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Cultural Specificities or Strategic Application of
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INTRODUCTION

On 19 June 2024, a particularly serious clash took place between the People's Republic of China (PRC) and the Philippines near the Second Thomas Shoal. The reef is a disputed area claimed by both countries, but since 1999, the Philippines has maintained a permanent military presence with the help of a warship, the *Sierra Madre*, that was deliberately run aground. The vessel has a permanent crew regularly receiving supplies, however, the Chinese Coast Guard has made repeated attempts to prevent this since 2021. While previously they only employed water cannons and rammed ships carrying supplies, in the incident of 19 June 2024, the Chinese Coast Guard boarded Philippine ships without permission, confiscated the weapons in the possession of the crew, and injured a Philippine soldier in the process.²

Similar incidents are frequent in the region, with over 70 major conflicts between 2010 and 2020, predominantly caused by the Chinese Coast Guard.³ As an illustration of the tension in the South China Sea, just two months earlier, the Philippines and the United States had conducted a joint naval exercise in the region involving some 16,700 troops, which simulated, among other things, how to retake "occupied" islands.⁴ However, at least rhetorically, the conflict is based on differing interpretations of international law. While the People's Republic of China claims that about 90 percent of the South China Sea is under Chinese sovereignty, the Philippines and other states in the region dispute this. This is also clear from the statement of the head of the exercise, Lieutenant General Journey, who stressed that although the exercise is taking place outside the Philippine territorial sea, it is "based on international law and international order."⁵

A significant part of the international legal literature therefore considers the South China Sea conflict as a blatant example of legal warfare, i.e., lawfare, which shows how the People's Republic of China is using international law to try to gain a position to consolidate its sovereignty over the region. In this narrative, the PRC sophisticatedly uses the specificities of international law to its own advantage, while other countries, including the United States, are merely reacting to this tactic. This study aims to challenge this assumption, demonstrating the complexity of applying the concept of lawfare as an analytical category. In order to do so, it

¹ A shorter version of this paper was published as Tamás Hoffmann, Viktória Laura Herczegh, *China and International Law: Lawfare or Strategic Application of International Law?* "Studia Iuridica Lublinensia", 2026, vol. 35., pp. 87-105.

² *South China Sea: Philippines Accuses China of Boarding Boats*. "Deutsche Welle" (19 June 2024). <https://www.dw.com/en/south-china-sea-philippines-china-coast-guard/a-69409869>

³ D. Desierto, *China's Maritime Law Enforcement Activities in the South China Sea*, "International Law Studies", 2020, vol. 96., pp. 258-260.

⁴ *US, Philippines Kick off Combat Drills in South China Sea*, "Deutsche Welle" (22 April 2024). <https://www.dw.com/en/us-philippines-kick-off-combat-drills-in-south-china-sea/a-68885289>

⁵ The United States has repeatedly emphasized that it considers only the Philippines' claim defensible under international law. In a previous incident, for example, the U.S. State Department stated in a statement that "the United States stands with our Philippine ally in maintaining a rules-based international maritime order..." U.S. Support for the Philippines in the South China Sea (29 April 2023). <https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-4/>

first introduces the concept of legal warfare and then the specificities of Chinese legal and international legal conceptions.

DEFINITIONAL CHALLENGES OF THE CONCEPT OF WARFARE

The concept of "lawfare" has gained immense popularity in the last two decades.⁶ The term is a wordplay: a merging of the words law and warfare. Although its explosive spread has been the result of Charles J. Dunlap's 2001 conference paper,⁷ the term actually resurfaced several times in the second half of the 20th century,⁸ with its earliest appearance dating back to a 1957 work on legal history in which it is used as a synonym for law enforcement.⁹

The term's success is presumably due to a lack of specific meaning, thus it can be employed in radically different contexts, and in the aftermath of the terrorist attacks of 11 September 2001, it reflected the prevailing American *Zeitgeist*.¹⁰ Dunlap first defined the concept of legal warfare as "the use of law as a weapon of war"¹¹ or "a method of warfare where law is used as a means of realizing a military objective."¹² Eventually, somewhat refining this definition, he construed lawfare as "the use of law as a means of accomplishing what might otherwise require the application of traditional military force."¹³ According to Dunlap, a typical example of the use of lawfare is when, during the US military intervention in Afghanistan in 2001, the United States purchased commercial satellite imagery of Afghanistan, thus using a legal instrument, the contract, to prevent this militarily crucial information from falling into the hands of potentially hostile organisations.¹⁴ This approach thus takes a narrow view of the concept of lawfare, considering it as a value-neutral method related only to armed conflicts, which examines the ways in which the application of law can affect the conduct of military operations, i.e., the interaction between law and war.¹⁵

However, the value-neutral concept of lawfare was quickly abandoned in the context of the 'war on terror'. The notion of legal warfare took on a negative connotation as a manipulation of the law, used primarily in asymmetric conflicts to abuse the state's desire to enforce the

⁶ According to Google scholar, 3060 scholarly works used the term in 2023 alone. https://scholar.google.com/scholar?q=%22lawfare%22&hl=hu&as_sdt=0%2C5&as_ylo=2023&as_yhi=2023

⁷ C.J. Dunlap Jr, *Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts*. Washington D.C. (2001. november 29.): Humanitarian Challenges in Military Interventions Conference. https://scholarship.law.duke.edu/faculty_scholarship/3500/

⁸ It was even used to advertise discount flight tickets specifically for lawyers with the combination of the words "law" and "airfare". L. Sadat – J. Geng, *On Legal Subterfuge and the So-Called "Lawfare" Debate*, "Case Western Reserve Journal of International Law", 2010, vol.43(1), p. 157.

⁹ "The canton, with clearly reduced status, is still a state, with judicial powers to make some law on behalf of its people, and is responsible for some of the behaviour of its people." J.W. Davies – B.D. Inglis, *Divorce, the Royal Commission and Conflict of Laws*, "The American Journal of Comparative Law", 1957, Vol. 6(3), p. 253. Consequently, the widely held view that the first appearance of lawfare dates back to the 1975 study by John Carlson and Neville Yeomans is clearly mistaken. J. Carlson – N. Yeomans In M. Smith – D. Crossley (eds.): *The Way Out: Radical Alternatives in Australia*. Melbourne, Lansdowne, 1975, p. 155.

¹⁰ Perhaps this explains why Comaroff, who had already used the term lawfare to describe the coercive use of law before Dunlap, is not recognized as the progenitor of the term, since he did not use it in the context of an armed conflict. "That mode of warfare - or rather lawfare, the effort to conquer and control indigenous people by the coercive use of legal means-had many theatres, many dramatic personae, many scripts." J. L. Comaroff, *Colonialism, Culture, and the Law: A Foreword*, "Law & Social Inquiry", 2001, vol. 26(2), p. 306.

¹¹ Dunlap, 2001, p. 2.

¹² Ibid., p. 4.

¹³ C. J. Dunlap Jr.: *Lawfare 101 – A Primer*. "Military Review", 2017, vol. 97., p.9.

¹⁴ Ibid., pp. 9-10.

¹⁵ D. Kennedy, *Of War and Law*. Princeton, Princeton University Press, 2006. p. 125.

law,¹⁶ for instance, the use of protected objects such as schools or hospitals for military purposes, or the use of human shields to protect military targets.¹⁷ Moreover, its scope has been broadened to include not only the application of law in armed conflict but also any act that is contrary to the strategic interests of the state. This new interpretation, in fact, encompasses any international legal norms and institutions that allow state action to be challenged before international and national courts.

Already in 2002, an internal memo to the Bush administration noted that "In the past quarter century various nations, NGO's, academics, international organizations, and others in the international community have been busily weaving a web of international and judicial institutions that today threatens USG interest."¹⁸ This interpretation of lawfare became part of the official strategic objectives of the United States. The 2005 U.S. National Security Strategy identified the use of international institutions and legal processes to counter U.S. government actions as a national security risk on par with terrorism.¹⁹

Lawfare, as an analytical category, already suffers from fundamental conceptual problems in its original, value-neutral form, as anything that can have an impact on a conflict and influence public opinion in relation to it can be considered part of lawfare. Thus, Dunlap cites the example of how, when images of dead civilians were published in the world press in 1991 after the bombing of a civilian facility mistaken for an Iraqi command centre, the bombing of densely populated parts of Baghdad was drastically reduced.²⁰ This presumably also constitutes lawfare, despite the fact that neither the choice of targets nor the execution of the military action can be considered a violation of the law, and was not even suggested by the media. Goldenziel goes even further and defines lawfare as "the purposeful use of law to bolster the legitimacy of one's own strategic, operational, or tactical objectives toward a particular adversary, or to weaken the legitimacy of a particular adversary's particular strategic, operational, or tactical objectives".²¹ However, an approach that might include even aspects of legitimacy can render the concept completely elusive.

The vagueness of the concept is obvious from the first and most often cited monograph on the subject, that was unable to precisely define the meaning and scope of application of the concept.²² Similarly to Dunlap, Kittrie also regards lawfare as a value-neutral concept that uses law as a tool of war, but divides it into two categories: lawfare that can produce the same or similar effects as traditional kinetic military action, and lawfare that can be aimed at weakening or destroying an opponent.²³ Even though the monograph goes into extraordinary details to describe the various situations in which the application of law - or at least its invocation - is potentially relevant, it is often unclear how to distinguish the application of international law from lawfare.²⁴ In many cases, it simply includes in this category the application of law

¹⁶ D. Stephens, *The Age of Lawfare*, "International Law Studies", 2017, vol. 87., p. 328.

