORLD* (2022) at 141-152 (describing PRC efforts to capture global elites); *see generally* RUSH DOSHI, *THE LONG GAME: CHINA’S GRAND STRATEGY TO DISPLACE AMERICAN ORDER* (2021) (describing PRC efforts to limit U.S. influence within global institutions while building up Chinese influence in existing and new institutions); *see also* KITTRIE, *LAWFARE*, *supra* note 8.

³⁰ *See, e.g.*, U.S.-CHINA ECON. & SEC. REV. COMM’N, 2023 ANNUAL REPORT TO CONGRESS 202 (2023), https://www.uscc.gov/sites/default/files/2023-11/2023_Annual_Report_to_Congress.pdf [<https://perma.cc/4NYJ-T657>] (“The [CPC] and its proxies have brought lawsuits alleging manufactured claims in U.S. court in an attempt to exercise sovereign control within U.S. borders. These cases seek both to silence critics of China’s government and to pressure fugitives into returning to China to face prosecution on charges that are often politically motivated. While many of the suits brought against Chinese dissidents residing in the United States are eventually thrown out, they can impose significant financial costs and time burdens on the defendants. Such suits can also deter other potential critics from speaking out for fear they will be targeted in a similar manner.” (citations omitted)).

of the Sea (UNCLOS) to reinforce its territorial claims in the South China Sea³¹ and permit the construction of militarized artificial islands.³² The United States's efforts at deploying "financial lawfare" against Iran³³ to curtail Iranian nuclear ambitions³⁴ and terrorism sponsorship³⁵ have also been framed as a form of lawfare,³⁶ although such characterization is debatable, and is challenged in Section V of this paper. Iran and its proxies have also sought to use foreign domestic legal systems to secure political and military advantages in the Middle East.³⁷ While this list is not exhaustive, it illustrates how interstate applications of instrumental lawfare are largely conducted as part of interstate "competition" (i.e., below the threshold of active armed conflict).³⁸ This "lawfare-in-competition" activity often plays out in international bodies and is designed to achieve high-level strategic and diplomatic goals, often through the incremental imposition of small costs on strategic competitors, or the incremental erosion (or building) of norms and state practices.

³¹ See, e.g., *id.* at 189; see also Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1128-29 ("China's creative interpretations of UNCLOS amount to a form of instrumental lawfare. It is using legal claims to assert sovereignty over the South China Sea, together with its military actions laying facts on the ground.").

³² See Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1108.

³³ See, e.g., KITTRIE, *LAWFARE*, *supra* note 8, at 111-60; for an extensive description of financial warfare against Iran, see generally JUAN ZARATE, *TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* (2013).

³⁴ See KITTRIE, *LAWFARE*, *supra* note 8, at 112.

³⁵ *Id.*

³⁶ *Id.* at 7, 115.

³⁷ See, e.g., Crispin Smith et al., *Team of Legal Gladiators? Iraqi Militias' Tortured Relationship with Law*, WASH. INST. (April 12, 2021), <https://www.washingtoninstitute.org/policy-analysis/team-legal-gladiators-iraqi-militias-tortured-relationship-law> [<https://perma.cc/6LVV-ZV8T>]; Crispin Smith & Michael Knights, *Remaking Iraq: How Iranian-Backed Militias Captured the Country*, JUST SEC. (Mar. 20, 2023), <https://www.justsecurity.org/85566/remaking-iraq-how-iranian-backed-militias-captured-the-country> [<https://perma.cc/X6JC-EBJC>]; Michael Knights et al., *Discordance in the Iran Threat Network in Iraq: Militia Competition and Rivalry*, 14 CTC SENTINEL 1 (Oct. 2021), <https://ctc.westpoint.edu/wp-content/uploads/2021/10/CTC-SENTINEL-082021.pdf> [<https://perma.cc/DQ2F-2GYJ>]; Michael Knights, Hamdi Malik & Crispin Smith, *Iraq's New Regime Change: How Tehran-Backed Terrorist Organizations and Militias Captured the Iraqi State*, COMBATING TERRORISM CTR. AT WEST POINT (Dec. 2023), <https://ctc.westpoint.edu/iraqs-new-regime-change-how-tehran-backed-terrorist-organizations-and-militias-captured-the-iraqi-state/> [<https://perma.cc/NGK3-U8BS>].

³⁸ See JOINT CHIEFS OF STAFF, JOINT DOCTRINE NOTE 1-19, COMPETITION CONTINUUM v, 2-3 (2019) ("Competition is a fundamental aspect of international relations. As states and non-state actors seek to protect and advance their own interests, they continually compete for diplomatic, economic, and strategic advantage." The DoD sees "Competition Below Armed Conflict" as encompassing "[s]ituations in which joint forces take actions outside of armed conflict against a strategic actor in pursuit of policy objectives. These actions are typically nonviolent and conducted under greater legal or policy constraints than in armed conflict but can include violent action by the joint force or sponsorship of surrogates or proxies." Activities may include "diplomatic and economic activities; political subversion; intelligence and counterintelligence activities; operations in cyberspace; and the information environment, military engagement activities, and other nonviolent activities to achieve mutually incompatible objectives, while seeking to avoid armed conflict.").

In short, the West's lived experience of "lawfare-in-conflict," which this paper labels "operational lawfare," has been almost entirely in the context of NIACs with NSAGs. By contrast, its experience of *interstate* lawfare is almost entirely as part of interstate *competition* and has (for the most part) not yet been experienced during state-on-state international armed conflict (IAC). But failure to predict and systematically prepare for interstate operational lawfare during and in the buildup to conflict would be a profound strategic shortcoming with real operational and battlefield consequences. Simply acknowledging that adversaries will seek to use and misuse legal tools in conflict for strategic, operational, and tactical advantage is important, but insufficient. Policymakers, military planners, legal professionals, and intelligence personnel must also anticipate *how*, *when*, and *where* this operational lawfare will be deployed, what military effects will be sought through its deployment, and (perhaps most importantly) they must identify and develop effective counter-efforts. This paper is an early attempt to do just that.

II. CHINA AND CURRENT CHINESE LAWFARE APPROACHES

No serious book, paper, or article on lawfare is complete without a discussion of the Chinese approach to lawfare.³⁹ The PRC, which has a claim to being the true founder of modern lawfare, relies heavily on lawfare as a tool of statecraft.⁴⁰ But, as noted above, contemporary reviews and studies of lawfare primarily focus on Chinese efforts to use lawfare in strategic "competition" rather than conflict, though that is hardly surprising considering the PLA has not fought a "hot" large-scale interstate conflict since the 1979 Sino-Vietnam War.⁴¹ This paper,

³⁹ See, e.g., Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1091–92; KITTRIE, *LAWFARE*, *supra* note 2, at 214–16.

⁴⁰ See Elsa Kania, *The PLA's Latest Strategic Thinking on the Three Warfares*, 16 JAMESTOWN FOUND. CHINA BRIEF (Aug. 22, 2016), <https://jamestown.org/program/the-plas-latest-strategic-thinking-on-the-three-warfares/> [https://perma.cc/FHL7-X3SB]. Kania notes that the PLA's approach to legal warfare has been "formalized and already advanced considerably. Based on the 2003 and 2010 Political Work Regulations (政治工作条例), the Three Warfares, under the aegis of "wartime political work" (战时政治工作), were the responsibility of the General Political Department of the former General Staff Department, which, through the recent organizational reforms, has become the Political Work Department (政治工作部), subordinate to the Central Military Commission (CMC). *Id.* (internal citations omitted). In 2005, the CMC ratified—and the former General Staff Department, General Political Department, General Logistics Department, and General Armaments Department jointly promulgated—official guidelines (gangyao, 纲要, literally "outline" or "essentials") for public opinion warfare, psychological warfare, and legal warfare, officially incorporating the concepts into the PLA's education, training, and preparation for military struggle." *Id.*

⁴¹ See, e.g., Timothy R. Heath, *China's Military Has No Combat Experience: Does It Matter?*, RAND (Nov. 27, 2018), <https://www.rand.org/pubs/commentary/2018/11/chinas-military-has-no-combat-experience-does-it-matter.html> [https://perma.cc/8GY5-URFK]. It should be noted, however, that China has been involved in various low-intensity clashes in recent years, including clashes with India (resulting in fatalities), see *Ladakh: China Reveals Soldier Deaths in India Border Clash*, BBC (Feb. 19, 2021), <https://www.bbc.com/news/world-asia-56121781> [https://perma.cc/K2UN-RPBQ], and the Philippines (resulting in serious injuries), see, e.g., Arron-Matthew Lariosa, *Philippine Sailor Severely Injured, Vessels Damaged as Chinese Block South China Sea Mission*, U.S. NAVAL INST. (June 17, 2024),

which aims to predict and prepare for interstate “operational lawfare,” focuses on Chinese lawfare in part because the PRC has shown itself to be the most effective lawfare operator out of the West’s various potential state adversaries, and in part because the PLA explicitly builds lawfare into its doctrine and operational planning.⁴² Moreover, as outlined below, Western defense planners are increasingly concerned about the rising likelihood of open conflict with the PRC. Consequently, the PRC may be both the most effective lawfare operator in the world, the most likely to use lawfare during interstate conflict, and, most concerning, a peer or near-peer state with which open conflict against the United States could emerge. Though this section is not intended to enumerate the many scholarly reviews of modern Chinese strategic lawfare, a summary is useful to provide a situational overview before considering how the PRC will likely use lawfare during conflict in Section IV.

A. The Growing Risk of Interstate Conflict Involving China

The PRC is arguably the world’s leading practitioner of lawfare⁴³ and has deployed instrumental lawfare techniques to achieve various strategic aims. China is also the United States’s top “pacing challenge,”⁴⁴ and the DoD considers it to be the most “comprehensive and serious challenge” to U.S. security.⁴⁵ Beyond the United States, there is broad consensus in the Western security community that China seeks to supplant the United States as the dominant global power⁴⁶ and

<https://news.usni.org/2024/06/17/philippine-sailor-severely-injured-vessels-damaged-as-chinese-block-south-china-sea-mission> [<https://perma.cc/944T-YMGD>].

⁴² For a discussion of current Chinese use of lawfare, see parts (3)-(5) of this Section.

⁴³ See, e.g., Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1. See also Jordan Foley, *Multi-Domain Legal Warfare: China’s Coordinated Attack on International Rule of Law*, LIEBER INST. ARTICLES WAR (May 28, 2024), <https://lieber.westpoint.edu/multi-domain-legal-warfare-chinas-coordinated-attack-international-rule-law/> [<https://perma.cc/8WE6-9F9G>] (noting that use of law in grey zone conflict is “most pronounced in the Indo-Pacific where the People’s Republic of China (PRC) remains the United States[’s] pacing challenge and continues to engage in controversial lawfare”).

⁴⁴ See, e.g., NATIONAL SECURITY STRATEGY, *supra* note 4, at 20.

⁴⁵ See, U.S. DEP’T OF DEF., NATIONAL DEFENSE STRATEGY, NUCLEAR POSTURE REVIEW, AND MISSILE DEFENSE REVIEW 4 (Oct. 2022), <https://media.defense.gov/2022/Oct/27/2003103845/-1/-1/1/2022-NATIONAL-DEFENSE-STRATEGY-NPR-MDR.pdf> [<https://perma.cc/WKE7-M46D>].

⁴⁶ See, e.g., HAL BRANDS & MICHAEL BECKLEY, DANGER ZONE: THE COMING CONFLICT WITH CHINA (2022) at 6 (noting that “Beijing wants more than regional hegemony” with its strategy “focuse[d] on achieving global power and, eventually, global primacy. State media and party officials have explained that an increasingly powerful China cannot comfortably reside in a system led by the United States... Xinhua, the PRC’s state run news agency, makes no bones about who will shape global affairs once China’s national rejuvenation is achieved” ‘By 2050, two centuries after the Opium Wars [...] China is set to regain its might and re-ascend to the top of the world.’ [Meanwhile] [t]he struggle to become the world’s No. 1 ... is a “people’s war,” the nationalist newspaper *Global Times*, declares.”); See generally DOSHI, *supra* note 29 (in his book, Dr. Doshi extensively outlines Chinese strategy to blunt U.S. power, build rival institutions and power, and ultimately supplant U.S. dominance in China’s near abroad and then globally); see also Michael Schuman, *How China Wants to Replace the U.S. Order*, ATLANTIC (July 13, 2022), <https://www.theatlantic.com/international/archive/2022/07/china-xi-jinping-global-security-initiative/670504> [<https://perma.cc/KUF9-2SL2>] (describing China’s Global Security Initiative

replace (or substantially reshape) the post-1945 international rules-based order.⁴⁷ Since 2008, and especially under the leadership of Xi Jinping, China has abandoned a more cautious strategy summarized by Deng Xiaoping's "hide your capabilities, bide your time" mantra for a more aggressive foreign⁴⁸ and military policy.⁴⁹ During this same period, the PRC has adopted an increasingly belligerent strategy towards various territorial and sovereignty claims in its near abroad. This is manifested in the building of militarized artificial islands in the South China Sea,⁵⁰ maritime clashes with Vietnam⁵¹ and the Philippines⁵² (almost resulting in an armed conflict in 2024),⁵³ deadly clashes with India over the Line of Actual Control (LAC) in the Himalayas,⁵⁴ tightening controls over Hong Kong⁵⁵ and associated clamp down on civil liberties,⁵⁶ and serious maritime disputes with Japan.⁵⁷

and its role as part of a strategy to chip away at the U.S.-led global order. Schuman notes that "[w]hat began as a trade war over Beijing's discriminatory business practices and a tech war to dominate the industries of the future is now an ideas war—a battle to establish the norms that govern global affairs.")

⁴⁷ See, e.g., Schuman at *Id.*

⁴⁸ See, e.g., Doshi, *supra* note 29 at 160 ("[Hu Jintao] declared that China needed to modify Deng's "hiding capabilities and biding time" by more "Actively Accomplishing Something". This seemingly mundane semantic shift—the addition of the word "actively" to one part of Deng's doctrine—was momentous.... That move at such a high-profile forum was a major sign that China was changing its grand strategy. China was no longer interested only in blunting American power, Hu's invocation of "Actively Accomplishing Something," and Xi's spin on the concept with "Striving for Achievement" (奋发有为) indicated a shift to building regional order within Asia).

See also, Brands & Berkley *supra* note 46 at 20-22.

⁴⁹ See Doshi *Id.* at 186.

⁵⁰ See, e.g., *U.S. Admiral Says China Has Fully Militarized Islands*, ASSOCIATED PRESS (Mar. 21, 2022), <https://apnews.com/article/business-china-beijing-xi-jinping-south-china-sea-d229070bc2373be1ca515390960a6e6c> [<https://perma.cc/DMG8-WDRM>].

⁵¹ See, e.g., *Timeline: China's Maritime Disputes*, COUNCIL ON FOREIGN REL. (last visited Mar. 14, 2025), <https://www.cfr.org/timeline/chinas-maritime-disputes> [<https://perma.cc/78KN-3LR8>]; see also Michael Green et al., *Counter-Coercion Series: China-Vietnam Oil Rig Standoff*, CENT. FOR STRATEGIC & INT'L STUDIES (June 12, 2017), <https://amti.csis.org/counter-co-oil-rig-standoff> [<https://perma.cc/2YMD-MB2M>].

