

INTEGRATING LAWFARE AND WARFARE

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Abstract: Current military campaigns are not waged solely on the physical battlefield, but in multiple other arenas. One such arena is lawfare: legal activity that supports, undermines, or substitutes for other types of warfare. In today's law-rich environment, with an abundance of legal rules and legal fora, strategists must evaluate the full scope of possible legal argumentation. Lawfare can substitute for warfare where it provides a means to compel specified behavior with fewer costs than kinetic warfare, or even in cases where kinetic warfare would be ineffective. As a result, lawfare can be strategically integrated into military command structures to bring about desired outcomes.

INTRODUCTION

Both kinetic warfare and legal dispute are forms of contestation.¹ Contestation can be physical or symbolic.² Legal arguments or claims are one type of symbolic contestation.³ Other types of symbolic contestation may be based on historical justification, moral philosophy, or religious doctrine.⁴ Symbolic contestation may be used alongside or in place of physical contestation.⁵ Although we may plan strategy around geographically defined contested arenas like the South China Sea, the Crimea, or Syria, we may also consider functionally defined arenas such as the cyber or biological arenas.⁶ Arenas for contestation may be geographic or functional, physical, or symbol-

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¹ See ORDE F. KITTRIE, *LAWFARE: LAW AS A WEAPON OF WAR* 1, 3 (2016); Timothy Noah, *Birth of a Washington Word*, SLATE (Nov. 20, 2002, 6:40 PM), http://www.slate.com/articles/news_and_politics/chatterbox/2002/11/birth_of_a_washington_word.html [<https://perma.cc/A4AU-B6JW>].

² See KITTRIE, *supra* note 1, at 6–7.

³ See *id.*

⁴ See Gerrie Ter Haar, *Religion: Source of Conflict or Resource for Peace?*, in BRIDGE OR BARRIER: RELIGION, VIOLENCE, AND VISIONS FOR PEACE 1, 13 (Gerrie Ter Haar & James J. Busuttill eds., 2005).

⁵ See KITTRIE, *supra* note 1, at 6–7.

⁶ See Peter Navarro, *China's Non-Kinetic "Three Warfares" Against America*, NAT'L INT. (Jan. 5, 2016), <http://nationalinterest.org/blog/the-buzz/chinas-non-kinetic-three-warfares-against-america-14808> [<https://perma.cc/S4R8-XJCC>]; see, e.g., *infra* notes 49–70, 85–91 and accompanying text.