¹⁷ E. T. Jensen, *The ICJ's "Uganda Wall": A Barrier to the Principle of Distinction and an Entry Point for Lawfare*, "Denver Journal of International Law and Policy", 2007, vol. 35(2), pp. 269-270.

¹⁸ J. Goldsmith, *The Terror Presidency, Law and Judgment Inside the Bush Administration*. New York, W.W. Norton & Company, 2009. 60.

¹⁹ "Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism." *The National Defense Strategy The United States of America*. March 2005. p. 5. <https://tinyurl.com/yc4zatp6>

²⁰ Dunlap, 2017, p. 10.

²¹ J.I. Goldenziel, Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare, 2021, "Cornell Law Review", pp. 1085-1172. 1097.

²² O. F. Kittrie, *Law as a Weapon of War – Lawfare*. Oxford, Oxford University Press, 2016.

²³ Ibid., pp. 6-8.

²⁴ At the end of the book, the author himself admits that the theoretical explanation of the concept is far from perfect. Ibid., p. 330.

contrary to US or Israeli interests, such as attempts to persuade countries to recognise Palestinian statehood.²⁵

Lawfare, as the abuse, or manipulation of law, however, cannot be a normative category, since in practice a state condemning lawfare always classifies it as an act contrary to its own interests, regardless of the merits of invoking particular legal norms or the initiation of legal proceedings. A typical example of this was when a US author, in examining Israel's Operation Cast Lead, condemned the report of the Commission of Inquiry of the UN Human Rights Council²⁶ as lawfare and claimed that it allowed terrorists to manipulate the use of the laws of war.²⁷ Adopting such an approach would in effect classify most of the historical development of international law as lawfare.²⁸

The concept of lawfare is thus hardly suitable for substantive legal analysis, but it reveals hidden dimensions of the application of law. Legal norms have a legitimizing function, as the public usually regards legal conduct as moral.²⁹ However, David Kennedy points out that in judging the legitimacy of state action, the rules of international law are not always decisive, since "the law in force before the court of world public opinion is not necessarily the law that is technically valid, but the law that is persuasive to a relevant political community".³⁰ Lawfare thus performs two functions in parallel or alternately: it is a means of justifying or challenging legitimacy as well as legality. Justifying or questioning the legality of the actions of a state or non-state actor primarily concerns the dimension of legality, but it also necessarily affects the public's perception of the legitimacy or illegitimacy of the act in question.³¹ However, lawfare can also be used to delegitimize an otherwise lawful act, for example by showing civilian casualties during an attack on a military target, or even to emphasise the legitimacy of an unlawful act, as can be seen, for example, in the debate over humanitarian intervention.³²

²⁵ Ibid., pp. 200-226. Interestingly, in the Latin American context, a very specific interpretation of the concept of lawfare has recently emerged, which refers to abusive prosecutions of democratically elected state leaders. See E. R. Zaffaroni, ¡Bienvenidos al lawfare! Buenos Aires, Capital Intelectual, 2020; C. Améni – H. Albuquerque – M. Beloni, M. Villarreal (eds.): *América Latina na Encruzilhada: Lawfare, Golpes e Luta de Classes*, São Paulo, Autonomia Literária, 2020.

²⁶ *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 September 2009. UN Doc. A/HRC/12/48.

²⁷ L. R. Blank, Finding Facts but Missing the Law: The Goldstone Report, Gaza, and Lawfare, "Case Western Reserve Journal of International Law", 2010, vol. 43(1), pp. 281-282.

²⁸ For example, the debate between Hugo Grotius and John Selden in the 1600s about whether the coastal state had the right to control the high seas. See H. Thornton, *John Selden's Response to Grotius: The Argument for Closed Seas*, "International Journal of Maritime History", 2006, vol. 18(2), pp. 105-127.

²⁹ C. Jochnick, R. Normand, *The Legitimation of Violence: Critical History of the Laws of War*, 1994, "Harvard International Law Journal", pp. 49-95. 57.

³⁰ Kennedy, 2006, p. 96.

³¹ C. Cai, *The Rise of China and International Law – Taking Chinese Exceptionalism Seriously*. Oxford, Oxford University Press, 2019, pp. 272-273.

³² During NATO's 1999 intervention in Yugoslavia, NATO Secretary General Javier Solana, without acknowledging the legality of the use of armed force, stressed that "NATO had a moral duty" to "prevent more human suffering and more repression and violence against the civilian population of Kosovo" and that the military intervention "is intended to support the political aims of the international community". Communiqué PR (1999) 040. (23.03.1999) https://archives.nato.int/uploads/r/null/1/4/145073/PRESS_RELEASE_1999_40_ENG.pdf (22.10.2022) The Independent International Commission on Kosovo, the commission of inquiry set up to investigate the intervention, stated in its final report that the intervention was "illegal but legitimate". INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO: *The Kosovo Report: Conflict, International Response, Lessons Learned*. O.U.P. 2000. 4. Charles Goldstone, chairman of the commission, explained that in the commission's view the use of armed force, while clearly illegal under international law, was "morally and politically justified" because there was an unacceptable distinction between what was legal and what was morally justifiable. Richard GOLDSTONE: The Independent International Commission on Kosovo. "Journal of International Peacekeeping", 2001, vol. 7(1), 336.

Schabas is perhaps overstating the case when he argues that the concept of lawfare is completely useless.³³ Its practical significance may lie in its original, narrowly defined concept, which allows states to identify methods that can be used in armed conflicts and to develop strategies to counter them. On the other hand, the expansive understanding of lawfare seems indistinguishable from the established discourse on strategic application of international law and the abuse of law. The contention that states apply and enforce international law strategically, i.e. seek to achieve specific goals in the development and application of international legal norms, rather than merely rigidly following existing rules, is hardly a novel observation but a mere description of the reality of international relations.³⁴ Moreover, efforts to reform international legal norms often do not merely reflect state self-interest, but may seek to change norms that are perceived as unjust.³⁵ This can be observed in strategic litigation cases brought before international courts.³⁶ The strategic use of international law is now also becoming more common at the national level, as state courts are becoming increasingly more amenable to applying international law norms,³⁷ which is seized upon by NGOs.³⁸

The instability of the term is further illustrated by recent academic debates in Chinese scholarship. In their study of Chinese treaty practice, Shang and Shen introduce lawfare as the use of law as a weapon of conflict, but then argue that China ought to rely more on what they call the “lawfare approach” precisely because doing so would increase predictability for other states and reduce transaction costs on all sides.³⁹ For them, lawfare is not a method of warfare at all but the antonym of politicisation: a discipline that constrains a state by obliging it to formulate its claims in legal terms. Cai’s cognate notion of lawfare in international dispute settlement, taken up by de la Rasilla and Hao, is different again, denoting the accumulation of litigation capacity - the expertise required to appear before international courts and tribunals - rather than the weaponisation of legal norms.⁴⁰ A concept that can simultaneously designate the abuse of law, the disciplined legalisation of politics and the technical competence to litigate is not performing analytical work.

THE RELATIONSHIP BETWEEN CHINESE LEGAL TRADITIONS AND INTERNATIONAL LAW

³³ W. A. Schabas, *Gaza, Goldstone, and Lawfare*, “Case Western Reserve Journal of International Law”, 2008, vol. 43(1), p. 308.

³⁴ S. A. Kocs, *Explaining the Strategic Behavior of States: International Law as System Structure*, “International Studies Quarterly”, 1994, vol. 38(4), pp. 535-556.

³⁵ B. Rajagopal, *Counter-hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, “Third World Quarterly”, 2006, vol. 27, no(5), pp. 767-783.

³⁶ M. Ramsden, *Strategic Litigation before the International Court of Justice: Evaluating Impact in the Campaign for Rohingya Rights*, “European Journal of International Law”, 2022, vol. 33(2) pp. 441-472.; D. Guilfoyle, *The Chagos Archipelago before International Tribunals: Strategic Litigation and the Production of Historical Knowledge*, “Melbourne Journal of International Law”, 2021, vol 21(3), pp. 749-771.

³⁷ E. Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and National Law by National Courts*, “The American Journal of International Law”, 2008, vol. 102(2), pp. 241-274.

³⁸ T. Hondora, *Civil Society Organisations’ Role in the Development of International Law Through Strategic Litigation in Challenging Times*, “Australian International Law Journal”, 2018, vol. 25, pp. 115-136.

³⁹ C. S. Shang, W. Shen, *China’s Treaty Practices: Politicization of Law or Legalization of Politics?*, in I. de la Rasilla, C. Cai (eds.), *The Cambridge Handbook of China and International Law*, Cambridge, Cambridge University Press, 2023, p. 136.

⁴⁰ I. de la Rasilla, Y. Hao, *China and International Dispute Settlement by Adjudicative and Other Means*, in I. de la Rasilla, C. Cai (eds.), *The Cambridge Handbook of China and International Law*, Cambridge, Cambridge University Press, 2023, pp. 514 and 519.

