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Lawfare as a Form of Hybrid War: The Case of Bulgaria. An Empirical View

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Abstract
This article is about the application of lawfare as a tool of a hybrid war. After analyzing the existing positions in the academic debate, a working definition of the latter is given; then the main theoretical postulates are operationalized as empirical indicators and finally, four cases of Russia's lawfare against Bulgaria are stated. It is argued that lawfare can be used to achieve the capture of the state, what eventually is a goal of every war, including the hybrid one and that such a capture is more probable in states which are former Russian satellites, where Russia indirectly can impact national legislative and decision making process.

Keywords: Lawfare, hybrid war, economic capture, state capture, Bulgaria-Russia relations.

Introduction

The rise of the liberal order, especially after the creation of the League of Nations (after 1944 – the United Nations), saw increased importance of the law in international relations. The reasons for that are probably rooted from one side in the globalization, which provides new challenges that cannot be dealt with easily in isolation, and on the other side – the desire for peace and the lessons learned – from the horrors of the First and Second World wars. The establishment of a large body of international law has observable results in the absence of new, third world conflict, and is also responsible for the solution of several crises over time that could have led to armed conflicts. Nevertheless, countries have tried to abuse international law more than once, in order to achieve their strategic or operational goals, while operating largely outside of it.[1] China, for example, used legal warfare to manipulate national and international law to further its economic and geostrategic interests in the South

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1 Charles J. Dunlap Jr., "Does Lawfare Need an Apologia?," *Case Western Reserve Journal of International Law* Vol. 43, Issue 1-2 (2020): 141.

China Sea and the Arctic.[2] Russia two times tried to promote (March-April, 2020) the draft resolution of the UN General Assembly named "Declaration of solidarity of the United Nations in the face of the challenges posed by the coronavirus disease 2019 (COVID-19)," whose real purpose was the lifting of international sanctions imposed on it for the illegal annexation of Crimea.[3] Phenomena like above mentioned gave birth to the term "lawfare" – a form of hybrid war used on several occasions by Russia against Bulgaria.

In comparison with other tools, lawfare is less discussed, probably because its effects are not as spectacular as those of cyber war, fake news, and some others. Nevertheless, as far as it creates dangerous precedents, lawfare is a serious threat to international, regional, and national security. Several authors have made valuable contributions to its better understanding. Charles Dunlap is a pioneer in the field; Sascha-Dominik Bachmann and Antonio Munoz Mosquera did a lot for the development of the concept. Orde Kittrie operationalized it and transformed the theory in indicators, suitable to resolve more practical tasks. José Ramón Suberviola Gilabert presented a systematic view on the state of art. The works of these authors constitute the first corpus of literature the analysis in this paper relies on. The second corpus has to do with hybrid war. Together with "classical ideas" of Thomas M. Huber about compound warfare, Paul Brister and Jack McCuen, with their views on hybrid war as an asymmetric one, several modern and challenging ideas can be also found. Jan Almäng launched the idea about vagueness and hybrid war; Andreas Krieg and Rickli Jean-Marc introduced the term "surrogate war", Vladimir Rauta offered a new typology of state and non-state actors in hybrid war, to mention some. The third corpus of literature has to do with the Russian experience in hybrid war, analyzed by Bettina Renz, Tony Balasevicius, Mary Ellen Connel, Sarah Vogler and others. The last group of sources is composed of open media publications shedding light on the cases chosen.

Scope, content, novelty, and conditions under which it could be successfully implemented are in the center of academic debates about lawfare. Is it a helpful tool that contributes to better understanding of the changing face of the war, or is something already seen? In order to find an answer, I first analyze "hybrid war" and "lawfare" as multidimensional, multilevel concepts as well as the relationship between them; then describe Russian experience in the

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[2] Sascha-Dominik Bachmann and Andres Mosquera, "China's Strategic Preconditioning in the Twenty-first Century," *Air University*, April 13, 2020, https://www.airuniversity.af.edu/ Wild-Blue-Yonder/ Article-Display/Article/2145001/chinas-strategic-preconditioning-in-the-twenty-first-century/.

[3] General Assembly of the United Nations, "Declaration of solidarity of the United Nations in the face of the challenges posed by the coronavirus disease 2019 (COVID-19)," April 17, 2020, https://www.un.org/pga/74/2020/04/17/declaration-of-solidarity-of-the-united-nations-in-the-face-of-the-challenges-posed-by-the-coronavirus-disease-2019-covid-19/.

field and finally, implementing a set of indicators, operationalize the concept what allowed me to analyze and assess chosen cases.

From Theory to Practice: Multi-level Analysis

The logic of the research follows the designed structure of the paper and starts with the development of the concepts, needed not only because they by themselves are objects of aminated academic debates and as a rule, do not enjoy universally accepted understanding, but because the development of a concept is more than providing a definition; "it is deciding what is important about the entity."[4] Goertz states that more significant concepts have a three-level structure. Thus, if we accept that lawfare is one of the tools of hybrid warfare, hybrid warfare itself should be treated as a basic level or a "cognitively central" concept. It appears in several works; although their critical analysis goes beyond the limits and the scope of this paper, a deeper look would contribute to the identification of important features of this phenomenon.

As a tool of hybrid war, lawfare can be used to achieve the capture of the state, that eventually is a goal of every war, including the hybrid one: such a capture is more probable in states which are former Russian satellites, where Russia indirectly can impact the national legislative and decision making process. Guided by my definition of hybrid war as mentioned in one of the next sections, I argue that lawfare is a source of hybridity when it is combined with others which are not necessarily kinetic means. Understanding the latter as means that "creates power",[5] "does not rely on the release of kinetic energy," does not cause physical destruction,[6] and contributes to the achievement of the goals of hybrid war. In order to prove the above-mentioned hypothesis, I analyze four cases of lawfare of Russia against Bulgaria.

The third level is the level of indicators, which relates more abstract issues of theory to the ontological world. In order to define whether the chosen cases are cases of lawfare, I use a set of indicators, offered by Kittrie to which I added two new ones.

The cases are chosen from sensitive for both countries' areas: energy and arms industry. Bulgaria was – and still is – strongly dependent on the Russian

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4 Gary Goertz, *Social Science Concepts: A User's Guide* (Princeton, NJ: Princeton University Press, 2006), 6-63.

5 Lawrence Freedman, *The Transformation of Strategic Affairs*, Adelphi Paper 379 (London: International Institute for Strategic Studies, 2006).

6 Frans Osinga, "The Promise, Practice and Challenges of Non-Kinetic Instruments of Power," in *Netherlands Annual Review of Military Studies 2017: Winning Without Killing:The Strategic and Operational Utility of Non-Kinetic Capabilities in Crises*, ed. Paul A.L. Ducheine and Frans P.B. Osinga (The Hague: T.M.C. Asser Press, 2017), 1-18.

Federation as far as it has not yet diversified oil supplies, while a great part of the weapons of the Bulgarian army are produced in Russia. Since Bulgaria, in accordance with its national interests and Euro-Atlantic geopolitical orientation, is looking to break this dependency, the Russian Federation, in consonance with its concept of Bulgaria as its "Trojan horse" in EU and NATO, tries to keep it and undermine the unity of the member states, as well as the confidence of Bulgaria as a reliable partner. Three criteria have been applied to choose the cases: all are relevant for the parties to the conflict; all haven't been resolved through negotiations or other peaceful means; all need legal regulation.

Hybrid War: the Basic-level Concept

Defining hybrid war is not an easy task. In the academic debate, there are two different schools, which I call "Russian" and "Western"; they offer a different interpretation of it.

