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In 52 BCE, the Roman statesman and orator Cicero spoke in defense of his friend Titus Annius Milo, on trial for the death of a political rival during a period of unrest, arguing that "laws are silent when arms are raised."[1] These words often have been misinterpreted and removed from their original context to suggest that law does not apply during times of war. But a more complete reading suggests that Cicero was arguing the opposite. His point was that in a situation of mortal self-defense, the law was so obvious, indeed so well established and inherent, that it need not be consulted.[2] In situations where the law is preeminently clear, the defender is free to act accordingly without a second thought. Generating this clarity of the law so as to create a "legal silence" in competition and conflict should be a strategic goal, and can be achieved through what is commonly known as "lawfare."

The idea of setting the stage for future conflict is well established in military doctrine. The concept of "preparation of the environment" (PE) is fundamental to the activities of special operations forces (SOF). Under U.S. joint doctrine, PE consists of activities "to prepare and shape the operational environment" for future military operations, and may include intelligence collection, target development, establishing human and physical infrastructure, or something as specific as setting up a safe house.[3] These preparations allow the military, especially SOF, to transition seamlessly from conditions of peace to conflict and the essential task of defeating the enemy. Forces do not have to waste time and effort at the start of combat operations

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developing new access, logistics, or intelligence, as these things have been established ahead of time. This type of preparation amplifies the effects of SOF operations, which are typically executed by smaller units and at a lower intensity than those of conventional forces, and allows SOF to respond more quickly to crises.

In much the same way, the wartime legal environment can be prepared by making certain sustained efforts prior to conflict. At the strategic level of warfare, preparation of the legal environment would consist of what is now often called *lawfare*, the state-level posturing to shift customary and treaty law in favor of the operational activities that the state desires to pursue.[4] To expand on the SOF analogy: a state can enhance its lawfare efforts by applying other core SOF operating principles, such as "placement and access" and "by, with, and through."[5] The success of SOF is largely driven by partnerships. A good lawfare strategy should be no different.[6] A SOF approach to lawfare applies these principles in the way that the state interacts with international legal structures, preparing the legal battlefield prior to—or to prevent—future conflicts.

WHAT IS LAWFARE?

International Law 101

To understand how lawfare works, we must first examine the mechanics of international law. International law functions quite differently from a state's domestic legal structures. In the absence of some supranational legislature to pass statutes that bind all states to a common code, international law is based on the consensus of sovereign states. This is often referred to as the *Lotus* principle, after a case before the Permanent Court of International Justice between France and Turkey that addressed state actions surrounding the captain of SS *Lotus*. In its ruling, the court solidified the principle that "restrictions upon the independence of States" cannot be presumed.[7] In essence, the *Lotus* principle means that international law is only binding on states that consent to being bound by it. Another way to say this is that state sovereignty is still the primary factor in international law, although "more and more, modern states are ceding their sovereign powers for the sake of global security through treaties like the *U.N. Charter*."[8]

States cede their sovereignty to international law in several ways, best described in the Statute of the International Court of Justice (ICJ). Article 38 of the statute describes the many possible sources of international law—to wit, international conventions (treaties), international custom as evidence of a general practice accepted as law (the state practice element of customary law and norms), the general principles of law recognized by civilized nations (the *opinio juris* element of customary international law), and international court decisions, which are binding on the parties involved.[9] It also suggests that other judicial decisions and the writings of highly qualified academics may be relied on as "subsidiary

means for the determination of rules of law."[10] This can be compared to the use of secondary legal authority in domestic legal cases.

Though no official hierarchy exists for sources of international law, the most recognized precedence follows the order in which the ICJ statute lists them. Treaties create clear and binding obligations on the states that join them. Therefore, a violation of the terms of a treaty by a party state is a clear violation of international law. However, the interpretation of the rules of a treaty are left to each state, and many will submit comments or reservations when they join a treaty. Additionally, originalism is not a hard rule for treaties, and states are able to change their interpretation of a treaty over time.[11] If there is no treaty governing a certain international legal question, or if not all states involved are parties to the relevant treaty, then customary international law becomes the primary focus.

Customary law and norms are established through two complementary and necessary processes: state practice and *opinio juris*.[12] The former refers to the actual actions taken by states on the international stage. The latter refers to the official statements by national governments with regard to their legal obligations toward and interpretation of the law. These may or may not coincide. When they do, the combination of conforming practice and opinion is evidence of a customary norm. In many cases, this interpretation is not given readily, especially when dealing with sensitive topics such as national security matters.[13] If a conflict arises between the rules established in a treaty and customary law, the treaty is normally dominant, since states have agreed to follow the specific language in the treaty. By signing on to a treaty, states knowingly set aside all previous legal structures.[14] Finally, if there is no relevant treaty on which to rely, and if the customary law is murky, one must rely on secondary sources to build a legal argument.

Defining Lawfare

In short, *lawfare* is a modern term describing the use of law as a tool of war (or national security objectives more generally), whether it be hot or cold.[15] When the modern usage was originally coined by Colonel Charles J. Dunlap Jr. (later the deputy judge advocate general of the Air Force and now the executive director of the Center on Law, Ethics and National Security at Duke Law School), he defined it as "a method of warfare where law is used as a means of realizing a military objective."[16] Examples offered by Dunlap included using false claims of war crimes to create legal dilemmas for a more powerful, occupying power. In the two decades since this introduction of the term, the concept of lawfare has expanded into all domains of state power beyond just military operations and encompasses all state actions that employ domestic or international law to achieve a state's objectives.[17]

Beyond Dunlap's original military-centered meaning, Zakhar Tropin provides a more comprehensive definition, suggesting *lawfare* is the "use of law aimed at delegitimising the actions of an opponent (or legitimising one's own) and to tie

up the time and resources of the opponent and achieve advantages in military activity or in any sphere of social relations."[18] This is the meaning commonly used by academics today, and is the meaning used for this paper.[19] Tropin also cites the scholar Yevhen Magda, who incorporates lawfare under the umbrella of hybrid warfare, which he defines as "a set of prepared and promptly implemented actions of the military, diplomatic, economy-based, and informational type [i.e., DIME] that are aimed at achieving strategic objectives."[20]

Much of the contemporary lawfare activity we observe is centered on making changes to customary law, which is based on the practice and opinions of states. When a broad coalition of states share the same opinion and practice, a legal element can become a norm. However, neither practice nor opinion is static. Certain states today seek to modify customary norms by initiating new practices or publishing new interpretations of both treaty and customary rules. States can also use their representation on international boards and tribunals to assert these new interpretations of the rules. If enough states accept and practice under the new interpretations, these can become the new norms.

