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China and International Law: Lawfare or Strategic Application of International Law?

Chiny a prawo międzynarodowe. Lawfare czy strategiczne wykorzystanie prawa międzynarodowego?

ABSTRACT

The People's Republic of China (PRC) has been repeatedly accused of employing a sophisticated strategy of lawfare, i.e., a strategic and abusive application of international law to further its aims, especially in connection with South China Sea territorial disputes. This article aims to challenge this widely held view. It first introduces the concept of lawfare and highlights its inherent analytical problems. Then it describes the Chinese historical relationship with international law and doctrinal approach to lawfare. Finally, the article examines the maritime dispute between the PRC and the Philippines that was referred to the Permanent Court of Arbitration to demonstrate that there is little evidence that China engages in methodical warfare, though the PRC undeniably tries to shape the norms of public international law for its own benefit.

Keywords: lawfare; legal warfare; international law; South China Sea; maritime disputes

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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.[1]

There have been over 70 major conflicts in the region between 2010 and 2020, predominantly caused by the Chinese Coast Guard.[2] As an illustration of the tension in the South China Sea, just two months earlier, the Philippines and the United States conducted a joint naval exercise in the region involving some 16,700 troops, which simulated, among other things, how to retake "occupied" islands.[3] However, at least rhetorically, the conflict is based on differing interpretations of legal titles.

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, where the PRC is using international law to consolidate its sovereignty over the region. In this narrative, the PRC is sophisticated in its use of 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 difficulties of applying the concept of lawfare as an analytical category. In order to do so, it first introduces the concept of lawfare and then examines the specificities of Chinese actions in the South China Sea. Ultimately, it aims to demonstrate that lawfare is an unsuitable analytical category and there is no evidence that the PRC employs a sophisticated legal strategy.

[1] Deutsche Welle, *South China Sea, Philippines Accuses China of Boarding Boats*, 19.6.2024. https://www.dw.com/en/south-china-sea-philippines-china-coast-guard/a-69409869 (access: 6.7.2026).

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

[3] Deutsche Welle, *US, Philippines Kick off Combat Drills in South China Sea*, 22.4.2024, https://www.dw.com/en/us-philippines-kick-off-combat-drills-in-south-china-sea/a-68885289 (access: 6.7.2026).

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DEFINITIONAL CHALLENGES OF THE CONCEPT OF LAWFARE

The concept of "lawfare" has gained immense popularity in the last two decades.[4] The term is a wordplay: a merging of the words *law* and *warfare*. Although its explosive spread has been the result of C.J. Dunlap's 2001 conference paper,[5] the term actually resurfaced several times in the second half of the 20th century,[6] with its earliest appearance dating back to a 1957 work on legal history, in which it is used as a synonym for law enforcement.[7]

The term's success is presumably due to a lack of independent 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*.[8] C.J. Dunlap first defined lawfare as "the use of law as a weapon of war"[9] or "a method of warfare where law is used as a means of realizing a military objective".[10] Eventually, he construed it as "the use of law as a means of accomplishing what might otherwise require the application of traditional military force".[11] 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.[12] Thus,

[4] According to Google Scholar, 3,060 scholarly works used the term in 2023 alone. See https://scholar.google.com/scholar?q=%22lawfare%22&hl=hu&as_sdt=0%2C5&as_ylo=2023&as_yhi=2023 (access: 6.7.2026).

[5] C.J. Dunlap Jr, *Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts*, Washington 2001.

[6] It was even used to advertise discount flight tickets specifically for lawyers with the combination of the words *law* and *airfare*. See 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.

[7] "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 J. Carlson and N. Yeomans is clearly mistaken. See J. Carlson, N. Yeomans, *Whither Goeth the Law: Humanity or Barbarity*, [in:] *The Way Out: Radical Alternatives in Australia*, eds. D. Crossley, M. Smith, Melbourne 1975, p. 155.

[8] Perhaps this explains why J.L. Comaroff, who had already used the term "lawfare" to describe the coercive use of law before C.J. 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).

[9] C.J. Dunlap Jr, *Law and Military Interventions…*, p. 2.