The Western school based largely on the works of scholars like Frank Hoffman, Thomas Huber, William Lind, Thomas Hammes, William Nemeth, David Kilcullen and others, focuses on cases in which a big and powerful army attacks an incomparably weaker one. Hoffman analyzes Hezbollah's retaliation against the Israeli army,[7] Nemeth speaks about the Chechen wars.[8] Turbiville insists that hybrid war is not a new kind of war, but a new perspective on warfare which obtains new relevance due to globalization, mass communication and the speed or technology innovation.[9] Paul Brister emphasizes the nature of hybrid war as a limited one in which the purpose is to break the enemy's ability or will to resist, but not to the point when its society and economy are irretrievably shattered.[10] J. McCuen calls attention to the specific characteristic of hybrid war – its battlefield is the population in the conflict zone, as well as the home and the international community population.[11]

The conflict between Russia and Ukraine and the illegal annexation of Crimea, in what "Russia's conventional military forces, which traditionally lead such operations, played only a supporting role"[12] does not fit in the framework,

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7 Frank G. Hoffman, "Conflict in the 21st century: The rise of hybrid wars," *Arlington: Potomac Institute for Policy Studies (2007),* 51.

8 William J. Nemeth, "Future war and Chechnya: a case for hybrid warfare" (PhD diss., Monterey: *California Naval Postgraduate School,* 2006), 1-76.

9 Graham Turbiville, "Russian Special Forces," *The JSOU Pamphet 05-1* (August 2020): 1-36.

10 Brister, Paul. "Revisiting the Gordian Knot: Strategic Considerations for Hybrid Warfare," in *Hybrid Warfare and Transnational Threats: Perspectives for an Era of Persistent Conflict*, ed. Paul Brister, William H. Natter and Robert R. Tomes (New York, Council for Emerging National Security Affairs, 2011), 51.

11 John McCuen, "Hybrid wars," *Military Review* (2008), 107-113.

12 Tony Balasevicius, "Looking for Little Green Men: Understanding Russia's Employment of Hybrid Warfare," *Canadian Military Journal* (2017).

elaborated on the basis of Afghanistan, Lebanon and Iraq societies. As a result, new visions about hybrid war appeared, pointing out such features as: blurred boundaries between conventional and unconventional;[13] implementation of cyber activities; fake news; misinformation and disinformation campaigns; economic warfare and many others. Terms as "surrogate wars" appeared, referring to wars in which "the state is increasingly looking to externalize the burden of warfare to human and technological surrogates", which results in a change of employment, from soldiers-citizens to professional soldiers.[14] Although Krieg insists that this kind of war is non-trinitarian, I would say that it is. The trinity, however, instead of being the government, the people and the army, is the government, the communities and the human surrogates. Vladimir Rauta steps further while offering a new conceptualization of the role of violent non-state actors as auxiliary, affiliate, surrogate and proxy.[15] Some new definitions combine military and social points of view, explaining hybrid war as "synchronized use of multiple instruments of power tailored to specific vulnerabilities across the full spectrum of societal functions to achieve synergistic effects."[16] Hybrid war is increasingly linked to the so-called grey zone between peace and war – that sub-threshold zone, where neither the perpetrator, nor the hostile act can be easily identified. Ontological unclarity, referring to "where it is permissible to draw the boundary between peace and war" and epistemological unclarity, pointing out "where one or both of the parties to the conflict lack knowledge of the relevant contextual parameters of the conflict,"[17] introduced by Almäng, form that coordinate system, according to which a given conflict can be assessed as a borderline cases of war, i.e., as a hybrid war.

In the Russian school, on the other hand, with authors such as Messner, Isserson, Surkov, Kozyrev, Denisov, Bartosh, Pocheptsov, Gerasimov and Dugin the focus is not entirely on the military aspect. Many of the authors have civilian background – During is a sociologist, Bartosh is a political scientist, Kozyrev and Surkov are experts in international relations. In the Russian view of hybrid war, the impact on population is at the center. From this stems another major difference – Western scholars tend to describe the hybrid war as a tool, to

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[13] Thomas M. Huber, "Compound warfare: a conceptual framework," *in Compound warfare: that fatal knot*, ed. Thomas M. Huber (Fort Leavenworth, KS: US Army CGS College Press, 2002), 310.

[14] Andreas Krieg and Jean-Marc Rickli, "Surrogate warfare: the art of war in 21st century?," *Defense Studies* 18, no. 2, (2018): 1.

[15] Vladimir Rauta, "Towards a typology of non-state actors in 'hybrid warfare': proxy, auxiliary, surrogate and affiliated forces," *Cambridge Review of International Affairs*, (September 2019): 1-7.

[16] Sean Monaghan, Patrick Cullen and Njord Wegge, "MCDC Countering Hybrid Warfare Project: Understanding Hybrid Warfare, A Multinational Capability Development Campaign project," *MCDC* (2019): 3.

[17] Jan Almäng, "War, vagueness and hybrid war," *Defence Studies* 19, no. 2 (2019): 189-204.

which certain groups resort in specific times, while Russian scholars describe it as something that has to be ongoing all the time anytime.

Another debate is about the kinetic element in a hybrid war. Several scholars consider that without it, there is no warfare. Taking into consideration the example of Crimea, they insist that the conflict "was not 'won' with non-military means alone. These efforts were backed up by special forces, auxiliary fighters and the implicit threat of more military force to come."[18] Since this point of view, "'hybrid warfare' is only one of many concepts in the history of strategic thought that claims to offer a war-winning formula", but nothing more.[19] Four years after these events, we see that states can put in energy blockade without use of physical arms; that governments can be compelled to execute other states' will and that, finally, people can fall victims of disinformation or misinformation in the literary sense of the word.

Following such a line of thought, I define hybrid war as any political act that aims to compel our enemy to do our will; an act, which combines more than one form of violence (but does not include necessary physical or kinetic component) and is directed above all to the destruction of the institutions (through eroding trust and governability), communities (through impeding informed individual and collective choices) and society, threatening it through interference in national decision making process and impact on public opinion. According to such a view, the essence of hybrid war is a combination of several tools; lawfare is one of them. Historically, it has been successfully implemented together with economic influence; both can lead to state capture, understood as a result of manipulation of a country "by dominating – and abusing – strategic sectors of its economy (which we will refer to as "economic capture") and another that centers on the cultivation of political relationships with aspiring autocrats, nationalists, populists, Eurosceptic, and Russian sympathizers (or "political capture").[20]

Second-level Concept: Lawfare

The second level concept is "lawfare". Coined first by Dunlap in 2001, it is defined by him as "use or misuse the law as a substitute for traditional military means to achieve an operational objective."[21] As a military (Charles J. Dunlap himself is a Major General of the United States Air Force), he

[18] Bettina Renz and Hanna Smith, "Russia and hybrid warfare –going beyond the label, part II" in *Aleksanteri Papers 1/2016*, (Helsinki: Kikimora Publications, 2016), 11.

[19] Bettina Renz, 2016, "Russia and 'hybrid warfare', Contemporary Politics," *Contemporary Politics Volume 22,* (2016): 5.

[20] Michael Connell and Sarah Vogler, "Russia's Approach to Cyber Warfare," *CAN* (March 2017): 1-32.