For the United States, lawfare at the strategic level must include national-level involvement in the evolution and employment of the law—both defensively and offensively—so that rapid U.S. or allied responses to adversarial aggression receive global legal sanction quickly, or to create political dilemmas for aggressors. One goal for this type of lawfare is to prevent authoritarian states from changing global norms and undermining the global rules-based order. A second goal is to proactively shape global norms to increase freedom of movement to defeat increasing global aggression.[21] (Domestic law also can be used to influence international events and norms, but those mechanisms are beyond the scope of this article.)[22]

The United States lacks a strategic approach to lawfare. As noted by lawfare expert Orde Kittrie, "the U.S. government has only sporadically engaged with the concept of lawfare. It has no lawfare strategy or doctrine, and no office or interagency mechanism that systematically develops or coordinates U.S. offensive lawfare or U.S. defenses against lawfare."[23] Even though much has been written on the concept of lawfare since Kittrie penned his comment in 2016, the criticism largely remains true outside a few notable but isolated exceptions that I discuss later. In general, there is no systematic, coordinated U.S. lawfare effort against competitors that are attempting to dominate the strategic legal terrain. Key global competitors such as Russia and China appear to be advancing faster than the United States.

Lawfare in Action

Russia. Russia has employed lawfare for centuries; Mark Voyger argues that "1774 should be regarded as the year of birth of Russian Lawfare," when the Russian

Empire employed the Treaty of Küçük Kaynarca to achieve certain expansionist goals against the Ottoman Empire.[24] Voyger notes that Russia has more recently employed lawfare to justify interventions in Moldova (1992), Georgia (2008), and Crimea (2014), among others. One method involves corrupting the doctrine of humanitarian intervention to justify and obscure expansionist objectives. There are multiple instances of Russia issuing passports and granting citizenship to Russian speakers in border areas, instigating local independence referenda under the guise of self-determination, then employing its military nominally to "protect" these new citizens from their own legitimate governments, all while occupying new territory.[25] This demonstrates how the Russian government manipulates the legally insufficient justifications for foreign interventions used by Western powers, particularly the United States, for Moscow's own, more imperial, purposes. It thus reveals an unintended risk of relying on such justifications.[26]

Russia is notably effective at employing nuances and loopholes in nondescript legal instruments to serve or cover its own purposes. For example, the Organization for Security and Co-operation in Europe's Vienna Document 2011 on Confidence- and Security-Building Measures places restrictions on the types of military exercises its parties can conduct and also requires them to provide a forty-two-day advance notice of those exercises.[27] Russia avoids this obligation by not "officially" planning exercises ahead of time and instead characterizes them as emergency mobilizations.[28] Additionally, Russia gets around requirements to allow outside observers at exercises exceeding thirteen thousand troops by breaking down what are de facto large-scale exercises into smaller, individually reportable portions.

Russia has also wielded its membership in international legal bodies as a political weapon. For example, before Ukraine went to the International Telecommunication Union to ask the body to block Russia from using Crimea's international dialing code, Russia increased its number of representatives on the body, thereby ensuring the request would fail.[29] Russia has since used the Russia area code in Crimea as one of many arguments that the region is lawfully part of the Russian Federation. When accused of the attempted assassination of the double agent Sergei Skripal using a chemical agent called Novichok, Russia "made a request for cooperation and the provision of documents" to the United Kingdom under the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.[30] When the United Kingdom rejected the obvious political ploy, the Russians blamed the United Kingdom for violating the treaty in an effort to deflect the international discussion away from the unlawful assassination attempt. Russia also attempts to embed its agents and spies into international organizations, such as a military intelligence (GRU) operative who tried (but failed) to infiltrate the

International Criminal Court (ICC), and uses military-observer access through the Organization for Security and Co-operation in Europe to conduct reconnaissance on the Ukrainian military.[31]

China. Although later to employing the strategy than Russia, China also has started using international organizations to serve its political and strategic ends. Increasingly, China prioritizes getting Chinese representatives into leadership positions of these organizations. China twice has maneuvered its candidates into leadership positions at Interpol, the international criminal police organization. The first was Meng Hongwei, who became president of Interpol in 2016 but was jailed for corruption in China two years later (though it is likely that he was removed for political reasons).[32] China has used Interpol's "red notice" system as a way to track down political dissidents abroad, and some analysts suggest that Meng's purge was in part due to his failure or refusal to support these Chinese Communist Party objectives as leader of the organization.[33] More recently, China's judge at the ICJ was one of only two to dissent (the other being the Russian judge) against a call for Russia to cease all military operations in Ukraine.[34] The position is an interesting one for a Chinese official, since China has long stressed the fundamental importance of sovereignty and nonintervention. China has also used its vast political leverage to disrupt a vote in the UN related to the release of a "damning" human rights report on Chinese atrocities in the province of Xinjiang.[35]

As Harriet Moynihan notes: "Until 15 years ago, China was a relatively quiet player on the international law scene, playing only a small role in international rule-making."[36] This is in part because China long viewed international law as a Western construct employed to Beijing's detriment.[37] China's skeptical view of international law is not entirely invalid, considering the myriad uneven treaties that were imposed on it, such as the Treaty of Nanjing, which ended the 1839–42 Opium War in favor of the British, who had instigated the conflict. However, once China realized that international law rooted in Westphalian ideas was not going away, it discovered a severe lack of comparative expertise. Today, China is reluctant to involve itself in many international arbitrations, because it feels its rivals possess dominant legal expertise.[38] But this view is changing rapidly. In 2014, the Chinese Communist Party directly called "for China to take a greater role in shaping the norms that underpin the international legal order."[39] This wide effort now includes an emphasis on international law training for lawyers, the creation of international law centers of excellence in China, and incorporation of lawfare as one of the "three warfares" that underpin Chinese military strategy today.[40]

The most well-known international law issue featuring China is the South China Sea territorial disputes. As noted by Moynihan, the area is an economically

critical region that handles "half of the world's daily merchant shipping, a third of global oil shipping, and 12 per cent of the world's total fish catch."[41] Eight countries have claim to some part of the sea. In 2012, the Philippines referred the issue of China's vast (and unlawful) territorial claims to the Permanent Court of Arbitration (PCA), as allowed by the UN Convention on the Law of the Sea (UNCLOS).[42] The court largely sided with the Philippines in a ruling that declared China's sweeping claims over the areas that overlapped with the territorial claims of other states to be invalid. China maintains to this day that the decision "seriously violates international law" and that it is "illegal, null, and void."[43]