The perception of law by individual states is significantly influenced by their historical and cultural traditions, which also influence their perception of international law.⁴¹ Accordingly, in order to understand the current attitude of the People's Republic of China towards the interpretation, application and change of international legal norms, it is necessary to review the historical development and characteristics of Chinese law. However, a methodological caution is in order at this point. D'Aspremont and Zhang have shown that the encounter between China and international law has been “eventalized” and “narrativized” - elevated into a founding event of the discipline and organised around a common plot of imposition - in the English-language and the Chinese-language literatures alike, but that the two register it in radically divergent orders of meaning.⁴² In the English-speaking scholarship the encounter functions as a modern tale, supplying international law with a traceable origin and a linear extension through space and time that confirms its universality; in the Chinese-speaking scholarship the same facts are absorbed into the tale of modern Chinese nation-building.⁴³ The two tales are, in their reading, inversely symmetrical: each speaks on behalf of an absent other that is the constituted subject of the other tale.⁴⁴ This matters directly for the present inquiry, because it explains how a single body of historical fact can sustain both the Chinese self-portrait of a state recovering from subjugation and the Western portrait of a state that has learned to manipulate the law that once subjugated it. Neither portrait is a neutral report, and naturally the account offered below is not innocent either.

It is important to note that, although in the past several authors have expressed doubts concerning the existence of an actual Chinese legal system before the 20th century,⁴⁵ Chinese law obviously existed even before the founding of the People's Republic in 1949. Although there were few formal written laws in China prior to the 20th century, the vast majority of which were penal norms, Chinese society has traditionally developed a different normative framework from that of the West. This different approach, with its different understanding of the relationship between the individual and the law and the varied roles of law, as well as the controversial role of international law in China's semi-colonial decline during the 19th century, had a significant impact on China's attitude towards the international legal system and can provide a basis for understanding the idiosyncratic approach to international law in China.

1. Development and characteristics of Chinese law

The Chinese conception of law is fundamentally shaped by two radically different philosophical schools of thought about the role of law in regulating society. The first is Confucianism, a school of philosophy that has had a major influence on the thinking of the Chinese people to this day, and which sees the role of law as subordinate to that of morality. The Confucius' (551-479 BC) teachings are made up of four books and five classical texts, in which law appears in a secondary role as a factor influencing human behaviour. Rather than a detailed system of legal norms, Confucianism emphasises the central role of morality and rituals and traditions (*Li*). The ritual 'propriety' means, for example, the decorum of social relations and the specific rituals that govern them.⁴⁶

⁴¹ See further A. Roberts, P. B. Stephan, P-H. Verdier, M. Versteeg (eds.) *Comparative International Law*, Oxford University Press, 2018.

⁴² J. d'Aspremont, B. Zhang, China and International Law: Two Tales of an Encounter, “Leiden Journal of International Law”, 2021, vol. 34, pp. 899-914.

⁴³ *Ibid.*, pp. 909-913.

⁴⁴ *Ibid.*, pp. 913-914.

⁴⁵ See W. P. Alford, *Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law*, “Modern China”, 1997, vol. 23(4) 398-419.

⁴⁶ N. Zhang, *A Confucian Analysis on the Evolution of Chinese Patent Law System*, New York, Springer Publishing, 2020, 98-101.

Confucius claimed that human nature is inherently good, and bad, sinful actions are the result of negative influences from the outside world and inadequate education. According to this line of thought, human beings do not exist as free individual in practice, but as a tiny element of a complex web of social relations, in which everyone should fulfil their duties as a subject, parent, spouse or child according to a well-defined moral-ritual code of the *Li*, and thus strive to create a harmonious social order. Although Confucius and his disciples agreed that both law and morality were necessary for the proper functioning of society, they regarded the application of law as essentially a failure of moral education.⁴⁷

Contrary to the doctrines of Confucianism, the advocates of Legalism argued that human nature was inherently evil, and that without the state's enforcement of law (*Fa*), crime would quickly take hold. To prevent this, the state's role is to enact laws and punish violators with a heavy hand. According to classical legist doctrines, people are not equal by nature, as they can be distinguished by wealth, power and status. Nevertheless, the rule of law should apply equally to all: the guilty should be punished and the innocent rewarded.⁴⁸

The first Chinese legal code was compiled during the reign of the first emperor, Qin Shi Huang (259-210 BC) and bears a clear influence of legalism. Although the emperors of the Qin dynasty aimed to eradicate Confucianism, the code also contains elements of the Confucian hierarchical system, in addition to the most typical legist teachings. The attempt to eradicate Confucian teachings was so unsuccessful, however, and during the post-Qin Han dynasty (206 BC - 220 AD) a new 'Confucianized' legal code was created, premised on social status-based distinction in law.⁴⁹

This concept remained central to Chinese law throughout the imperial period. The structure of the various codes issued under the later dynasties did not undergo major changes, and there is a marked continuity in the way most of the regulations are viewed. However, there was also a certain dynamism in the development of the Chinese legal system, for although the foundations of the imperial code remained firm, the smaller laws, customary rules and practices that were organised around it were constantly changing, growing and expanding. These laws, however, focused primarily on the criminal consequences of breaking the law, and the Chinese state left the regulation of private relations to the traditional moral rules, the *Li*, and only penalised its violation. Thus, the concept of law in China became synonymous with criminal law.⁵⁰

The application of Confucian rules therefore prevailed over written law in practice. Law was generally seen as an instrument of domination, which ignored social hierarchy and which the virtuous man avoided if possible. As a result, the Chinese mentality has been defined by the negotiated settlement of disputes but even then, when it came to a court case, it was often the case that the judge decided on the basis of the *Li*, setting aside the substantive law.⁵¹

Western observers, however, focusing solely on the undoubted cruelty of Chinese criminal law, have described the Chinese legal system as primitive and violent, ignoring the Confucian approach that pervades Chinese society. As a result, China's leading officials and intellectuals have attempted to reform the country's legal system in a way that would remove the basis for Western criticism while maintaining the traditional values of the legal system. It was with this aim in mind that initiatives were taken in the last decades of the Qing dynasty (1644-1912 AD) to create a new, world-class legal system in China, modelled on the most

⁴⁷ M. A. Carrai, *Historiographies of International Law from a Chinese Perspective*, "Clio Thémis", no. 18., 2021.

⁴⁸ Y. Zhao, M. NG: *Chinese Legal Reform and the Global Legal Order: Adoption and Adaptation*, Cambridge University Press, 2017. 245-251.

⁴⁹ Carrai, 2021. pp. 8-11.

⁵⁰ A. E. Tay, *Law in Communist China - Part 1*. "Sydney Law Review", 1969, vol. 6(2), 158-162.

⁵¹ J. Pan, *Chinese Philosophy and International Law*, "Asian Journal of International Law", 2011, vol. 1(2) pp. 234-235.

advanced legal systems in Europe. Although there were several attempts to incorporate a Western, liberal approach to law in the twilight of the imperial era and the dawn of the republic, all proved unsuccessful during these turbulent decades.⁵²

After the founding of the People's Republic of China (1949-), the country's legal system followed the model of the Soviet Union's socialist system, which regarded law as a subordinate tool of politics,⁵³ completely breaking with the legal system that had existed until then, and thus abolishing all the laws introduced by the Kuomintang and the Constitution of the Republic of China.⁵⁴ On the one hand, this ideology was not in itself fully in line with the tradition of Chinese law, and on the other hand, the Chinese Communist Party leadership had removed almost all legal experts from their positions.⁵⁵ As a result, by the end of the 1970s there were only 3,500 lawyers left in China.⁵⁶ The concept of law as having an autonomy and role outside politics came under sharp attack during the Cultural Revolution (1966-76), and the importance of legal regulation was reduced to the articulation of the will of the state.⁵⁷ Formal legal institutions and higher legal education virtually disappeared in China for ten years.⁵⁸

With Deng Xiaoping's rise to power, the need to reform the legal system came to the fore again. At the heart of this was the restoration and consolidation of the basic legal institutions to prevent a crisis like the Cultural Revolution from happening again. Another aim of the reform, in line with the trend in China in the 1970s and 1980s, was to bring the Far Eastern power closer to the Western world, particularly in economic terms. To this end, several law courts and law universities were re-established, and several important areas of law were codified.⁵⁹

In the last decades of the 20th century, virtually all the essential elements of the Chinese legal system underwent rapid and significant change. But of course, this has not been without its problems - on the one hand, because these reforms have been carried out in a relatively short period of time. on the one hand, and because the targeted westernisation of the system could not be unhindered while Chinese traditions were being carried forward. As a result, the Chinese approach to law and the application of the law is currently facing a number of problems that need to be resolved.⁶⁰ Many authors believe that since the 2000s there has been a regression and that the role of the courts has been marginalised,⁶¹ although many refute this view.⁶² The Chinese official position, however, is that the PRC is committed to developing the Chinese

⁵² Z. Yin, *Heavenly Principles? The Translation of International Law in 19th-century China and the Constitution of Universality*, "European Journal of International Law", 2017, vol. 27(4), pp. 132-135.