⁵² See, e.g., David Rising, *Timeline of Clashes Between China, Philippines in South China Sea*, ASSOCIATED PRESS (June 17, 2024), <https://apnews.com/article/china-philippines-south-china-sea-ship-06e9fe0ef440aba09bc650d986d83377> [<https://perma.cc/2KU8-WU2Y>].

⁵³ *Id.*

⁵⁴ See, e.g., Nishant Rajeev & Alex Stephenson, *Why We Should All Worry About the China-India Border Dispute*, U.S. INST. PEACE (May 31, 2023), <https://www.usip.org/publications/2023/05/why-we-should-all-worry-about-china-india-border-dispute> [<https://perma.cc/VXY9-96J7>].

⁵⁵ See, e.g., Lindsay Maizland & Clara Fong, *Hong Kong's Freedoms: What China Promised and How It's Cracking Down*, COUNCIL ON FOREIGN REL. (Mar. 19, 2024), <https://www.cfr.org/background/hong-kong-freedoms-democracy-protests-china-crackdown> [<https://perma.cc/Y3UH-R4V256C8-V65V>].

⁵⁶ *Id.*

⁵⁷ See, e.g., Ray Bowling, *Sino-Japanese Tensions Will Escalate in the East China Sea*, JOHNS HOPKINS SCH. ADVANCED INT'L STUD. (2024), <https://bipr.jhu.edu/BlogArticles/32-Sino-Japanese-Tensions-Will-Escalate-in-the-East-China-Sea.cfm> [<https://perma.cc/5V8J-QLET>].

Most significantly, the ruling Communist Party of China (CPC or, alternatively, Chinese Communist Party or CCP) has revived⁵⁸ its desire to capture (or, in the CPC's parlance, "reunify with") Taiwan, considered one of the most democratic and free societies in the world, against the wishes of the majority of the Taiwanese people.⁵⁹ Hostile PLA activity toward Taiwan has grown enormously over the last five years, in both scale and the nature of the activities.⁶⁰ Reportedly, Xi has ordered the PLA to be ready to invade by 2027,⁶¹ and though the CPC frequently reiterates a desire to "reunify peacefully," it has also explicitly reserved the right to use force to capture the island.⁶² The U.S. military and intelligence community has repeatedly warned of the growing likelihood of military conflict

⁵⁸ Though Mao Zedong initially sought to take Taiwan and conclude the Chinese Civil War against Chiang Kai-Shek's nationalists, by the 1970s, the CPC leader indicated (at least to American interlocutors) that the matter could wait. See, e.g. *Memorandum of Conversation*, in FOREIGN RELATIONS OF THE UNITED STATES, 1969–1976, VOLUME XVIII, CHINA, 1973–1976 (David P. Nickel ed., 2007), <https://history.state.gov/historicaldocuments/frus1969-76v18/d124> (in which Mao told Henry Kissinger that the question of Taiwan's status could wait up to a hundred years. Mao and successors remained willing to defer the issue. By the time of Xi Jinping's premiership, however, CPC designs on the island reemerged and intensified.) [<https://perma.cc/GT79-XE3G>]. See e.g., Kyle Amonson & Dane Egli, *The Ambitious Dragon: Beijing's Calculus for Invading Taiwan by 2030*, 6 J. INDO-PACIFIC AFFS. 37 (Mar.–Apr. 2023), https://media.defense.gov/2023/Apr/24/2003205865/-1/-1/1/07-AMONSON%20%26%20EGLI_FEATURE%20IWD.PDF [<https://perma.cc/ZBC9-Z875>].

⁵⁹ Most Taiwan residents do not support unification with China. See, e.g., *Over 80% of Taiwanese Favor Maintaining Status Quo with China: Survey*, FOCUS TAIWAN (2024), <https://focustaiwan.tw/cross-strait/202402230019> [<https://perma.cc/2UGH-R4XK>]. The report notes that "[t]he three most preferred choices in 2023 were 'maintain the status quo indefinitely' (33.2 percent), 'maintain the status quo, decide at a later date' (27.9 percent) and 'maintain the status quo, move toward independence' (21.5 percent)." *Id.* Those three categories accounted for 82.6 percent of the total surveyed population. The least preferred option was "unification as soon as possible" at 1.2 percent. Indeed, that option has never exceeded 5 percent of respondent approval since the Center began conducting the survey. *Id.*

⁶⁰ See, e.g., Caitlin Campbell et al., CONG. RSCH. SERV., TAIWAN DEF. ISSUES FOR CONG. (2024), <https://crsreports.congress.gov/product/pdf/R/R48044> [<https://perma.cc/P6E8-FM5V>].

⁶¹ See, e.g., Hope Yen, *CIA Chief: China Has Some Doubt on Ability to Invade Taiwan*, ASSOCIATED PRESS (Feb. 26, 2023), <https://apnews.com/article/russia-ukraine-taiwan-politics-united-states-government-eaf869eb617c6c356b2708607ed15759> (reporting CIA Director Burns's remarks from a television interview stressing "that the United States must take 'very seriously' Xi's desire to ultimately control Taiwan even if military conflict is not inevitable." Burns noted that "we do know, as has been made public, that President Xi has instructed the PLA, the Chinese military leadership, to be ready by 2027 to invade Taiwan, but that doesn't mean that he's decided to invade in 2027 or any other year as well." He nevertheless added that U.S. "judgment... is that President Xi and his military leadership have doubts today about whether they could accomplish that invasion.") [<https://perma.cc/8D9X-FQVV>].

⁶² See, e.g., Yew Lun Tian & Ben Blanchard, *Xi: China Will Never Renounce Right to Use Force over Taiwan*, REUTERS (Oct. 16, 2022), <https://www.reuters.com/world/china/xi-china-will-never-renounce-right-use-force-over-taiwan-2022-10-16> (reporting Xi Jinping's official statement that "[r]esolving the Taiwan issue is the Chinese people's own business, and it up to the Chinese people to decide" and that China "insist[s] on striving for the prospect of peaceful reunification with the greatest sincerity and best efforts, but we will never promise to give up the use of force and reserve the option to take all necessary measures") [<https://perma.cc/R9XF-UXQS>].

over Taiwan in the coming decade.⁶³ In many cases, the U.S. has committed to formal or informal obligations to assist and defend regional actors now subject to PRC hostility,⁶⁴ raising the possibility of embroiling the United States (and its allies) in local conflicts. Meanwhile, the PLA has carried out more “unprofessional” or hostile activities toward U.S. and allied military vessels conducting freedom of navigation missions (FONOPs), legal exercises, and other operations in the Pacific in recent years.⁶⁵ These activities often run the risk of inflicting serious casualties or fatalities—raising the likelihood of accidental escalation.

Many contemporary books, studies, and reports discuss the growing likelihood of armed conflict involving China in the late 2020s and 2030s, stemming either from the country’s significant regional and territorial disputes,⁶⁶ or from the growing tension between China’s position as a “rising power” and the United States’s position as current world hegemon.⁶⁷ Undoubtedly, a conflict between great powers would be terrible, tragic, and should be deterred. However, given the growing risks, failure to prepare for conflict is irresponsible. Understandably, therefore, military planners at U.S. Indo-Pacific Command (INDOPACOM) and elsewhere are preparing to allow for effective deterrence and, if necessary, to fight and win in conflict.⁶⁸ But failure to consider and prepare for Chinese operational lawfare puts the effectiveness of those plans at risk.

⁶³ See, e.g., *Surveying the Experts: China’s Approach to Taiwan*, CHINAPOWER PROJECT (Sept. 12, 2022), <https://chinapower.csis.org/survey-experts-china-approach-to-taiwan/> [<https://perma.cc/9HJ9-UQVP>]; Adela Suliman, *China Could Invade Taiwan in the Next 6 Years, Assume Global Leadership Role, U.S. Admiral Warns*, NBC NEWS (Mar. 10, 2021), <https://www.nbcnews.com/news/world/china-could-invade-taiwan-next-6-years-assume-global-leadership-n1260386> [<https://perma.cc/FJ98-TE77>]; Valerie Insinna, *Navy Leader ‘Can’t Rule Out’ Chinese Invasion of Taiwan Even Earlier than 2027*, BREAKING DEF. (Oct. 19, 2022), <https://breakingdefense.com/2022/10/navy-leader-cant-rule-out-chinese-invasion-of-taiwan-even-earlier-than-2027> [<https://perma.cc/6MNK-WSEU>]; see also *Japan White Paper Warns About China’s Escalating Tension with Taiwan*, TAIPEI TIMES (July 13, 2024), <https://www.taipetimes.com/News/front/archives/2024/07/13/2003820732> [<https://perma.cc/4AVW-FDTF>].

⁶⁴ See Treaty of Mutual Cooperation and Security, U.S.-Japan, Jan. 19, 1960, 11 U.S.T. 1632; Mutual Defense Treaty, U.S.-Philippines, Aug. 30, 1951, 3 U.S.T. 3947; see also Taiwan Relations Act, 22 U.S.C. § 3301(b)(5) (1979) (The Act does not commit the United States to mutual defense of Taiwan; rather, it commits the United States to providing *arms* for Taiwan to defend itself.).

⁶⁵ See, e.g., *U.S. Says China Has Stepped Up Risky Behavior in South China Sea*, BLOOMBERG (Oct. 17, 2023), <https://www.bloomberg.com/news/articles/2023-10-17/us-says-china-has-stepped-up-risky-behavior-in-south-china-sea> [<https://perma.cc/N8BW-RRUM>].

⁶⁶ See generally GRAHAM ALLISON, *DESTINED FOR WAR: CAN AMERICA AND CHINA ESCAPE THUCYDIDES’S TRAP?* (2017); Brands & Beckley, *supra* note 46; ELBRIDGE A. COLBY, *THE STRATEGY OF DENIAL: AMERICAN DEFENSE IN AN AGE OF GREAT POWER CONFLICT* (2021).

⁶⁷ See generally GRAHAM ALLISON, *DESTINED FOR WAR: CAN AMERICA AND CHINA ESCAPE THUCYDIDES’S TRAP?* (2017); Brands & Beckley, *supra* note 46; ELBRIDGE A. COLBY, *THE STRATEGY OF DENIAL: AMERICAN DEFENSE IN AN AGE OF GREAT POWER CONFLICT* (2021).

⁶⁸ See, e.g., *U.S. Military Posture and National Security Challenges in the Indo-Pacific Region: Hearing on H.R. 5009 Before the H. Comm. On Armed Services*, 118th Cong. 43 (2024) (Statement of John C. Aquilino, U.S. Navy Commander, U.S. Indo-Pacific Command), <https://www.congress.gov/118/meeting/house/116960/witnesses/HHRG-118-AS00-Wstate->

B. Chinese Lawfare – a Doctrinal Perspective

“Non-kinetic” military effects have been an important part of Chinese military thinking for centuries.⁶⁹ Modern PRC foreign policy and military thinking is heavily influenced by Marxist-Leninism and, of course, Maoism.⁷⁰ Practice and thinking rooted in concepts like “people’s war” (人民战争), revolutionary struggle, and “political warfare” means that the CPC and the PLA do not make the same delineation between “war,” meaning periods characterized by acts of military violence, and “peace” that is common among Western policymakers, warfighters, and legal scholars. As a result, the CPC applies “a broad view of warfare as a struggle between competing entities and not just the use of brute force.”⁷¹ It is within this context that PLA military thinkers grouped some non-kinetic practices under the term “Three Warfares” (三战), comprising public opinion warfare (舆论战), psychological warfare (心理战), and legal warfare, or lawfare (法律战).⁷² The concept was part of CPC military thinking as early as 1963,⁷³ formally entering PLA doctrine in the early 2000s.⁷⁴ The “Three Warfares” are critical components

AquilinoJ-20240320.pdf [https://perma.cc/3SND-HG7X] (noting that “USINDOPACOM has delivered a comprehensive plan that provides a more distributed force posture, a synchronized campaign of joint/combined operations across all domains, the capabilities needed to fight and win, and the relationships with allies and partners needed to maintain a free and open INDOPACIFIC”).

⁶⁹ In the *Art of War* (c. 5th Century BCE), Sun Tzu noted that “defeating an enemy without fighting is the acme of skill.” THE ART OF WAR chapter 3; see also STEVEN HALPER ET AL., CHINA: THE THREE WARFARES 32 (2013), <https://cryptome.org/2014/06/prc-three-wars.pdf> [https://perma.cc/U5LD-KLHT] (noting that, while the idea of the Three Warfares is a relatively new concept in PLA manuals, the role of perception management has been a staple of PLA activities since at least the 1930s and that the Three Warfares are “entirely congruent with Chinese strategic culture”).

⁷⁰ See, e.g., *Formulation of Foreign Policy of New China on the Eve of its Birth*, MINISTRY FOREIGN AFF. THE PEOPLE’S REPUBLIC OF CHINA, (last visited Mar. 14, 2025), https://www.mfa.gov.cn/eng/zy/wjls/3604_665547/202405/t20240531_11367589.html [https://perma.cc/SN67-P2KN]; see also JULIA LOVELL, MAOISM: A GLOBAL HISTORY (2019) (noting that “in the context of a global great-power vacuum...early evidence suggests that the [CPC] is deploying strategies developed under Mao...to increase its influence abroad”).

⁷¹ See SETH G. JONES ET AL., COMPETING WITHOUT FIGHTING: CHINA’S STRATEGY OF POLITICAL WARFARE 2–4 (2023), https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-08/230802_Jones_CompetingwithoutFighting.pdf?VersionId=Zb5B2Le0lf0kk7.QH7E0meA9phGqQEzf [https://perma.cc/LK5F-UL8B] (discussing the CPC’s view of “political warfare,” or power politics short of conventional war, and noting that China views warfare as a struggle between competing entities and not just the use of brute force).

⁷² See, e.g., DEAN CHENG, WINNING WITHOUT FIGHTING: CHINESE LEGAL WARFARE (2012), <https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare> [https://perma.cc/N9WP-E56L]; see also Kania, *supra* note 40.

⁷³ See Peter Mattis, *China’s ‘Three Warfares’ in Perspective*, WAR ON THE ROCKS (Jan. 30, 2018), <https://warontherocks.com/2018/01/chinas-three-warfares-perspective/> [https://perma.cc/2AS3-NLPU].

⁷⁴ See, e.g., CHENG, *supra* note 72; see also HALPER ET AL., *supra* note 69, at 248.

of China's strategic approach in the South China Sea and beyond,⁷⁵ with lawfare playing a particularly prominent role as “both a stand-alone military technology and ready supplier of material” for information operations and public opinion warfare.⁷⁶

C. China's View of Western Lawfare

Despite the lack of Western lawfare doctrine, China perceives the United States as one of the world's leading practitioners of lawfare.⁷⁷ The First Gulf War deeply shocked the CPC due to the ease with which the United States defeated a Soviet-style military.⁷⁸ China perceived the United States as relying on United Nation (UN) resolutions—along with legal sanctions against the Saddam Hussein regime—as part of its effort in the war to secure legitimacy for its campaign and build coalitions.⁷⁹ China made similar observations from studying U.S. tactics during the Second Gulf War,⁸⁰ leading Chinese planners to view these (from their perspective) shocking military victories as partially enabled by successful lawfare.⁸¹

It is also likely that Chinese conceptions of the role and function of international law are “mirror imaged” onto Western counterparts.⁸² Though generalizations may be unhelpful when considering a nation and system as complex as China's, Chinese conceptions of the law's role may broadly be driven by historical intellectual schools of thought, particularly Confucianism and Legalism.⁸³ This intellectual legacy, in combination with the political legacy of Imperial China and the experience of early CPC rule under Mao Zedong, who

⁷⁵ See Kania *supra* note 40.