The PCA case reveals China's preferred methods for influencing international law. China is reluctant to participate directly in these sorts of arbitration proceedings, especially if a loss would carry significant repercussions (such as the loss of territory or access).[44] Instead, China will submit matters into the record as a third party. In the South China Sea arbitration, China did not participate as a party to the dispute but did submit a "position paper" with its legal arguments.[45] China also engaged in an information-warfare campaign by encouraging academics to write articles supporting its position and by pushing its arguments in the media.[46] Perhaps to the Chinese government's surprise, the Chinese submission was interpreted by the court to reflect the official position of the state. China now routinely submits matters as a third party in an effort to shape international law judgments, such as with the issue of self-determination addressed in the *Kosovo Advisory Opinion*.[47]

The irony in the South China Sea case is that China's primary counterargument was that the Philippines did not exhaust all possible bilateral means of reconciliation.[48] This means that on the one hand China portrays itself as a defender of the even playing field against an international law construct that it asserts favors Western powers (at least when it views itself as the weaker party). On the other hand, China urges bilateral negotiation as the preferred method of resolving disputes when it is the dominant party, since this allows it to use the full measure of coercive means to get its way. Ironically, this is the very power dynamic that the arbitration processes in international legal instruments are intended to prevent. A hearing at the PCA is supposed to be an even playing field for both politically powerful and weak states—unless you are China, and what you want is inconsistent with the basic tenets of international law.

United States. As noted, the United States does not have a unified and coherent lawfare strategy. However, it has regularly engaged in activities that fall under the umbrella of lawfare. One clear example is the long history of "freedom of navigation operations" (FONOPs) conducted by the U.S. Navy.[49] These activities have been executed in response to "excessive and illegitimate maritime claims" of

China in the South China Sea, as well as improper claims of maritime sovereignty by other states in the region.[50] As described above, China has long attempted to resist or even modify international norms relating to maritime sovereignty, as exemplified by UNCLOS. This and previous international instruments—not to mention customary law—limit a state's sovereignty to a limited stretch of sea adjacent to its landmass. UNCLOS limits this claim to only twelve nautical miles from the low-water line along the coast.[51] Moreover, all states possess the right of innocent passage within those territorial seas and transit-passage rights in international straits.[52] Freedom of navigation operations exercise the right of innocent passage as a means of stabilizing international maritime norms and preventing China and other states from establishing a customary structure of absolute maritime sovereignty in these spaces.

One of the primary U.S. entities conducting these activities is U.S. Indo-Pacific Command (INDOPACOM), a geographic combatant command of the U.S. military headed by a four-star admiral. The U.S. government has not specifically identified FONOPs as a lawfare activity. However, some elements of the government have begun actively applying the lawfare label to other activities. Last year, INDOPACOM got out in front of the greater U.S. government in lawfare, establishing what it calls a "counter-lawfare" strategy. This concept was first presented publicly at the 2022 International Military Operations and Law Conference. While the event was not specifically focused on lawfare, the official summary of the event noted: "Day 3 was highlighted by a panel on lawfare and counter-lawfare in legal operations with experts from U.S. Indo-Pacific Command, National Defense University, and NATO."[53] This event was attended by more than twenty-five U.S. allies and partners and was presented by the Office of the Staff Judge Advocate (OSJA) in concert with global lawfare experts, including preeminent lawfare scholar Jill Goldenziel.[54]

INDOPACOM's counterlawfare activities expanded quickly. Among the products developed by the OSJA are a summary of the counterlawfare concept; an OSJA lawfare journal, *Legal Vigilance Dispatch*; and so-called tactical aids (TACAIDs) that describe budding legal conflicts and present INDOPACOM's interpretation of the relevant international law.[55] One example was published in response to the Chinese high-altitude balloon that traversed U.S. territory in early 2023. The TACAID describes the Chinese legal claims relating to the balloon in detail and then refutes these claims one by one. INDOPACOM has also published bilateral legal understandings for a few international law matters.

INDOPACOM's efforts, however, are not a whole-of-government approach to lawfare, let alone a multinational one. As described in INDOPACOM's counterlawfare concept, "Counter-lawfare encompasses a range of activities centered on the law and enhancing legitimacy of *USINDOPACOM's objectives*" (emphasis

added).[56] These activities are clearly siloed within the U.S. military, and within INDOPACOM specifically. Thus, what is needed is a more holistic strategy for the United States to conduct lawfare.

SOF PRINCIPLES RELEVANT TO LAWFARE

The unconventional nature of lawfare lends itself to being explored through the lens of principles inherent in the work of special operations forces—the joint force's unconventional warriors—and that in turn suggest avenues for executing lawfare more effectively across the spectrum of conflict. Here we will introduce those relevant principles, and then later examine the ways they expand our understanding of lawfare.

Preparation of the Environment

Preparation of the environment is an umbrella term for myriad actions that might be taken prior to, and in support of, a military operation. This concept evolved from what used to be—and sometimes still is—called *preparation of the battlefield*. As noted in Joint Publication 3-05, PE activities generally are performed by selectively trained SOF personnel and, in addition to intelligence collection, may include close-target reconnaissance, infrastructure development (both physical and human terrain), and RSOI (reception, staging, onward movement, and integration) of follow-on forces.[57]

Intelligence collection historically has been one of the primary PE lines of effort, which some argue can be traced back to the human network activity during the American Revolution, such as with George Washington's employment of the extraordinarily successful Culper Ring.[58] Now, PE is fundamentally a SOF mission. As noted by Joshua Kuyers, "After September 11, 2001, then–Secretary of Defense Donald Rumsfeld pushed for a greater special operations role" in conducting PE, since "SOCOM [Special Operations Command] is one of the few Combatant Commands with global reach and capabilities" and because SOF operate using "innovative, low-cost, and small-footprint approaches."[59] By leveraging highly skilled and well-equipped operators, the military is able to maximize the effect and accuracy of the main operation supported by SOF, whether it be as small as a drone strike or as large as an invasion.

