



HYBRIDITY, LAWFARE, AND UNLAWFARE IN THE MARITIME DOMAIN

Date: November 13, 2023

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KEY EVENTS

On November 13, 2023, Dr. Ian Ralby presented *Hybridity, Lawfare and Unlawfare in the Maritime Domain* for this year's West Coast Security Conference. The presentation was followed by a question-and-answer period with questions from the audience and CASIS Vancouver executives. The key points discussed were the strategic importance of the maritime domain, usage of hybrid maritime aggression by international antagonists such as China, Iran, and Russia, and strategies for countering these tactics.

NATURE OF DISCUSSION

The maritime domain is of great strategic importance to the contemporary world order, owing in part to a Grey Zone that encompasses the usage of Hybrid Maritime Aggression by countries like Iran, China, and Russia. This concept includes four key elements: 1) unconventional action by states that have conventional forces; 2) a degree of "implausible" deniability; 3) an illegal act and 4) scalability of the action depending on the response. Related to this style of aggression are the concepts of "Lawfare" – the use of law and legal processes to achieve military goals –and "Unlawfare," or the use of fake, baseless, and unfounded legal positions to achieve military goals. Cooperation among the involved countries combined with academic research are the best methods to combat this new form of hybrid aggression.

BACKGROUND

Presentation

Dr. Ralby asserted the importance of the maritime domain by explaining that 90% of the world trade and 97-99% of communications happens in this environment, making it inextricably significant to life on land. He explained that countries such as China, Russia, and Iran make use of Hybrid Maritime

Aggression, which is classified by states with conventional forces choosing to use unconventional action that violates the law, is plausibly or “implausibly” deniable, and is scalable based on the response to it. That hybrid aggression is aimed at gaining strategic advantage is one of the main operational activities within the so-called “Grey Zone” which has been described by the former UK Defence Secretary Ben Wallace as “that limbo land between peace and war.”

Dr. Ralby outlined how Russia and Iran take different approaches on the subject by highlighting both the invasion of Crimea in 2014 and the drone attacks on the Israel-managed tanker *Mercer Street* by Iran. Both were clear kinetic approaches but were either denied in public communications or ignored as a means of causing confusion and chaos.

Dr. Ralby explained the concept of Unrestricted Warfare undertaken by China, which incorporates 11 different types of warfare that are not included in conventional definitions of war. He highlighted the importance of Lawfare on this subject, which entails using the law or legal processes to achieve military objectives. This strategy was used by both China and Russia extensively in recent years and is defined as one of China’s Three Warfares, along with Public Opinion and Psychological.

In juxtaposition with Lawfare, Dr. Ralby pointed to the concept of Unlawfare, which is the usage of false or unfounded legalistic positions or processes that give an appearance of legality and legitimacy to disrupt and cause confusion among the international community. Exemplifying this case, he referenced legal fictions on behalf of China, such as the Nine-Dash Line and other international claims like the exclusion of foreign warships and warplanes from the exclusive economic zone that have no basis in international law. Dr. Ralby noted as well that China is not only bastardizing the existing law, but working to make new law by flooding the academic literature with positions that support its wishes in areas of international law that are otherwise vague, underscoring the grave consequences if not properly addressed.

Dr. Ralby concluded by listing the common weapons that can be used when fighting these strategies, including the importance of cooperation and mutual support that comes with communications among allied countries. He also emphasised the necessity of applying rigorous academic exercise to critical thinking and Red Teaming (a tactic that involves seeing the adversary’s perspective and strategies by positioning the observer on the opposite side). He reiterated the importance of clarity, certainty, and trust as the antidotes to doubt

fostered by these tactics and presented the importance of academic and scientific publications in bolstering defence.

Question and Answer

Is it true that once the Parry Channel and the Canadian Arctic becomes more usable than it could potentially replace the Panama Canal and bring with it multi-channel vulnerability to Canada. Especially since the Parry Channel is seen as international waters by many estate actors.

Dr. Ralby noted the major changes among the international actors in the following years, stating that he foresees that a shifting world order will certainly impact the dynamics in the region and that risk assessment will be taken with different approaches in relation to these waters.

Is it time for the international navy to police the right of passage and high seas maritime crime?

Dr. Ralby stated that it is not the time, suggesting that the way the international court of law works makes it difficult to use Law Enforcement as an international tool. He clarified that international law enforcement requires domestic interaction and that international crimes are generally settled by domestic law, largely because international interactions can be less stable, and countries often dispute decisions as well as attributions. He stated that, even in areas such as piracy—where there is a common consensus among all countries that it should be combated—the intervention of foreign actors may be problematic and cause tensions if no consideration is given to the “legal finish,” as they may find that no coastal state is willing to accept the pirates for prosecution.

KEY POINTS OF DISCUSSION

- The maritime domain is of great strategic importance to the contemporary world order, for its relevance to world trade and international communications as well as the use of Grey Zone tactics and Hybrid Maritime Aggression.
- The usage of lawfare by both Russia and China is a common tactic, using the process of law to achieve military objectives.
- The Chinese concept of Unrestricted Warfare includes 11 approaches to warfare that are largely unrecognised in the west.
- Unlawfare, being the usage of false legal processes to cause chaos and achieve military goals, is an increasingly common tactic in the maritime domain.

- In order to combat Hybrid Maritime Aggression, international cooperation and vigorous academic research are key.

FURTHER READING

Ralby, Ian M. (2016) "Maritime Security Cooperation in the Gulf of Guinea: Prospects and Challenges, by Kamal-Deen Ali," *Naval War College Review*: Vol. 69: No. 3, Article 9. Available at: <https://digital-commons.usnwc.edu/nwc-review/vol69/iss3/9>

Ralby, Ian M. (2018). What Went Wrong When Regulating Private Maritime Security Companies. In: Schildknecht, J., Dickey, R., Fink, M., Ferris, L. (eds) *Operational Law in International Straits and Current Maritime Security Challenges*. *Operational Maritime Law*, vol 1. Springer, Cham. https://doi.org/10.1007/978-3-319-72718-9_9



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