⁵³ The willingness to adapt the Soviet model is illustrated by the translation of many Soviet law codes and law textbooks into Chinese and the sending of Chinese students to the Soviet Union to study law. J. Chen, *Chinese Law: Context and Transformation*, Leiden, Martinus Nijhoff, 2008. 48.

⁵⁴ The 1949 Chinese Communist Party guidelines stated that "Law is the will of the state compulsorily and openly enforced through military forces by the ruling class." Instruction of the Central Committee of the CPC to Abolish the Kuomintang Six Codes and to Define the Judicial Principles for the Liberated Areas. Cited in *ibid.* p. 44.

⁵⁵ *Ibid.*, p. 47.

⁵⁶ V. H. Li, *Law without Lawyers – A Comparative View of Law in China and the United States*, Oxfordshire, Routledge, 1978.

⁵⁷ See in more detail: A.E. Tay, *Smash Permanent Rules: China as a Model for the Future*, "Sydney Law Review", 1976, vol. 7(3), pp. 400-423.

⁵⁸ H. Xue, *China's Open Policy and International Law*, "Chinese Journal of International Law", 2005, vol. 4(1), 135.

⁵⁹ Carrai, 2021, p. 9.

⁶⁰ X. Zhang, W. Yan, *Forty-Years of the Modernization of Chinese Socialist Legality: Strategy, Lacuna, and Outlook*. "German Law Journal", 2022, vol. 23(5), 691-712.

⁶¹ C. F. Minzner, *China's Turn against Law*. "American Journal of Comparative Law", 2011, vol. 59(4), 935-984.; S. Shirk, *China in Xi's "New Era": The Return to Personalistic Rule*, "Journal of Democracy", 2018, vol. 29(2), 22-36.

⁶² T. Zhang, T. Ginsburg, *China's Turn Toward Law*, "Virginia Journal of International Law", 2019, vol. 59(2), pp. 306-389.

legal system, as demonstrated by Chinese Premier Li Ko-jiang's speech to the 2017 Congress of the People's Republic of China, in which he stressed the importance of 'due process' in areas such as the environment, economy and finance, the fight against crime and corruption, charities/social organisations, cyber governance, religious issues, and military and legal reform.⁶³

Alter and Li's comparative study of Chinese and Western rule-of-law discourses helps to explain why this domestic trajectory matters for international law. They argue that whereas in the West the rule of law is treated as constitutive of legitimate governance, Chinese discourse conceives it teleologically and functionally, as a means towards some further end — economic development, social order and stability, the reduction of corruption, regime legitimacy, modernisation or international reputation — so that it has not acquired the same normative and cultural appeal as in the West.⁶⁴ On this account the instrumentalism that Western commentators detect in Chinese international legal practice is not a foreign-policy stratagem devised for external use, but the outward projection of a domestic conception of law. The distinction matters for the lawfare debate: an instrumentalist conception of law is a general disposition, while lawfare, properly understood, is a deliberate operational method directed at an adversary.

2. Chinese reception of international law

China's reception of international law began in the first half of the 19th century, when Western states tried to persuade the Chinese Empire to liberalize its international trade relations and to respect the principle of sovereign equality between states by invoking the norms of international law. However, the concept of equality between states was completely alien to Chinese thinking. China imagined the regulation of inter-state relations in a system based on its own cultural traditions, with China, the 'Celestial Empire', at the centre, with a mission to achieve celestial harmony in the 'sphere below the sky' (*tianxia*). In this conception, the Chinese Empire was necessarily above all other states, since its transcendental mission placed it at the apex of a hierarchical world order.⁶⁵ Thus, instead of international law, China followed a kind of international *law* in which the Sinocentric world order demanded a strict hierarchy based on moral principles, with the recognition of the leading role of the Chinese Empire.⁶⁶

For this reason, relations between China and other states were based on a system of tribute established by the Ming dynasty (1368-1644), in which subjugated states had to declare their acceptance of China's supremacy by paying regular taxes.⁶⁷ China also tried to apply this to Western states, as can be seen by the fact that in 1793 Emperor Qianlong wrote to King George III of England, urging the English monarch to "Tremblingly obey and show no negligence!"⁶⁸ Since the Western states refused to declare their inferiority, the Chinese government refused to meet their economic demands, such as opening more Chinese ports to international trade.⁶⁹

By the 19th century, however, the growing conflicts with Western countries forced the Chinese Empire to appeal to the norms of international law. In 1839, the imperial envoy Lin

⁶³ Cai, 2019, pp. 156-162.

⁶⁴ K. J. Alter, J. Li, Chinese and Western Perspectives on the Rule of Law and Their International Implications, in I. de la Rasilla, C. Cai (eds.), *The Cambridge Handbook of China and International Law*, Cambridge, Cambridge University Press, 2023, p. 108.

⁶⁵ See M. A. Carrai, *Sovereignty in China - A Genealogy of a Concept since 1840*, Cambridge, Cambridge University Press, 2019, 30-42.

⁶⁶ L. Zhaojie, *Traditional Chinese World Order*. "Chinese Journal of International Law", 2002, vol. 1(1), p. 20.

⁶⁷ Y. Zewei, *Western International Law and China's Confucianism in the 19th Century. Collision and Integration*. "Journal of the History of International Law", 2011, vol. 13(2), 290-294.

⁶⁸ Emperor Qianlong: Letter to George III, 1793. <https://china.usc.edu/emperor-qianlong-letter-george-iii-1793>

⁶⁹ Carrai, 2019, p. 45.

Zexu attempted to eliminate the opium trade to China, which was mainly mediated by British merchants. Since the British government considered the destruction of opium stocks as an attack on free trade and thus a violation of international law, the chief envoy had parts of Emerich de Vattel's seminal international law monograph, *Le droit des gens*, translated and argued that it was part of state sovereignty under international law whether a state prohibited which products it allowed to be traded.⁷⁰

However, this early attempt for the strategic application of international law ultimately failed. The Chinese Emperor had suffered a heavy defeat by Britain in the First Opium War (1839-1842) and as a result China lost Hong Kong Island, was forced to pay reparations, open more ports to foreign traders and accept consular jurisdiction, so that from then on British consuls, not Chinese courts, were to hear legal proceedings involving British citizens on Chinese territory.⁷¹ In the course of the 19th century, China was eventually forced to ratify similar unequal treaties with all the Western powers, which severely restricted its territorial sovereignty and remained in force until 1944.⁷² Unsurprisingly, the period between 1839 and 1949 has been referred to by Chinese society as the "century of humiliation".⁷³

During this period, international law functioned as one of the most important instruments for limiting China's sovereignty. Classical international law distinguished between 'civilised' and 'uncivilised' states and the full range of sovereign rights could only be exercised by civilised states. The standard of civilization was essentially the adoption of Western culture, including Western law, so that from a Western perspective even China, with its millennia of civilization, was not a fully civilised state and thus its sovereignty could be restricted.⁷⁴ Even though the Chinese Empire actively tried to employ international law to promote its own interests in this period, this was essentially unsuccessful.⁷⁵

China did not have a positive experience with international law after World War II, either. Although by the end of World War II, all unequal treaties had been abolished and with the adoption of the UN Charter, China became nominally one of the leading powers, as a permanent member of the Security Council, in reality, Taiwan represented China in the United Nations instead of the People's Republic of China until 1971, and the era of humiliation continued. In this period, the People's Republic of China rejected the concept of a single international legal system binding on all states and seriously considered the creation of a parallel international institutional system.⁷⁶ The international legal system was seen as an

⁷⁰ Ibid., pp. 48-49. It seems that the Chinese Empire was already willing to accept the concept of sovereign equality to a limited extent. In the Treaty of Nerchinsk of 1689, China and Russia settled their border dispute as equals, and the Jesuit monk Tomás Pereira, who played a major role as a mediator in the creation of the treaty, claimed to have explained certain basic norms of 'European common law' to the emperor. See Sze Hong LAM: The Gentle Civilizer of the Far East - A Re-Examination of the Encounter between 'China' and 'International Law'. "Journal of the History of International Law", 2024, vol. 26, p. 14.

⁷¹ Ibid., 23.

⁷² A. Peters, *Treaties, Unequal*, *Max Planck Encyclopedia of Public International Law*, online. Interestingly, however, this did not automatically mean the end of Chinese leadership in the region, with some states in the region, such as Vietnam and Korea, continuing to recognise the subordination system, which only ceased to exist after the loss of the Japan-China War (1894-1895). Carrai, 2019, i.m. 59. D'Aspremont and Zhang, on the other hand, note that the term is a twentieth-century coinage commonly traced to Chinese nationalists of the 1920s, and that the Qing did not characterise the instruments as unequal when it concluded them. D'Aspremont, Zhang, 2021, p. 905.

⁷³ A. A. Kaufman, *The "Century of Humiliation", Then and Now: Chinese Perceptions of the International Order*, "Pacific Focus", 2013, vol. 25(1), pp. 1-33.

⁷⁴ See T. Hoffmann, *The Concept of the Standard of Civilization in International Law*. "MTA Law Working Papers", 2016, no. 17, pp. 1-13.

⁷⁵ P. C. W. Chan, *China's Approaches to International Law since the Opium War*. "Leiden Journal of International Law", 2014, vol. 27(4), p. 868.