[21] Charles J. Dunlap Jr., "Lawfare Today: A Perspective," *Yale Journal of International Affairs* (2008): 146-154.

interpreted the term in the context of his speculations on the modern military intervention. Pointing out that "lawfare is a concept that is ever more frequently discussed in government, academic, and media circles", he considers that "that discussion is not as informed as it might be",[22] at last because of the fact that "lawfare" has been used by several people in quite different context since the 1970s. Another reason is that the world became very legalistic and complex, which caused a revolution in legal military affairs. For him, lawfare is an arm as any other, which can be used for justifiable and non-justifiable purposes; his intention is to apply the term neutrally in order to better reveal its heuristic capabilities. This means lawfare is to be understood in its initial context as an analysis of "how law might be used in armed conflict,"[23] rather than as a description of a relation between law and warfare: "It focuses principally on circumstances where law can create the same or similar effects as those ordinarily sought from conventional war making approaches."[24] It is the opinion of the scholar that this is a form of effect-based operations, designed to achieve specific results "that contribute directly to desired military and political outcomes."[25] Dunlop clearly states that lawfare should not be reduced to propaganda and glorification, because it is much richer and complicated, nor to PR for the militaries. It requires effective communication with those who are fighting and with media in order to explain "what the law does – and does not – require"[26] during wartime.

In its contemporary understanding, lawfare is "one of many tools used by human beings in their interactions."[27] Apart from reflecting the closest relation between war and law, it denominates the use of law "in all its aspects, as a tool… that the Armed Forces can use to achieve the tasks they have entrusted"; it focuses on „instrumentalization of law in relation to the specific aspect of its employment in military operations,"[28] and sheds light on the implementation of law "in order to achieve the same or similar effects to those which could be achieved through conventional physical military actions."[29] Lawfare refers to the use and/or abuse of the rule of law in a defensive and offensive capacity to

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22 Ibid.

23 Charles J. Dunlap Jr., "Does Lawfare Need an Apologia?," *Case Western Reserve Journal of International Law* (2010): 141.

24 Charles J. Dunlap Jr., "Lawfare: A Decisive Element of 21st-Century Conflicts?," *JFQ Issue* 54 *(*2009): 34.

25 Edward C. Mann III, Gary Endersby, and Thomas R. Searle, "Thinking Effects. Effects-Based Methodology for Joint Operations," *Air university* (2002): 15.

26 Dunlap Jr., "Lawfare: A Decisive Element," 37.

27 Sascha-Dominik Bachmann and Andres Mosquera, "Understanding Lawfare in a Hybrid Warfare Context," *NATO Legal Gazette* (October 2016): 1.

28 José Gilabert, "Lawfare. El uso del derecho como arma," *Revista Española de Derecho Militar* no. 106 (2015): 190-194.

29 Orde Kittrie, *Lawfare: law as a weapon of war* (Oxford: Oxford University Press, 2016), 11.

achieve operational success without the need to employ kinetic methods of warfighting,[30] or to the use of law as a weapon with the goal of manipulating the law by changing legal paradigms.[31] Reviewing the state of art in the field, David Hughes[32] concludes that currently "lawfare" has three main interpretations: lawfare as the use and abuse of international law to threaten state interests; lawfare as a rhetorical device intended to discredit parties which attempt to engage with international law as a means to ensure accountability and compliance; and as a weapon, the legitimacy of which is defined by its user's intentions.[33]

There is no doubt that the link between law, legitimacy and war is deep and inseparable: no military command will take any decision without being absolutely convinced that it is lawful, legitimate and legitimised by public opinion. Examples are more than abundant. In our Western societies' wars, as a rule, are not supported by the general public, especially in Europe. This position can easily be verified by the various opinion polls, conducted in occasion of the USA led invasion in Afghanistan and Iraq. While the concrete numbers might slightly vary from country to country, in Spain in April 2003, one of the largest newspapers El Pais, claimed that 98,6% of the Spanish people opposed the war and 92,2% opposed Aznar's decision to invade Iraq and asked his resignation.[34] While this was not a representative study, there are little reasons to doubt this was a general trend. Gallup International Polls have found out that the support, even if it is backed by the UN, is low in Romania and Bulgaria as well – only 38% and 28% respectively, as reported by BBC European Affairs analyst.[35] The said is true to some extent even for the US, where 72% supported the invasion and 25% opposed it strongly.[36] This demonstrates the internal difficulty any government faces when it comes to start or support a war. On the other hand, declaration of war damages country's image in the eyes of other countries – in relation to the invasion in Iraq, Forca poll claimed that 57% of Germans held the opinion that "the United States is a nation of warmongers."[37] The reality of the modern world is that we don't live anymore in a place where political

[30] Swedish Defense University, *Hybrid Threats and Asymmetric Warfare: What to do?* (Stockholm: Swedish Defense University, 2017), 18.

[31] Sascha-Dominik Bachmann and Andres B. Munoz Mosquera, "Hybrid warfare and lawfare," *The Operational Law quarterly 16-1* (November 2015): 2.

[32] David Hughes, "What does lawfare mean?", *Fordham International Law Journal* vol. 40 (2016): 5.

[33] Ibid.

[34] Clara Blanchar, "El 92% de los participantes en la consulta piden la dimisión de Aznar," *El Pais*, April 2, 2003, https://elpais.com/diario/2003/04/02/catalunya/1049245644_850215.html.

[35] William Horsley, "Polls find Europeans oppose Iraq war", *BBC*, February 11, 2003, http://news.bbc.co.uk/2/hi/europe/2747175.stm.

[36] Gallup International, "Seventy-Two Percent of Americans Support War Against Iraq," *Gallup*, March 24 2003, https://news.gallup.com/poll/8038/seventytwo-percent-americans-support-war-against-iraq.aspx.

[37] William Horsley, "Polls find Europeans oppose Iraq war," *BBC*, February 11, 2003, http://news.bbc.co.uk/2/hi/europe/2747175.stm.

leaders can simply say "Follow me!" and everybody would follow – without any legal reasons - especially when it comes to war. The initial support, even when existing like in the case of United States of America, could erode fast. And if it is found that the war is being conducted in an unfair and inhumane way, that effect might multiply rapidly, leading to deep transformations.

Nowadays, news and propaganda reach audiences much faster than before – world and war are "mediatized."[38] In a democratic state with rule of law and independent media, this is not just a public relations problem, but can lead to deep state policy changes, including changing agenda and ultimately – changing of ruling class. "Mediatization" requires much more and much faster formulated legal reasons of military acts. Lawfare becomes much more important.

Hybrid War and Lawfare

Lawfare is taking a central role in hybrid warfare due to its ability to distort public opinion and alter the ethical and legal discourse of the home and foreign societies. When national and international law are used as a weapon, lawfare can be a positive and negative force. In some cases, lawfare has been used instead of traditional military means, which saved human lives and potentially prevented humanitarian crises. The negative aspect, on the other hand, is evident in cases when it is used to compromise the national security of the country and its democratic values or the rule of law itself. As Charles J. Dunlap says, "in the 21 century we should expect to see further development of lawfare. We may not like iterations, but we should never forget that legal battles are always preferable to real battles, and modern democracies are well-suited to wage – and win – legal "wars."[39]

Lawfare, understood as a threat to use/misuse the law, can be effectively employed as a tool of hybrid war. It gives a chance to the adversaries to be flexible and adapt quickly to the surroundings. This includes the ability to find fast potential weaknesses and exploit them:

> "Lawfare has become an integral element of any Hybrid Warfare strategy and its affirmative use should become an element of Western military thinking and planning. Although lawfare is used unscrupulously by state or non-state actors, this shouldn't discourage international actors from continuing to act in compliance with international law."[40]

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[38] Andreas Krieg and Jean-Marc Rickli, "Surrogate warfare: the art of war in 21st century?," *Defense Studies* 18, no. 2 (2018): 4.