⁷⁶ See HALPER ET AL., *supra* note 69 at 29.

⁷⁷ *Id.* at 50.

⁷⁸ See DOSHI, *supra* note 29, at 86.

⁷⁹ See HALPER ET AL., *supra* note 69, at 50–51.

⁸⁰ *Id.*

⁸¹ *Id.* at 50 (“China perceives other nations as sharing and operating with this same instrumentalist view of the law and the benefits it can bring. Indeed, China perceives the [United States] as one of the leading practitioners of lawfare. During the First Gulf War of 1991 Chinese analysts noted that not only did the [United States] successfully secure a legal basis for its military operations through [UN] authorization[] but also afforded itself a potent lawfare tool in the form of sanctions. Legal arguments were also viewed as the critical components in justifying certain military operations, such as the bombing of the al-Firdos bunker and Iraqi forces. During the Second Gulf War of 2003, China analyzed that, although the [United States] did not obtain formal authorization from the UN nor the backing of NATO, the [United States] was still able to successfully manipulate international law to provide itself with a legal justification for military conflict. This was achieved by portraying Iraq as having violated previous UN resolutions regarding weapons of mass destruction. On the flip side, PRC analysts also noted the successes of Iraq's campaign of legal warfare in preventing the [United States] from acquiring UN approval for its actions.”)

⁸² “Mirror imaging” is a term intelligence analysts use for assuming that your opponents will act and think as you would. See JAMES ANDREW LEWIS, *Misperception and Mirror Imaging*, in STRATEGY, MASS EFFECT, AND STATES 12 (2018), <https://www.jstor.org/stable/pdf/resrep22408.6.pdf> [<https://perma.cc/6KJA-RT5W>].

⁸³ See HALPER ET AL., *supra* note 69, at 48.

asserted that “law should serve as an ideological instrument of politics,”⁸⁴ resulted in a starkly different conception of the role of the law, its relationship with political authority, and how it may be used, as compared with Western conceptions. Specifically, CPC conceptions of state sovereignty, derived from historical ideals, lack a “meaningful concept of co-equal, legitimate sovereignties pursuant to which states may exist over the long term in non-hierarchical relationships.”⁸⁵ Meanwhile, the law provides Chinese authorities the means to exercise control over their populations without meaningfully constraining such political power.⁸⁶ Law in China therefore primarily applies to the public but not the CPC, which has license to manipulate and deploy it as a weapon, domestically and internationally, for political effect.

This “rule by law” instead of “rule of law”⁸⁷ may feel deeply cynical to a those used to the Western model, which aspires to “rule of law.” But it is important to appreciate that a CPC perspective engages a fundamentally different understanding of what is appropriate and effective. From that angle, the Western approach may seem alien or even appear as a hypocritical masking of a U.S. reality that some in China suspect is in fact more similar to a reality advocated by the CPC’s approach. It is therefore imperative to understand that, for at least *some* PLA and CPC members, China’s lawfare efforts are (in their view) both a reasonable use of international law and also reflective of *actual* Western state practice. But, for avoidance of doubt (and as will be shown in the rest of this section and the next), this view is incorrect and belies a truly aggressive and manipulative approach to international law at odds with actual international state practice.

D. Chinese Lawfare – Recent Strategic Examples

As noted above, China has not fought an active, large-scale, IAC since 1979.⁸⁸ Consequently, the only clear examples of modern Chinese counter-state lawfare relate to activities undertaken during interstate “competition.” The intended effect of these lawfare efforts has generally been to improve China’s strategic position, either in relation to its general global standing or various disputed territorial claims. It has also been employed as a strategy to “blunt” U.S. influence.⁸⁹ Some examples of this activity are outlined below, categorized by the

⁸⁴ *Id.*

⁸⁵ *Id.* at 49.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See, e.g., Timothy R. Heath, *China’s Military Has No Combat Experience: Does It Matter?*, RAND (Nov. 27, 2018), <https://www.rand.org/pubs/commentary/2018/11/chinas-military-has-no-combat-experience-does-it-matter.html> [<https://perma.cc/4F9B-QD9U>]. It should be noted, however, that China has been involved in various low-intensity clashes in recent years, including clashes with India (resulting in fatalities) and the Philippines (resulting in serious injuries). See Pandey Vikas, *India and China Agree to De-Escalate Border Tensions*, BBC (Oct. 21, 2024), <https://www.bbc.com/news/articles/ckg0gwy0nlyo> [<https://perma.cc/NRZ4-ELZU>].

⁸⁹ See generally, DOSHI, *supra* note 29, Part I.

primary strategic goal of each. It should nevertheless be noted that, in many cases, a single lawfare effort may achieve multiple strategic goals.

1. Improving China's Global Standing through International Institutional Capture

China has effectively wielded institutional lawfare⁹⁰ throughout its geopolitical rise over the last thirty years. China has built institutions, such as the Asian Infrastructure Investment Bank (AIIB) and the New Development Bank (NDB), as alternatives to U.S.-led international organizations.⁹¹ China also has worked to develop its influence within international bodies like the UN. Such efforts fundamentally redefine principles that were once seen as universally agreed upon and on which these international bodies are based. They also permit the weaponization of multilateral organizations against those principles and allow China to maintain power bases at home and abroad by disrupting the work of those organizations.⁹²

2. Realizing China's Territorial and Sovereignty Claims

As already alluded to above, China also uses lawfare to realize its various territorial claims in its near abroad. In fact, China heavily emphasizes (often spurious) legal arguments in its international diplomacy, public statements, and media strategy for each of its most controversial claims, several of which are discussed below.

i. The South China Sea

Some of the best-known Chinese lawfare efforts relate to its territorial claims over the South China Sea. Beijing contests the majority of the South China Sea based on disputed and tenuous historical claims.⁹³ These claims are reflected in the “Nine-Dash Line” repeatedly promulgated by Beijing to demarcate its claims.⁹⁴ The line is often criticized by other South China Sea claimant states (*i.e.*,

⁹⁰ See Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1100 (“*Institutional lawfare* is a form of instrumental lawfare involving the purposeful creation of new domestic and international laws and institutions to achieve one’s military or strategic efforts.”).

⁹¹ See, e.g., Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1138–40.

⁹² FOREIGN AFFS. COMM, *In the Room: The UK’s Role in Multilateral Diplomacy*, 2021–2, HC 199–1, at 3 (UK).

⁹³ See, e.g., COUNCIL ON FOREIGN REL., *Timeline: China’s Maritime Disputes*, *supra* note 51.

⁹⁴ See, e.g., Rénmín Ribào: Zhōngguó Zài Nánhǎi Duàn Xù Xiàn Nèi de Lìshǐ Xìng Quánlì Bùróng Wàng Yìhé Fǒuding (人民日报：中国在南海断续线内的历史性权利不容妄议和否定), PEOPLE’S DAILY (May 23, 2016), <http://opinion.people.com.cn/n1/2016/0523/c1003-28369833.html> [<https://perma.cc/KB24-UWR5>].

Brunei, Indonesia, Malaysia, the Philippines, and Vietnam),⁹⁵ many of which also claim and occupy various islands, reefs, and other features within the “Nine-Dash Line” area.⁹⁶ But China has gone further, reinforcing its spurious legal claims to these features by building and militarizing artificial islands across the South China Sea, creating “facts on the ground” to support its posture.⁹⁷ Such actions plainly violate international treaty law and custom, intersecting⁹⁸ with various 200-nautical-mile exclusive economic zones (EEZ) allotted to coastal states under UNCLOS.⁹⁹ Indeed, international bodies like the Arbitral Tribunal in the 2016 *Philippines v. China* case have criticized China’s claims.¹⁰⁰ However, despite its repeated violations of UNCLOS and clear efforts to reshape international practice of its application in the CPC’s favor, China remains a signatory to the convention.¹⁰¹

This apparent contradiction may stem from a multi-faceted Chinese lawfare strategy in the South China Sea. The combination of developing new state practice, altering facts on the ground by sheer will, and promulgating novel or even completely specious legal arguments regarding ownership of the seas and ocean features likely represents an effort to obfuscate and deny wrongdoing while building a new and more favorable legal order. Continued membership in UNCLOS also allows the PRC to blunt opposition to Chinese actions and shape—or at least obstruct—existing consensus on issues relating to the international law of the sea.¹⁰² As a form of “lawfare in competition,” these activities can undoubtedly be understood as legal warfare of “Three Warfares” provenance. In trying to categorize the type of lawfare, however, it is possible to discern both instrumental lawfare and compliance-leverage lawfare in play. The former is identifiably based on the PRC use of spurious legal assertions to enable and legitimize its building islands in the first instance. Meanwhile, having created facts on the ground, the PRC relies on legal compliance on the part of other states—along with their fear of being perceived as violating the law—to normalize the territorial gains while

⁹⁵ See Alec Caruana, *MAP Spotlight: Nine-Dash Line*, INST. FOR CHINA-AM. STUD. (July 25, 2023), <https://chinaus-icas.org/research/map-spotlight-nine-dash-line/> [<https://perma.cc/NB6Q-ALDN>].

⁹⁶ See, e.g., Sourabh Gupta & Matt Geraci, *China’s Claims in the South China Sea*, ARCGIS STORYMAPS (last visited Mar. 14, 2025), <https://storymaps.arcgis.com/stories/f41484de9d4144c59b22540cb94b150a> [<https://perma.cc/H4ZJ-H7WN>].

⁹⁷ See Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1109.

⁹⁸ See Gupta & Geraci, *supra* note 96.

⁹⁹ United Nations Convention on the Law of the Sea, art. 57 Dec. 10, 1982, 1833 U.N.T.S. 397.

¹⁰⁰ See South China Sea Arbitration (Phil. v. China), Award, 33 R.I.A.A. 153 (Perm. Ct. Arb. 2016), <https://pcacases.com/web/sendAttach/2086> [<https://perma.cc/53NE-NYUX>].

¹⁰¹ United Nations Treaty Collection, 6. *United Nations Convention on the Law of the Sea*, UNITED NATIONS (last visited Mar. 14, 2025), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en [<https://perma.cc/UN9W-R2A5>].

¹⁰² See DOSHI *supra* note 29, at 117–21 (outlining a broad Chinese geostrategy based on blunting U.S. sources of power, including by joining multinational institutions with an aim of limiting their power and shaping their roles to favor Chinese policy objectives).

performing aggressive or risky military maneuvers against other states' vessels or aircraft. The legal compliance discrepancy gives PLA aircraft and vessels more freedom to act and move in the vicinity of the newly (and illegally) claimed seas.

ii. Taiwan Recognition

Taiwan (formally, the Republic of China, or ROC) is especially vulnerable to Chinese lawfare because its status under international law is so unclear.¹⁰³ While Taiwan seems to have the four elements of statehood listed by the Montevideo Convention on the Rights and Duties of States,¹⁰⁴ only eleven states (and the Vatican) formally recognize it as such as of March 2025.¹⁰⁵ This status derives, in part, from the Chinese Civil War: upon defeat by the Communists, the Chinese Nationalists (Kuomintang or KMT) under General Chiang Kai-shek fled to the island, establishing a government there without relinquishing sovereignty claims over the whole of mainland China. Until 1971, the UN and much of the international community recognized the KMT as the legitimate government of all of China. Though international recognition shifted to the PRC in the 1970s, the Taiwanese government has never formally renounced its claim to mainland China or asserted statehood as “just” Taiwan.¹⁰⁶ Under the KMT military dictatorship, Taiwan's continued claim derived from a genuine desire to one day retake control of the mainland.

Today, however, Taiwan is a successful democracy¹⁰⁷ with its own national identity distinct from that of the PRC.¹⁰⁸ Nevertheless, the CPC continues to effectively block Taiwan from renouncing its claim of unity with the mainland or from formally declaring its independence. To deter any such temptations, China has employed military threats and coercion and made clear that either course of action by Taiwan would elicit a military response by the PLA.¹⁰⁹ As a result, the

¹⁰³ See Michael J. West & Aurelio Insisa, *Reunifying Taiwan with China through Cross-Strait Lawfare*, 257 CHINA Q. 188, 189–90 (2023), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/443AB970DF081B5B6225661D37258AB6/S0305741023000735a.pdf/reunifying-taiwan-with-china-through-cross-strait-lawfare.pdf> [https://perma.cc/E59Q-7Q26].

¹⁰⁴ *Id.* at 189. The four elements are (1) a permanent population; (2) defined territorial boundaries; (3) a government; and (4) the capacity to enter into relations with other states. See *Montevideo Convention on Rights and Duties of States* art. 1, Dec. 26, 1933, 165 L.N.T.S. 19.

¹⁰⁵ See *Diplomatic Allies*, MINISTRY OF FOREIGN AFF., REPUBLIC CHINA (TAIWAN) (last visited Aug. 18, 2024), <https://en.mofa.gov.tw/AlliesIndex.aspx?n=1294&sms=1007> [https://perma.cc/2X25-4L7Y].

¹⁰⁶ See JOHN CURTIS & WINNIE KING, TAIWAN: RELATIONS WITH CHINA 5 (2023), <https://researchbriefings.files.parliament.uk/documents/CBP-9844/CBP-9844.pdf> [https://perma.cc/R7RW-YA4W].

¹⁰⁷ *Taiwan: Country Profile*, FREEDOM HOUSE (last visited Mar. 14, 2025), <https://freedomhouse.org/country/taiwan> [https://perma.cc/JCE2-XPFR].

¹⁰⁸ See CURTIS & KING, *supra* note 106, at 18.