[10] *Ibidem*, p. 4.

[11] Idem, *Lawfare 101 – A Primer*, "Military Review" 2017, vol. 97, p. 9.

[12] *Ibidem*, pp. 9–10.

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lawfare was construed 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.[13]

Still, this narrow interpretation was quickly abandoned in the context of the "war on terror". Lawfare 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 law,[14] 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.[15] 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 G.W. 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".[16] 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.[17]

Lawfare, as an analytical category, already suffers from fundamental conceptual problems in its original, value-neutral form, as it can encompass anything that might have an impact on a conflict and influence public opinion. C.J. Dunlap cites the example of how, in 1991, after images of dead civilians were published in the international press following the bombing of a civilian facility mistakenly identified as an Iraqi command centre, the bombing of densely populated areas of Baghdad was drastically reduced.[18] 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. J.I. Goldenziel goes even further and defines lawfare as "the purposeful

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[13] D. Kennedy, *Of War and Law*, Princeton 2006, p. 125.

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

[15] 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.

[16] J. Goldsmith, *The Terror Presidency, Law and Judgment Inside the Bush Administration*, New York 2009, p. 60.

[17] "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 of the United States of America, March 2005, https://tinyurl.com/yc4zatp6, access: 10.7.2026, p. 5).

[18] C.J. Dunlap Jr, *Lawfare 101…*, p. 10.

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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".[19] However, an approach that might include even aspects of legitimacy can render the concept completely elusive.

Even the first and most frequently cited monograph on lawfare was unable to precisely define its meaning and scope of application, and it is often unclear how the application of international law can be distinguished from lawfare.[20] In many cases, it simply includes the application of law contrary to U.S. or Israeli interests, such as attempts to recognise Palestinian statehood.[21] 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. Adopting such an approach would in effect classify most of the historical development of international law as lawfare.[22]

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.[23] However, D. 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".[24] 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.[25] However, lawfare can also be used to delegitimize an otherwise

[19] J.I. Goldenziel, *Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare*, "Cornell Law Review" 2021, vol. 106(5), p. 1097.

[20] O.F. Kittrie, *Law as a Weapon of War – Lawfare*, Oxford 2016.

[21] *Ibidem*, 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 2020.

[22] For example, the debate between H. Grotius and J. 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.

[23] C. Jochnick, R. Normand, *The Legitimation of Violence: Critical History of the Laws of War*, "Harvard International Law Journal" 1994, vol. 35, p. 57.

[24] D. Kennedy, *op. cit.*, p. 96.

[25] C. Cai, *The Rise of China and International Law – Taking Chinese Exceptionalism Seriously*, Oxford 2019, pp. 272–273.

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lawful act, for example by showing civilian casualties during an attack on a military target, or even to emphasize the legitimacy of an unlawful act.

The practical significance of lawfare may lie in its original, narrowly defined concept, which enables states to identify methods that may be employed 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 – that is, that they seek to achieve specific goals through the development and application of international legal norms, rather than merely rigidly following existing rules – is hardly a novel observation but rather a description of the reality of international relations.[26] 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.[27] This can be observed in strategic litigation cases brought before international courts.[28] 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,[29] which is seized upon by NGOs.[30]

CHINESE APPROACH TO LAWFARE

The perception of law by individual states is significantly shaped by their historical and cultural traditions, which also influence their understanding of international law.[31] Chinese society, under the influence of Confucianism, traditionally strove to avoid litigation and focus on the negotiated settlement of disputes.[32] International law, on the other hand, was generally regarded as an instrument of colonization that

[26] S.A. Kocs, *Explaining the Strategic Behavior of States: International Law as System Structure*, "International Studies Quarterly" 1994, vol. 38(4), pp. 535–556.

[27] B. Rajagopal, *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, "Third World Quarterly" 2006, vol. 27(5), pp. 767–783.

[28] 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.

[29] E. Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, "American Journal of International Law" 2008, vol. 102(2), pp. 241–274.

[30] 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.

[31] See A. Roberts, P.B. Stephan, P.-H. Verdier, M. Versteeg (eds.), *Comparative International Law*, Oxford 2018.