[39] Charles J. Dunlap Jr, "Lawfare Today…and Tomorrow" in *International Law and the Changing Character of War*, ed. Raul A. "Pete" Pedrozo & Daria P. Wollschlaeger (US Naval War College International Law Studies, 2011), 315-325.

[40] Sascha-Dominik Bachmann and Andres B. Munoz Mosquera, "Lawfare in Hybrid Wars: The 21st Century Warfare," *Journal of International Humanitarian Legal Studies 7* (2016), 63-87.

Democratic societies are governed by and adhere to the rule of law. By opting for affirmative lawfare within legal constraints they ensure their choice of responding to hybrid warfare will be successful and legitimate."[41] In the same way, using lawfare is very important in a situation of competition of great powers. As a rule, they do not want to have smaller countries near them which are tightly integrated with their competitors; therefore, they might act to secure their interests. In the case of Ukraine, this was done through invasion and annexation. In countries like Bulgaria, which is EU and NATO member, one effective way to do so is lawfare.

Third-level Concept: Indicators

In order to distinguish if a specific case is a case of lawfare or not, Kittrie has proposed two tests:[42] "The actor uses law to create the same or similar effects as those traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target" and "One of the actor's motivations is to weaken or destroy an adversary against which the lawfare is being deployed."[43]

As the lawfare can be waged by international organizations, states, autonomies, NGOs, groups or even individuals, it can take place in international, national and sub-national levels; it can take different forms such as: Creating new international laws designed to disadvantage an adversary; reinterpreting existing international laws so as to disadvantage an adversary; using international law to generate intrusive and protracted investigations by international organizations; generating international organizations votes to disadvantage an adversary; generating international law advisory opinions in international forums; using international law as grounds for "universal jurisdiction" prosecutions of third-country officials in national courts for alleged war crimes; Using international law as grounds for criminal prosecutions of domestic companies in national courts; Creating new national laws designed to put foreign vendors of strategic products to a choice between one's own market and that of an adversary; National legislature actions other than passing new laws; National permitting processes; Sub-national legislation.[44]

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41 Ibid.

42 Orde Kittrie, *Lawfare: Law as a Weapon of War* (Oxford: Oxford University Press, 2016), 8.

43 Idib.

44 The full typology of Kittrie's lawfare can be read in his book *Lawfare: Law as a Weapon of War* (Oxford: Oxford University Press, 2016), 13-15. In this paper only the cases considered relevant for the study of the topic are quoted.

To the above-mentioned forms, I would add two more: (1) bending the national law or convincing the national or local legislature to accept new laws that put an adversary in a disadvantageous position, and (2) preventing the development of a clear definition to a specific situation. The last two forms could be seen as a certain innovation, as far as they study cases where hybrid war agents partly coincide with political elites and when their activity creates a situation of uncertainty, difficult to be assessed and managed. The first point is important in the context of hybrid war. While in the cases proposed by Kittrie it is assumed that the countries – through their institutions – act in defense of their national interests, the nature of the hybrid warfare leads to capturing the state from within and institutional decay. Therefore, it can lead to a situation in which the institutions and legislatures are engaged in legal activities in defense of interests, different from the national ones. The second point is somehow connected to the ideas of Kittrie about generating protracted investigations by international organizations but goes in more depth. In order to determine the scope of the national or international law, one must first analyze and define a specific situation. However, when this process is obstructed so are the consequent actions. The ambiguous situation creates confusion and uncertainty about what to do and who is responsible of what. To illustrate better the situation, I would give the example of the war in Ukraine. It is still not determined whether this is an armed conflict between two states – Russia and Ukraine –, if it is a non-international armed conflict, or a local civil unrest. The obstruction, the deniability, the propaganda, and disinformation about the nature of the conflict make it very hard to agree on the appropriate course of actions and on giving the adequate response. Identically, the second point can refer to the cases in which the nature of the conflict is hidden, and measures are taken masked under "humanitarian intervention", "mission to protect human rights" etc., to meddle in the affairs of third country with or without UN charter.

A remark should be made here. The international law does not establish a judicial system or a coercive penal one. The UN Security Council could enforce international law on states that violate some of its charter, especially related to human rights. Nevertheless, in cases in which states strong enough decide not to follow any specific aspect of the international law, the law might change according to the new reality. Alternatively, states can decide to stay out of specific agreements. For example, if a country is not participating in specific agreement regarding human rights, it is not granted automatically immunity to violate it, and it still can be sanctioned by the UN or individually by strong states who find that unacceptable. This is due to the existence of Jus Cogens laws – peremptory norms, which are above the state's will and must be respected by all countries, but which are also subject of interpretation by the

states. Therefore, international law is "more ethical than legal"[45] and it works as long as the countries want to make it work. Thus, using international law as a tool of warfare is limited by the amount of power the state has, the amount of influence it can generate in support of a specific cause, and the amount of damage it can do to an adversary country. In some cases, that damage can be done to the economy or even to the image and credibility of the country, but it can also have a backlash effect. In that sense, even the most powerful countries cannot feel secure from such treats as they can be targeted by other countries, providing they are able to generate enough support. Therefore, a leading principle in international law is the principle of good faith, as the International Court of Justice has established: "[t]he Court recalls that, according to customary international law as expressed in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose."[46] The intentional non-application of this principle allows situations in which specific actions that are either difficult to characterize or that non-formally breach the agreement are possible, but doing them would render the purpose of the agreement vain.

Russia's Experience in Lawfare

Russia has significant experience in using hybrid war; it is impressive enough to make some authors to see hybrid war as "quasi-theory of Russian foreign policy."[47] Lawfare is relevant as one of its forms. Let us remember that Ukraine agreed to transfer the nuclear weapons it possessed after the dissolution of the USSR and asked territorial guarantees in return. In 1994 the Budapest Memorandum was signed between Russia, Ukraine, US and UK. The idea of the agreement was that territorial integrity of Ukraine would be respected by Russia and Russia will refrain from the "threat or use of force"[48] against Ukraine. During 2015, when Crimea was annexed by Russia, Russian officials

[45] James Brown Scott, "The legal nature of international law," *Columbia Law Review* vol. 5, no. 2 (1905): 128-130.

[46] Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America), *International Court of Justice*, December 12, 1996, https://www.refworld.org/cases,ICJ,414ada66f.html.

[47] Bettina Renz and Hanna Smith, "Russia and hybrid warfare –going beyond the label, part II," in *Aleksanteri Papers* 1 (Helsinki: Kikimora Publications, 2016), 11.

[48] United Nations, "Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons A/49/765 S/1994/1399," December 5, 1994, http://www.pircenter.org/media/content/files/12/13943175580.pdf.

denied any violation of the agreement arguing that they did not use force, but instead compelled with the "will of the people of Crimea who wished to join", blaming for the situation in Ukraine the "complicated internal processes, which Russia and its obligations under the Budapest Memorandum have nothing to do with."[49] This strategy of denial and misinformation about the obligations of Russia is a clear example of reinterpreting the existing international laws to disadvantage the enemy, which falls into the broader legal category of "abuse of right" and treaty abuse. Russia deliberately did not apply the principle of good faith in the interpretations of its obligations which resulted in Ukraine territorial loss and Russian territorial gain, which was precisely the purpose of the agreement.