Placement and Access

In an intelligence and counterintelligence context, *placement and access* is literal, describing the information a source can acquire through the source's physical access to facilities or information. In a SOF context, placement and access concerns relationships more generally. U.S. SOF regularly deploy across the world to train with partner militaries, and even sometimes those of less friendly countries. Sometimes, this leads to intelligence and supports PE, or otherwise can be

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exploited for operational gains. In one example related to Operation JUST CAUSE, the 1989 U.S. invasion of Panama, Charles T. Cleveland, a retired senior Army Special Forces officer, recalled:

> My Panama-based Special Forces battalion went into serious preparation for supporting an invasion in the summer of 1989. Our battalion was the remnant of a continuous and, at times, robust Special Forces permanently assigned presence in Panama since the 1960s. Amid rising tensions between Noriega and the United States, we were tasked (along with others) to use our placement and access to get inside Noriega's decision cycle, to put some uncertainty into his planning, and to be prepared to support an invasion.[60]

Placement and access is now seen as a critical element of SOF operations and is viewed primarily through the lens of human networking and partnerships. The commander of SOCOM responded in 2023 to the Senate Armed Services Committee: "Against the threats of North Korea and Iran, USSOCOM's strong relationships with allied and partner forces—and irregular warfare expertise—provide placement, access, and capabilities, while messaging U.S. conviction and minimizing the risk of unintended escalation."[61] The year prior, Christopher Maier, the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, made a similar comment, noting that over the previous twenty years, special operations forces had built "tremendous partnerships with counterparts in foreign militaries that gives us a tremendous reach globally." Assistant Secretary Maier went on to say that as the United States competes with China and Russia, U.S. SOF's mission set was capable of enabling placement and access to "unlock a lot of other joint force capabilities against near-peer adversaries that they probably can't match."[62] The concern with placement and access is so significant that SOCOM identified a need for greater diversity within the SOF community.[63] As noted by Rachel Theisen, "Adding women to Special Operations will increase organic capability. Women provide access and placement that men alone simply cannot achieve."[64]

By, With, and Through

U.S. SOF regularly leverage the partnerships they cultivate and the irregular warfare networks they have constructed in order to conduct military operations with minimal—or even zero—U.S. boots on the ground. This operating concept is commonly referred to as the "by, with, and through" (BWT) approach, defined as operations "led *by* our partners, state or nonstate, *with* enabling support from the United States or U.S.-led coalitions, and *through* U.S. authorities and partner agreements."[65] What should be added to this definition, of course, is that these efforts are taken *to meet U.S. policy objectives*. The BWT approach gained more popular recognition through the exploits of Task Force Dagger at the onset of the

2001 war in Afghanistan (depicted in the 2018 film *12 Strong*), and it continued to be employed in the theater, helping to enable the international legitimacy of coalition operations.[66] The definition provided by Joseph Votel and Eero Keravuori applies broadly to conventional operations, but historically BWT was almost exclusively a special operations approach to warfare.

During World War II, the Office of Strategic Services (the OSS, precursor to the Central Intelligence Agency [CIA]) employed local partisan forces to achieve U.S. military objectives, the earliest formal use of BWT principles as SOF employ them today. The CIA engaged in local-force BWT tactics again in the Korean War, which became the basis for the *unconventional warfare* concept that would become the core mission of Army Special Forces (a.k.a. the Green Berets). Until the post-9/11 era, employing BWT doctrine remained almost exclusively the province of SOF.[67]

The *by* and *through* elements of the BWT concept refer to operations where the partner force, as the lead element, ultimately is responsible for the operation and its consequences. With new technology—such as the Remote Advise and Assist Virtual Accompany Kits—in the SOCOM inventory, U.S. forces may not even be on the ground in the area of operations.[68] The core difference between the two seems to be whether or how much the supporting state wishes to acknowledge U.S. SOF involvement, the *through* approach generally being used to describe clandestine proxy operations. However, the *with* approach seems preferred, especially for SOF, because it generates "equitable ownership of problem sets and equal involvement in execution of solutions."[69]

The benefits of a BWT approach are numerous. Working together with partners distributes risk, allows for burden sharing of costs and personnel, and allows one side to tap into the unique skills and expertise of the other.[70] This approach is not without its drawbacks and risks, however. Conducting partnered operations can obfuscate the supporting state's ability to assess cost benefits accurately or to mitigate civilian harm.[71] The different command structures and methods of the local partner also can escalate tensions rather than reduce them, since "partnered operations require relinquishing some decisionmaking authority at the tactical and operational levels, diluting the level of control over partner conduct."[72] This does not mean necessarily that local partners are negligent with their planning and execution of operations; in many cases, "local militaries and armed groups are less equipped to mitigate civilian harm than their international counterparts."[73] In most cases, there will be an imbalance among partners in terms of capacity that should be considered when distributing responsibilities and burdens. Even so, in most cases a well-planned and organized combined approach is preferred to a unilateral one.

A SPECIAL OPERATIONS APPROACH TO LAWFARE

The United States does not have an official doctrine for lawfare, despite years of widespread advocacy for it to develop one.[74] Because SOF have a long, demonstrated ability to attack unique and complex strategic problems, SOF principles—an interagency effort of *preparation of the environment* that utilizes *placement and access* via an international *by, with, and through* approach—are a natural lens through which to develop a coherent lawfare strategy.

All lawfare is a form of preparation of the environment. All the legal actions states take in the context of power competition are done (at least in part) to gain advantages in support of future political or economic efforts and activities. But a more focused and operational approach might yield more-concrete results. At the strategic level of warfare, what we might call "preparation of the legal environment" primarily consists of whole-of-government lawfare efforts.[75] The key idea with PE is that these measures must be *prepared* ahead of time so that countermeasures may be employed promptly when needed.

Traditional PE comprises specific actions tailored to preparing for a specific operation. Having a thousand resistance fighters ready in Barcelona, for example, is irrelevant if the mission is to invade Normandy. The cyber domain is one area where the United States already is preparing the legal environment for operations. The United States is a major world cyber power but is also one of the biggest targets for international cyberattacks. One way to prepare the environment to counter these attacks is to ensure the United States can freely and legally employ its vast cyber capabilities globally. The infrastructure is already there; the main impediment is international law. Despite decades of debate, there still are no binding international norms related to cyber activity, and the lack of clear guidelines creates significant ambiguity and risk for decision makers. For a long time, the principal avenue for developing cyber norms was the UN Group of Governmental Experts (GGE).[76] From 2004 to 2016, the General Assembly established five GGE sessions, which consisted of experts representing between fifteen and twenty-five member states, including the five permanent members of the Security Council.[77]

In 2018, Russia initiated a separate process because it did not like the evolving GGE consensus on cyber law and norms. This was the Open-Ended Working Group (OEWG).[78] The states promoting the OEWG had different political goals they wanted to achieve. At least at first, this created two rival spheres of influence. The GGE advocated for a "sovereignty-lite," open Internet, while the OEWG wanted hard and absolute territorial control over the Internet and other information.[79] Each side uses these international institutions and mechanisms to establish its preferred consensus and rules. If Russia's vision for the Internet were to win out, the world would develop binding norms that make any web traffic

flowing through the physical infrastructure of a state implicate the sovereignty of that state and would also allow states lawfully to shut down domestic Internet at the push of a button. This would create a severe hindrance to the ability of the United States to employ its cyber power. So, the United States continues to promote a sovereignty-lite, open-Internet legal regime through institutions such as the GGE and OEWG. This ensures the international legal environment is prepared in a way to allow the Federal Bureau of Investigation or U.S. Cyber Command to respond quickly to a cyberattack on the United States or its allies. That is the essence of preparation of the environment—preparatory actions taken in advance of specific anticipated operations.