¹⁰⁹ See, e.g., *China Warns Taiwan Independence ‘Means War’ as US Pledges Support*, BBC NEWS (Jan. 29, 2021), <https://www.bbc.com/news/world-asia-55851052> [https://perma.cc/973J-SEZ7]; see also *China’s Defence Chief Repeats Threat of Force Against Taiwanese Independence*,

current status is that “Taiwan is not a State because it still has not unequivocally asserted its separation from China and is not recognized as a State distinct from China.”¹¹⁰

Lawfare is currently the CPC’s principal tool for ensuring Taiwan never attempts to declare independence. The CPC also deploys it as part of a broader influence effort to force so-called peaceful reunification. Some of this lawfare is directed toward Taiwan itself, along with its population, while other efforts are directed at third parties (primarily to minimize diplomatic recognition of Taiwan and isolate its government). In analyzing cross-strait lawfare, Michael West and Aurelio Insisa have identified three strands of the lawfare effort to chip away at Taiwan’s sovereignty. The first is to “recast the relationship between Beijing and Taipei as being an internal dispute between a central and local government.”¹¹¹ The second is to “eliminate diplomatic recognition of [Taiwan] and exclude it from participating in international organizations, or . . . to limit [Taiwan’s] participation on terms that effectively designate it as a province of the PRC.”¹¹² The third aims to contain and “erode the ability of Taiwan to exercise any right of self-determination.”¹¹³ Collectively, these efforts are intended to achieve CPC political and strategic goals of checking “Taiwan’s drift towards independence and subtly [steering] it instead towards the PRC’s goal of national ‘reunification.’”¹¹⁴

iii. *Hong Kong and Xinjiang*

Whether one buys China’s casting of the Taiwan question as an internal matter, the PRC has used lawfare techniques to overcome other “domestic” challenges. Through lawfare, the PRC has eroded Hong Kong’s political autonomy and its citizens’ civil rights, disregarded the ‘one country two systems’ principle, meddled in Hong Kong’s elections, and worked to accelerate Hong Kong’s absorption into the PRC’s system.¹¹⁵ In Xinjiang, meanwhile, the PRC has used domestic legislation to suppress Uyghur minority dissent. The CPC justifies its detention, mass surveillance, and internment for the purpose of Uyghur “reeducation” by cloaking such actions as counterterrorism efforts, thereby attempting to legitimize its abuses while deflecting international criticism of human rights violations suffered by the citizens of Xinjiang.¹¹⁶

GUARDIAN (June 2, 2024), <https://www.theguardian.com/world/article/2024/jun/02/chinas-defence-chief-repeats-threat-of-force-against-taiwanese-independence> [<https://perma.cc/KY5M-H6N7>].

¹¹⁰ West & Insisa, *supra* note 103, at 189 (quoting Australian jurist James R. Crawford).

¹¹¹ *Id.* at 191–92.

¹¹² *Id.* at 192.

¹¹³ *Id.*

¹¹⁴ *Id.* at 197.

¹¹⁵ Carolina S  chica, *Lawfare: China’s New Gambit for Global Power*, CENT. FOR GLOB. AFF. & STRATEGIC STUD. AT UNIVERSIDAD DE NAVARRA (May 9, 2024), <https://www.unav.edu/en/web/global-affairs/lawfare-china-s-new-gambit-for-global-power> [<https://perma.cc/ME37-6N67>].

¹¹⁶ *Id.*

3. Blunting United States and Allied Influence

China also uses several “lawfare in competition” strategies to curtail U.S. (and allied) influence in the Indo-Pacific and globally. Rush Doshi, who served as the Deputy Senior Director for China and Taiwan on the National Security Council during the Biden administration, has argued that the CPC’s strategy to compete with and ultimately replace United States dominance in the global arena includes efforts to peacefully displace the United States by “blunting” U.S. strategic influence and control over the international order while building new, Chinese-led, institutions and power structures.¹¹⁷ Many of the types of CPC lawfare described above (and in other studies) may be viewed through this prism. Consequently, efforts to capture global institutions (while building rival institutions and initiatives such as the AIIB, or One Belt One Road initiative) can be understood as a blunting effort to curtail U.S. influence¹¹⁸ while limiting U.S. coalition-building efforts. This has been an invaluable part of CPC strategy in the modern era of great power competition¹¹⁹ and has also laid some of the foundations (or, in military terminology, “shaping”) for possible future kinetic conflict. In such an active conflict environment, lawfare will likely play a similar blunting role to erode U.S. legitimacy, thereby constraining its ability to form and maintain international cooperation and coalitions.

III. CHINESE LAWFARE IN CONFLICT

The potential for interstate conflict involving the PRC is growing, with some assessments suggesting that a “danger zone” for such conflict will open in the second half of this decade, lasting well into the 2030s.¹²⁰ As also outlined above, the CPC is ideologically predisposed to use international law as a “weapon to defend [state] interests.”¹²¹ Chinese scholars have researched and refined the use of lawfare in international relations,¹²² and PLA doctrine¹²³ explicitly includes the use of lawfare as a tool of state and military power. Moreover, during the current period of interstate competition, the CPC has repeatedly shown a preference for using lawfare as either a supporting or, in some cases, the main effort for achieving

¹¹⁷ See e.g., DOSHI, *supra* note 29 at 20 noting that China can peacefully displace hegemonic powers like the United States through two broad strategies generally pursued in sequence: the first is to *blunt* the hegemon’s exercise of its forms of control, particularly those that are extended over the rising state... the second is to *build* forms of control over others, as well as the foundations for consensual bargains and legitimacy.

¹¹⁸ See generally DOSHI, *supra* note 29. 298; 355–56; 454.

¹¹⁹ *Id.*

¹²⁰ See generally BRANDS & BECKLEY, *supra* note 46 (arguing that China is a peaking power, making it more dangerous and unpredictable, and suggesting that China’s demographic challenges, economic decline, and geopolitical isolation mirror conditions of peaking powers that have lashed out militarily in the past).

¹²¹ HALPER ET AL., *supra* note 69, at 50.

¹²² See KITTRIE, *Lawfare, China, and the Grey Zone*, *supra* note 2, at 214.

¹²³ See *id.* at 214-216.

strategic objectives “without fighting.” As Dean Cheng notes, Chinese writers “assign equal importance to preparing the legal and physical battlefields,” with strong coordination between the two.¹²⁴

It therefore stands to reason that lawfare will almost certainly have a significant role in PLA operations in the event of active interstate conflict. It is also likely that the PLA is already rehearsing the use of this “operational lawfare” as part of prudent military planning efforts and is shaping the “legal battlefield” to maximize China’s chances of success during conflict. Preparing viable counters to Chinese operational lawfare that effectively support combat operations thus requires the United States and its allies to assess how, when, and why such efforts may be deployed. This section attempts to provide guidance on how to do so.

A. Shaping and Preparing the Battlespace Ahead of Conflict

China is already using lawfare to shape potential future battlespaces.¹²⁵ Battlespace shaping is the process whereby military commanders set the conditions for friendly success during decisive military operations ahead of or during the early stages of active conflict.¹²⁶ China conducts these shaping activities to set conditions for success in various potential battlespaces and conflict zones.

The lawfare that supports such shaping is most visible in the contexts of the Chinese legal narratives regarding Taiwan described in the last section. Efforts to eliminate diplomatic recognition of Taiwan and drive narratives regarding Taiwan’s status as a part of the PRC lay the groundwork to delay or deter foreign intervention in support of Taiwanese sovereignty in the event of a conflict. Concomitantly, these efforts also have an attritional effect on Taiwanese willingness to resist a potential invasion. Meanwhile, efforts to control the South China Sea also have a shaping aspect: by normalizing Chinese military bases and presence in the maritime environment, legitimizing that presence through stretched legal doctrines, all while contesting foreign territorial claims and legitimate maritime navigation efforts, the PLA and the PLA Navy has been able to exert control over the area.¹²⁷

¹²⁴ See Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1093.

¹²⁵ See Christian Schultheis, *What Has China’s Lawfare Achieved in the South China Sea?*, ISEAS–YUSOF ISHAK INST. (July 10, 2023), <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2023-51-what-has-chinas-lawfare-achieved-in-the-south-china-sea-by-christian-schultheiss/> [<https://perma.cc/UM9Y-EHV2>]; S  chica, *supra* note 115; Foley, *supra* note 43.

¹²⁶ *Intelligence Research Program Chapter 2*, FED’N AM. SCIENTISTS (last visited Mar. 14, 2025), <https://irp.fas.org/doddir/army/pam525xx/i21chap2.htm> [<https://perma.cc/FGX9-JHSK>].

¹²⁷ Peter Leavy, *A Step-Change to Beijing’s “Lawfare” in the South China Sea*, INTERPRETER (Sept. 17, 2024), <https://www.lowyinstitute.org/the-interpreter/step-change-beijing-s-lawfare-south-china-sea> (“China has successfully blurred the lines between civilian and military activity, both in building artificial islands in the South China Sea, which has been very successful,...and lawfare, which is following the same trajectory.”) [<https://perma.cc/RV5R-KSAY>].

In a future conflict, Chinese artificial islands, reinforced with military forces, intelligence sensors, and anti-air and anti-ship systems, would give the PLA a significant edge. Hostile forces could find Chinese presence to be a *fait accompli* not worth contesting should hostilities break out: militarily, an enemy already positioned and holding defensive positions may be difficult and costly to dislodge. Alternatively, military forces (and supply chains) would likely find it challenging to operate in the South China Sea, delaying the passage of forces and materiel around the Indo-Pacific. Legal warfare concepts deployed by CPC and PLA have played a vital role in developing these artificial islands and isolating Taiwan. While this type of lawfare has so far taken place during interstate competition, it has the effect of strengthening the PLA's hand should competition boil over into crisis or conflict.

B. Delaying or Deterring Third Parties from Entering an Imminent or Ongoing Conflict

Upon the outbreak of potential crisis or conflict, lawfare could have a devastating impact on the United States's ability to get to and sustain military action within the first and second island chains¹²⁸ of the western Pacific. In a Taiwan defense scenario, for example, PLA lawfare operators would be highly likely to use a combination of *jus ad bellum*¹²⁹ and *jus in bello* lawfare attacks against any U.S. intervention. The PLA could call attention to Taiwan's lack of international recognition as an independent state and to (mis)interpretations of long standing positions such as the United States's "One China Policy"¹³⁰ to argue that: (1) the

¹²⁸ The first island chain (comprising the Kuril Islands, Japan, the Ryukyu Islands, Taiwan, the Philippines, and Borneo) and more easterly second island chain (including certain Japanese islands, the Mariana Islands, Guam, and the Caroline islands) are likely to be key terrain in any conflict over either Taiwan or the South China Sea. See, e.g., SUSAN M. GORDON & MICHAEL G. MULLEN, U.S.-TAIWAN RELATIONS IN A NEW ERA: RESPONDING TO A MORE ASSERTIVE CHINA 50–52 (2023), https://live-tfr-cdn.cfr.org/cdn/ff/Ig_ZOUcBVzeNEasQrQ3Evyn2UdT3rn-2TreCp8i-BqE/1687531766/public/2023-06/TFR81_U.S.-TaiwanRelationsNewEra_SinglePages_2023-06-05_Online.pdf?_gl=1*1qh8f4n*_gcl_au*MTk5MzA5NzU1OS4xNzM4MDI2NDcy*_ga*MTQwMzc0MTkyOS4xNzA1MTg1NDY1*_ga_24W5E70YKH*MTc0MTk4MTY1My44OC4wLjE3NDE5ODE2NTQuNTkuMC4w [https://perma.cc/7A4R-QCMR].

¹²⁹ *Jus ad bellum* is the law of the use of force and seeks to limit resort to force between states. Under the UN Charter, states must refrain from the threat or use of force against the territorial integrity or political independence of another state. U.N. Charter art. 2, ¶ 4. Exceptions to this principle are permissible in cases of self-defense or following a decision adopted by the UN Security Council under Chapter VII of the UN Charter. *Id.* at arts. 39–51.

¹³⁰ See e.g., Chong Ja Ian, *The Many "One Chinas": Multiple Approaches to Taiwan and China*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Feb. 9, 2023), <https://carnegieendowment.org/research/2023/02/the-many-one-chinas-multiple-approaches-to-taiwan-and-china?lang=en¢er=global> (noting that "the United States'[s] 'one China policy' states that Washington does not take a position on Taiwan's sovereignty and merely 'acknowledges' the existence of a Chinese position even as Washington officially recognizes the PRC as the government of China. The United States reserves the right to maintain unofficial relations with Taiwan as it sees fit" and that "Beijing tends to 'increasingly frame the United States'[s] 'one China policy' within the context of the PRC's own 'one China principle' in its

ROC is not a state and (2) the vast majority of states have agreed (openly or tacitly) with the PRC's "One China Principal" (*i.e.*, that Taiwan is an inalienable part of China).¹³¹ Based on this, the PLA could argue that Taiwan is already a part of China (indeed, the PRC already makes this argument¹³²) and, as such, any dispute or conflict between the PRC and the ROC is purely an internal issue.¹³³ On this basis, any foreign intervention would be characterized as, at a minimum, an impermissible violation of PRC sovereignty under international law.¹³⁴ Any foreign intervention involving the deployment of troops into Taiwan, meanwhile, would almost certainly be met with PRC claims that the foreign intervener is violating the prohibition on the use of force against the territorial integrity or political independence of another state enshrined in Article 2(4) of the UN Convention.¹³⁵

public statements. Such characterization of the U.S. position appears to be becoming more frequent.) [<https://perma.cc/YMF5-64CB>].

¹³¹ *Id.* (noting that "Beijing's 'one China principle' contends that '[t]here is but one China in the world, Taiwan is an inalienable part of China's territory, and the Government of the People's Republic of China is the sole legal government representing the whole of China'" and that "Beijing more frequently reiterates that its 'one China principle' 'has been clearly recognized by [UN] General Assembly Resolution 2758 of 1971.'" Furthermore, "[s]ince [China's] founding...in 1949, 181 countries have established diplomatic relations with [it] on the basis of the one-China principle. The one-China principle is a universal consensus of the international community and a basic norm in international relations.").

¹³² *See, e.g., id.*

¹³³ *See* West & Insisa, *supra* note 103, at 191–92. (noting that China seeks to "recast the relationship between Beijing and Taipei as being an internal dispute between a central and local government").

¹³⁴ Non-intervention is a generally established principle of international law. Article 2(7) of the UN Charter provides that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter...." U.N. Charter, *supra* note 129, art. 2, ¶ 7. Meanwhile, in the *Nicaragua* case, the International Court of Justice wrote that "[t]he principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law. It also reaffirmed that "international law requires political integrity...to be respected." *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, ¶ 202 (June 27). The Court went on to say that "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States" and that "a prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. [...] the element of coercion [...] defines, and indeed forms the very essence of, prohibited intervention." *Id.* at ¶ 205. In a later case, the Court noted that *Nicaragua* had "made it clear that the principle of non-intervention prohibits a State 'to intervene, directly or indirectly, with or without armed force, in support of the internal opposition within a State.'" *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶ 164 (Dec. 19).

¹³⁵ U.N. Charter, *supra* note 129, art. 2, ¶ 4. Under international law, force is only permissible in three scenarios: (1) in cases authorized by the UN Security Council under Chapter VII of the UN Charter; (2) in cases where force is exercised as part of the inherent right to self-defense permitted under Article 51 of the UN Charter, *id.*; and (3) in cases where the territorial state has consented to the use of force. Consent is based on the principle of state sovereignty, *see, e.g., Nicaragua* 1986

One might also consider a scenario wherein the PLA launches a military operation to capture Taiwan (either through a military quarantine designed to cut off the island, or a full-scale invasion). In such a situation, the United States may elect to intervene to defend Taiwan, either through the provision of arms, intelligence, and logistics support (as it has done vis-à-vis Ukraine in the Russo-Ukraine war), the deployment of special forces to support the Taiwanese Defense Forces, or through a full-scale intervention. The PRC will have undeniably acted, in the eyes of most Western observers, in a morally and legally unacceptable manner: the Taiwanese people's right to self-determination will be at risk, and the CPC would be acting in a "might makes right" manner wholly incompatible with the modern international rules-based order. But even before any U.S. intervention, PLA lawfare and information operations will have been driving arguments—backed by the non-intervention doctrine, UN Charter, and language of international law—that portray PLA actions as justified and legitimate (or at least not a matter with international legal implications) while portraying U.S. intervention efforts as an active violation of international law and a serious breach of international legal norms.