Another example of Russia employing strategies of lawfare can be seen in its declaration to "defend the rights of all Russians including of those living abroad"[50] which was applied to the situation of Georgia and Ukraine. First of all, there are indications that Russia was preparing for the events by giving passports easier to citizens living in neighboring countries and regions such as Abkhazia, Ossetia and Crimea in order to be able to claim presence there and to extend on these territories its principle through amendment of its own laws regarding citizenships.[51] The same author Mark Voyager has found out that Russia has amended its laws to allow annexation of regions of neighboring states following local referenda. Secondly, Russia attempted to use the United Nations Security Council (UNSC) to sanction the opening of "humanitarian corridors," "prevention of humanitarian crisis," and "prevention of Russian genocide" to justify its intervention in Ukraine.[52] Thirdly, it used Kosovo and Libya as legal precedents for its actions. It is worth to mention as well that several Ukrainian officials were sentenced by Russian courts.[53] All this shows not only the Russian creativity in bending the national and the international law, but also a motivation to weaken or destroy its opponents, behind the Russian actions.

A third example of Russia using lawfare is the campaign against the US planned intervention in Iraq in 2003. Russia managed to create substantial support for its cause allying itself with Germany and France and other European countries. While it was not able to stop the invasion, the actions led to a veto in

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[49] The Ministry of Foreign Affairs of the Russian Federation, "Foreign Ministry Spokesman Alexander Lukashevich answers a media question about the situation around the Budapest Memorandum," March 14, 2015, https://twitter.com/mfa_russia/status/576620025714503681.

[50] David M. Herszenhorn, "Putin Vows to 'Actively Defend' Russians Living Abroad," *Atlantic Council*, July 2, 2014, https://www.atlanticcouncil.org/blogs/natosource/putin-vows-to-actively-defend-russians-living-abroad/.

[51] Mark Voyger, "Russia's Use of 'Legal' as an Element of its Comprehensive Warfare Strategy," *Land Power Magazine* (2015): 20.

[52] James P. Rudolph, "How Putin Distorts R2P in Ukraine," *Opencanada.org*, March 7, 2014, https://www.opencanada.org/features/how-putin-distorts-r2p-in-ukraine/.

[53] Knipp, Kersten, "What is the real goal of Russia in Libya?," *Deutsche Welle*, December 22, 2019, https://p.dw.com/p/3VDrd.

UNSC, and to a series of international and national investigations questioning the legality of the war.[54] although detailed research on the topic is required, at first glance it would seem that the outcome of these actions was that the United States' image was damaged, they undermined the relations between EU countries and the US and made the Euro-Atlantic integration slower. The actions had an effect in the American society as well, reducing the support for the war.

The Kerch Strait Incident is another example of lawfare. On 25 November 2018, the Russian coastal guard fired upon and captured Ukrainian Navy vessels which were attempting to pass the Kerch Strait. Russia denied the existence of the international armed conflict (IAC) between itself and Ukraine and did not accept the claim of having occupied Crimea. If that was the case, the Russian actions would constitute a violation of the United Nations Convention on the Law of the Sea (UNCLOS), which obliges it to operate in innocent passage in the Ukrainian territorial sea and gives the right of innocent passage to Ukrainian naval ships.[55] If there is IAC however, which is what the majority of the international community appears to agree upon, the UNCLOS is displaced by the Law of Naval Warfare, which indeed grants Russia the right to fire, capture and destroy Ukrainian ships. Nevertheless, the captured Ukrainian sailors should have been treated as prisoners of war (POWs), and instead, they were treated like common criminals. With its actions, Russia successfully exploited the gray zone of legality between the peacetime and wartime dimensions of the Crimea's current situation in order to push its own geopolitical agenda, while creating chaos and confusion.

Lawfare can be characterized as an asymmetric form of warfare – as far as in the case of Hezbollah, which puts its weapons and fighters behind a "live shield", in order to create the impression that Israelis are guilty for the plenty of civilians. This "weakness" of democracy is always used by its enemies: "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. Our vulnerability here is what philosopher of war Carl von Clausewitz would term our 'center of gravity."[56]

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[54] Deutsche Welle, "Operation Desert Storm fifteen years ago," *Deutsche Welle,* January 16, 2006, https://p.dw.com/p/Atmv.

[55] Grigorov, Petar, "The incident in the Kerchen straight: causes and consequences," *Geopolitika,* November 28, 2018, https://geopolitica.eu/aktualno/2922-intsidentat-v-kerchenskiya-proliv-prichini-i-poslediti.

[56] William Eckhardt, "Lawyering for Uncle Sam When He Draws His Sword," *Chicago Journal of International Law 431* (2003): 4.

From Indicators to Empirical Analysis

The current paper will use two-step analysis to determine if a given situation is a case of lawfare or not.

First, each case will be examined. If it corresponds to the following criteria: is it a case where there is a use, threat to use, or misuse of the law as a substitute for traditional military means to achieve an operational objective (Q1)? Is it a case where there is a use, threat to use, or misuse of international law to threaten state interests (Q2)? Is it a case where the use, threat to use, or misuse is used as a rhetorical device intended to discredit parties who attempt to engage with international law as a means to ensure accountability and compliance (Q3)? Is it a case, in which the law is used as a weapon, the legitimacy of which is defined by its user's intentions (Q4)? Is the actor using law to create the same or similar effects as those traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target (Q5)? Is the motivation of the actor to weaken or destroy an adversary against which the lawfare is being deployed (Q6)?

Second, once the case is identified, there will be an attempt to put each case of lawfare in the Kittrie's classification.

Cases of Lawfare Against Bulgaria

Based on the mentioned criteria in one of the previous sections, I have identified four important cases of lawfare against Bulgaria: the case of Atomstroyexport against Bulgaria (C1); the threat of a case against Bulgaria regarding the cancellation of South Stream (C2); the suspicions that specific laws in Bulgaria were changed under pressure from Russia to make South Stream possible (C3), and the constant pressure from Russia on Bulgaria regarding the Bulgarian military industry and the claims made by Russian side about the need for licenses for production (C4).

Case 1: Atomstroyexport against Bulgaria

Perhaps the most notable is the *Atomstroyexport* case recently lost by Bulgaria. The story is strictly related to the nuclear power plant (NPP) *Belene*, whose construction was approved in 1981 by the communist government in power back then. The construction was frozen in 1991 during the government of Dimitar Popov. Nevertheless, 10 years later, the project was dusted off and in 2002 the Prime Minister Mr. Saxe-Koburg-Gotha declared that the project will

be revitalized. On 29 April 2004, the Council of Ministers takes the decision for the construction of *Belene* with protocol №17/29.04.2004, a decision that has been kept secret and was revealed only after a dispute in the court. In 2006 the Russian company *Atomstroyexport* is chosen and they sign an agreement with the National Electric Company Bulgaria (NEK) to sign a contract for engineering, supply, and construction of the project, which had to be provided by the Russian company. In 2008 the Annex 5 was signed between NEK and *Atomstroyexport* for the production and delivery of the equipment, despite the lack of a contract. The price of the project was 673,9 million Euro. Later that year, the other company chosen to invest in the project, the German RWE, refuses to invest before all the details are cleared, and in 2009 decided to withdraw. In March 2010 PM Borisov visits the construction site and calls it the "supreme form of corruption",[57] but later the same year he declared his support for the project in front of Russian Media. In 2011 NEK and *Atomstroyexport* sign a memorandum, which was attacked by the Minister of Energy Traycho Traykov, who called the director of NEK a "national traitor". In the absence of strategic investor, in 2012 the Borisov government stops the project, an act sanctioned with a decision of the Parliament.[58] In 2013, a national referendum for the future of *Belene* was held, which was not validated due to not enough voter participation. Nevertheless, the discussion was sent to the Parliament where the Parliament decided to stop the project.[59] During the same year, a legal case between *Atomstroyexport* and NEK for the construction of *Belene* was forwarded to the International Court of Arbitration (ICA). In 2016 the court decided that NEK had to pay for the equipment ordered by Annex 5, a total amount of 628,9 million euro.[60]

As already mentioned, the project has been revived during the government of Saxe-Koburg-Gota. During the negotiations for joining the European Union, the three Ministers Kuneva, Passi and Kovachev had already agreed to close the 3rd and the 4th reactors of the existing nuclear power plant *Kozloduy* in exchange for permission to build a new one – *Belene*. The main arguments for the construction of the new NPP was that the most modern reactors, 5th and 6th, in *Kozloduy* will only be operational until 2017 and 2019 respectively, after which they will close. This of course was not true – the blocks at the NPP were modernized, even if it happened in the last moment, and the reactors were given permission to operate for another 10 years. These permissions however are given by the Nuclear Regulatory Agency and their

[57] Vladislava Peeva, "NPP "Belene" - Supreme Form of Corruption," *Mediapool.bg*, March 16, 2010, https://www.mediapool.bg/aets-belene-vissha-forma-na-koruptsiya-news163044.html.