This competition between the United States and Russia relating to conflicting perspectives of Internet freedom and cyber sovereignty has expanded beyond the scope of simply leading the competing working groups to include the placement of individuals at specific, and sometimes obscure, international institutions. For example, Russia and the United States recently competed for leadership of the International Telecommunication Union (ITU), with the open-Internet-supporting candidate favored by the West winning out.[80] The previous secretary general of the ITU, a Chinese citizen, used his position to support the growth of Chinese information technology firms such as Huawei, while also helping China avoid scrutiny and oversight for some of its practices.[81] A Russian secretary general was expected to push policy in favor of the hard cybersovereignty goals of the authoritarian regimes.[82] This example demonstrates the potential power of placement and access in a lawfare context.

Beyond the ITU, both China and Russia have used their presence in other international organizations to promote their goals and drive a shift in international law. But they are not the only ones. More states are employing international legal instruments in novel ways. In response to Russia's 2022 invasion, Ukraine filed and won a case with the ICJ based on an unconventional reading of the Genocide Convention.[83] The core argument was not that Russia had committed genocide itself but rather that false Russian accusations of genocide against Ukraine used as a pretext for unlawful aggression were a violation of the treaty.[84] It is perhaps not surprising that only the Russian and Chinese judges sitting on the case dissented from the powerful majority opinion that ordered Russia "shall immediately suspend the military operations" in Ukraine.[85]

Ukraine is using every tool in its legal tool kit to find leverage against its much larger adversary. For example, Ukraine has employed bilateral investment treaties to inflict financial costs on Russia.[86] Scholars are now suggesting a wide range of unconventional legal measures, such as using the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters to force Russia into a situation where remaining on the present course in Ukraine would inevitably

force it into international law violation.[87] Although the likelihood of Russia ever acquiescing in an international court's judgment in such a case is low, the loss of such a case would damage Russian credibility further, so these sorts of legal actions are not without strategic value.

These examples demonstrate the importance of direct involvement in all sorts of international institutions and processes for supporting or achieving national objectives. In this sense, *placement and access* means ensuring the United States not only has membership on as many arbitration bodies as possible—no matter how obscure they may appear—but also possesses experts with deep knowledge of the variety of legal instruments that might prove useful for lawfare. This should be a dedicated assignment for legal professionals, not an additional duty. Tropin argues that "planning and implementing such actions should be carried out by specialists who are not bound by day-to-day legal maintenance of state interests," owing to the excessive workload of routine government operations.[88]

Holding powerful global actors accountable under international law is complicated by the fact that Russia and China have not acceded to many of the relevant instruments. Russia does not recognize the compulsory jurisdiction of the ICJ, preventing Ukraine from filing a complaint of simple aggression and instead forcing it to find other jurisdictional approaches, such as the Genocide Convention. Russia also has withdrawn from Additional Protocol I to the Geneva Conventions, complicating the prosecution of war crimes in its ongoing war against Ukraine. China also rejects the compulsory jurisdiction of the ICJ, does not consent to "the individual or interstate communication procedures of any of the UN human rights treaty bodies," and voted against the creation of the ICC.[89]

But the United States is in a poor position to leverage this against China or Russia, because it too does not recognize the jurisdiction or obligations of many international bodies, and in some cases takes even stronger positions against those bodies. As long as the United States refuses to join the international community under basic instruments of international law such as the ICJ and the ICC, any complaint the United States makes against these rivals appears hypocritical. China and Russia will always have leverage against the United States as long as it continues to be a global outlier. Likewise, the United States must be more cautious in promoting novel interpretations of international law, such as humanitarian intervention or preemptive self-defense, as these can be employed by rival states to achieve contrary ends. The United States should fully join the ICJ, ICC, Additional Protocols to the Geneva Conventions, and other fundamental instruments, as proof of its dedication to the protection of international norms and to protect its own credibility.

However, since national politics and various strong interests make it unlikely that the United States will accede to many additional international instruments

and bodies, it can pursue international legal pressure *by, with, and through* partner nations who are fully compliant with the international system. As in normal military operations, acting in a BWT capacity adds legitimacy to one's actions. More significantly, in an international law context, where law is based on consensus of states, BWT tactics build coalitions who present the same interpretation of the law. This would have a much more powerful effect in shaping the evolution of international norms than one or two states, however powerful, acting alone.

It is worth noting that there is a difference between a *by-with-through* approach and when a more powerful state simply coerces a less powerful one to go along with a political scheme. It is only *by-with-through* if the partner state is acting willingly and genuinely. Considering how customary law is formed, state practice is not enough. A powerful state may be able to coerce another state to take a certain action, but it is still missing the required *opinio juris* aspect—the declaration by the state that it understands the action to be lawful or obligated by law—needed to create customary norms.

There is a lot that the United States can do to support the lawfare efforts of like-minded partners. The U.S. legal experts should support Ukraine in its unconventional legal battles against Russia, along with South China Sea states in their sovereignty contests with China. As with SOF advise-and-assist operations, these partners would lead the "mission" while the United States provides resources and expertise.

One of the SOF fundamentals is "humans are more important than hardware."[90] To this end, it is important not only to build expertise in the above areas, but also to centralize doctrine and leadership. This can be accomplished by creating lawfare centers of excellence (COEs) for the United States and its allies. NATO currently has twenty-eight COEs but none are dedicated solely to legal operations.[91] The legal schools of the military services provide courses on international and operational law, but these institutions likely are not the best place to center lawfare doctrine, since the curricula of these schools vary and are typically focused on the more unique legal needs of the respective sponsoring service.

The creation of a lawfare center should be centralized for the entire interagency, to ensure a unified doctrine and unity of effort across the whole of government. This center would deliver the education that legal professionals engaging in lawfare will need to be effective; in addition, these efforts should be coordinated and planned by a single lead agency.[92] In the same way that SOCOM writes the doctrine for military preparation of the environment, one agency should drive doctrine for *legal* preparation of the environment. This would likely be the State Department, since lawfare is fundamentally political,

but alternatively it could be an interagency task force, drawing in representatives from the State, Defense, Justice, and Treasury Departments as well as other agencies and activities.