⁷⁶ J. A. Cohen, H. Chin, *People's China and International Law: A Documentary Study*. Princeton, Princeton Legacy Library, 1974, 284.

instrument of global capitalism, in accordance with the Marxist conception of law, which was primarily used to serve the interests of Western imperialist states.⁷⁷ This instrumentalist conception is illustrated, for example, by the statement of a Chinese jurist, Chu Li-lu, who stated that international law is a dispute settlement instrument for solving international problems, which should only be used if it is beneficial to China, otherwise new instruments must be created.⁷⁸

At the same time, the People's Republic of China has adopted certain principles of international law as the foundation of international relations. In the preamble of the 1954 Sino-Indian Agreement, the parties to the treaty committed themselves to the five principles of "Peaceful Coexistence", which are (1) mutual respect for territorial integrity and sovereignty, (2) non-aggression, (3) non-interference in internal affairs, (4) equality and cooperation based on mutual benefit, and (5) peaceful co-existence. These principles later had a decisive influence on the functioning of the Non-Aligned Movement.⁷⁹

With Deng Xiaoping's rise to power, the PRC also reassessed its relationship with international law. By shifting the focus from international class struggle to economic development, international law became an effective tool for the country's integration into the international economic cooperation system.⁸⁰ As a sign of this, in 1979, Chinese universities resumed teaching international law.⁸¹ China no longer planned to abolish or rewrite the international legal system, but neither did it automatically accept its authority,⁸² for example, Chinese legal doctrine continues to consider unequal treaties concluded during the 19th century as ineffective, which could potentially challenge current international boundaries.⁸³ The Chinese legal system is dualist, i.e. international treaties do not become part of domestic law without incorporation, and therefore many international legal obligations, such as human rights standards, are not binding in Chinese domestic law.⁸⁴ Nevertheless, the People's Republic of China has repeatedly emphasized the importance of international legal norms, attaching particular importance to the principle of sovereign equality because of historical experience.⁸⁵ In 2014, for example, the Central Committee of the Communist Party of China stressed that

⁷⁷ X. Hanqin, *Chinese Contemporary Perspectives on International Law – History, Culture and International Law*. Hague, Recueil des Cours, 2011, vol. 355, 59.

⁷⁸ Cited by H. Chiu, *Communist China's Attitude Toward International Law*, "American Journal of International Law", 1966, vol. 60(2) pp. 248-249. When India proposed in 1962 that the border dispute between them be settled by the International Court of Justice in The Hague, the People's Republic of China rejected the proposal on the grounds that the court was an instrument of Western imperialist powers applying "bourgeois international law". Y. Hao, I. Rasilla, China and International Adjudication-Picking Up Steam? "Journal of International Dispute Settlement", 2021, vol. 12(4), p. 641.

⁷⁹ S. Chesterman, Asia's Ambivalence about International Law and Institutions: Past, Present and Futures. "European Journal of International Law", 2017, vol. 27(4), p. 956. In 2014, on the 50th anniversary of the adoption of the Convention, Wen Jia-pao, Premier of the People's Republic of China, stressed that the five principles are in line with the purposes and principles of the UN Charter and China will continue to shape its foreign relations in accordance with them. J. Wen, *Carrying Forward the Five Principles of Peaceful Coexistence in the Promotion of Peace and Development*, "Chinese Journal of International Law", 2004, vol. 3(2) 364.

⁸⁰ Junwu, 2011, p. 239.

⁸¹ T. Wang, *Teaching and Research of International Law in Present Day China*. "Columbia Journal of Transnational Law", 1983, vol. 77(1), p. 77.

⁸² L. Henkin, *How Nations Behave*, New York, Columbia University Press, 1979, pp. 109-110.

⁸³ For example, in an exchange of messages on the Sino-Soviet border on 8 March 1963, the Chinese side stressed that these borders were based on unequal treaties and could not be valid. L. Schreier, *China's Use of International Law in Border Disputes: The Cases of India and the Soviet Union*, "Iustitia", 1974, vol. 2(2), 32.

⁸⁴ X. Hanqin – J. Qian, *International Treaties in the Chinese Domestic Legal System*, "Chinese Journal of International Law", 2009, vol. 8(2), p. 302.

⁸⁵ Hanqin, 2011, p. 90. Emphasizing the central role of sovereignty, however, is also partly a vestige of the impact of Soviet international legal doctrine. W. Muller, *The Power of Discourse: Doctrinal Implications of China's Normative Aspirations*. "Hague Yearbook of International Law", 2021, vol. 34, p. 61.

China should "vigorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law... use legal methods to safeguard our country's sovereignty, security and development interests".⁸⁶ The foreign policy doctrine "Global Community of Shared Future for Mankind", developed by PRC President Xi Jinping, also assigns a decisive role to international law in the management of international relations.⁸⁷

Accordingly, since 2013, China has been the most active major power in the UN General Assembly, where it has initiated hundreds of resolutions and regularly speaks out on key international law issues.⁸⁸ For example, it has consistently opposed an expansive interpretation of the prohibition of use of force between states, such as the concept of self-defence against preventive or non-state actors, or humanitarian intervention.⁸⁹ However, the PRC has sought to avoid recourse to international dispute settlement fora, with the exception of the World Trade Organisation dispute settlement procedure and investment disputes, arguing that diplomatic dispute settlement is the most appropriate way to resolve conflicts under international law.⁹⁰ Chinese opposition is reinforced by the assumption that international judicial fora are under Western influence and thus biased in their decision-making processes.⁹¹ China is also trying to use its influence to increase the representation of developing countries in various international organisations, especially economic and financial organisations.⁹²

In sum, China recognises the importance of international legal norms and seeks to preserve the stability of the international legal system.⁹³ Still, as a result of Chinese cultural traditions and historical experience, it has shifted from a value-based approach to international law to an instrumentalist approach to law, seeking to avoid or even modify international legal norms that are contrary to its interests.⁹⁴

3. Chinese approach to lawfare

In recent years, a number of Western analysts, particularly in the US, have portrayed China as a state that has consistently and systematically used legal warfare for strategic purposes.⁹⁵ According to this narrative, the PRC has been working for decades to weaponise the rules of international law, and this has been clearly demonstrated in recent conflicts. In this section, we review whether decades of conscious planning can indeed be observed behind

⁸⁶ CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward <https://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward/>

⁸⁷ X. Jinping, *On Building a Human Community with a Shared Future*. Beijing, Central Compilation & Translation Press, 2019.

⁸⁸ I. Rasilla – Y. Hao, *The Community of Shared Future for Mankind and China's Legalist Turn in International Relations*. "Chinese Journal of International Law", 2021, vol. 20(2), p. 345.

⁸⁹ Ibid., p. 360.

⁹⁰ Hao – Rasilla, 2021, pp. 649-652.

⁹¹ D. Zhu, *China and the International Criminal Court*, London, Palgrave MacMillan, 2018, p. 38.

⁹² H. Huang, *China's Contribution to the International Rule of Law since the Restoration of Its UN Seat 50 Years Ago*. "Chinese Journal of International Law", 2021, vol. 20(3), p. 541.

⁹³ D. Jielong, *Statement on the Rule of Law at the National and International Levels*, "Chinese Journal of International Law", 2001, vol. 6(1), pp. 185-188.

⁹⁴ J. D'Aspremont, *International Law in Asia: The Limits to the Western Constitutionalist and Liberal Doctrines*, "Asian Yearbook of International Law", 2007, vol. 13, p. 27.

⁹⁵ See i.e. Kittrie, 2016, i.m. 161-196.; D. Cheng, *Winning Without Fighting: Chinese Legal Warfare*. The Heritage Foundation, 2012. <https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare>; M. Vanhullebush – W. Shen, *China's Air Defence Identification Zone: Building Security through Lawfare*, "The China Review", 2016, vol. 16(1), 121-150.; T. Rühlig, *How China Approaches International Law: Implications for Europe*. European Institute for Asian Studies, May 2018.

China's legal warfare strategy and whether this can be observed in China's behaviour during the South China Sea conflict.

Western authors repeatedly refer to 1996 as the beginning of Chinese lawfare, when the President of the People's Republic of China and General Secretary of the Communist Party of China, Jiang Zemin, declared at a gathering of international legal experts in Beijing that 'international law must be used as a weapon to defend the interests of our state and maintain national pride'.⁹⁶ This exhortation, however, could simply be interpreted as an expression of a general instrumentalist approach towards law that already pervades Chinese domestic discourse, and not a plan to weaponise international law against adversaries.⁹⁷

On the other hand, the People's Republic of China has officially introduced that concept of legal warfare (*falü zhan* in Mandarin) as an integral part of its 'grand strategy'⁹⁸ since the 2003 decision by the Central Committee of the Communist Party of China and the Chinese Central Military Commission to introduce and implement the so-called 'Three Warfare'. Within this framework, China formally incorporated psychological warfare, warfare through the media, and *falü zhan* into its military doctrine, which was defined as "the use of international and domestic laws to gain international support and manage potential political repercussions of China's actions."⁹⁹ It is important to emphasize that China has defined this concept specifically in relation to military actions and Chinese textbooks analyzing *falü zhan* have retained this approach.¹⁰⁰

Foreign analysts have paid particular attention to the monograph entitled "Unrestricted Warfare"¹⁰¹ by two Chinese colonels, Qiao Liang and Wang Xiangsui, published in English in 1999, which some consider to be "one of the most important works of Chinese military thought in recent years."¹⁰² This work is often referred to as the first doctrinal exposition of the Chinese lawfare concept¹⁰³ as it states that China must take a leading role in international norm-setting as part of its warfare, and thus, according to the book, international legal warfare is the seizing of an opportunity to develop normative regulation.¹⁰⁴ The book's true significance, however, may well be inversely proportional to the international attention it received: as Baughman has pointed out, it was not published by a leading Chinese publisher and there is no evidence that it reflects the official Chinese position, which is not surprising given, for example, that the authors' vision is often irrational, for example, that they attribute mystical significance to the rules of the golden ratio.¹⁰⁵

From the above, it is clear that at the doctrinal level, the PRC has indeed accepted the importance of legal warfare in armed conflict, but the question is how it applies it in practice.