[58] Capital, "The chronology of the project", *Capital*, September 21, 2016, https://www.capital.bg/politika_i_ikonomika/bulgaria/2016/09/21/2831281_hronologiia_na_proekta_aec_belene/.

[59] Ibid.

[60] Ibid.

maximum period is 10 years. The Russian experts who participated in the modernization had already expressed the opinion that the reactors can work for another 10 years at least, or until 2037/2039 or more. Therefore, at least on expert level, we do not see a pressure from Russia to build *Belene*. As a matter of fact, the Russian side has carried out the modernization of the current reactors in a way that would allow them to operate for a longer period. More about the impact on the energy security of Bulgaria will be discussed in the next sections, dedicated to energy.

The case *Atomstroyexport* can however be viewed as an example of lawfare against Bulgaria. The question is not only about the compensation which must be paid for a project that has already swallowed billions and produced nothing. The defeat at the ICA impacted the decision making of the country and led to the cancellation of previous decisions to stop the project and to the decision to revive again the project, against the national interests of the country.

This is a case of using the law as a substitute of traditional military means in order to achieve operational victory. One of the goals of hybrid warfare is to achieve a situation of state capture. In this case, we can talk about economic capture. Bulgarian energetic dependency on Russia was reinforced. The use of law led to reopening the project which, if built, will be by Russian investor, as stated by both Bulgarian and Russian officials. It clearly threatens Bulgarian interests in favor of foreign interests.

Case 2: The threat of a case against Bulgaria regarding the cancellation of South Stream

An almost identical situation was witnessed regarding the cancellation of South Stream. The project started in November 2006 when Gazprom and the Italian Eni signed a contract for direct gas deliveries in Italy starting 2008, which by 2010 should have been increased to 3 billion cubic meters. In 2007 the Gazprom representative Alexander Medvedev and the representative of Eni Paolo Scaroni signed a memorandum on the construction of South Stream. On 24 June 2007 in Zagreb, Croatia, during a meeting of the heads of states from the South Europe on the questions of energy, the Bulgarian President Georgi Parvanov expressed interest to his Russian counterpart President Putin, to join the project. On 12 July 2007 in accordance with this position, an expert group was created to prepare an official agreement with the Russian side. On 8 November 2007 in Moscow, a Declaration for the Transit Gas Pipeline *South Stream* was signed between the Russian and Bulgarian ministers of energy. On 18 January 2008 Bulgaria and Russia signed an agreement for the construction of *South Stream*, which was ratified by the Bulgarian Parliament on 25 June 2008. The project was joined by Serbia, Hungary, Greece, Turkey, and

Slovenia, which guaranteed the transit to Italy. On 13 November 2010 during a visit of President Putin in Bulgaria, a joint company was created by Gazprom and Bulgarian Energy Holding with capital of 15,6 million Leva. It was agreed that the *South Stream* infrastructure would start at the Russian port Anapa, pass through the Black Sea, cross northern Bulgaria, Serbia, Hungary, Slovenia and arrive in Turkey. In Bulgaria, the length of the pipeline was supposed to be 538 kilometres. The capacity of the gas pipeline was of 63 billion cubic meters per year and the price for building it on Bulgarian soil was estimated to be around 3,5 billion Euro. On 15 November 2012, the representative of Gazprom Alexey Miler and the representative of the Bulgarian Energy Holding Mihail Andonov signed a contract for the investment decision for *South Stream*. On 31 October 2013, the beginning of the construction was inaugurated but very soon it was put on hold, in 2014, after the procedures against Bulgaria by the EU Commission.[61] On 1 December 2014 President Putin announced in Turkey that the project will be canceled and another one, called *Turkish Stream*, will be built.[62] Putin and Gazprom announced that the cancellation was a result of the Bulgarian rejection to carry on the project and of the EU reluctance to be a partner to Russia, threatening to redirect the gas flows to Asia instead. The so-called reluctance of the EU in fact was caused by objective legal problems – it was not compatible with the Third Package – the latest round of EU energy market regulations. In particular, Gazprom had to allow the access to other suppliers and not reserve all the pipeline capacity for itself. Risking encountering the same problems, Italy also refused to invest more in the project. Brussels suspected that through the choice of Bulgarian-Russian consortium of companies, which was related to the Russian government and to the Bulgarian government, in particular to the deputy Delyan Peevski, Bulgaria has violated the EU regulations and laws.[63] President Putin announced that Bulgaria would lose 400 million Euro per year.[64]

The Bulgarian version of the cancellation differs. Nine months after the project was announced as cancelled by Putin in Turkey, the Bulgarian government was still keeping working formally on the project in absence of an official letter of cancellation. The explanation given by the government was that there is a fear of legal actions against Bulgaria.[65] The final confirmation about

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61 Atanas Georgiev, Galya Alexandrova, Ilin Stanev and Stefan Popov, *The South Stream Gas Pipeline Project and the Capture of the State* (Risk Monitor Foundation, 2016), 4.

62 The detailed chronology can be found in the same source.

63 Mediapool, "Why was 'South Stream' stopped and is it still possible today," *Mediapool.bg*, May 21, 2018, https://www.mediapool.bg/zashto-be-spryan-yuzhen-potok-i-vazmozhen-li-e-dnes-news279373.html.

64 Ilin Stanev, "How much exactly will Bulgaria lose from stopping the 'South Stream'." *Capital*, December 2, 2014, https://www.capital.bg/politika_i_ikonomika/bulgaria/2014/12/02/2431097_kolko_tochno_shte_zagubi_bulgariia_ot_spiraneto_na/.

65 Ralitsa Nikolova, "The country slowly moves forward 'South Stream' to keep its legal aces," *Capital*, August 26, 2015, https://www.capital.bg/politika_i_ikonomika/bulgaria/2015/08/26/2597875_durjavata_bavno_dviji_jujen_potok_za_da_ima_sudebni/.

the legal threats for compensations for the presumed cancellation by the Bulgarian side, made by Gazprom, can be seen in the agreements it made with the Commission, which forbid Gazprom from asking any form of compensation from Bulgaria regardless whether the legal grounds for this are justified or not. This was part of a broader agreement between Gazprom and the Commission, announced in May 2018.[66]

The threat for legal actions, while not officially announced by the Russian side, apparently pushed Bulgaria into spending additional resources and money into a project which was obvious it could not happen, although the extent of the damage caused by this legal threat is hard to estimate. Thanks to an intervention of the Commission and the conclusion of the agreement with Gazprom, the situation with *Atomstroyexport* and *Belene* did not repeat. The threat to use lawfare is also a form of lawfare.