Legal professionals and operations staffs can prepare the legal environment at every level of warfare. At the tactical level, legal preparation of the environment means having judge advocates embedded in the planning process to ensure a smooth transition to military operations and to reduce risk through training and oversight. At the operational level, legal staff can assist commanders in frontloading necessary legal authorities and providing input on legislative changes. But the largest effort happens at the strategic level, where the whole of government must build international coalitions and engage in international lawfare with global competitors. Ensuring that international norms remain consistent with U.S. priorities will equate to less time spent in political maneuvering prior to—or worse, after—the start of an operation. Favorable norms also cause disruptions to the operations of aggressors who flagrantly violate them, most clearly seen in the fierce global reaction to the Russian invasion of Ukraine.[93]

Currently, the United States does not have a consolidated, interagency doctrine for lawfare. This is despite the fact that the United States has created unified strategies for other global issues, such as counterdrug operations and transnational organized crime.[94] Nor does the federal government have a single representative for lawfare, as compared with, for example, the new national cyber director in the field of cyber.[95] This needs to change to meet and support responses to the strategic challenges posed by adversaries who are now actively promoting authoritarian views in international forums, and requires a unified effort that begins with national policy and trickles down into tactical operations. And this transition needs to happen long before the next "hot" war.

The United States should not unilaterally manipulate the law to pursue selfish ends; the nature of international law, with its focus on collaboration and consensus, is an impediment to self-centered approaches. Lawfare, by its nature, must be conducted by coalitions of the willing, and the primary focus of U.S. lawfare efforts must be in developing those partnerships, aligned to a democratic and beneficial interpretation of international law.

NOTES

The views presented are those of the author and do not reflect the official position of the U.S. Army, U.S. Special Operations Command, or the Department of Defense.

1. Cicero, *For Milo*, in *The Orations of Marcus Tullius Cicero*, ed. C. D. Yonge (London: George Bell & Sons, 1891), sec. 11, available at www.perseus.tufts.edu/.

2. Ibid., sec. 10. Cicero describes the point as follows: "What is the meaning of our retinues, what of our swords? Surely it would never be permitted to us to have them if we might never use them. This, therefore, is a law, O judges, not written, but born with us,—which we have not learnt or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught but to which we were made,—which we were not trained in, but which is ingrained in us,—namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honourable."
3. U.S. Defense Dept., *Special Operations*, Joint Publication 3-05 (Washington, DC: Joint Staff, 2014), pp. IV-3 to IV-4, available at edocs.nps.edu/.
4. For a full explanation of the three levels of war, see Andrew S. Harvey, "The Levels of War as Levels of Analysis," *Military Review* (November–December 2021), available at www.armyupress.army.mil/. Note also that "there are no fixed limits or boundaries between the levels of war."
5. Joseph L. Votel and Eero R. Keravuori, "The By-With-Through Operational Approach," *Joint Force Quarterly*, no. 89 (2018), available at ndupress.ndu.edu/. The by-with-through approach here is defined as operations "led *by* our partners, state or nonstate, *with* enabling support from the United States or U.S.-led coalitions, and *through* U.S. authorities and partner agreements."
6. James F. Glynn [Maj. Gen., USMC], "A Letter from the MARSOC Commander," *Marine Corps Gazette* (January 2021), available at mca-marines.org/. Glynn argues, "MARSOC remains positioned to capitalize on the forward deployed placement and access to help prepare the operating environment for potential future operations in competition and conflict."
7. S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, p. 18 (27 September), available at icj-cij.org/. The court noted that "international law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."
8. Justin Malzac, "Expanding Lawful Influence Operations," *Harvard National Security Journal,* online ed. (12 April 2022), harvardnsj.org/.
9. Statute of the International Court of Justice art. 38, 26 June 1945, available at icj-cij.org/.
10. Ibid.
11. Article 31 of the Vienna Convention on the Law of Treaties establishes that, when assessing state interpretations of treaties, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" must be considered. Vienna Convention on the Law of Treaties art. 31, 23 May 1969, available at oas.org/.
12. For example, see Brian J. Egan, "Remarks on International Law and Stability in Cyberspace" (Berkeley Law School, Berkeley, CA, 10 November 2016), available at 2009-2017.state.gov/. He remarks, "Customary international law, of course, develops from a general and consistent practice of States followed by them out of a sense of legal obligation, or opinio juris."
13. For example, see Rebecca Crootof, "Change without Consent: How Customary International Law Modifies Treaties," *Yale Journal of International Law* 41 (2016), available at scholarship.richmond.edu/. "States explicitly consent to be bound by a treaty, but their consent to customary international law (to the extent it exists) usually must be inferred."
14. For a brief discussion on how new treaties can abrogate previous custom, see Justin Malzac, "A Broken UN Security Council Is Changing International Law: Part 2," *Georgetown Journal of International Law Blog*, 3 May 2022, www.law.georgetown.edu/.
15. For an in-depth analysis of lawfare, see Orde F. Kittrie, *Lawfare: Law as a Weapon of War* (Oxford, U.K.: Oxford Univ. Press, 2016).
16. Charles J. Dunlap Jr. [Col., USAF], "Law and Military Interventions: Preserving

Humanitarian Values in 21st [Century] Conflicts" (presented at "Humanitarian Challenges in Military Interventions Conference," Washington, DC, 29 November 2001), available at scholarship.law.duke.edu/.