Such a narrative of Chinese sanctimony might well seem absurd to some Americans, whose knowledge of the conflict will likely be shaped by media coverage and official pronouncements of Chinese aggression and its impact on the Taiwanese people and democracy (notwithstanding the real possibility of misinformation and active information campaigns to the contrary). But Americans will not be the principal intended audience of the PLA's legal arguments. Instead, the primary audiences will be in third-party countries. There, legal narratives aimed at showcasing PLA virtuousness and Western illegitimacy, such as spurious *jus ad bellum* narratives, will likely find more fertile ground among foreign populations and decisionmakers. Indeed, China has spent years developing information operations which highlight examples, both real and embellished, of Western hypocrisy regarding international law.¹³⁶

I.C.J. Rep. 14 at ¶ 246. UN Charter 2(7) prevents the United Nations from intervening in "matters which are essentially within the domestic jurisdiction of any state." U.N. Charter, *supra* note 129, art. 2, ¶ 4. That a state can consent to acts otherwise contrary to its sovereignty is recognizable broadly within international law. See Max Byrne, *Consent and the Use of Force: An Examination of 'Intervention by Invitation' as a Basis for US Drone Strikes in Pakistan, Somalia and Yemen*, 3 J. ON USE OF FORCE & INT'L L. 97, 100 (2016); but see Ashley S. Deeks, *Consent to the Use of Force and International Law Supremacy*, 54 HARV. INT'L L. J. 1, 5, 27–30 (2013).

¹³⁶ See e.g. *Facts on U.S. Breaching International Rules*, XINHUA (Apr. 20, 2021) at https://web.archive.org/web/20240421221153/http://www.xinhuanet.com/english/2021-04/20/c_139893941.htm. Xinhua is the PRC's official state news agency. It is controlled by the CPC and has close links to PRC intelligence agencies. This English language article enumerates a long list of alleged U.S. legal violations, noting that "the United States in fact makes its selfish political gains first and puts its national law above international laws. The self-righteous country willfully breaks treaties and withdraws from international organizations, changing like a weathercock. Under the pretense of democracy and human rights, Washington constantly interferes in other countries' internal affairs, blatantly wages wars to encroach upon other countries' sovereignty, flagrantly undermines international order, and poses a grave threat to

The impact of this lawfare effort could be profound on potential U.S. partnerships. In a conflict around Taiwan or in the South China Sea, the United States will likely seek support (or at least cooperation) from a variety of third-party states.¹³⁷ In many cases, such efforts will have to contend with concerns over publicly supporting a conflict perceived as potentially violating Article 2(4) of the UN Charter or other principles of international law. If faced with supporting a conflict perceived as “illegal” by its domestic population, would, for example, Malaysia quickly open its many waterways and straits to allow the timely passage of U.S. ships? Would Singapore permit its territory to become associated with a war effort by allowing U.S. forces to use service stations to resupply? Would the Philippines quickly grant U.S. access, basing, and overflight permissions to allow necessary air cover and logistical support to U.S. forces defending Taiwan? Would Japan be swift to permit its defense forces to provide any non-lethal support to the U.S. military, while also providing political and diplomatic assent to the inevitable use of U.S. bases located across Japan for combat missions?

This list is far from exhaustive, but failure to receive any one of these permissions or support agreements would have palpable operational implications for the success of U.S. operations. Maritime forces would have to circumnavigate closed waterways, delaying their arrival. The use of previously uncontroversial bases and military facilities could be impeded or become politically compromised. Air superiority could be compromised. Longer logistic chains could be subject to greater vulnerabilities. Governments and diplomats of regional countries might hand-wring in private, acknowledging U.S. frustrations while pointing to the legal

international security. “What the [United States] has done has severely violated international rules including the United Nations (UN) Charter. The U.S. attempt to press other countries to “abide by rules” is in fact nothing but force them to yield to a unipolar world order dominated by the United States.” [https://perma.cc/ZG28-8PP9]; see also Pieter Zhao, *Chinese Political Warfare: A Strategic Tautology*, THE STRATEGY BRIDGE (Aug. 28, 2023), https://thestrategybridge.org/the-bridge/2023/8/28/chinese-political-warfare-a-strategic-tautology (“China’s psychological and legal warfare activities have been further augmented with various efforts that seek to influence global and domestic public opinion to support China’s objectives while discrediting diverging narratives and dissuading contrary actions. Central themes within such media warfare include items that emphasize the historical validity of China’s claims, the humiliating loss of Chinese territories due to the century of humiliation, and the selective disregard of international law as a tool of imperialism. Overseas-oriented media channels, such as the *Global Times*, *People’s Daily*, and *Xinhua* often push a similar narrative with an extra emphasis on the responsibility of the United States, Japan, Vietnam, and the Philippines, among others, in aggravating the regional tensions and their lack of respect for Chinese law.”) [https://perma.cc/G2TJ-UMZU].

¹³⁷ See, e.g., JENNIFER KAVANAGH ET AL., BUILDING MILITARY COALITIONS: LESSONS FROM U.S. EXPERIENCE xviii (2021) (“Having regional partners and support can ease access and logistical challenges that are manifold in both U.S. Indo-Pacific Command and U.S. European Command.”); see also Jim Garamone, *U.S. Official Says Allies Acting Together to Deter China*, DOD NEWS (Sept. 29, 2023), https://www.defense.gov/News/News-Stories/Article/Article/3543179/us-official-says-allies-acting-together-to-deter-china (reporting remarks by the U.S. deputy assistant secretary of defense for South and Southeast Asia that “[c]lose collaboration with our allies and partners is foundational to sustaining and strengthening deterrence in the Indo-Pacific region, including in the South China Sea”) [https://perma.cc/R2LR-XGQL].

complexities and lack of popular support in their home countries. Even where permissions are ultimately granted, delays of mere hours or days could have genuine operational consequences. In a Taiwan-invasion scenario, where the PLA may attempt to seek to achieve a quick *fait accompli* before U.S. forces have an opportunity to come to Taiwan's aid, such ramifications could be particularly devastating.¹³⁸

That American warfighters and legal advisors would likely be completely unconvinced by PLA *jus ad bellum* arguments would be of little consequence in determining the operational effect of such claims. Many U.S. partners and allies adopt more restrictive interpretations of international law¹³⁹ than Washington does and may place greater weight on contentions of international law. Arguments painting the United States as a hypocritical actor violating international law may find fertile ground among global audiences, especially since this perception has been bolstered by years of Chinese media operations.¹⁴⁰ Lawfare

¹³⁸ See, e.g., Scott Savitz, *Defend Taiwan with Naval Mines*, 149 U.S. NAVAL INST. PROCEEDINGS 2/1, 440 (Feb. 2023) (noting that “[g]iven some degree of strategic surprise, the PLA could aim to swiftly seize Taiwan and achieve a *fait accompli* before the United States and Taiwan could effectively respond”); see also, Walker D. Mills, *Deterring the Dragon: Returning U.S. Forces to Taiwan*, MIL. REV. (2020) at 65–66 (noting “the contours of the power balance make the possibility of a surprise, or *fait accompli*, attack on Taiwan more likely. If PLA forces can prevent U.S. forces from responding reflexively or immediately to PLA aggression, the United States will either accede to a quick PLA victory in a Taiwanese-mainland China conflict, or be forced to wage a long, costly campaign to reestablish access to Taiwan with a far from certain outcome. U.S. leadership may have to face down domestic pressure at home and international pressure abroad against a deliberate and more global conflict with China.”)

¹³⁹ See, e.g., KAVANAGH ET AL., *supra* note 137. See also, David S. Goddard, *Understanding the Challenge of Legal Interoperability in Coalition Operations*, 9 J. NAT’L SEC. L. & POL’Y 211, 228 (2017) (noting that “States [in a coalition] may differ not only in their substantive legal obligations, but in the way that they understand and interpret those obligations, in how they apply them to concrete situations, and in the amount of risk they are willing to bear that they subsequently might be judged as having been wrong”); see also Shirley Scott, *Is There Room for International Law in Realpolitik?: Accounting for the US ‘Attitude’ Towards International Law*, 30 REV. INT’L STUD. 71, 71–72 (2004) (noting that “[a]ccording to critics, the attitude of the United States [] towards international law is two-faced: on the one hand, the [United States] extols the virtues of the international rule of law as a way of moving the world towards greater peace, democracy and a ‘new world order’; on the other, a number of actions (and inactions) on the part of the [United States] in recent years do not seem to evidence the same support for the system of international law and institutions as was apparent at the time the [UN] was being established”).

¹⁴⁰ See, e.g., *Facts on U.S. Breaching International Rules*, *supra* note 136; see also *Reality Check: Falsehoods in US Perceptions of China*, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE KINGDOM OF BELGIUM (June 20, 2022), http://be.china-embassy.gov.cn/eng/rv/202206/t20220620_10706591.htm (available at https://web.archive.org/web/20241101083216/http://be.china-embassy.gov.cn/eng/rv/202206/t20220620_10706591.htm) (claiming that “[w]hat the [United States] has constantly vowed to preserve is a so-called international order designed to serve the [United States]’ sown interests and perpetuate its hegemony. The [United States] itself is the largest source of disruption to the actual world order”) [<https://perma.cc/37AW-U7RU>]. The extensive criticism of hyperarchy encompasses a range of allegations about U.S. violations of international and domestic laws. See Ken Moritsugu, *China Accuses US of ‘Abusing’ International Law by Sailing in Taiwan Strait and South China Sea*, ASSOCIATED PRESS (Jan. 25, 2024),

efforts may also have an impact on popular support in Indo-Pacific democracies for any U.S. intervention. This in turn may further delay regional governments from acting to provide necessary assistance, as politicians assess the electoral costs or the risk of popular unrest. How various lawfare narratives are ultimately received will depend on various local, cultural, and political considerations. What works in one country may fail in another (though it is possible that PLA lawfare operators will target their messaging to account for these differences). Nevertheless, PLA lawfare efforts that might well sound absurd to an American military audience could have profound (even battle-winning) operational impact.

C. Attrititing Willingness to Fight

The PLA may also use lawfare—in combination with the other elements of the Three Warfares, “public opinion warfare” and “psychological warfare”—to attrit an adversary’s willingness to fight.¹⁴¹ This may target the morale and willingness of actual combatants to fight or may be intended to weaken support among domestic populations and voting publics. To accomplish this, the PLA may seek out, highlight, or invent adversary violations of international norms, including violations of LOAC or international humanitarian law (IHL), international human rights law, or an adversary’s domestic laws. These violations may be heavily publicized to discredit adversary forces and cast doubt on the morality and legality of their actions and intentions.

China has already had some experience deploying this kind of lawfare against the United States and Australia. During the later years of the United States-led intervention in Afghanistan, Chinese media and diplomats regularly drew

<https://apnews.com/article/china-us-south-china-sea-taiwan-strait-1fda357c498ba8cf1b8aafafab36f12e> [<https://perma.cc/844R-7PEV>] (reporting a Chinese government statement in response to legal freedom of navigation activity claiming “[t]he United States side should stop abusing international law, cease all dangerous and provocative behavior, and strictly restrain the activities of front-line troops, which is the fundamental way to avoid accidents at sea and in the air”); see also Maria Repnikova, *China’s Propaganda on the War in Ukraine*, CHINA LEADERSHIP MONITOR (June 1, 2022), <https://www.prleader.org/post/china-s-propaganda-on-the-war-in-ukraine> (reporting in the context of Chinese information operations related to the Russia-Ukraine conflict that “[i]n the past two months, there has been a flood of messaging by China’s official spokespeople aimed at discrediting the moral standing of the United States. At a March 4 press briefing, for instance, Foreign Ministry spokesperson Wang Wenbin responded to U.S. accusations about China’s prior knowledge of Putin’s plans by calling them slander and by questioning whether the [United States] has made any real contributions toward world peace, accusing it of profiting from conflict. Other spokespeople have called out specific accusations about alleged war crimes. ‘Apart from Agent Orange, U.S. military planes brought ordnances and also landmines that are still posing threats to the daily lives of the Cambodian people,’ tweeted Zhao Lijian, while sharing a video produced by Xinhua. Overall, anti-Western, and especially anti-U.S., framing has been prominent in China’s official communications about the war, positioning the [United States] as the aggressor and as a morally bankrupt actor”) [<https://perma.cc/H7C5-8B7Q>].

¹⁴¹ See e.g. HALPER ET AL., *supra* note 69, at 51, 64.

attention to actual and alleged war crimes committed by coalition forces.¹⁴² In 2021, for example, China's envoy told the UN Human Rights Council during a session on Taliban human rights abuses that the U.S. army and the militaries of its coalition partners should also be held accountable for alleged rights violations in Afghanistan.¹⁴³ In 2020, Chinese foreign ministry official Zhao Lijian tweeted a gruesome fake picture of a grinning Australian soldier holding a knife to an Afghan child's neck. The child's face was covered by Australia's flag in the image, with the caption: "Don't be afraid, we are coming to bring you peace!"¹⁴⁴ In that case, the tweet was amplified across social media by unusual accounts, half of which were assessed to likely be fake.¹⁴⁵ The incident came in response to real and shocking revelations of war crimes committed by Australian special forces; the resulting inquiries, prosecutions, and media attention have almost certainly had a detrimental effect on the operational effectiveness of the unit in question—and, by extension, on Australian strategic capabilities.¹⁴⁶ Highlighting the strategic harm caused by these investigations is in no way intended as an argument against conducting such investigations. Rather, the threat of lawfare risks handing real strategic and tactical wins to adversaries, reinforcing the need for close compliance with the laws of war.

¹⁴² See e.g., *China Demands Justice for Civilians Killed by U.S. Military: FM Spokesperson*, XINHUA (Dec. 14, 2021), http://www.news.cn/english/2021-12/14/c_1310372391.htm (available via the WayBackMachine at https://web.archive.org/web/20221225133803/http://www.news.cn/english/2021-12/14/c_1310372391.htm) (drawing attention to PRC foreign ministry statements condemning "barbaric military interventions by the United States in Afghanistan, Iraq, Syria and other countries under the banner of 'democracy' and 'human rights,' and [calling] on the international community to investigate the war crimes committed by the U.S. military of killing innocent civilians around the world") [<https://perma.cc/WQ69-7DG8>]; Yu Ning, *How US Evades Responsibility for War Crimes in Afghanistan*, GLOBAL TIMES (Sept. 27, 2021), <https://www.globaltimes.cn/page/202109/1235240.shtml> [<https://perma.cc/L4MM-QTHB>] (a daily tabloid newspaper under the CPC's official newspaper, the People's Daily (Renmin Ribao), discussing allegations of U.S. and Australian war crimes); Alex Ward, *China and Australia Are in a Nasty Diplomatic Spat over a Fake Tweet — and Real War Crimes*, VOX (Dec. 2, 2020), <https://www.vox.com/22021226/australia-china-afghanistan-tweet> [<https://perma.cc/FE98-MYNG>] (discussing a diplomatic spat between Australia and China relating to Chinese propaganda relating to real war crimes committed by Australian special forces).