Case 3: The suspicions that specific laws in Bulgaria were changed under pressure from Russia to make South Stream possible

A problem related again to *South Stream* is the possible Russian involvement into the changing of existing legal framework in order to attempt exclusion of this gas pipeline from the Third Package. The Russian involvement was discovered by the Bulgarian political party *Reformatorski Blok* after court intervention in accordance with the Law on Access to Public Information. It was discovered that the law change proposal put forward by the deputies Tasko Eremenkov and Yavor Kuyumdzhiev is a result of two letters (99-00-480/28.08.2013 and E-93-00-1304/28.08.2013) from the end of 2013, sent to the Ministry of Energy and Economy in which the company "South Stream Transport" (majority owned by Gazprom)[67] proposed modifications in the Bulgarian Law on Energy, in particular to include the new category of "sea gas pipeline". According to the law modifications, for "sea gas pipelines" specific paragraphs of the Law would not be applied. This attempt was made to exclude *South Stream* from the existing European regulations, which gives a legal basis to the agreement signed between Bulgaria and Russia on 31 October 2013 to

[66] Vasilia Peycheva, "Gazprom will not ask compensations for the cancellation of 'South Stream' from Bulgaria," *Dnes.bg*, May 24, 2018, https://www.dnes.bg/notifikacii/ 2018/05/24/ gazprom-niama-da-iska-obezshtetenie-za-spiraneto-na-iujen-potok-ot-bylgariia.377410.

[67] Nikolay Marchenko, "The ruling elites are like Trojan horse of Gazpom and Kremlin in Bulgaria and EU," *Economic.bg*, May 8, 2014, https://www.economic.bg/bg/news/ 4/Upravlyavastite-sa-kato-Troyanski-kon-na-Gazprom-i-Kremul-v-ES-i-u-nas.html.

build the project "in accordance to the Bulgarian law".[68] In addition, it was discovered that the Ministry of Interior the State Agency for National Security also requested information about these letters, which, as the party members pointed out, can be a case of a breach of the national security.[69] The words of *Reformatorski Blok* were also confirmed later by a publication on the webpage of the Ministry of Energy and Economy. The Ministry published two letters sent by the ex-Minister Dragomir Stoynev to his Russian counterpart Alexander Novak, in which he declared that "the received proposals for law modifications were examined and discussed in detail."[70]

While there is no official confirmation, the interest shown in this event by the security agencies in Bulgaria could be an indication of a possible national security problem. The proposed law modifications were an attempt to exclude the *South Stream* project from the Third Package, which undermined the EU trust in Bulgaria and indications showed that they would not be accepted by the Commission. The Russian proposals for law changes cannot be seen as genuine concerns to improve the legal framework as they have clearly as intention the realization of the *South Stream*, in violation of the Third Package.

Case 4: The constant pressure from Russia on Bulgaria regarding the Bulgarian military industry and the claims made by the Russian side about the need for licenses for production

The question about the Russian licenses is an ongoing, although peripheral problem, persisting in the Russian-Bulgarian relations after the dissolution of the USSR. During the communist period, Bulgaria positioned itself as a major arms and military equipment producer, developing a strong military industry. Between 1945 and 1989 the Russian *Rosvooruzhenie* has given to Bulgaria around 670 licenses for production.[71] For each license there was an agreement on the number and the period of production. According to these agreements, the Russian side has the obligation to provide the innovations

[68] WebCafé BG. "South Stream under the dictate of Russia and the control of DANS," *webcafe.bg*, May 8, 2014, https://webcafe.bg/newscafe/1179347466-yuzhen-potok-pod-diktovkata-na-rusiya-i-kontrola-na-dans.html.

[69] Ibid.

[70] BNews, "Declassified: Russia dictated us what is Sea gas pipeline!," *Bnews*, September 5, 2014, http://www.bnews.bg/article/171554-razsekreteno_rusiya_ni_diktuvala_shto_e_morski_gazoprovod.

[71] Maria Andonova, "Will the Russian licenses shot down the Bulgarian military production," Capital, December 4, 2004, https://www.capital.bg/politika_i_ikonomika/bulgaria/2004/12/04/229071_shte_zastreliat_li_ruskite_licenzi_bulgarskoto/.

on the selected equipment to Bulgaria and buy part of the production, and Bulgaria has the obligation to produce the exact amount specified, not to sell to third countries outside of the Warsaw Pact without a permission from Moscow, and of course – to pay for the license.[72] After the dissolution of the USSR Russia has stopped providing innovations and buying Bulgarian production, and Bulgaria has stopped paying. With the dissolution of the Warsaw Pact, Bulgaria has found new markets for its own military production, including in the USA. It is important to clarify that the huge majority of these 670 licenses, around 70-80%, are for weapons or military equipment which is obsolete and therefore – not in production anymore.[73] Bulgarian military production facilities include *Arsenal AD*, *TEREM*, *VMZ Sopot*, *Samel 90* and others. The country produces and exports equipment ranging from small arms and bulletproof vests to mortars and armored vehicles to over 30 countries.

The question is rarely put forward during high level meetings but is often discussed at work-level meetings. An example of the Russian position can be seen in an announcement made on 28 December 2016 by the Director of the Information and Press Department of the Ministry of Foreign Affairs of the Russian Federation Maria Zakharova. She commented that the military industry in Bulgaria worked with Soviet licenses which were expired, and the Bulgarian government did not seem interested in renewing them.[74] In 2017 Zakharova repeated the position that Russia wants to settle the issue with Bulgaria and expressed expectations Bulgaria would participate in the dialogue. She pointed out that this is an important topic in the Russian-Bulgarian relations.[75]

At the beginning, the Bulgarian position was that the production of the weapons and military equipment only use some ideas from the old Russian originals and now they are not the same anymore.[76] In addition, Bulgaria claimed that Russia has violated some of the license agreements by not providing innovations and not buying part of the Bulgarian production anymore. Lately it appears that Bulgaria maintains this position that Russia has no legal grounds for claims for that Soviet production.[77] Bulgaria points out too that no

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72 Ibid.

73 Ibid.

74 Boryana Raycheva, "Russia accused Bulgaria for selling weapons in Syria," *Eurocom.bg*, December 28, 2016, https://eurocom.bg/new/rusiia-obvini-bulgariia-che-prodava-orujie-v-siriia.

75 "Russia wants to settle the licenses for arms production," *Faktor.bg*, July 17, 2017, https://faktor.bg/bg/articles/novini/svyat/rusiya-iska-da-uredim-litsenzite-za-proizvodstvoto-na-orazhiya.

76 Tanya Ivanova, "The Russian weapon licenses will be phased out from our production," *Money.bg*, October 10, 2006, https://money.bg/archive/ruskite-orazheyni-litsenzi-otpadat-ot-voennoto-ni-proizvodstvo.html.

77 Krasimir Karakachanov, "Karakachanov: Bulgaria will not negotiate with Russia for weapons licenses," *Investor.bg*, February 24, 2019, https://www.investor.bg/ikonomika-i-

other country from the Warsaw Pact, including even Serbia, has agreed to pay for new licenses.[78]

The consistent habit shown by the Russian side to put forward this problem during meetings of different type demonstrates the consistency of these intentions. This constant political pressure on the legal problem with Bulgaria is extremely dangerous, as it can put an entire industry under Russian control. Moreover, obviously this industry is of special importance for the national security. This would also provide a leverage to the Russian side to regulate the relationship between Bulgaria, through its military production complex, and the other NATO member states, since Russia would have to formally approve any weapon export deal. Ultimately it could have an extremely negative effect on the industry and lead to loss of workplaces for thousands of employers working in these factories.

