

sierra  
L A T A M

"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"

# TERRUM.

Lawfare:

The Usage of Law as a Weapon of War

By Carlos Sierra De la Peña.

June 15, 2023  
Year 18 No. 1

Find us in



by Carlos Sierra De la Peña.

The outbreak of new wars in recent years has demonstrated the rising use of a new strategy known as 'Lawfare' to justify conflicts between nations. As defined by Dunlap, Lawfare is "the practice of using law as a means of realizing a military objective"<sup>1</sup>. This article aims to delve into the implementation of Lawfare as a tool for legitimizing these conflicts, examining how nations have been able to and continue to circumvent international law through its application. By analyzing international conflicts and their legal justifications in the past, we gain insights into the evolving nature of warfare in the modern era.

**"Every day since [9/11] has been September 12 ... We all had the overwhelming sense that we were still one step behind the terrorists and in danger of another successful attack."**

To comprehend the present use of Lawfare, we must first examine international conflicts where international law was manipulated or outright ignored to legitimize military action. The invasion of Iraq by the coalition led by the United States in 2003 provides a pertinent case study. After the 9/11 attacks, the United States found itself in great urgency to "avert a follow-on attack"<sup>2</sup>. This urgency was perfectly expressed by then Secretary of State Condoleezza Rice: "Every day since [9/11] has been September 12 ... We all had the overwhelming sense that we were still one step behind the terrorists and in danger of another successful attack"<sup>3</sup>. Despite no evidence pointing to the government of Saddam Hussein's direct responsibility for the attacks of 9/11, the United States invaded Iraq, seeing that Hussein was the only leader who praised the attacks. They did so in fear that they would sponsor another attack on America as they had done in other regions of the Middle East<sup>4</sup>. The United States invasion of Iraq was legitimized before the international community using the legal pretense that Iraq possessed weapons of mass destruction (WMDs), breaching international non-proliferation treaties<sup>5</sup>. Despite the absence of unequivocal evidence, the 'self-defense' legal argument was leveraged to justify the invasion. This marked a critical point in the utilization of Lawfare, shifting from an instrument of peacekeeping to a tool for initiating conflict.

Another example of the re-interpretation of international law is Russia's annexation of Crimea in Ukraine in 2014. Russia manipulated the principle of 'self-determination', arguing for "peaceful 'reunification' based on voluntary self-determination and historical commonness"<sup>6</sup> in Vladimir Putin's 'Crimean Speech'. Although the international community denounced the invasion of Ukraine and sanctions were eventually placed on Russia, their attempt at manipulating international law effectively highlights how Lawfare can be used as a weapon of war<sup>7</sup>.

The overarching reason for the use of Lawfare is for countries to allow themselves to justify conflicts while falsely adhering to international legal norms in the eyes of the international community, thereby circumventing international law<sup>8</sup>. Despite this, the manipulation of international law is not for all nations to apply at will. One major flaw in international law which opens the doors to its exploitation by nations is its leniency towards its selective application. Certain states may selectively apply international law, adhering to its principles when

---

1.- Dunlap, C., *Does Lawfare Need an Apologia?*, 43 *Case Western Reserve Journal of International Law* 121-143 (2010)

2.- Schoenfeld, G., *Was the Iraq War a Foreseeable Blunder?* - <https://www.lawfareblog.com/was-iraq-war-foreseeable-blunder> (2023)

3.- Schoenfeld, G., *Was the Iraq War a Foreseeable Blunder?* - <https://www.lawfareblog.com/was-iraq-war-foreseeable-blunder> (2023)

4.- Schoenfeld, G., *Was the Iraq War a Foreseeable Blunder?* - <https://www.lawfareblog.com/was-iraq-war-foreseeable-blunder> (2023)

5.- UNODA, 1970 - <https://treaties.unoda.org/t/npt>

6.- Žalimas, 2017 - <https://www.constcourt.md/libview.php?l=en&id=1045&idc=9&t=/Media/Publications/RUSSIAN-JUSTIFICATION-OF-THE-ANNEXATION-OF-CRIMEA-AND-NAZI-PROPAGANDA-GREAT-SIMILARITIES-AND-MINOR-DIFFERENCES/>