¹⁴³ See *China Says US Army Must Be Held Accountable for Afghanistan Actions*, REUTERS (Aug. 24, 2021), <https://www.reuters.com/world/china/china-says-us-army-must-be-held-accountable-afghanistan-actions-2021-08-24> [<https://perma.cc/5ERB-2CB5>].

¹⁴⁴ See Ward, *supra* note 129.

¹⁴⁵ *Likely Fake Accounts Propel China Tweet that Enraged Australia*, AL JAZEERA (Dec. 5, 2020), <https://www.aljazeera.com/news/2020/12/5/likely-fake-accounts-propel-china-tweet-that-enraged-australia> [<https://perma.cc/H2SZ-8QPC>].

¹⁴⁶ See, e.g., Rod McGuirk, *Australian General Says US Warns War Crime Allegations Could Prevent Work with Australia's SAS*, ASSOCIATED PRESS (May 31, 2023), <https://apnews.com/article/australia-war-crimes-sas-afghanistan-us-d63f360e73fec6002cc34a752d9986ba> ("The United States has warned that allegations of war crimes against Australian soldiers in Afghanistan could prevent U.S. forces from working with Australia's Special Air Service Regiment in the future.") [<https://perma.cc/P847-MCGE>].

In an active conflict, any allegations (real or fabricated) of legal violations by combatants fighting China are likely to be seized upon and publicized by PLA lawfare and media operators. These would be broadcast around the world, potentially generating protests in the capital cities of the PLA's adversaries, while prompting potential allies to distance themselves from the alleged violator(s). It would also sap the "moral component" of adversaries' fighting power, draining the ethical foundation, motivation, and moral cohesion needed to rally people to fight effectively.¹⁴⁷ Beyond the battlefield, such efforts would also erode home-front resolve of China's adversaries' populations to commit to a continued fight.

D. Dividing Hostile Coalitions and Building Supporting Blocs

As discussed above, the PLA is likely to deploy operational lawfare during conflict using legal attacks based on *jus ad bellum*, *jus in bello*, the non-intervention doctrine, and other international legal concepts. In addition to delaying intervening forces; denying (or delaying) assess, basing, and overflight rights; stretching logistical chains; and depleting combatants' willingness to fight and domestic populations' support for a war effort, China may also use operational lawfare to divide international coalitions.

Lawfare's ability to deter or delay third parties from entering a conflict with the PRC was outlined above. But lawfare may also have deleterious effects on coalition and combined warfare even when third parties cannot be fully deterred from entering the fight, with implications for American strategy. The United States generally prefers to fight its wars as part of a coalition of likeminded states.¹⁴⁸ Though allies and partners may be able to bring niche capabilities and insights that deliver operational value,¹⁴⁹ coalitions are especially valuable for conferring legitimacy on U.S. operations.¹⁵⁰ Acting in coalition allows U.S. leaders to more credibly communicate to audiences at home or abroad that a given campaign is politically acceptable, pointing to third-party states that have accepted and agreed upon its necessity and justification.¹⁵¹ As one 2021 RAND Corporation study notes:

coalitions might grant an intervention a degree of international legitimacy or approval from the international community. One version of this line of

¹⁴⁷ The moral component is, arguably, the most important part of fighting power. A motivated force will fight harder and for longer. For a visualization of the components of fighting power See BRITISH MINISTRY OF DEFENSE, ARMY DOCTRINE PUBLICATION LAND OPERATIONS 1–11, https://assets.publishing.service.gov.uk/media/677fe2d4d721a08c0066560c/Army_Doctrine_Publication_land_operations__withdrawn_25_May_2022_.pdf [<https://perma.cc/H4M9-NJSF>]. See also, BRITISH MINISTRY OF DEFENSE, JOINT DEFENSE DOCTRINE 0-01, at 25 (available at https://assets.publishing.service.gov.uk/media/63776f4de90e0728553b568b/UK_Defence_Doctrine_Ed6.pdf)

¹⁴⁸ See, e.g., Kelly A. Grieco, *Fighting and Learning in the Great War: Four Lessons in Coalition Warfare*, 48 US ARMY WAR COLL. Q.: PARAMETERS 27 (Sept. 1, 2018).

¹⁴⁹ See e.g., KAVANAUGH ET AL, *supra* note 137, at 100, 143.

¹⁵⁰ *Id.* at 69.

¹⁵¹ *Id.* at 1.

reasoning maintains that states pursue coalition interventions because they strictly prefer the international legitimacy that is bestowed on an intervention when it is conducted by multiple countries together or through an international organization. Since the end of the Cold War especially, the norm of legitimacy has become increasingly important for states using military force abroad and is closely tied to the norm of territorial sovereignty.¹⁵²

For the United States, therefore, coalition warfare not only offers tangible operational capabilities, but signifies consensus or agreement that a particular military action is justified, necessary, and permissible under international norms.¹⁵³ This in turn bolsters political and moral willingness to fight at home.

Differences between the United States and coalition partners regarding their respective political-risk tolerances and “widely different interpretations of seemingly fundamental [international legal] rules,”¹⁵⁴ as mentioned in prior sections, creates operational challenges – which may in turn be exploited or exacerbated by the deployment of lawfare. Specifically, “legal issues and the differing approaches amongst coalition partners make the legal aspects of conflict a strategic issue that must be addressed,”¹⁵⁵ as Dunlap noted during the Global War on Terror (GWOT). As discussed in Section II, to the extent that Western forces experienced hostile lawfare during the GWOT, it primarily arose from NSAGs deploying compliance-leverage lawfare to obtain tactical-level battlefield advantages. Such lawfare efforts successfully created differences in operational approaches among U.S. coalition partners: in many cases, foreign partners were less able to undertake certain missions due either to divergent interpretations of an operation’s permissibility under international law or concerns about the political risks of an operation and voters’ receptiveness to it “back home.”¹⁵⁶

Unlike the lawfare experienced during the GWOT, prospective Chinese operational warfare will likely be better-resourced and state-sponsored and will likely include efforts explicitly designed to drive wedges between potential coalition partners. Beijing understands how important coalition warfare is to the United States, having most recently observed U.S. successes in cohering global

¹⁵² *Id.* at 12.

¹⁵³ *Id.*

¹⁵⁴ Charles J. Dunlap, *Legal Issues in Coalition Warfare: A U.S. Perspective*, 82 INT’L L. STUD. 221, 222 (2006).

¹⁵⁵ *Id.*

¹⁵⁶ For example, during the invasion of Iraq in March 2003, 14 Australian F/A-18 Hornet pilots defied the orders of their American commanding officers. These pilots independently aborted 40 bombing missions at the last minute because they believed that the objects of attack were not valid military targets or that dropping their bombs would result in an alarming number of civilian casualties. None of the pilots were reprimanded—they were following Australian rules of engagement. See Patricia A. Weitsman, *Wartime Alliances versus Coalition Warfare*, 2 AIR & SPACE POWER J.-AFR. & FRANCOPHONIE 29, 32 (2011).

coalitional support for Ukraine against Russia's illegal invasion in 2022.¹⁵⁷ Many of the same *jus ad bellum* arguments that the PLA could deploy to limit regional basing, access, and overflight might also be deployed, in conjunction with other media and influence operations, to convince populations in allied and partner countries to oppose any inclination their governments or leaders may have to join new coalitions in support of a war perceived as "illegal." Allegations of real and invented *jus in bello* violations could also be delivered to Western eyeballs via combinations of internet open-source intelligence (OSINT) investigators, bloggers, traditional media outlets, and through formal CPC statements in international fora. While these lawfare operations would likely fail to keep staunch U.S. partners from supporting their ally, the associated popular "debate" and dissention might limit the timeliness, overtness, and level of support ultimately provided. Though the precise impact of this lawfare might well be hard to measure, any delay or limitation on coalition support would have real-world operational impacts.

In addition to attriting the size, speed, and coherence of U.S.-led coalitions, China may also use lawfare to build its own global coalitions, particularly at international fora. Unlike the United States, the PRC has historically avoided formal alliances,¹⁵⁸ although it has a standing formal alliance with North Korea,¹⁵⁹ a "quasi" alliance with Russia,¹⁶⁰ close ties with Pakistan, and may be developing new overseas military bases in friendly countries.¹⁶¹ China has, however, worked hard to build its influence within international organizations in recent years.¹⁶² It

¹⁵⁷ See, e.g., Edel, *Ukraine, Coalition Building, and the Indo-Pacific*, CENT. FOR STRATEGIC & INT'L STUDIES (Mar. 1, 2022), <https://www.csis.org/analysis/ukraine-coalition-building-and-indo-pacific> [<https://perma.cc/SH72-A8JY>] (noting that "[i]n the Ukrainian crisis, the United States has mustered, coordinated, and led a European and, indeed, a global response. Countries as far away from the conflict as Australia are committing substantial resources to the fight").

¹⁵⁸ See, e.g., John S. Van Oudenaren, *China's Shifting Approach to Alliance Politics*, 22 JAMESTOWN FOUND. CHINA BRIEF (July 15, 2022), <https://jamestown.org/program/chinas-shifting-approach-to-alliance-politics> [<https://perma.cc/7HPQ-KHLU>].

¹⁵⁹ Patricia M. Kim, *China's Search for Allies*, FOREIGN AFF. (Nov. 15, 2021), <https://www.foreignaffairs.com/articles/china/2021-11-15/chinas-search-allies> [<https://perma.cc/43EY-F29T>].

¹⁶⁰ Liselotte Odgaard, *Chinese Perspectives on Alliance and Alignment: Entrapment Concerns in China's Foreign Relations*, HUDSON INST. (July 31, 2024), <https://www.hudson.org/chinese-perspectives-alliance-alignment-entrapment-concerns-chinas-foreign-relations-liselotte-odgaard> [<https://perma.cc/43EY-F29T>].

¹⁶¹ See OFFICE DIR. NAT'L INTEL., ANNUAL THREAT ASSESSMENT OF THE U.S. INTELLIGENCE COMMUNITY 10 (Feb. 5, 2024) (noting that "[t]he PLA will continue to pursue the establishment of overseas military installations and access agreements in an attempt to project power and protect China's interests abroad. Beyond developing its military base in Djibouti and its military facility at Ream Naval Base in Cambodia, Beijing reportedly is considering pursuing military facilities in multiple locations, including—but not limited to—Burma, Cuba, Equatorial Guinea, Pakistan, Seychelles, Sri Lanka, Tajikistan, Tanzania, and the UAE.").

¹⁶² See e.g., DOSHI, *supra* note 29, at 459-60; ELIZABETH C. ECONOMY, *THE THIRD REVOLUTION: XI JINPING AND THE NEW CHINESE STATE* (2018) at 232 (noting that President Xi is establishing China "as a creator of new institutions that may promote a more globalized and integrated world through lower tariff barriers for trade and greater ease of investment. The current Chinese leadership has also assumed a greater role in organizations such as the IMF and hosted the G20.");

already uses its influence in UN committees and agencies,¹⁶³ as well as in the Association of Southeast Asian Nations (ASEAN) and other regional bodies, to ensure that such organizations cater to and align with CPC goals, such as its objectives in the South China Sea as discussed above.¹⁶⁴

Meanwhile, as noted above, the CPC views U.S. engagement with the UN in the context of the First Gulf War as a successful instance of Western lawfare aimed to enable and prosecute an effective U.S.-led military campaign against Saddam Hussein's Iraq¹⁶⁵—one from which CPC planners have and continue to draw lessons.¹⁶⁶ It is probable, therefore, that the CPC will seek to leverage its influence in international bodies during conflict. It has already conducted some shaping to this end through, for example, PRC efforts to ensure ASEAN never becomes a forum for serious security discussions contrary to China's interests.¹⁶⁷ Studies have also found that China has been quite effective at using its UN influence to promote its views and definition of human rights and limit international criticism of its domestic human rights record.¹⁶⁸ Similarly, it has used its weight across the UN system to prevent an expansion of Taiwan's formal participation in international bodies, while seeking to position its "one-China policy" as an article of international law.¹⁶⁹ China has also grown adept at wielding its voting and veto

See also, Yaroslav Trofimov et al., *How China Is Taking Over International Organizations One Vote at a Time*, WALL ST. J., (Sept. 29, 2020), <https://www.wsj.com/articles/how-china-is-taking-over-international-organizations-one-vote-at-a-time-11601397208> [<https://perma.cc/987P-VVBD>] (noting, *inter alia*, that "Beijing is pushing its civil servants, or those of clients and partners, to the helm of U.N. institutions that set global standards for air travel, telecommunications and agriculture. Gaining influence at the U.N. permits China to stifle international scrutiny of its behavior at home and abroad. In March, Beijing won a seat on a five-member panel that selects U.N. rapporteurs on human-rights abuses—officials who used to target Beijing for imprisoning more than a million Uighurs at so-called re-education camps in Xinjiang").

¹⁶³ *See generally* JEFFREY FELTMAN, CHINA'S EXPANDING INFLUENCE AT THE UNITED NATIONS – AND HOW THE UNITED STATES SHOULD REACT (2020), https://www.brookings.edu/wp-content/uploads/2020/09/FP_20200914_china_united_nations_feltman.pdf [<https://perma.cc/W53H-625Y>]; Carla Freeman, *As China Looks to Reform Global Governance, How Does it Approach the U.N.?*, U.S. INST. PEACE (Sept. 28, 2023), <https://www.usip.org/publications/2023/09/china-looks-reform-global-governance-how-does-it-approach-un> [<https://perma.cc/NLU6-3TGP>].

¹⁶⁴ *Cf.* Telegram from George Kennan, The Charge in the Soviet Union, to James Byrnes, Secretary of State (Feb. 22, 1946, 21:00), <https://nsarchive2.gwu.edu/coldwar/documents/episode-1/kennan.htm> [<https://perma.cc/L9XE-6S9T>] (explaining that "Moscow sees in UNO not the mechanism for a permanent and stable world society founded on mutual interest and aims of all nations, but an arena in which aims just mentioned can be favorably pursued... I reiterate, Moscow has no abstract devotion to UNO ideals. Its attitude to that organization will remain essentially pragmatic and tactical.").

¹⁶⁵ *See* HALPER ET AL., *supra* note 69, at 50–51.

¹⁶⁶ *See generally*, DOSHI, *supra* note 29, at 74–77.

¹⁶⁷ *Id.* at 121–126.

¹⁶⁸ *See generally* Courtney J. Fung & Shing-Hon Lam, *Staffing the United Nations: China's Motivations and Prospects*, 97 INT'L AFF. 1143 (2021).

¹⁶⁹ *See* Freeman, *supra* note 163.

power in the UN Security Council, and treats the UN General Assembly (UNGA) as a key platform for amplifying its preferences.¹⁷⁰

During crisis or conflict, China might leverage this influence at the UN, and particularly in the UNGA to chip away at U.S. legitimacy and global support. For example, China could leverage its influence and orchestrate successful UNGA votes to censure the United States or express support for Chinese positions. While nonbinding, such votes are still considered to carry some weight, as seen with the 2023 UNGA resolution calling for Russia's immediate withdrawal from Ukraine. A UNGA vote of censure could therefore have genuine operational repercussions. As with the other potential operational lawfare effects described in this paper, censure could delay the formation of necessary U.S.-led coalitions or limit the support that otherwise friendly nations would be willing to give. The PLA would also leverage the significant propaganda value of an UNGA vote of censure by broadcasting it widely as part of "public relations warfare" and "psychological warfare" efforts. Domestic political opponents of the incumbent U.S. administration would seize on the "illegality" of U.S. actions to encourage a rethinking of American policy, thus destabilizing national unity behind a war effort. Meanwhile, coalition soldiers might find their motivation to fight diminished out of fear of having lost the moral high ground in the war.