[32] J. Pan, *Chinese Philosophy and International Law*, "Asian Journal of International Law" 2011, vol. 1(2), pp. 234–235.

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allowed the restriction of Chinese sovereignty[33] during the "century of humiliation" between 1839 and 1949.[34]

In recent years, China has been portrayed as a state that has consistently and systematically used legal warfare for strategic purposes.[35] According to this narrative, the PRC has been systematically working for decades to weaponize 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 in China's legal warfare strategy and its behaviour during the South China Sea conflict.

In 1996, Jiang Zemin, the President of the PRC and the General Secretary of the Communist Party of China, stated that "international law must be used as a weapon to defend the interests of our state and maintain national pride".[36] The PRC has officially adopted legal warfare (*falu zhan*) since the 2003 decision of the Central Committee of the Communist Party of China and the Chinese Central Military Commission to introduce and implement the so-called "Three Warfares". Within this framework, China formally incorporated psychological warfare, warfare through the media, and *falu 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".[37] It is important to emphasize that China has defined this concept specifically in relation to military actions, and Chinese textbooks analyzing *falu zhan* have retained this approach.[38] This definition seems very similar to Dunlap's original, value-neutral concept of lawfare.

Foreign analysts, on the other hand, have paid particular attention to the monograph entitled *Unrestricted Warfare* by two Chinese colonels, Q. Liang and W. Xiangsui, published in English in 1999.[39] This work is often referred to as the first doctrinal

[33] S.H. 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, pp. 1–45.

[34] 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.

[35] For example, see O.F. Kittrie, *op. cit.*, pp. 161–196; D. Cheng, *Winning without Fighting: Chinese Legal Warfare*, 21.5.2012, https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare (access: 10.7.2026); T. Rühlig, *How China Approaches International Law: Implications for Europe*, European Institute for Asian Studies, May 2018, https://www.eias.org/wp-content/uploads/2016/03/EU_Asia_at_a_Glance_Ruhlig_2018_China_International_Law.pdf (access: 10.7.2026).

[36] D. Wang, *China's Unequal Treaties: Narrating National History*, New York 2008, p. 128.

[37] Central Military Commission, People's Liberation Army of China Regulation on Political Work, Article 14(18) (Dec. 2003), cited in O.F. Kittrie, *op. cit.*, p. 162.

[38] O.F. Kittrie, *op. cit.*, p. 162.

[39] Q. Liang, W. Xiangsui, *Unrestricted Warfare*, Beijing 1999. In several international editions, the book was published under the title *Unrestricted Warfare: China's Master Plan to Destroy America*, underscoring its presumed importance. See Q. Liang, W. Xiangsui, *Unrestricted Warfare: China's Master Plan to Destroy America*, New Delhi 2007.

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exposition of the Chinese lawfare concept,[40] as it states that China must take a leading role in international norm-setting as part of its warfare, and includes the active development of legal norms in the domain of lawfare.[41] The book's significance, however, may be overstated. It was not published by a leading Chinese publisher, and there is no evidence that it reflects the official Chinese position, but merely served as a proposal for Chinese authorities, which is not surprising given its often irrational views, e.g., the mystical significance attributed to the rules of the golden ratio.[42]

While at the doctrinal level, the PRC has indeed accepted the importance of lawfare, its actual application is unclear. O.F. Kittrie claims that it is evident in maritime conflicts, where China attempted to reinterpret international norms and shape international jurisprudence.[43] In the following, we will examine whether China actually engages in lawfare in the South China Sea conflict, the most high-profile maritime dispute in recent history.

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

1. Historical background of the South China Sea conflict

The PRC has more ongoing territorial disputes than any other major state.[44] Most of the disputes concern the South China Sea, which covers an area of approximately 3.5 million square kilometres and through which some 30% of the world's maritime transport routes pass, making it the world's most important sea route,[45] and is of outstanding importance for fisheries,[46] as well as likely containing very significant hydrocarbon deposits.[47] There are three archipelagos of disputed status

[40] O.F. Kittrie, *op. cit.*, pp. 162–163.