7.- Dunlap, C., *Does Lawfare Need an Apologia?*, 43 *Case Western Reserve Journal of International Law* 121-143 (2010)

8.- *Is Lawfare Worth Defining?*, 2010 - *Case Western Reserve Journal of International Law*. 43 (1) [https://web.archive.org/web/20110807201635/http://www.case.edu/orgs/jil/vol.43.1.2/43\\_Lawfare\\_Report.pdf](https://web.archive.org/web/20110807201635/http://www.case.edu/orgs/jil/vol.43.1.2/43_Lawfare_Report.pdf)

advantageous but disregarding them when inconvenient with little to no consequences. The power politics of the international community play a crucial role here. The five permanent members of the UN Security Council (United States, Russia, China, the UK & France), bestowed with veto powers, can manipulate international law to serve their interests. This essentially allows them to legitimize their actions, however controversial. Moreover, the absence of an effective enforcement mechanism in international law adds to the ease of its circumvention. Since no international body has the power or authority to enact any penalty for violating the law, countries, especially members of the UN Security Council, can break the law with impunity.

**"...principles when advantageous but disregarding them when inconvenient with little to no consequences. The power politics of the international community play a crucial role..."**

The growing application of Lawfare as a strategy in international conflicts has broad implications for the international geopolitical landscape. As outlined by the two case studies explored above, it can undermine international law and incite new wars if unchecked. The international community needs to address this issue urgently. An essential step could be reforming the UN Security Council to prevent the abuse of the veto power and provide fair representation to all world regions. Addressing the stagnant state of the Council's membership and allowing the rotation of countries holding the veto power could also help strengthen international legal institutions. This, in turn, would make it more difficult for a handful of countries to manipulate laws to their advantage.

When analyzing how Lawfare has been applied in the past, we can begin to draw parallels with the common law system, mainly through its leniency towards the ability to interpret the law in a way that ensures the achievement of an operational objective, even if this goes against the fundamental values of this legal system<sup>9</sup>. This differs from a civil law system that relies heavily on explicit legal codes, leaving less room for interpretation and ambiguity and less opportunity for manipulation or selective interpretation. Lawfare is often employed by victors of past large-scale conflicts as a way to shape and maintain global order, such as post-WWII powers shaping international law and norms to their advantage through the creation of the United Nations and its aforementioned Security Council.

In conclusion, the phenomenon of Lawfare represents a significant challenge to international peace and security. It has morphed warfare from the physical to the legal domain, with countries using it to circumvent international law and justify new conflicts, often for economic or political gain. Addressing the imbalances in the international legal system and introducing a way to enforce the rules defined by international law is crucial in preventing the misuse of law in relation to warfare and maintaining global peace.

---

9.- Princeton University Press, What is Legal Representation? <http://assets.press.princeton.edu/chapters/s7991.pdf>



**President of TFJA seeks to modernize online trial and implement alternative dispute resolution.**

The Federal Court of Administrative Justice (TFJA), presided over by Chief Justice Guillermo Valls Esponda, has launched a program to modernize the online trial system and is preparing a project to have a mediation system that allows for alternative dispute resolution. In the case of the mediation project, he admits that this will not be available in the short term, because it is an issue that implies legal reforms and it will be necessary to hold forums, for which the support of bar associations, academia and universities will be needed. [www.milenio.com/politica/presidente-tfja-busca-modernizar-juicio-linea](http://www.milenio.com/politica/presidente-tfja-busca-modernizar-juicio-linea) May 06, 2023.