Influence in more specialist international bodies might also be used for lawfare effect. Indeed, China has already drawn on its influence at the UN Human Rights Council: in 2022, China successfully orchestrated the defeat of a vote to open a debate about alleged human rights abuses by China against Uyghurs and other Muslims in Xinjiang, with some countries citing a fear of alienating China as a reason for voting against the motion.¹⁷¹ Such influence over global bodies will almost certainly be drawn on ever more heavily upon the outbreak of hostilities to fight an influence war for global support.

In short, during conflict, China is likely to use crafted legal arguments, together with its growing influence across the increasing numbers of international organizations—not to mention LOAC- and human rights-focused non-governmental organizations (NGOs)¹⁷²—to build diplomatic and possible physical coalitions to blunt the United States's convening power and political willingness to fight.

E. Achieving Military Fait Accompli and Quickly Normalizing Military Gains

¹⁷⁰ *Id.*

¹⁷¹ See, e.g., Emma Farge, *UN Body Rejects Debate on China's Treatment of Uyghur Muslims in blow to West*, REUTERS (Oct. 6, 2022), <https://www.reuters.com/world/china/un-body-rejects-historic-debate-chinas-human-rights-record-2022-10-06> [<https://perma.cc/8DZ2-DRNR>].

¹⁷² See KITTRIE, *Lawfare, China, and the Grey Zone*, *supra* note 2, at 211.

One or more of the CPC's aforementioned territorial ambitions will likely feature in prospective military conflicts involving the PRC. Some military analysts believe that, should any of these territorial disputes turn "hot," the PLA will likely attempt to achieve a quick *fait accompli*, capturing and reinforcing territory before more powerful external military powers can enter the fight.¹⁷³ Many of the potential lawfare strategies described above may delay and weaken a U.S. intervention to defend partners and allies, buying time for the PLA to achieve its objectives on the ground.

In addition to achieving acute military objectives during conflict (*e.g.*, delaying or deterring intervention, or discrediting foreign war aims), operational lawfare is also a critical tool for normalizing military gains.¹⁷⁴ The PRC will likely face significant international censure in the event of a major act of conquest, notwithstanding the CPC's lawfare and influence operations designed to minimize the impact of such criticism. As a result, countries could target the PRC with sanctions, and Western private sector actors may suspend operations in mainland China—a situation mirroring Russia's experience following its invasion of Ukraine.¹⁷⁵

In a successful Taiwan invasion scenario, China is also likely to face international opprobrium arising from its administration of the captured island, such as the installation of a new government, imposition of new laws (especially ones impinging on Taiwanese human rights), and any punitive measures taken against Taiwanese leadership, military personnel, or civilians opposing PRC rule. Ordinarily, many of these issues would be covered under LOAC or IHL through the law of occupation. In an international armed conflict (IAC), permanent occupation is considered unlawful, a principle derived from the prohibition of the use of force under Articles 2(3) and 2(4) of the UN Charter.¹⁷⁶ Furthermore, under the 1907 Hague Regulations, territory that comes under a foreign armed force's

¹⁷³ See Andrew F. Krepinevich, Jr., *The Big One: Preparing for a Long War Between the U.S. and China*, FOREIGN AFF. (Dec. 12, 2023), https://www.foreignaffairs.com/china/united-states-big-one-krepinevich?check_logged_in=1 [<https://perma.cc/V95B-K9WM>]; Carter Johnston, *Breaking Down the U.S. Navy's 'Hellscape' in Detail*, NAVAL NEWS (June 16, 2024), <https://www.navalnews.com/naval-news/2024/06/breaking-down-the-u-s-navys-hellscape-in-detail> [<https://perma.cc/9A4A-STJ6>]; but cf. Michael Kofman, *Getting the Fait Accompli Problem Right in U.S. Strategy*, WAR ON THE ROCKS (Nov. 3, 2020), <https://warontherocks.com/2020/11/getting-the-fait-accompl-problem-right-in-u-s-strategy/> [<https://perma.cc/8GXQ-QG8X>].

¹⁷⁴ Normalization of military gains in this context might include efforts to minimize global criticism of China for a clear violation of international norms regarding the use of force for territorial acquisition, minimizing the length of time of any political or diplomatic ostracization or sanctioning, and ensuring the territorial gain in question is quickly recognized by the international community (not only for diplomatic purposes, but also because of implications for international trade restrictions, and so on).

¹⁷⁵ *Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain*, YALE SCH. MGMT. (Jan. 28, 2024), <https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain> [<https://perma.cc/2CGS-X6RL>].

¹⁷⁶ U.N. Charter, *supra* note 129, art. 2, ¶¶ 3–4.

authority is considered “occupied.”¹⁷⁷ This change in circumstance triggers the imposition of certain obligations on the occupying armed force vis-à-vis the occupied population (regardless of the reasons for the occupation) under the Hague Regulations, the Fourth Geneva Convention, and the First Additional Protocol to the Geneva Conventions.¹⁷⁸ China has ratified each of these agreements. The enumeration of the rights of populations under the law of belligerent occupation is beyond the scope of this paper; however, suffice it to say that the PRC would be unable to respect these obligations, which are, in many cases, wholly incompatible with (illegal) permanent territorial annexation.¹⁷⁹

To soften international criticism and attendant economic and political consequences, the PRC is likely to leverage its lawfare experience and proficiency, combined with its influence over international human rights bodies, to draw attention to or embellish U.S. and allied wrongdoing and deflect attention from PRC actions. Sovereignty and *jus-ad-bellum* arguments will again be at the forefront of such efforts. Conflict over Taiwan will be framed as a Chinese domestic issue and thus a NIAC, to which the law of belligerent occupation does not apply. Territorial gains will be framed as the mere reassertion of control over Chinese territory, and international prior “recognition” of the oneness of China and Taiwan will be highlighted as evidence of global assent to the premise of China’s argument.

F. Chinese Operational Lawfare: Conclusion

The potential PLA operational lawfare efforts explored above are not exhaustive. They are also necessarily—and thankfully—speculative; however, considering the PLA’s and CPC’s track record with lawfare and its importance in Chinese military and diplomatic doctrines, that is unlikely to remain the case. Chinese operational lawfare will likely differ from the types of lawfare to which Western militaries have previously been exposed, and as shown above, it has the potential to achieve real operational results that may be disproportionately effective compared with the limited time and resources needed for enactment.

Before discussing responses to potential Chinese operational lawfare, it is worth highlighting the three overarching points made in this section. First, the PLA and CPC diplomats, media, and affiliates are already shaping some of the key narratives needed for effective lawfare. These efforts to shape the legal and

¹⁷⁷ Convention Respecting the Laws and Customs of War on Land art. 42, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 (“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”).

¹⁷⁸ See generally *International Humanitarian Law and Policy on Occupation*, INT’L COMM. RED CROSS (last visited Mar. 14, 2025), <https://www.icrc.org/en/law-and-policy/occupation> [https://perma.cc/RT9C-82YH].

¹⁷⁹ Notably, this includes a requirement to preserve the existing justice system for civilians in occupied territories while respecting certain judicial guarantees established by the Geneva Conventions (GCIV Arts. 47, 54, and 64–75).

information environment include attacks on the United States's credibility regarding its respect for international law and human rights, as well as pro-PRC narratives on sovereignty issues and interpretations of international law that favor or justify Chinese activity while limiting potential Chinese adversaries. Second, Chinese lawfare arguments will sometimes have a basis in real international legal arguments, allowing PLA lawfare operators to spin and promulgate believable accounts claiming the moral and legal high ground. Third, like all military actions, operational lawfare will be deployed to achieve specific effects, and legal narratives will be targeted at specific audiences to achieve those effects. Sometimes those audiences will be American or Western. More often, however, they will be decisionmakers and populations in third-party countries. How legal narratives are received and acted upon by those intended targets, therefore, may be non-intuitive to Western military planners.

Each of these contentions points to ongoing and future Chinese lawfare strategy aimed at blunting and defeating the West in competition and then conflict—and stands in contrast to the lack of a current Western lawfare strategy. Yet without such a strategy, Western nations risk being reactionary, short-termist, and overly focused on Western legal shibboleths that fail to convince intended third-party audiences. This must change, and soon. Given the significance of operational lawfare to Chinese strategy, Western military decisionmakers must build counter-lawfare into their planning assumptions. For this to be effective, a specialist-led approach must be developed with haste. The next section will begin to lay out how this might be done.

IV. ALLIED OPERATIONAL LAWFARE STRATEGY

That a U.S. or Western lawfare strategy is urgently needed is nothing novel. As Kittrie recently noted, “[i]f the United States is to win its current grey zone struggle against the PRC, and be fully prepared for a future kinetic war against China, it must promptly both adopt a comprehensive and coordinated lawfare strategy and create an interagency team to implement it.”¹⁸⁰ To this end, he briefly posited developing a better understanding of how both the United States and the PRC have previously used lawfare by “enhancing coordination and synergies amongst lawfare practitioners in the [U.S.] government, allied governments, and the private sector”¹⁸¹ and monitoring ongoing PRC lawfare efforts.¹⁸² Goldenziel, meanwhile, has offered a solution, calling for “whole-of-government lawfare strategy.” Like Kittrie, she advocates cross-government collaboration and monitoring of adversary lawfare activities. She goes further, however, suggesting that the United States should “proactively identify opportunities for instrumental lawfare, or legal alternatives to potential kinetic conflicts with its adversaries [and] identify opportunities for institutional lawfare.”¹⁸³ Goldenziel also considers the

¹⁸⁰ See KITTRIE, *Lawfare, China, and the Grey Zone*, *supra* note 2, at 235.

¹⁸¹ *See id.*

¹⁸² *See id.*

¹⁸³ *See* Goldenziel, *Law as a Battlefield*, *supra* note 2, at 1162.

importance of building and maintaining genuine lawfare expertise within the U.S. military, advocating for a central lawfare office staffed by experts, and training both civilians and military personnel on existing lawfare efforts.¹⁸⁴

This paper contributes to this line of scholarship in arguing that the United States—and the West more broadly—must originate and institute a lawfare strategy posthaste, proactively work to identify Chinese lawfare threats and plan to defend against them. However, it presents a more specific set of recommendations intended to guide policymakers and planners. It also explicitly cautions against any strategy that seeks to play China at its own game, arguing heavily in favor of developing defensive lawfare efforts and resisting the urge to conduct offensive lawfare.

A. Recognize the Threat and Plan Against it Realistically

The first and most important part of an operational lawfare strategy is to recognize the significant threat hostile state-led lawfare could pose to military operations, several of which are outlined above. Effective lawfare has the potential to delay and deter timely interventions, disrupt logistics and lines of communication, degrade military personnel's will to fight, and discredit war objectives in the eyes of democratic populations back home. Any one of these effects, if successfully delivered, has war-winning potential. Previously, Western militaries have encountered lawfare in tactical aforementioned “compliance-leverage” scenarios deployed by NSAGs to complicate targeting,¹⁸⁵ or through “subthreshold” or “grey-zone” strategic efforts deployed by states during interstate competition. Operational lawfare during interstate armed *conflict*, however, is likely to deliver even more impactful results. Based on Chinese military writings and China's lawfare use during interstate competition, it is reasonable to infer that the PLA intends to deploy lawfare during conflict to achieve operational goals. Operational lawfare therefore represents a high threat to U.S. and allied operations in conflict.¹⁸⁶

After recognizing operational lawfare as a threat, military decisionmakers need to appropriately plan to defend against it. Fundamentally, this will require a predictive, intelligence-driven approach. Though Chinese lawfare during *competition* can be and has been observed, there are no examples of Chinese lawfare in live *conflict* that provide a template for precisely how state-on-state lawfare will be deployed. There are, however, at least three analytical approaches that can help U.S. military and policy planners predict PLA operational lawfare lines of effort.

The first approach is effects-based: planners should assess likely tactical, operational, and strategic effects the PLA will need to achieve to enable successful

¹⁸⁴ See *id.* at 1162–66.

¹⁸⁵ Though propaganda efforts by NSAGs can and do have a strategic impact.

¹⁸⁶ The threat can be understood as a function of adversary capabilities to cause harm, adversary intent to cause said harm, and the opportunity for the adversary to do so.

combat operations. They should then work backwards to identify how and where lawfare information operations, arguments, and legal narratives could be deployed to achieve the desired effects. Planners should then identify potential target audiences for those operations, as well as the content of those laws, legal arguments, and narratives.

The second approach is preemptive. It focuses on the CPC's current legal-shaping activities and how such activities are likely to benefit Chinese strategists in the future. Planners should carefully observe all existing PLA, CPC, and affiliate efforts to broadcast legal arguments, shape international and foreign-domestic legal bodies, or develop new customary law or legal interpretations. Analysts should then consider how these legal developments could be used to support lawfare efforts during combat, working *forward* to predict how current CPC-promulgated arguments will play out as part of lawfare-based information operations, which will likely target populations that may be unfamiliar with international law and have perceptions and values that diverge from those of Western audiences. For example, a media campaign promulgated in a third state and criticizing the United States for alleged legal violations should be analyzed within the context of how such allegations might be developed for propaganda purposes, how they might impact U.S. interests over time, and how resulting perceptions might be exploited and built on in the event of future conflict. Having established the potential of such a campaign, lawfare analysts should develop effective and timely strategies to challenge the narrative, change any unnecessary behavior (if the lawfare's harm outweighs that behavior's benefit), or take other steps to mitigate or eliminate any harm.

The third approach focuses instead on *how* the PLA practices operational lawfare. The PLA has significantly increased its military exercise activities in recent years, with growing efforts to rehearse joint warfare concepts, island seizures, and operations against peer states. The PRC will likely begin practicing how to integrate lawfare activities into its military activities by incorporating them into these exercises. Though lawfare "drills" may be harder to observe than military maneuvers, intelligence analysts should pay heed to any reporting that indicates the deployment of legal advisors and information operators in "offensive" lawfare-related roles to support traditional military exercises.¹⁸⁷ Importantly, wherever possible, information derived from intelligence about potential lawfare efforts should be released quickly to legal teams, counter-lawfare operatives, and allies (who may otherwise not have the necessary clearances or compartmented access to view relevant developments) to allow the development of effective responses. Meanwhile, where available, attention should also be paid to the legal arguments

¹⁸⁷ These operators may practice broadcasting legal narratives relating to the fictional exercise scenario. They may also be deployed to address real world legal concerns relating to drills, such as territorial violations and UNCLOS issues. To the extent their presence is publicized, these operators' roles may be described in defensive terms—for example, by defending against alleged *Western* lawfare operations.

these operators craft as part of such exercises, as well as any indications of a possible target audience and the desired real-world effect of the lawfare operation.

These analytical approaches will help military planners preempt likely lawfare operations, muting the impact of adversary lawfare and allowing for the development and deployment of effective counters in a timely manner.