[41] Q. Liang, W. Xiangsui, *Unrestricted Warfare…*, 1999, pp. 42–43.

[42] J. Baughman, *"Unrestricted Warfare" Is Not China's Master Plan*, 25.4.2022, https://www.airuniversity.af.edu/CASI/Articles/Article-Display/Article/3004313/unrestricted-warfare-is-not-chinas-master-plan (access: 6.7.2026)

[43] O.F. Kittrie, *op. cit.*, p. 165.

[44] S.S. Kim, *Sovereignty in the Chinese Image of World Order*, [in:] *Essays in Honour of Wang Tieya*, ed. R. McDonald, Dordrecht 1994, p. 442.

[45] B. Sacks, *The Political Geography of the South China Sea Disputes: A RAND Research Primer*, Santa Monica 2022, p. 3.

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

[47] 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.

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in the sea, the Paracel, Pratas, and Spratly Islands, which consist of over 200 small islands, rocks, cays, shoals and reefs.[48]

Chinese scholarship traces Chinese territorial sovereignty over the region back to the 3rd century BC,[49] 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.[50] From the 20th century onwards, Britain, France, and later Japan claimed sovereignty over various areas of the sea. These claims were abandoned following the defeat of the Japanese Empire in World War II and the withdrawal of the colonial powers. Since then, the land formations 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, is disputed by the PRC, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan, all of which claim its territory in whole or in part.[51]

Since the 1990s, the PRC 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. Although the Socialist Republic of Vietnam, Taiwan, and the Philippines have also built airports on their islands, and Vietnam has added 0.2 square kilometres of land, these developments dwarf the Chinese work.[52]

[48] In Chinese literature, these archipelagos are referred to by Chinese names, such as Xisha for the Paracel Islands, Dongsha for the Pratas Islands, and Nansha for the Spratly Islands. The PRC claims that there is a fourth archipelago, the Chongsha 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. See B. Sacks, *op. cit.*, pp. 3–4.

[49] 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.

[50] 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.

[51] 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. See B. Sacks, *op. cit.*, p. 5.

[52] 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.

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2. The "Nine-Dash Line" and the Permanent Court of International Arbitration – Philippine counter-lawfare?

The PRC seeks to consolidate its sovereignty over the South China Sea on the basis of historical rights, which are underpinned by the U-shaped demarcation line, the so-called "Nine-Dash Line", first published by the Chinese Ministry of the Interior in 1947.[53] Even though the PRC has never explained the origin of this supposedly binding legal institution,[54] 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.[55]

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),[56] ratified by the PRC, 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 was an active participant in the diplomatic conference that drafted the 1982 Convention and even stressed its importance as a tool for Third World countries in the fight against "colonialism, imperialism and hegemony". 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 several other maritime issues.[57]

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,[58] while Article 14 of the 1998 Law on the Exclusive

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

[54] According to B. Hayton, the line was drawn by a Chinese cartographer, B. 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. See B. Hayton, *The South China Sea: The Struggle for Power in Asia*, New Haven 2014.

[55] J. Kraska, R. Pedrozo, *International Maritime Security Law*, Dordrecht 2013, pp. 45–48.

[56] 10 December 1982, 1833 UNTS, no. 397.

[57] M. Carr, *China and the Law of the Sea Convention*, "Australian Journal of Chinese Affairs" 1983, vol. 9, p. 35.

[58] "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, access: 10.7.2026).

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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".[59] China also attempted to have the "Nine-Dash Line" recognized internationally in 2009. In a two-page *note verbale* submitted to the UN Commission on the Limits of the Continental Shelf, it stated that it had "indisputable sovereignty over the islands in the South China Sea" and attached a map depicting the "Nine-Dash Line", without specifying its precise legal meaning.[60]

On 22 January 2013, the Philippines instituted arbitration proceedings under Article 286 UNCLOS against the PRC to settle disputes relating to the South China Sea in accordance with Annex VII to the UNCLOS within the framework of the Permanent Court of Arbitration (PCA). The PRC, in its written declaration under Article 298(1)(a) UNCLOS, excluded the dispute on the basis of historic titles and sovereign rights, and therefore considered the proceedings to be unlawful.[61] Accordingly, on 19 February 2013, the Chinese government rejected the Philippines' notification of the initiation of the proceedings by a diplomatic note.[62] 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 PRC 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

[59] 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 (access: 10.7.2026). See more in J. Delisle, *From Accepting to Challenging the International Law of the Sea: China and the South China Sea Disputes*, [in:] *Legal Thoughts between the East and the West in the Multilevel Legal Order*, eds. C. Lo, N.N. Li, T. Li, 2016, p. 265.