**SCJN invalidates AMLO's decree that 'shields' the public works of the 4T.**

The Supreme Court of Justice of the Nation (SCJN) invalidated the entire decree of President Andrés Manuel López Obrador, by which he classifies of public interest and national security the projects of his government (4T), such as the Felipe Ángeles International Airport, the Mayan Train, the Dos Bocas refinery, among others. This was given when analyzing the constitutional controversy filed by the National Institute of Transparency, Access to Information and Protection of Personal Data (Inai) against said presidential agreement that went into effect in November 2021. Article 113 of the General Law of Transparency and Access to Public Information states that public information will be reserved when national security is compromised. However, Minister González Alcántara declared that it is unconstitutional because its broadness and ambiguity hinders and inhibits access to information for all citizens regarding the country's public works. The SCJN determined that the decision will have effects on all the Secretariats, since they are part of the Executive Branch. [www.forbes.com.mx/scjn-invalida-decreto-de-amlo-que-blinda-las-obras-de-la-4t/](http://www.forbes.com.mx/scjn-invalida-decreto-de-amlo-que-blinda-las-obras-de-la-4t/) May 18, 2023.

**Mexico formalizes petition to create "American Union".**

In anticipation of the upcoming Summit of the Americas to be held in Los Angeles, in which Venezuela, Nicaragua and Cuba have been petitioned to be included, Mexico has made a formal proposal to initiate a regional integration project similar to the European Union. In order for the project to start, it will be necessary to sign an agreement to strengthen the internal market of the continent, in addition to raising 3 core points for international interaction, these being non-intervention between countries, cooperation for development and the fight against inequality and discrimination. It was also stated that for this project to work, visions such as the Monroe Doctrine as well as other slogans originated during the Cold War must be left in the past. [www.heraldodemexico.com.mx/nacional/2022/5/19/las-noticias-destacadas-hoy-jueves-19-de-mayo-mexico-formaliza-propuesta-de-union-americana-mas-405886.html](http://www.heraldodemexico.com.mx/nacional/2022/5/19/las-noticias-destacadas-hoy-jueves-19-de-mayo-mexico-formaliza-propuesta-de-union-americana-mas-405886.html) May 19, 2023.

**Mexican President insists on continuing Tren Maya despite court order.**

Due to environmental damage, a judge has suspended the cutting of trees in stretches from Yucatan to Quintana Roo. With this suspension, all permits to deforest in some sections of the Mayan Train route are judicially paralyzed. In addition, it was resolved that the provisional permits for the train works did not have the necessary authorizations, so they were also annulled. In spite of this, the President of Mexico has declared that he will not stop the work, as he justifies that this mega project is for the benefit of the people. At the same time, he qualifies all attempts to stop the construction as a "technical coup". [www.eluniversal.com.mx/nacion/mas-alla-de-amlo-se-mantienen-relaciones-mexico-peru/](http://www.eluniversal.com.mx/nacion/mas-alla-de-amlo-se-mantienen-relaciones-mexico-peru/) May 29, 2023.

**Supreme Court prohibits SAT from sharing personal data of its taxpayers.**

Until May 29, 2023, the Tax Administration Service (SAT) was allowed to share taxpayer information with third parties, but the Court declared unconstitutional the use of taxpayer information to provide identity verification services to private companies. Thus, the Court decided that the right to protection of personal data must be respected and therefore the use of information by the Service must be only to comply with tax obligations. Therefore, the SAT's powers were limited after the vote of the magistrates and the respective modification to the legislation. [www.elfinanciero.com.mx/economia/2023/05/30/suprema-corte-prohibe-al-sat-compartir-datos-personales-de-sus-contribuyentes/?outputType=amp](http://www.elfinanciero.com.mx/economia/2023/05/30/suprema-corte-prohibe-al-sat-compartir-datos-personales-de-sus-contribuyentes/?outputType=amp) May 30, 2023.

# TERRUM.

## CARLOS SIERRA DE LA PEÑA

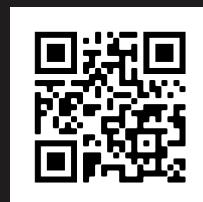
**International Relations:** Mr. Carlos Sierra De La Peña, of Mexican nationality obtained his bachelors degree at Queen Mary University of London, England with honors first class in political science and international relations from Queen Mary University of London.

**LANGUAGES:** Spanish and English.

e-mail: [casierra@asyv.com](mailto:casierra@asyv.com)



Prol. Reforma No. 1190 25th Floor,  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)



[www.linkedin.com/company/asyv](http://www.linkedin.com/company/asyv)

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.