17. The common acronym for the instruments of state power is DIME, for diplomatic, informational, military, and economic levers.
18. Zakhar Tropin, "Lawfare as Part of Hybrid Wars: The Experience of Ukraine in Conflict with Russian Federation," in "Non-military Aspects of Security in the Changing International Order," ed. Wiesław Lizak, Kamil Zajączkowski, and Malwina Kołodziejczak, special issue, *Security and Defence Quarterly* 33 (2021), p. 17, available at securityand defence.pl/.
19. For example, see Jill I. Goldenziel, "Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare," *Cornell Law Review* 106, no. 5 (2021), available at cornelllaw review.org/.
20. Tropin, "Lawfare as Part of Hybrid Wars," p. 16 (citing Yevhen Magda).
21. Freedom of movement (or maneuver) is "the actual or perceived degree to which individuals or groups can move from place to place within a given environment or into and out of that environment." For example, see Ben Connable et al., *Assessing Freedom of Movement for Counterinsurgency Campaigns* (Santa Monica, CA: RAND, 2012). Although this is commonly applied to the physical domain, the concept can be, and is, easily applied to other domains, such as cyberspace and law.
22. For an examination of how domestic jurisdiction relates to international issues, see Justin Malzac, "Leveraging Domestic Law against Cyberattacks," *American University National Security Law Brief* 11, no. 1 (2021), p. 32, available at digitalcommons.wcl.american .edu/.
23. Kittrie, *Lawfare*, p. 3.
24. Mark Voyger, "Russian Lawfare—Russia's Weaponisation of International and Domestic Law: Implications for the Region and Policy Recommendations," *Journal on Baltic Security* 4, no. 2 (2018), p. 36.
25. For example, Russia recently declared martial law in the four oblasts of Ukraine that it annexed illegally and issued "a threat to resort to nuclear weapons to defend what Russia sees as its own lands." See Mark Trevelyan, "Putin Demands All-Russia War Effort as He Declares Martial Law in Occupied Ukraine," *Reuters*, 20 October 2022, reuters.com/. Mark Voyger notes: "This lawfare technique was used against Georgia in order to portray the occupations and forced secession of Abkhazia and South Ossetia as a legitimate action in response to the will of the local 'Russian citizens,' coupled with the newly redefined Russian right of 'responsibility to protect.'" Voyger, "Russian Lawfare," p. 39.
26. For a short explanation of how the doctrine of humanitarian intervention violates the intent of the UN Charter, see Malzac, "Broken UN Security Council."
27. Voyger notes the spirit and intent of the instrument is to "increase transparency and reduce tensions in Europe." Voyger, "Russian Lawfare," p. 39.
28. As noted by Voyger, "The Russian modus operandi involves having a major Russian news agency issue a communique on the very morning of the exercise stating that President Putin had called the Minister of Defence Sergei Shoygu in the early hours of that morning to order him to put the Russian troops on full combat alert—a simple but very powerful technique combining lawfare with information warfare." Ibid.
29. Tropin, "Lawfare as Part of Hybrid Wars," p. 20.
30. Ibid.
31. Gordon Corera, "Russian GRU Spy Tried to Infiltrate International Criminal Court," *BBC*, 16 June 2022, bbc.com/; Voyger, "Russian Lawfare," p. 39.
32. John Leicester, "Wife of Jailed Ex–Interpol Chief Says Friend Risks Same Fate," *U.S. News & World Report*, 19 November 2021, usnews .com/.
33. Zane Zovak, "China Seeks to Exploit Interpol Leadership Role to Hunt Dissidents," *Foundation for Defense of Democracies*, 1 December 2021, fdd.org/; Leicester, "Wife of Jailed Ex–Interpol Chief."
34. "International Court Orders Russia to 'Immediately Suspend' Military Operations in Ukraine," *UN News*, 16 March 2022, news .un.org/.

35. Rana Siu Inboden, "Going on Offense against Authoritarians at the UN Human Rights Council and Beyond," *Just Security*, 10 July 2023, justsecurity.org/.
36. Harriet Moynihan, *China's Evolving Approach to International Dispute Settlement* (London: Chatham House, 2017), p. 2, available at chathamhouse.org/.
37. Ibid.
38. Ibid., p. 5.
39. Ibid.
40. Dean Cheng, *Winning without Fighting: Chinese Legal Warfare* (Washington, DC: Heritage Foundation, 2012), available at heritage.org/.
41. Moynihan, *China's Evolving Approach*, p. 3.
42. Daniza Fernandez, "China Claims Arbitral Ruling on South China Sea 'Seriously Violates International Law,'" *Asia News Network*, 15 July 2022, asianews.network/.
43. Ibid.
44. Moynihan, *China's Evolving Approach*.
45. Ibid., p. 3.
46. Ibid.
47. Ibid., p. 9. China sided with Serbia in the dispute on whether the independence declaration of Kosovo was a violation of international law; the ICJ ruled for Kosovo. China has a strong interest in controlling the legal actions of separatist regions.
48. Ibid.
49. For example, see "7th Fleet Cruiser Conducts Freedom of Navigation Operation in South China Sea," *America's Navy*, 28 November 2022, navy.mil/.
50. Ibid.
51. United Nations Convention on the Law of the Sea art. 5, *opened for signature* 10 December 1982, 1833 U.N.T.S., p. 397, available at un.org/.
52. Ibid., arts. 17, 38.
53. Office of the Staff Judge Advocate, "U.S. Indo-Pacific Command's International Military Operations and Law Conference: Record of Proceedings," *U.S. Indo-Pacific Command*, August 2022, pacom.mil/.
54. Jill I. Goldenziel (@JillGoldenziel), "Energized and hopeful after speaking before 25+ US Ally & Partner nations @USINDOPACOM Military Operations & Law Conference in Bangkok," *Twitter*, 20 August 2022, twitter.com/. Goldenziel continued, "At #MILOPS2022 we announced the INDOPACOM Counter-Lawfare Concept of Implementation I've been working on w/ INDOPACOM SJA."
55. USINDOPACOM J06, "Countering PRC Legal Warfare: 'Counter-lawfare,'" *U.S. Indo-Pacific Command*, January 2023, www.pacom.mil/; *Legal Vigilance Dispatch*, October 2022, www.pacom.mil/; USINDOPACOM Joint Operational Law Team, "Topic: High-Altitude Balloons," USINDOPACOM J06/SJA TACAID Series, *U.S. Indo-Pacific Command*, 14 February 2023, www.pacom.mil/.
56. USINDOPACOM J06, "Countering PRC Legal Warfare."
57. U.S. Defense Dept., *Special Operations*, p. II-5.
58. Matt Hutchison and Erick Waage, "'Task Force Green Dragon: Preparation of the Environment in New England Taverns," *Molotov Cocktail* (blog), *War on the Rocks*, 16 February 2016, warontherocks.com/; "The Culper Spy Ring," INTEL.gov.
59. Joshua Kuyers, "'Operational Preparation of the Environment': 'Intelligence Activity' or 'Covert Action' by Any Other Name?," *National Security Law Brief* 4, no. 1 (2013), p. 24, digitalcommons.wcl.american.edu/; "innovative, low-cost, and small-footprint approaches" is quoted by Kuyers from "Posture Statement of Admiral William H. McRaven, USN, Commander, United States Special Operations Command, before the 112th Congress Senate Armed Services Committee," *USSOCOM*, 6 March 2012, www.socom.mil/.
60. Charles T. Cleveland, with Daniel Egel, *The American Way of Irregular War: An Analytical Memoir* (Santa Monica, CA: RAND, 2020), p. 62, available at rand.org/.
61. "Senate Armed Services Committee Advance Policy Questions for Lieutenant General Bryan P. Fenton, USA, Nominee for Commander, United States Special Operations Command," *United States Senate Committee on Armed*

Services, 21 July 2022, armed-services.senate.gov/.