[60] UN Doc. CML/17/2009, 7.5.2009, https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf (access: 10.7.2026).

[61] "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" (International Tribunal for the Law of the Sea, Declarations Made by States Parties under Article 298. China: 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, access: 6.7.2026).

[62] Press Release, Permanent Court of Arbitration Issuance on the Arbitration between the Republic of the Philippines and the People's Republic of China: Arbitral Tribunal Establishes Rules of Procedure and Initial Timetable, PCA 101203, 27.8.2013.

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territorial sovereignty, which is contrary to UNCLOS, and the reservation made by China.[63]

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 UNCLOS and did not decide on issues of territorial sovereignty, but only on the application of the rights contained in the Convention.[64] Subsequently, on 12 July 2016, it issued a final decision, ruling in favour of the Philippines.[65] The panel rejected the idea that the PRC could exercise any historic right within the area delimited by the "Nine-Dash Line",[66] and stressed that under UNCLOS rules, low-tide elevations cannot be converted into islands by artificial means,[67] and that China had violated the UNCLOS rules by constructing an artificial island within the Philippines' Exclusive Economic Zone.[68]

3. Impact of the arbitral award – Chinese lawfare?

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.[69] China thus declared the award null and void in a 2015 communication after the arbitral tribunal rejected its jurisdictional objections,[70] and reiterated this position after the final award was issued.[71] Chinese officials described the arbitral

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[63] 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, 7.12.2014, https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdfyyq/P020200201565468720286.pdf (access: 6.7.2026).

[64] 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.

[65] 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.

[66] *Ibidem*, para. 692.

[67] *Ibidem*, para. 305.

[68] *Ibidem*, paras 1025, 1029–1043.

[69] 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. See S. Yee, *The South China Sea Arbitration (The Philippines v. China): Potential Jurisdictional Obstacles or Objections to Jurisdiction and Admissibility*, "Chinese Journal of International Law" 2018, vol. 17(2), p. 627, para. 911.

[70] 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, 30.10.2015, https://www.fmprc.gov.cn/eng/gjhdq_665435/2675_665437/2762_663528/2763_663530/201510/t20151030_520923.html (access: 6.7.2026).

[71] 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

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award as "nothing more than a piece of waste paper"[72] and stressed that it "has already been turned over as a page of history",[73] and the PRC continues to maintain its legal claims to the South China Sea. Accordingly, the PRC continued 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 Sansa, founded on 24 July 2012, with a population of 1,800 people, and which cover the islands of Paracel and Spratly.[74]

In 2018, the Chinese international legal community unanimously supported China's position in a legal analysis of over 500 pages,[75] and the influential "Chinese Journal of International Law" published several articles criticising the decision.[76] However, this effort does not seem to have swayed the international legal community outside China, which overwhelmingly agrees with the PCA's findings. Typically, the only prominent non-Chinese international lawyer who supports the Chinese position, German scholar S. 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.[77]

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,[78] the authors of this paper find it more convincing that the PRC had no structured

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at the Request of the Republic of the Philippines, 12.7.2016, https://www.fmprc.gov.cn/eng/wjdt_665385/2649_665393/201607/t20160712_679470.html (access: 6.7.2026).

[72] 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, 13.7.2016, https://www.fmprc.gov.cn/nanhai/eng/wjbxw_1/t1381980.htm (access: 6.7.2026).

[73] Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference, 18.5.2016, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1463251.shtml (access: 6.7.2026).

[74] Ministry of National Defense of the People's Republic of China, China's Sansha City Establishes Xisha, Nansha Districts in Major Administrative Move, 18.4.2020, https://eng.mod.gov.cn/xb/News_213114/TopStories/4863772.html (access: 6.7.2026).