⁹⁶ D. Wang, *China's Unequal Treaties: Narrating National History*, New York: Rowman and Littlefield Publishers, 2008, p. 128.

⁹⁷ R. D. Williams, *International Law with Chinese Characteristics: Beijing and the "Rules-Based" Global Order*, Washington D.C., Brookings Institution, 2020, p. 3.

⁹⁸ D. B. H. Denoon (ed), *China's Grand Strategy: A Roadmap to Global Power?*, New York, New York University Press, 2021.

⁹⁹ Central Military Commission, People's Liberation Army of China Regulation on Political Work, Article 14(18) (Dec. 2003), cited in Kittrie, 2016, p. 162.

¹⁰⁰ Kittrie, 2016, p. 162.

¹⁰¹ Q. Liang, W. Xiangsui, *Unrestricted Warfare*, Beijing, P LA Literature and Arts Publishing House, 1999.

¹⁰² A. Bartók, „Korlátok nélküli hadviselés” (超限战) – Egy kínai nézőpont a 21. század hatalmi versengéséről. „Hadtudományi Szemle”, 2018, 11(3), p. 338. In several international editions the book was published under the title “China's master plan to destroy America”, underscoring its presumed importance. Q. Liang, W. Xiangsui, *Unrestricted Warfare: China's Master Plan to Destroy America*, New Delhi, Natraj Publishers, 2007.

¹⁰³ Kittrie, 2016, pp. 162-163.

¹⁰⁴ Liang, Xiangsui, 1999, pp. 42-43.

¹⁰⁵ J. Baughman, “Unrestricted Warfare” is Not China's Master Plan (25 April 2022) *China Aerospace Studies Institute* <https://www.airuniversity.af.edu/CASI/Articles/Article-Display/Article/3004313/unrestricted-warfare-is-not-chinas-master-plan/>

According to Kittrie, this can be clearly observed, among other things, in maritime conflicts, which are manifested in particular in new attempts to interpret international law rules, in international institutions, in the shaping of international jurisprudence, and in the adoption of domestic laws that reflect China's interpretation of the law.¹⁰⁶ In the following, we will examine whether systematic and concerted legal warfare by the PRC can be observed in the South China Sea conflict, the maritime dispute that has received the most international attention in recent history.

THE SOUTH CHINA SEA TERRITORIAL DISPUTES – LAWFARE OR STRATEGIC LAW ENFORCEMENT?

1. Historical background of the South China Sea conflict

The People's Republic of China has more ongoing territorial disputes than any other major state.¹⁰⁷ Most of the disputes relate to the South China Sea, which covers an area of some 3.5 million square kilometres and through which some 30% of the world's maritime transport routes, making it the world's most important sea route,¹⁰⁸ and is of outstanding importance for fisheries,¹⁰⁹ as well as likely containing very significant hydrocarbon deposits.¹¹⁰ There are 3 archipelagos of disputed status in the sea, the Paracel, Pratas, and Spratly Islands, which consist of over 200 small islands, rocks, cays, shoals and reefs.¹¹¹

Chinese authors have claimed Chinese territorial sovereignty over the region as far back as the A.D. Chinese authors trace Chinese territorial sovereignty back to the 3rd century BC,¹¹² but it seems more plausible that until the 19th century no state had any legal claim to the area, as it was unsuitable for permanent settlement and served at most as temporary accommodation for fishermen. Since the importance of the South China Sea lay primarily in its function as a maritime transport route, these geographical formations posed a threat to the safety of navigation, and their identification and mapping was not intended to establish sovereignty over the territories, but to enable navigators to avoid these potential sources of danger.¹¹³ From the 20th century onwards, Britain, France and then Japan laid claim to various areas at sea, but after the defeat of the Japanese Empire in World War II and the withdrawal of the colonial powers, they were, of course, abandoned. Since then, the land areas of the South China Sea have been claimed to varying degrees by the coastal states of the region. In particular, the status of the Spratly Islands, with potentially significant hydrocarbon deposits, which are considered

¹⁰⁶ Kittrie, 2016, p. 165.

¹⁰⁷ Kim, S. S., *Sovereignty in the Chinese Image of World Order* in: R. McDonald (ed.), *Essays in Honour of Wang Tieya*. Dordrecht, Martinus Nijhoff, 1994. p. 442.

¹⁰⁸ B. Sacks, *The Political Geography of the South China Sea Disputes: A RAND Research Primer*. 2022, RAND. 3.

¹⁰⁹ Approximately 12 percent of the world's total fish catch comes from here. A. Rabbani, *China's Hegemony in the South China Sea*, *World Affairs: The Journal of International Issues*, 2009, vol. 23(9) p. 70.

¹¹⁰ H. Zhong, M. White, *South China Sea – Its Importance for Shipping, Trade, “Energy and Fisheries*, *Asia-Pacific Journal of International Law and Policy*”, 2017, vol. 2(1), p. 24.

¹¹¹ In Chinese literature, these archipelagos are referred to by Chinese names, such as Hsisa for the Paracel Islands, Dongsa for the Pratas Islands and Nansa for the Spratly Islands. The People's Republic of China claims that there is a fourth archipelago, the Chongsa Islands, but in reality there are no islands at this geographical coordinate, only rocky reefs, cliffs and headlands. The Natuna Islands are entirely under Indonesian sovereignty and their legal status is not disputed by any state. B. Sacks, *The Political Geography of the South China Sea Disputes: A RAND Research Primer*. 2022, RAND. 3-4.

¹¹² J. Shen, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, “*Chinese Journal of International Law*”, 2002, vol. 1(1), pp. 102-105.

¹¹³ S. Tonnesson, *Why Are the Disputes in the South China Sea So Intractable? A Historical Approach*, “*Asian Journal of Social Science*”, 2002, vol. 30(3), pp. 572-574.

sovereign territory in whole or in part by the People's Republic of China, Vietnam, the Philippines, Malaysia, Brunei and Taiwan, is disputed.¹¹⁴

In 1988, disputes over the islands also led to a direct military confrontation between the Socialist Republic of Vietnam and the People's Republic of China, during which three Vietnamese ships were sunk and more than 70 Vietnamese soldiers were killed.¹¹⁵ In order to prevent similar conflicts, in 2002 China and the Association of Southeast Asian Nations (ASEAN) signed an agreement entitled "Declaration on the Conduct of the Parties in the South China Sea".¹¹⁶ Although this document is only a declaration of intent and not a legally binding treaty, the parties do take political responsibility to exercise restraint, to strive to maintain peace and stability and to avoid the development of uninhabited areas in the region in order to prevent escalation of conflicts.¹¹⁷

However, this latter objective has not been achieved. Since the 1990s, the People's Republic of China has been increasing the area under its control by land reclamation, expanding the islands under its control and creating artificial islands from various rocky cliffs and coral reefs. In 1991, it built airfields on Woody Island, part of the Paracel Islands, and between 1995 and 1998 it developed infrastructure on Mischief Reef. However, the activity that has attracted significant protest from the international community has been the reef filling on the Spratly Islands, where the PRC increased the area under its control by 809 hectares between 2013 and 2015, creating a significant military infrastructure, including a military garrison, airport and port.¹¹⁸ Although the Socialist Republic of Vietnam, Taiwan and the Philippines have also built have built airports on their islands, and Vietnam has added 0.2 square kilometres of land, but these developments dwarf the Chinese work.¹¹⁹

2. The "nine-dash line" and the Permanent Court of International Arbitration - Philippine counter-lawfare?

The PRC is seeking to consolidate its sovereignty over the South China Sea on the basis of historical rights, which is underpinned by the U-shaped demarcation, the so-called "*Nine-Dash Line*", first published by the Chinese Ministry of the Interior in 1947.¹²⁰ Even though the PRC has never explained the origin of this supposedly binding legal institution,¹²¹ this demarcation line demarcates about 80% of the territory of the South China Sea with straight baselines and has been published in several different versions.¹²² Still, that there have been other occasions in the past when maps published by the PRC have included territories under

¹¹⁴ B. K. Murphy, *Dangerous Ground: The Spratly Islands and International Law*, "Ocean and Coastal Law Journal", 1995, vol. 1(2), p. 189. The Spratly Islands consist of more than 100 geographical formations spanning a distance of 410,000 km. Sacks 2002, p. 5.