Observations

I will try to relate now the four cases with the empirical indicators and forms of hybrid wars (Table 1). This inductive approach will help to define the nature of cases chosen as ones of lawfare. if we combine it with deductive one, we will be able to go the way back – from empirics to theory, enriching it in this way the very concept of lawfare.

In the first case we can clearly see how the threat to use, and then the use itself of international law to settle the trade dispute between Russia and Bulgaria, has led to ignoring results of a referendum, even if its results were not binding. It has led also to Parliament decision to block the construction of a new NPP. Bulgaria and Russia did not find a way to settle the dispute and following the unsuccessful Bulgarian defense at ICA, Bulgaria was sentenced to pay for the produced equipment and subsequently restarted the project.

In the second case, there was a threat to use law in a way identical to the first case. However due to negotiations at a higher level, this was avoided. Nevertheless, it was an unsuccessful attempt which ended with the construction of *Turkish Stream* instead. Although there were no concrete actions against Bulgaria, there was a threat to use them. All this was accompanied by anti-Bulgarian rhetoric from Russia who actively blamed Bulgaria for the failure of the *South Stream* project.

In the third case we can see example of bending and changing the national law in order to accommodate for action which is against the national

politika/332/a/karakachanov-bylgariia-niama-da-pregovaria-s-rusiia-za-oryjeinite-licenzi-277687/.

[78] Ibid.

interest. In addition, this change was used to reinterpret the existing law and introduce a new term, which created confusion about the nature of *South Stream*.

In the fourth case it is shown how the threat to use international law has given grounds to push this problem on the agenda of bilateral talks, even if apparently there are no legal grounds for such activities.

All the four cases are related to key sectors of the Bulgarian economy. Bulgaria is almost entirely dependent on Russian gas import and the huge investments in this big gas infrastructure project is likely to solidify the status-quo, draining attention and resources from possible alternative gas projects which would diversify the Bulgarian market. In the same way, a construction of a new NPP would guarantee long-lasting Russian presence in the Bulgarian energy production, through import of nuclear fuel and general maintenance. The case with the Bulgarian weapon industry is particularly sensitive as it is related not only to economy, but also to national security.

With the results of this empirical analysis, is it possible to go way back, i.e., to return from the third level concept to the first level one and to add some new aspect to the theory? It seems that at least three modest contributions should be emphasized. The first is that, from an empirical point of view, the analysis facilitates the answer to the question about what act could be labelled lawfare (through pointing out shared features of the cases). Second, it proves that lawfare has effects not only on the legality of a given act, but also on its legitimacy. Although lawfare is not as spectacular as some other forms of hybrid war, it constitutes a serious threat to national and international security as far as it gives legitimacy to narratives and images of the aggressor; legitimacy that otherwise they would not obtain. Third, even when a court decision is formally just, in a specific political context it can be used as a tool of hybrid war.

Conclusions

This paper had as one of its purposes to confirm the value of empirical approach to lawfare as a form of hybrid war. Indeed, much more solid empirical foundation is needed in order to settle a concept able to bring under its common denominator the immense multitude of cases that always remain under the threshold, in the gray zone in-between peace and war, as well as in-between legality, legitimacy and abuse of law. The deeply contextualized analysis of the cases showed outcomes that challenge the conventional wisdom: for example, the outcomes of the right application of the law can also be used as lawfare under specific conditions. To what is already known in the academic debate, this paper added two new forms of lawfare: "bending the national law or

convincing the national or local legislature to accept new laws that put an adversary in disadvantageous position" and "preventing a development of clear definition to a specific situation". I argued that lawfare is always a source of hybridity when it is combined with other, not necessarily kinetic means, and that it contributes to the achievement of the goals of hybrid war, which are not different from the goals of any other one - to compel one's enemy to do one's will. My definition of hybrid war, emphasizing the destruction of the institutions (through eroding trust and governability), communities (through impeding informed individual and collective choices) and society has a logical conclusion that one of the easiest ways to do so is to delegitimize them and to give legitimacy to narratives and images that cannot obtain such legitimacy without the use of law as an arm in order to capture a relevant state. Then, if lawfare is understood to mean "the use of law, or exploitation of aspects of a legal system, to achieve tactical or strategic advantages in the context of conflict"[79] or "a weapon of war,"[80] are democratic countries allowed to use it as a defensive mean? This is one of the directions that current research can take in the future.

The research has certain limitations. First, this article examines four cases in a presumed Russian hybrid warfare against Bulgaria, which is not enough to get a more sophisticated idea about lawfare as a tool of hybrid war. Besides, it would be useful to conduct a similar research in other countries in Eastern and Central Europe, in order to determine whether the Russian lawfare against them is part of a broader hybrid strategy or not. Finally, it can be useful to study cases of non-Russian lawfare against European countries and attempt to determine the dynamics around them. It will contribute to meeting in a more successful way the challenges of lawfare as one of the tools of hybrid war. While more research about countering lawfare is needed, the success of the Russian lawfare against Bulgaria, excepting the case of South Stream, where Bulgaria was backed by the EU, indicates that one of the possible countermeasures for Bulgaria is the closer integration, cooperation and coordination with the EU and NATO states and complying with the common European policies when it is possible.

Table 1: Relating Cases, Indicators and Forms

N	Questions	C1	C2	C3	C4
Q1	Is it a case where there is a use, threat to use, or misuse of the law as substitute for traditional military means to achieve an operational objective	Yes	Yes	No	Yes

[79] Craig Martin. "What Are the Limits on Lawfare?," *OpinioJuris*, May 5, 2019, http://opiniojuris.org/2019/05/05/what-are-the-limits-on-lawfare/.

[80] Orde Kittrie, *Lawfare: Law as a Weapon of War* (Oxford: Oxford University Press, 2016), 1.

Q2	Is it a case where there is a use, threat to use, or misuse of international law to threaten state interests	Yes	Yes	Yes	Yes
Q3	Is it a case where the use, threat to use, or misuse of law is used as a rhetorical device intended to discredit parties who attempt to engage with international law as a means to ensure accountability and compliance	Yes	Yes	Yes	Yes
Q4	Is it a case, in which the law is used as a weapon, the legitimacy of which is defined by its user's intentions	No	No	No	No
Q5	Is the actor using law to create the same or similar effects as those traditionally sought from conventional kinetic military action – including impacting the key armed force decision-making and capabilities of the target	No	No	No	No
Q6	Is the motivation of the actor to weaken or destroy an adversary against which the lawfare is being deployed	Yes	Yes	Yes	Yes
F1	*Creating new international laws designed to disadvantage an adversary*	No	No	No	No
F2	*Reinterpreting existing international laws so as to disadvantage an adversary*	No	No	No	No
F3	*Using international law to generate intrusive and protracted investigations by international organizations*	Yes	Yes	No	No
F4	*Generating international organizations votes to disadvantage an adversary*	No	No	No	No
F5	*Generating international law advisory opinions in international forums*	No	No	No	No
	Using international law as grounds for "universal jurisdiction" prosecutions of third-country officials in national courts for alleged war crimes	No	No	No	No
F6	*Using international law as grounds for criminal prosecutions of domestic companies in national courts*	No	No	No	No

F7	*Creating new national laws designed to put foreign vendors of strategic products to a choice between one's own market and that of an adversary*	No	No	No	Yes
F8	*National legislature actions other than passing new laws*	No	No	No	No
F9	*National permitting processes*	No	No	No	No
F10	*Sub-national legislation*	No	No	No	No
F11	*Bending the national law or convincing the national or local legislature to accept new laws that put an adversary in disadvantageous position*	No	No	Yes	No
F12	*Preventing a development of clear definition to a specific situation.*	No	Yes	No	No

Source: This table is elaborated by the author.