[75] *The South China Sea Arbitration Awards: A Critical Study*, "Chinese Journal of International Law" 2018, vol. 17(2).

[76] For example, see 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.

[77] S. Talmon, *The South China Sea Arbitration – Jurisdiction, Admissibility, Procedure*, Leiden 2022, p. xii.

[78] F. Dupuy, P. Dupuy, *Legal Analysis of China's Historic Rights Claim in the South China Sea*, "American Journal of International Law" 2013, vol. 107(1), p. 124.

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legal strategy, but merely attempted to support its historical claims with some sort of argumentation that was at least seemingly 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 them even by force, but since for decades it has stressed its acceptance of the law of the sea 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.[79] 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.[80] For example, the United States, the only major maritime state not to have ratified UNCLOS, has repeatedly invoked the arbitral award.[81] In this situation, the Chinese delegitimization 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 to the Chinese application of international law, with particular reference to the South China Sea dispute. Although many scholars cite this conflict as one of the clearest examples of lawfare, the authors of this paper do not share this view. First, the broad concept of lawfare encompasses virtually any state conduct related to an international legal issue; thus, it is unsuitable for legal analysis. Second, there appears to be no complex legal strategy underlying Chinese actions. Rather, the Chinese approach to the South China Sea dispute appears to be influenced by

[79] For example, see Association of Southeast Asian Nations, Joint Statement on the 20th Anniversary of The Declaration on The Conduct of Parties in The South China Sea, 12.11.2022, https://asean.org/joint-statement-on-the-20th-anniversary-of-the-declaration-on-the-conduct-of-parties-in-the-south-china-sea (access: 10.7.2026); Ministry of Foreign Affairs of the People's Republic of China, Joint Statement between the People's Republic of China and the Republic of the Philippines, 5.1.2023, https://www.fmprc.gov.cn/mfa_eng/zy/gb/202405/t20240531_11367479.html (access: 10.7.2026).

[80] Hence J. 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. See J. Ku, *Assessing the South China Sea Arbitral Award after One Year: Why China Won and the U.S. Is Losing*, 12.7.2017, https://www.lawfareblog.com/assessing-south-china-sea-arbitral-award-after-one-year-why-china-won-and-us-losing (access: 10.7.2026).

[81] 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.

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historical considerations, as China regards this area 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, it generally supports a distinctly conservative, sovereignty-centred vision of international law. 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.[82] 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.[83] At the same time, however, the PRC'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.[84] 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 a form of legal adaptation, and potentially change the interpretation of the relevant provisions of the UNCLOS 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.

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[83] Navy JAG Corps, *Maritime Claims Reference Manual*, https://www.jag.navy.mil/national-security/mcrm (access:10.7.2026).

[84] 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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ABSTRAKT

Chińska Republika Ludowa (ChRL) bywa wielokrotnie oskarżana o stosowanie wyrafinowanej strategii *lawfare*, polegającej na strategicznym i nadużywającym wykorzystywaniu prawa międzynarodowego do realizacji własnych celów, w szczególności w związku ze sporami terytorialnymi na Morzu Południowochińskim. Celem artykułu jest zakwestionowanie tego rozpowszechnionego poglądu. W pierwszej kolejności przedstawiono koncepcję *lawfare* oraz wskazano na nieodłącznie związane z nią problemy natury analitycznej. Następnie scharakteryzowano historyczny stosunek Chin do prawa międzynarodowego oraz doktrynalne ujęcie zjawiska *lawfare*. W końcowej części poddano analizie spór morski pomiędzy ChRL a Filipinami, skierowany do rozstrzygnięcia przez Stały Trybunał Arbitrażowy, aby wykazać, że istnieje niewiele dowodów na to, że Chiny prowadziły metodyczną wojnę prawną, choć ChRL niewątpliwie podejmuje próby kształtowania norm publicznego prawa międzynarodowego we własnym interesie.

Słowa kluczowe: *lawfare*; wojna prawna; prawo międzynarodowe; Morze Południowochińskie; spory morskie