¹¹⁵ Tonnesson 2002, p. 588.

¹¹⁶ 2002 Declaration on the Conduct of the Parties in the South China Sea, 11 April 2002.

¹¹⁷ Zhang and Chen note that the formula was first articulated not for the South China Sea but in relation to the Diaoyu/Senkaku Islands, where China proposed to Japan the joint development of resources in the surrounding waters, and was only subsequently extended to the South China Sea. X. Zhang, X. Chen, China and the Settlement of Territorial Disputes, in I. de la Rasilla, C. Cai (eds.), *The Cambridge Handbook of China and International Law*, Cambridge, Cambridge University Press, 2023, p. 542.

¹¹⁸ For more detail, see K. Zhang, *Explaining China's Large-scale Land Reclamation in the South China Sea: Timing and Rationale*, "Journal of Strategic Studies", 2023, vol. 46(6-7), pp. 1185-1214.

¹¹⁹ P. Klemensits, *Kína építkezései a Spratly-szigeteken. A dél-kínai-tengeri konfliktus egy újabb fejezete*, "Honvédelmi Szemle", 2016(4), p. 56.

¹²⁰ The line is sometimes also called the "tongue-shaped line" or the "nine dotted line". K. Zou, *China's U-Shaped Line in the South China Sea Revisited*, "Ocean Development & International Law", 2012, vol. 43(1), p.18.

¹²¹ According to Hayton, the line was drawn by a Chinese cartographer, Bai Meizhu, on a map published in 1936, and was reproduced on 26 other maps until 1945, when it was adopted by the Chinese Ministry of Internal Affairs in 1947. B. Hayton, *The South China Sea: The Struggle for Power in Asia*, Yale University Press, 2014.

¹²² J. Kraska, *International Maritime Security Law*, Martinus Nijhoff, 2013, pp. 45-48.

the sovereignty of neighbouring countries as part of China. For example, until 1953, Chinese maps also depicted a significant part of the Soviet Union's Tajik Soviet Federative Republic as part of the PRC, and only then were they amended.¹²³

However, the "nine-dash line" as a unique *sui generis* legal institution for the exercise of Chinese sovereignty is clearly at odds with the accepted regime of maritime law. The 1982 United Nations Convention on the Law of the Sea (UNCLOS),¹²⁴ ratified by the People's Republic of China, precisely defines the extent of maritime zones under the jurisdiction of coastal States and the rights and obligations that may be exercised therein, but contains a completely different regulatory regime. China, although not involved in the earlier codification processes of the Law of the Sea, was an active participant in the diplomatic conference that drafted the 1982 Convention,¹²⁵ and even stressed its importance as a tool for Third World countries in the fight against "colonialism, imperialism and hegemony".¹²⁶ Thus, the PRC had the opportunity to convince the international community to accept the "nine-dash line", but it never made an attempt during the codification process, despite its repeated efforts to secure approval of its position on a number of other maritime issues.¹²⁷

During the implementation of UNCLOS, the PRC has already laid claim to a significant part of the South China Sea in several pieces of domestic legislation. Article 2 of the 1992 Law on the Territorial Sea stated that the disputed islands in the area were part of China,¹²⁸ while Article 14 of the 1998 Law on the Exclusive Economic Zone and Mainland Shelf stated that the legislation did not affect the PRC's historical rights, which likely apply to the area delimited by the "nine-dash line."¹²⁹ China also attempted to have the "nine-dash line" recognized internationally in 2009. In a 2-page *note verbale* to the UN Commission on the Continental Shelf, it stated that it had "indisputable sovereignty over the islands in the South China Sea" and did so with a map showing the "nine-dash line", but without specifying its precise legal meaning.¹³⁰ However, this claim was rejected by Malaysia, Vietnam, the Philippines and Indonesia.¹³¹

¹²³ J. Cohen, H. Chiu, *People's China and International Law: A Documentary Study*. Princeton Legacy Library, 1974, p. 444.

¹²⁴ United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 397.

¹²⁵ Haiwen Zhang, a former director-general of the China Institute for Marine Affairs, describes China as one of the architects of the Convention, noting that the Chinese delegation attended all eleven sessions of the Third Conference between 1973 and 1982 and advanced detailed proposals on the territorial sea, the exclusive economic zone and the continental shelf, having already argued before the Seabed Committee for an entirely new convention to replace what it regarded as a Geneva regime built on the hegemony of the traditional maritime powers. H. Zhang, China and the Law of the Sea, in I. de la Rasilla, C. Cai (eds.), *The Cambridge Handbook of China and International Law*, Cambridge, Cambridge University Press, 2023, pp. 366-367.

¹²⁶ M. Carr, *China and the Law of the Sea Convention*, "The Australian Journal of Chinese Affairs", 1983, no. 9, p. 35.

¹²⁷ H. Chiuh, *China and the Law of the Sea Conference*, in J. Hsiung, S. Kim, (eds.), *China in the Global Community*, Praeger Publishers, 1980, pp. 203-210.

¹²⁸ "The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China." People's Republic of China, Law on the Territorial Sea and the Contiguous Zone of 25 February 1992. https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf

¹²⁹ People's Republic of China, Exclusive Economic Zone and Continental Shelf Act of 26 June 1998. https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf
See further in J. Delisle, *From Accepting to Challenging the International Law of the Sea: China and the South China Sea Disputes*, in C. Lo, N. N. Li and T. Lin (eds.), *Legal Thoughts between the East and the West in the Multilevel Legal Order*. Springer, 2016, 265.

¹³⁰ UN Doc. CML/17/2009. (7 May 2009). https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf

¹³¹ For more detail, see L. Bautista, *Diplomatic Notes and the South China Sea Disputes*, "Philippine Yearbook of International Law", 2021, vol. XX, pp. 70-80.

On 22 January 2013, the Philippines instituted arbitration proceedings under Article 286 of the Convention against the People's Republic of China to settle disputes relating to the South China Sea in accordance with Annex VII to the Convention within the framework of the Permanent Court of Arbitration (PCA). The PRC, in its written declaration under Article 298(1)(a) of UNCLOS, excluded the dispute on the basis of historic titles and sovereign rights, and therefore considered the proceedings to be unlawful.¹³² Accordingly, on 19 February 2013, the Chinese government rejected the Philippines' notification of the initiation of the proceedings by a diplomatic note, and on 19 February 2013, the Chinese government rejected the Philippines' notification of the initiation of the proceedings by diplomatic note and reiterated "its position that it does not accept the arbitration initiated by the Philippines".¹³³ Since China, unlike the Philippines, did not select an arbitrator from the list, the President of the International Tribunal for the Law of the Sea, the Japanese Shunji Yanai, appointed three additional arbitrators for the proceedings, who jointly selected the President of the arbitral panel.

Although the People's Republic of China did not formally participate in the proceedings, it published a position paper on 7 December 2014 detailing its legal position on the invalidity of the proceedings. According to the PRC, the dispute violated an agreement previously accepted by the Philippines, to settle the conflicts between the countries through negotiation, and the subject matter of the dispute is the determination of territorial sovereignty, which is contrary to UNCLOS, and the reservation made by China.¹³⁴

However, on 29 October 2015 the panel ruled that it had jurisdiction to proceed with the case, stressing that the Chinese reservation did not preclude the proceedings because the panel instead of determining *historic title*, assessed *historic rights*, which is in accordance with the UN Convention and did not decide on issues of territorial sovereignty, but only on the application of the rights contained in the Convention.¹³⁵ Subsequently, on 12 July 2016, it issued a final decision, ruling in favour of the Philippines.¹³⁶ The panel rejected that the PRC could exercise any historic right within the area delimited by the "nine-dash line",¹³⁷ and stressed that under UNCLOS rules, low-tide elevations (Article 13) cannot be converted into islands by artificial means,¹³⁸ and that China had violated the Convention rules by constructing an artificial island within the Philippines' EEZ.¹³⁹

3. Impact of the Arbitral Award - Chinese Lawfare?

¹³² "The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention." <https://www.itlos.org/en/main/jurisdiction/declarations-of-states-parties/declarations-made-by-states-parties-under-article-298/>

¹³³ Permanent Court of Arbitration: 'Arbitration between The Republic of the Philippines and The People's Republic of China: Arbitral Tribunal establishes Rules of Procedure and Initial Timetable' (Press Release, PCA 101203, 27 August 2013).

¹³⁴ Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines (7 December 2014). https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdffyq/P020200201565468720286.pdf

¹³⁵ In the Matter of the South China Sea Arbitration (Republic of the Philippines v People's Republic of China), PCA Case no 2013-19, Award on Jurisdiction and Admissibility (29 October 2015).

¹³⁶ In the Matter of the South China Sea Arbitration (Republic of the Philippines v People's Republic of China), PCA Case no 2013-19, Award on Merits (12 July 2016).

¹³⁷ Ibid., para 692.

¹³⁸ Ibid., para 305.

¹³⁹ Ibid., para 1025, 1029-43.