B. Get the Right Personnel and Position Them Correctly

For planning to counter and mitigate against adversary lawfare to be effective, however, the right people need to be in the right place at the right time. As has already been shown, Chinese operational lawfare will draw on real international and domestic laws and mix legally correct narratives with unorthodox (but, to legally untrained audiences, plausible) arguments and complete fabrication. Lawfare efforts can also be both proactively prepared long in advance of combat operations, in order to complement likely “red force” lines of military effort, as well as reactively devised based on observed U.S. and allied activities.

Appropriately identifying, analyzing, and responding to Chinese operational lawfare threats therefore requires a range of skills rarely found in a single individual. Counter-lawfare operations should be conducted by teams that preferably comprise legally trained personnel, military and civilian intelligence analysts, information-operation and media-engagement professionals, and cultural and linguistic specialists.

Legal personnel should ideally include both lawfare “experts,” as Goldenziel recommended, and more generalist lawyers, perhaps from the military’s Judge Advocate General’s Corps or drawn from agency legal advisor offices. This legal core would help identify potential lawfare efforts and draft legally sound counternarratives. Intelligence personnel, meanwhile, will be crucial in drawing on and analyzing classified source material to understand how Chinese lawfare practice may be developing. Intelligence analysts will also be tasked with understanding and predicting likely PLA intentions, the effects needed to achieve those intentions, and how lawfare efforts will be deployed to enable or achieve those effects.

Information and media operators will work with the generalist lawyers and lawfare experts to ensure that no Chinese lawfare effort goes uncontested: once lawyers identify lawfare attacks and prepare legal counterarguments and narratives, information operators must then work to deliver those counter-messages to the correct target audience using effective media and in a timely and convincing manner. A legally correct but unconvincing response to a lawfare narrative risks being counterproductive. Likewise, a convincing and legally sound argument delivered days after a target audience has already been persuaded of U.S. malfeasance is likely to be ineffective.

Lastly, cultural experts will help ensure that lawfare countermeasures are appropriate for their target audiences. The potentially large number of disparate audiences Chinese lawfare may target will likely require drawing on the expertise of numerous cultural and linguistic subject-matter specialists. Individuals with legal expertise related to specific cultural and regional contexts will be particularly helpful for understanding how different legal narratives could “play out.” Such individuals may be rare (and, where found, could be difficult to clear at the highest security levels).¹⁸⁸ Nevertheless, they should be sought out and could include local advisors on host-nation domestic laws—particularly foreign nationals or dual citizens living abroad and willing to support local diplomatic staff. Other groups may be drawn upon for local legal and cultural expertise, and might include members of U.S. human rights, developmental aid, and legal aid NGO communities. In the long-term, meanwhile, it could be valuable to fund incentive schemes for cross-disciplinary programs to train cohorts of lawyers in target languages and culture, or to incentivize native speakers of target languages to undertake relevant legal training and commit to subsequent government service.

Small teams, using make-ups suggested above, should be embedded in operational-level military commands and included in wargames, exercises, and planning sessions. They should identify potential Chinese operational lawfare campaigns *now* and research and prepare effective counterarguments and narratives accordingly. Where necessary, these teams should identify preparatory activities needed either to counter Chinese narratives seeded in advance of conflict to enable future lawfare, or to lay the groundwork to improve friendly U.S. counternarrative success against prospective arguments.

The U.S. and Western governments should also consider placing lawfare specialists in embassies, particularly in the Indo-Pacific and tasking them with identifying and coordinating responses to locally targeted Chinese lawfare. They should work with local legal professionals and embassy cultural specialists to identify potential Chinese lawfare operations at an early stage. They should also provide advice on the most appropriate ways to counter-message in their respective local contexts.

Such teams would allow the United States to anticipate or quickly identify lawfare operations and respond to both in a timely and effective manner. Their

¹⁸⁸ Foreign Affairs Committee, WRITTEN EVIDENCE SUBMITTED JOINTLY BY BEIJING TO BRITAIN AND THE OXFORD CHINA POLICY LAB (Parliament), 2022-11, IRR0006 (UK), <https://committees.parliament.uk/writtenevidence/113834/pdf/> (noting that, in the UK context, “the Civil Service currently lacks a coherent process for identifying, engaging, and utilizing expertise from people who recently returned from China[—]including those already working within the Civil Service.” The process to get top-secret takes six-to-nine months, “and its requirements make it difficult for those who have spent time in China outside of the Civil Service, or those with Chinese friends, family, or partners/spouses, to achieve the required levels of clearance.” Only seventy Civil Service staff members “reached fluency or near fluency in Mandarin.” Furthermore, “only [fourteen] Foreign Office officials were trained last year.”) [<https://perma.cc/EB5Z-26MJ>].

expertise would also allow operational and strategic decision-makers to plan for and mitigate adversary lawfare's worst effects.

C. Stick to Defensive Lawfare; Don't Stoop to Offensive Lawfare

Many of the scholars cited throughout this paper argue that the United States should engage in active lawfare against China. This perspective is based on the belief that proactive legal measures can effectively counter China's strategic maneuvers and protect U.S. interests. Other scholars, meanwhile, have suggested that U.S. sanctions¹⁸⁹ and other measures, like the Uyghur Forced Labor Prevention Act, represent an active lawfare policy in all but name. That these measures are a form of active and offensive lawfare would also likely be wholeheartedly endorsed by the CPC which, as noted above, believes the United States already uses deliberate lawfare for strategic purposes.

On balance, however, it would be strategically harmful to develop an "offensive" Western lawfare strategy. Nor should U.S. sanctions and other economic measures be accepted as simply a form of Western lawfare. Unilateral sanctions¹⁹⁰ are measures imposed under U.S. domestic law to limit or prohibit economic activity (for example, through trade embargos, investment prohibitions, or asset freezes) between persons or entities subject to U.S. jurisdiction on the one hand and, on the other, foreign entities the United States seeks to punish or pressure as a matter of policy. Many states adopt unilateral sanctions against other states, organizations, and private persons for a variety of policy reasons,¹⁹¹ and unilateral sanctions are broadly accepted as permissible under international law (for example, as countermeasures for international legal violations by other states either directed against that state or contrary to an obligation *erga omnes*).¹⁹²

In short, U.S. unilateral sanctions are, at least in principle, legitimate and lawful tools of policy that regulate private economic activity and can be compatible with the letter and spirit of international law. Moreover, though it is beyond the scope of this paper to analyze every use of sanctions, U.S. sanctions have frequently

¹⁸⁹ Charles J. Dunlap, Jr., *Does Lawfare Need an Apologia?*, 43 CASE W. RES. J. INT'L L. 121, 123–4 (2010),

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2970&context=faculty_scholarship [<https://perma.cc/6K2W-MKT8>] (explicitly describing certain applications of U.S. sanctions during the 2003 Iraq law in terms of legal "weaponry").

¹⁹⁰ Unilateral sanctions are economic measures taken by one state to compel another to change its policy. Examples include embargoes and the interruption of financial and investment flows between sender and target countries.

¹⁹¹ See Aaron Fellmeth, *Unilateral Sanctions Under International Human Rights Law: Correcting the Record*, YALE J. INT'L L. (2023), <https://www.yjil.yale.edu/unilateral-sanctions-under-international-human-rights-law-correcting-the-record> [<https://perma.cc/C67Y-R445>].

¹⁹² See *Report of the International Law Commission to the General Assembly on the Work of Its Fifty-Third Session*, 2 Y.B. INT'L L. COMM'N 34, U.N. Doc. A/CN.4/SER.A/2001/Add.1, arts. 22, 48–54 (Part 2).

been deployed to encourage compliance with the rule of law, including in response to human rights abuses.¹⁹³ Unilateral sanctions, therefore, have the potential to *reinforce* the international rule of law.

Chinese lawfare, by contrast, has largely involved deliberate attempts to erode legal norms or stealthily reshape the international legal system. Lawfare efforts are often intended to create the appearance of legality for Chinese activity that might otherwise be prohibited under international law. Alternatively, they may be designed to erode the legitimacy of (and thereby support for) the United States or other international state competitors. The primary goal of such offensive lawfare is thus not to coerce compliance with international norms, but instead to prevent CPC activity that might be deemed illegal or otherwise to achieve success in convincing relevant audiences of China's false narratives.

It is this type of activity, which uses and deploys the law and legal language in a malign manner wholly outside the rule of law, that sets "lawfare" apart from ordinary, permissible statecraft. Offensive lawfare thus sits *outside* accepted uses of law, the rule of law, and the international rules-based system. Indeed, part of offensive lawfare's danger is that it risks damaging or destroying that very system. And it is because of that danger that it must be monitored and counteracted.

There are, therefore, several reasons why adopting an *offensive* lawfare strategy may be unwise. First, as already noted, offensive lawfare is fundamentally malign and (either by intent or as an externality) weakens and degrades long-standing international norms. As such, Western nations committed to the rule of law and the importance of the rules-based international system should avoid proliferating offensive lawfare. Where the United States or other countries wish to enforce or coerce compliance with international laws, they should continue to use lawful measures. Second, engaging in offensive lawfare (even if only in name) plays into the CPC's propaganda and world view. By setting up an offensive lawfare policy, any lawful activity designed to encourage compliance with international law will almost certainly be labelled "lawfare" by CPC propagandists. Such efforts will provide fodder for not only justifying existing and future Chinese lawfare efforts, but also discrediting the West's commitment to the rule of law.

It is possible these concerns explain the dearth of official mentions of the term "lawfare" by the U.S. government to date. But such complete avoidance is a mistake: though an offensive lawfare policy may be inadvisable for the United States, there is no doubt that lawfare is already a real policy tool for the CPC (and other U.S. adversaries) and could play a decisive role in interstate conflict. Furthermore, the logic against pursuing offensive lawfare does not likewise work against *defensive* lawfare policies, like the ones suggested above and which the

¹⁹³ See *U.S. Sanctions Tracker*, UYGHUR HUMAN RIGHTS PROJECT (last updated Mar. 2024), <https://uhrp.org/sanctions-tracker/> [<https://perma.cc/C3RP-TLT4>].

United States and its allies should develop in earnest to blunt the effectiveness of Chinese lawfare attacks.

D. Ensure Legal Consistency and Avoid Own Goals

The United States must actively contest inaccurate and misleading legal analyses and narratives, as well as the capture of judicial and legal bodies wherever identified by lawfare teams. This is especially important in third-party countries not directly involved in a potential conflict, since as discussed in previous sections, lawfare based information operations may be especially effective and impactful in peripheral states for a range of diplomatic and operational reasons. Wherever possible, defensive lawfare operators should be permitted to quickly respond to counteract falsehoods and institutional influence campaigns—though it must be acknowledged that spreading misinformation and inaccuracy is often less time and cost intensive than spreading factual information. Inevitably, therefore, some agility in responding will also be lost to the necessity of ensuring message accuracy and consistency between operational and theater commands, as well as across the interagency. Some work can and should be done ahead of time, however, to mitigate this dissipation. For example, early detection and preemption of legal attacks would allow lawyers and information operators to take the time to carefully craft responses *proactively* instead of *reactively*.

Equally important, U.S. lawfare policy should involve a hard look at global and regional perceptions of the United States's international legal compliance. The most impactful Chinese lawfare operations are likely to play on already entrenched and cultivated perceptions that the West is hypocritical and only adheres to international law when convenient.

Western commanders and decision-makers should therefore beware clever lawyering designed to weasel around laws and norms to get (inevitably important) jobs done. Arguments that might seem to open certain tactical options through artful readings of international law risk coming across as tone deaf or even unconvincing to foreign and untrained eyes and ears. Such an appearance of hypocrisy plays into existing hostile propaganda. This in turn creates fertile ground for lawfare and lawfare-driven information operations to quickly take hold and influence populations, greatly improving the efficacy of additional PLA operational lawfare operations in times of conflict.

A sound lawfare strategy should therefore undermine global audiences' receptiveness to CPC lawfare. This should involve not only challenging CPC-driven, legally spurious or misleading arguments wherever they arise but also joined-up, whole-of-government efforts to minimize any appearance of impropriety regarding U.S. respect for international law. When it comes to effective lawfare, success is not determined by "who is technically legally correct." Instead, success will be measured in terms of real-world effects. By and large, those real-world effects will be driven by lawfare's influence on people's perception of the

legitimacy of combatant states' war aims. It thus follows that global audiences (with their prejudices, cultural perspectives, preconceived notions, and so on) are in effect judge and jury when it comes to lawfare.

Some readers may find this conclusion troubling. They may feel popular opinions should not be particularly relevant when deciding whether a course of action is legal or illegal. They may balk at pandering to the views of countries that were already disinclined to give the United States a fair hearing, or object to foreign opinions impacting U.S. (or allied) military operations. They may also be troubled by adhering too closely to an international legal system that restrains U.S. power while allowing more unscrupulous countries to benefit.

These potential objections notwithstanding, it is important to remember that peer-on-peer conflict is not something that the United States can undertake alone. Success will require working with allies and partners in coalition, as well as relying on more tacit and covert support outside of live combat. The United States's ability to cohere others depends, in part, on the legitimacy and moral high ground afforded from being consistent and transparent in upholding and being bound by law. There are, of course, occasions where national interest may overwhelmingly require the United States or its allies to take actions unpopular or decried by third parties. But any commanders contemplating a short- or mid-term tactical "win" that could tarnish a U.S. reputation for consistent adherence to law must consider how that activity will be spun to different audiences and carefully weigh the short-term success against the potential long-term strategic detriment.

CONCLUSION

The CPC and PLA will almost certainly use lawfare in the event of interstate conflict. Lawfare used in such a context—operational lawfare—will be quite unlike the lawfare the West experienced during recent decades of counterterrorism operations. Chinese lawfare, combined with information operations and psychological warfare, could have battle-winning consequences with immediate real-world operational effects. As laid out in this paper, the CPC and PLA have already used lawfare during interstate competition and built lawfare into their military doctrine. They are also likely already laying the foundations to maximize the effectiveness of operational lawfare during conflict. Should a conflict with China emerge, the CPC will likely employ operational lawfare to delay and deter timely interventions, disrupt logistics and lines of communication, degrade military personnel's will to fight, and discredit war objectives in the eyes of domestic democratic populations.

With U.S. military planners warning of a growing likelihood of either regional conflict involving the PRC or a larger U.S.-PRC war, the potential deployment of Chinese operational lawfare must be predicted, preempted, and countered. Operational lawfare teams, composed of government lawyers, intelligence personnel, information operators, and cultural specialists, must be

stood up. Chinese lawfare operations should be predicted and observed. And the perceptions of audiences likely to be targeted by potential Chinese lawfare must be held paramount. Most importantly, any U.S. lawfare strategy should work to challenge Chinese narratives of Western hypocrisy regarding international rules and norms, which requires committing to consistent international law adherence that is sensitive to global perceptions.

If hot, great-power conflict is coming, then failure to understand Chinese operational lawfare risks consigning U.S. or allied forces to defeat, potentially before the first shot is ever fired. Effective lawfare requires long-termism and consistency, attributes the United States has not been particularly known for. The country therefore has some ground to make up. But if the best time to plant a tree was ten years ago, the second-best time is now.