ATHENA
CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

Lawfare and the Future of International Crimes

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Despite being a relatively recent addition to the Cambridge English Dictionary, the definition of the term "lawfare" has been hotly debated in academic circles, particularly in the fields of international law, international relations and military theory. The most widely cited definition in this respect was arguably provided by retired US Major General Charles J. Dunlap Jr., who described lawfare as "the strategy of using—or misusing—law as a substitute for traditional military means to achieve a warfighting objective". In spite of Dunlap's intent to formulate a "neutral" concept within the frameworks of public international law, international politics and operational theory, this understanding of "law as a weapon" has given way to broader interpretations of the term "lawfare" which have been used in other legal contexts (such as human rights law) as well as other disciplines (such as geopolitics).

Even though Dunlap's definition of "lawfare" can be deemed appropriate in contemporary contexts such as Ukraine's claims against Russia before the International Court of Justice and the European Court of Human Rights, or Palestine's claims against Israel before the International Court of Justice and the Office of the Prosecutor of the International Criminal Court, there have also been contexts in which law has served as a complement to traditional military means rather than a substitute thereof. Notable examples in that respect have arisen from post-conflict disputes over the narrative of the conflict, especially among those sovereign states that emerged from a single, multinational sovereign state: e.g., Azerbaijan and Armenia; Serbia, Croatia, and Bosnia and Herzegovina; also, if one is to observe more historical (and unitary) contexts, Turkey and Greece.

In light of the foregoing, international crimes have been central to claims and counterclaims in the context of "lawfare" in addition to laying the groundwork for the formulation of denialism-related offences: the latter of which have also played a crucial role in the "war of narratives". Such a predicament has led to a common misperception of international crimes as a "narrative weapon" meant to assert the moral superiority of one side over another, rather than a legal construct meant to protect humankind from the most despicable horrors conceived in history. This imbroglio of conflicting definitions and perspectives is further exacerbated by the continuous attempts to use the term "lawfare" as an accusation against any legal action taken against a given state or by a given state. Moreover, as opined by ICJ judges Kirill Gevorgian and Xue Hanqin, the use of international instruments on international crimes for the purpose of

achieving a judicial decision on the legality of the use of force can potentially lead to a misinterpretation and misimplementation of international law. Thus, we are faced with yet another challenge to the integrity of international law as the foundation of a rules-based international order.

Against the backdrop of these challenges, we welcome contributions from scholars and doctoral students from diverse disciplines within the framework of law, political sciences, social sciences, international studies, and military theory.

Said contributions may tackle subjects including (but not limited to) the following:

- The use of lawfare in lieu of international and non-international armed conflicts.
- The use of lawfare in connection with allegations of international crimes against the backdrop of post-conflict disputes.
- The evolution of the term "lawfare" in view of ongoing armed conflicts and diverging fora where "lawfare" is practised.
- International crimes and *ius ad bellum*, which may address questions such as:
    - Does the misuse/abuse of the "responsibility to protect" doctrine diminish the significance of international crimes as a legal construct?
    - Is there a pattern between the invocation (or abuse) of Article 51 of the UN Charter and allegations of international crimes (e.g., Turkish *casus belli* in Syria, Russian *casus belli* in Ukraine)?
- The evolution of international treaties on the prevention of the commission of international crimes in light of the recent Draft Articles on Prevention and Punishment of Crimes Against Humanity.
- "Lawfare and denialism", which may cover topics such as:
    - EU foreign policy and the formulation of denialism in EU law (e.g., Council Framework Decision 2008/913/JHA of 28 November 2008).
    - Formulation of "denialism offences" in national jurisdictions in light of recent legislative acts "inspired" by the war in Ukraine (e.g., Germany).
    - The relationship between denialism offences and governments' "official narratives" on past (and current) conflicts.
- "Lawfare and the weaponisation of human rights" which may cover topics such as:
    - Domestic and European legal procedures resulting from the implementation of unilateral coercive measures against countries in the Global South or the broader periphery of capital.
    - The "weaponisation of human rights" as a violation of human rights.
- "Lawfare and democracy" which may cover topics such as:
    - "Judicial coups" against constitutionally elected governments (e.g., the Bolivian coup of 2019).
    - Lawfare as a means to combat attempted coups and coup conspirators (e.g., lustration policies against the Gülen cult in Turkey following the cult's failed coup attempt in 2016).
- "Lawfare, political offences, and defamation" which may cover topics such as:
    - The abuse of sedition, counter-terrorism, and criminal defamation laws in repressive regimes.
    - Strategic lawsuits against public participation (SLAPPS) as a form of "lawfare".
- The abuse of the term "lawfare", which may cover topics such as:

- "Lawfare" as an accusation against attempts to judicially resolve ongoing conflicts and disputes.
- "Lawfare" as used in *tu quoque* discourses in international relations.

In view of the preceding, vol. 5 (2025), no. 1 of *Athena – Critical Inquiries in Law, Philosophy and Globalization* will welcome the application of diverse research methods pertaining to the disciplines mentioned above. By way of illustration, contributors from the field of law may adopt doctrinal, comparative, theoretical, historical, and critical approaches as they see fit; contributors from the various fields of political sciences may use, *inter alia*, discourse analysis, historical analysis, and qualitative (geopolitical) content analysis; whereas scholars of military theory may utilise (among other things) strategic theory development and just war theory evaluation. Please note that we especially encourage submissions that adopt an interdisciplinary approach; therefore, the aforementioned research methods are by no means exhaustive or mutually exclusive.

Preliminary information and scheduled deadlines:

- Papers can have either the form of an article (between 9000 and 15000 words) or a book review (between 3000 and 5000 words);
- Papers must be submitted anonymously at the following link: https://athena.unibo.it/about/submissions. Please add in a separate file the author's name, institutional affiliation, email address, ORCiD number (if available), a 200-word abstract and 5 keywords;
- Mandatory deadline for paper submission: 28 February 2025;
- First evaluation and notification by Editors: 7 March 2025;
- Mandatory final submission after peer review: 10 May 2025.

If you have any queries, please send an email to Dr Aytekin Kaan Kurtul (a.kurtul@hud.ac.uk) or the main email address of *Athena* (athena@unibo.it).