From the outset, the PRC sought to mitigate the potentially negative impact of the arbitration by delegitimising it, presenting it as a political rather than a legal process.¹⁴⁰ China thus declared the award null and void in a 2015 communication after the arbitral tribunal rejected its jurisdictional objections,¹⁴¹ and reiterated this position after the final award was issued.¹⁴² Chinese officials described the arbitral award as "nothing more than a piece of waste paper",¹⁴³ and stressed that it "has already been turned over as a page of history",¹⁴⁴ and the PRC continues to maintain its legal claims to the South China Sea. Accordingly, the PRC will continue to develop the areas under its jurisdiction. In April 2020, it established two new administrative districts in the South China Sea, which are part of the city of Sansha, founded on 24 July 2012, with a population of 1,800 people, and which cover the islands of Paracel and Spratly.¹⁴⁵

In 2018, the Chinese international legal community unanimously supported China's position in a legal analysis of over 500 pages,¹⁴⁶ and the influential Chinese Journal of International Law published several articles criticising the decision.¹⁴⁷ However, this effort does not seem to have swayed the international legal community outside China. Typically, the only prominent non-Chinese international lawyer who supports the Chinese position, the German Stefan Talmon, made a point of stressing in the introduction to his comprehensive monograph on the subject that he is unbiased and receives no financial support from Chinese sources.¹⁴⁸

Overall, Chinese actions preceding and following the arbitral proceedings strongly challenge the popular thesis that the PRC is engaged in some kind of sophisticated international legal warfare. Prior to the decision, China did not even attempt to present a coherent international legal argument but instead tried to support its position with nebulous concepts such as the "nine-dash line". Although it has been suggested that this vagueness may be part of a deliberate political strategy,¹⁴⁹ the authors of this paper find it more convincing that the PRC had no structured legal strategy at all but merely attempted to support its historical claims with

¹⁴⁰ One of the most interesting - albeit unconvincing - aspects of this is that the President of the Tribunal, the Japanese Shunji Yanai, was accused of being biased against China, as he had previously served in Japanese governmental functions, and Japan had occupied the South China Sea as a colonialist in the 1930s and 1940s, and had supported the Philippines in the post-WWII period in the dispute with the PRC. CHINESE SOCIETY OF INTERNATIONAL LAW, "Chinese Journal of International Law", 2018, vol. 17(2), p. 627, para 911.

¹⁴¹ Ministry of Foreign Affairs of the People's Republic of China: Statement on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Republic of the Philippines (30 October 2015). https://www.fmprc.gov.cn/eng/gjhdq_665435/2675_665437/2762_663528/2763_663530/201510/t20151030_520923.html

¹⁴² Ministry of Foreign Affairs of the People's Republic of China: Statement on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines (12 July 2016). https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201607/t20160712_679470.html

¹⁴³ Vice Foreign Minister Liu Zhenmin at the Press Conference on the White Paper Titled China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea (July 13, 2016). http://www.fmprc.gov.cn/nanhai/eng/wjbxw_1/t1381980.htm

¹⁴⁴ Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference (18 May 2016). http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1463251.shtml

¹⁴⁵ MINISTRY OF NATIONAL DEFENSE OF THE PEOPLE'S REPUBLIC OF CHINA: China's Sansha City establishes Xisha, Nansha Districts in Major Administrative Move (18 April 2020). http://eng.mod.gov.cn/xb/News_213114/TopStories/4863772.html

¹⁴⁶ CHINESE SOCIETY OF INTERNATIONAL LAW (2018)

¹⁴⁷ See i.e. C. Whomersley, *The Award on the Merits in the Case Brought by the Philippines against China Relating to the South China Sea: A Critique*. "Chinese Journal of International Law", 2017, vol. 16(3), pp. 387-423.

¹⁴⁸ S. Talmon, *The South China Sea Arbitration – Jurisdiction, Admissibility, Procedure* (Brill, Leiden, 2022) xii.

¹⁴⁹ F. Dupuy – P. Dupuy, *Legal Analysis of China's Historic Rights Claim in the South China Sea*, "The American Journal of International Law", 2013, Vol. 107(1), p. 124.

some sort of argumentation that was at least apparently legally defensible, and only tried to develop a coherent argumentation under the influence of the arbitration proceedings.

The PRC has indeed sought to anchor its claims over the South China Sea in Chinese domestic law and to impose these Chinese laws even by force, but since it has for decades stressed its acceptance of the maritime regime's rule of law and has not actively sought to influence/change international legislation, its behaviour can hardly be considered *lawfare*. This is supported by the fact that official Chinese statements continue to emphasise that the PRC respects and acts in accordance with UNCLOS rules.¹⁵⁰ However, this arbitral award is a very significant obstacle for China, as Chinese claims can always be countered by the final arbitral award that clearly classifies Chinese conduct as illegal.¹⁵¹ For example, the United States, the only major maritime state not to have ratified UNCLOS, has repeatedly invoked the arbitral award.¹⁵² In this situation, the Chinese delegitimisation campaign seems more like a desperate attempt to salvage the damage than lawfare.

CONCLUSIONS

The aim of this study was to examine the applicability of the concept of lawfare with regards to the Chinese application of international law, with particular reference to the South China Sea dispute. Despite the fact that many scholars analyse this conflict as one of the clearest examples of lawfare, the authors of this paper do not support this position. This is partly due to the lack of definition of the concept of lawfare, as its broad interpretation includes virtually any state conduct related to an international legal issue, but also to the tendency of some authors to see a complex strategy behind Chinese actions, which is not really justifiable.

An examination of the reception of international law in China and an exploration of the cultural specificities of the application of the law in China reveals that Chinese society has had a very ambivalent attitude towards the law, and especially towards judicial procedures, which is reinforced vis-à-vis international law by the fact that international law has served as a tool of subordination of China by Western powers. Since the teaching and practice of international law in the PRC almost completely ceased after the communist revolution until the 1970s, the country was unable to exert a significant influence on the development of international law for a long time. This obviously influences the Chinese approach to the South China Sea conflict, as this area is regarded by China as traditional Chinese territory, over which it lost control as a result of Western colonialism.

However, this does not mean that the PRC rejects the international legal order. On the contrary, the PRC generally supports a distinctly conservative, sovereignty-centred vision of international law and portraying China as “a territorially expansionist, resource acquisitive law-

¹⁵⁰ See *inter alia* Joint Statement on The 20th Anniversary of The Declaration on The Conduct of Parties in The South China Sea, Phnom Penh, Cambodia (11 November 2022). <https://asean.org/joint-statement-on-the-20th-anniversary-of-the-declaration-on-the-conduct-of-parties-in-the-south-china-sea/>; Joint Statement between the People's Republic of China and the Republic of the Philippines (5 January 2023). https://www.fmprc.gov.cn/mfa_eng/zy/gb/202405/t20240531_11367479.html

¹⁵¹ Hence Ku's assertion that China had actually emerged victorious from the legal battle as neither the Philippines, nor the United States do not demand the enforcement of the award is unconvincing. J. Ku, Assessing the South China Sea Arbitral Award after One Year: Why China Won and the U.S. Is Losing. “Lawfare”, 12 July 2017, <https://www.lawfareblog.com/assessing-south-china-sea-arbitral-award-after-one-year-why-china-won-and-us-losing>

¹⁵² J. G. Odom, *The Value and Viability of the South China Sea Arbitration Ruling: The U.S. Perspective 2016–2020*. “International Law Studies”, 2021, vol. 97, pp. 153-162.

breaker” seems unfounded.¹⁵³ Interviews conducted by the author of a recent monograph also show that Chinese international lawyers clearly believe that China defends the existing international legal order, and most of them even support the PRC bringing its maritime disputes to international judicial fora in the future.¹⁵⁴ China is not alone in the Asian region in claiming maritime rights that go beyond the current maritime law regime, similar aspirations can be observed in Bangladesh, India, Iran, Myanmar, North Korea and Pakistan.¹⁵⁵ At the same time, however, the People’s Republic of China’s attempt to support the rules of international maritime law but also adopt specific rules that would establish its sovereign claims in the South China Sea potentially undermines UNCLOS.¹⁵⁶ This, however, can hardly be considered a strategy of lawfare.

Ultimately, even though the concept of lawfare is too expansive for analytical research, the analysis of the South China Sea conflict clearly demonstrates that international law can be strategically applied for the protection of State interests. While the PRC failed to offer a sophisticated and coherent legal defence during the arbitration procedure, it has mustered significant resources to resist the implementation and general recognition of the arbitral award as form of legal adaptation and potentially change the interpretation of the relevant provisions of the UN Convention on the Law of the Sea to align with the pre-existing Chinese domestic legislation. This proves that China is clearly capable and willing to engage in the strategic application of international law.

¹⁵³ B. Saul, *China, Natural Resources, Sovereignty and International Law*. “Asian Studies Review”, 2013, vol. 37(2), p. 204.

¹⁵⁴ T. S. Eder, *China and International Adjudication – Caution, Identity Shifts, and the Ambition to Lead*. Baden-Baden, Nomos, 2021, p. 526.

¹⁵⁵ DEPARTMENT OF DEFENSE REPRESENTATIVE FOR OCEAN POLICY AFFAIRS: *Maritime Claims Reference Manual*. <https://www.jag.navy.mil/national-security/mcrm/>

¹⁵⁶ D. Guilfoyle, *The Rule of Law and Maritime Security: Understanding Lawfare in the South China Sea*, “International Affairs”, 2019, vol. 95(5).

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