62. Jim Garamone, "Austin Swears In Pentagon's New Special Operations Chief," MilitaryNews.com, 23 September 2021.
63. Headquarters United States Special Operations Command, *Diversity and Inclusion Strategic Plan 2021* (MacDill Air Force Base, FL: 2021). The strategic plan declares specifically, "We are best positioned to Advance Partnerships by creating opportunities through our unique global understanding and placement with a more diverse and inclusive force. In order to fully exploit SOF's organic cultural and regional expertise, worldwide placement, and access, we must increase force diversity with a deep understanding of cross-cultural competencies."
64. Rachel S. Theisen [Maj., USA], "Not Just Enablers Anymore: Women in SOF," in *The Next Decade: Amplifying the Women, Peace and Security Agenda, August 10–11, 2017, Working Papers* (Newport, RI: U.S. Naval War College, 2017), p. 33, digital-commons.usnwc.edu/. The author explains, "Women allow teams to engage an entire population which facilitates the ability to collect intelligence and increase situational awareness. Women increase security postures by conducting physical searches, and deescalating situations. Women allow for a lower profile when conducting sensitive operations. Women provide ample opportunity in elicitation, network development and low-level source operations. As Mullen points out, 'the different perception matters.'"
65. Votel and Keravuori, "The By-With-Through Operational Approach," p. 40.
66. Ibid., p. 42. Note: "The United Nations Security Council adopted Resolution 2189, welcoming ORS [Operation Resolute Support] as an expression of the international commitment to Afghanistan stability and the financial sustainment of the ANDSF [Afghan National Defense and Security Forces] through 2020. The execution of the current BWT approach in support of the ANDSF fosters domestic legitimacy and ownership of Afghan security by its indigenous security institutions and bolsters international legitimacy for the mission."
67. For example, see Diana I. Dalphonse, Chris Townsend, and Matthew W. Weaver, "Shifting Landscape: The Evolution of By, With, and Through," *RealClearDefense*, 1 August 2018, realcleardefense.com/.
68. For example, see "Remote Advise and Assist Operations," *National Security Info*, national-security.info/.
69. Dalphonse, Townsend, and Weaver, "Shifting Landscape."
70. Daniel Mahanty et al., "Civilians and 'By, With, and Through': Key Issues and Questions Related to Civilian Harm and Security Partnership," *Center for Strategic and International Studies*, 25 April 2018, csis.org/.
71. Ibid.
72. Ibid.
73. Emily Knowles, "No Such Thing as a Perfect Partner: The Challenges of 'By, With, and Through,'" *Prism* 8, no. 4 (2020), available at ndu-press.ndu.edu/.
74. For example, see Goldenziel, "Law as a Battlefield."
75. Here we use this term very broadly to encompass all forms of great-power competition that involve employing national power in coercive ways.
76. For example, see Dan Efrony [Maj. Gen., IDF (Ret.)], "The UN Cyber Groups, GGE and OEWG—a Consensus Is Optimal, but Time Is of the Essence," *Just Security*, 16 July 2021, justsecurity.org/.
77. Ibid.
78. Ibid.
79. Ibid.
80. For example, see Olena Borodyna, "Russia's Recent ITU Election Loss Is a Major Setback for China's Internet Governance Ambitions," *ODI*, 5 October 2022, odi.org/.
81. Ibid.
82. Ibid.
83. Marko Milanovic, "ICJ Indicates Provisional Measures against Russia, in a Near Total Win for Ukraine; Russia Expelled from the Council of Europe," *EJIL: Talk!* (blog), 16 March 2022, ejiltalk.org/.
84. Ibid.
85. "International Court Orders Russia to 'Immediately Suspend' Military Operations in Ukraine."

86. Eric Chang, "Ukraine's Lawfare Strategy May Help in Deterring Further Russian Plans for Invasion," in Charles J. Dunlap Jr. [Maj. Gen., USAF (Ret.)], "Guest Post: Eric Chang on 'Ukraine's Lawfare Strategy May Help in Deterring Further Russian Plans for Invasion,'" *Lawfire* (blog), 21 December 2021, sites.duke.edu/lawfire/.
87. Tropin, "Lawfare as Part of Hybrid Wars," p. 23. The author lays out the scheme in detail, noting that "both Ukraine and the Russian Federation are signatories of [the convention]. In accordance with article 13 of the Convention, official documents issued in one state are recognised on the territory of other states. On the other hand, and in accordance with part 3 of the Convention, court decisions of one state are recognised and are subject to enforcement on the territory of other states. . . . Ukraine may adopt regulations on the issuance of a special certificate verifying Ukrainian citizenship or initiate some procedures in Ukrainian courts to establish who holds Ukrainian citizenship [for those in Crimea]. The Russian Federation will have two options: to recognise such certificates or court decisions; or disregard them and denounce the Convention. The second action will constitute violation of international law because the Convention is automatically renewed every five years. Denunciation is possible only by a notification deposited twelve months prior to the end of the respective five-year period."
88. Ibid., p. 24.
89. Moynihan, *China's Evolving Approach*, p. 2.
90. "SOF Truths," *USSOCOM*, www.socom.mil/.
91. For a list of NATO COEs, see "Centres of Excellence," *North Atlanic Treaty Organization*, 4 July 2024, nato.int/.
92. As Tropin shows, Ukrainian lawfare efforts have been hindered by a lack of centralization. The author notes, "Ukrainian state enterprises and private persons from Ukraine are participating in dozens of arbitral and court cases against the Russian Federation and people affiliated with it. Due to the absence of coordination of these proceedings, the legal positions of Ukraine are sometimes in contradiction in different cases." Tropin, "Lawfare as Part of Hybrid Wars," p. 24.
93. For example, see "General Assembly Resolution Demands End to Russian Offensive in Ukraine," *UN News*, 2 March 2022, news.un.org/.
94. For example, see the executive order establishing the U.S. Council on Transnational Organized Crime. Exec. Order No. 14,060, available at whitehouse.gov/.
95. 6 U.S. Code § 1500, available at uscode.house.gov/.

Top to bottom: Admirals Chester W. Nimitz, Ernest J. King, and Raymond A. Spruance on board USS *Indianapolis* in the Pacific, 1944; Vice Admiral William P. Halsey Jr. with members of his staff; Rear Admiral Stephen B. Luce and class; *Zuikaku* crewmembers throwing explosives off the sinking carrier during the battle of Cape Engaño, 25 October 1944

Source: Naval War College Archives.