

# Legal Sanction and Emerging Tenets of Territorial Lawfare: A Case Study of the Sea of Japan's Nomenclature

Monika Chansoria\*

## Abstract

This paper delves into details of the arguments surrounding the nomenclature “Sea of Japan” which has been a source of contention between Japan, South Korea, and North Korea. Beginning with analyzing the early origins of the nomenclature, the paper includes studying various surveys of global antiquarian maps and international references to the “Sea of Japan.” While usage of the term “Sea of Japan” in no way implies an opinion regarding issues pertaining sovereignty, the manner in which nations with revisionist tendencies are developing lawfare strategies in the broader sense and context for strengthening their territorial claims remains concerning, including the recent trends of employing lawfare for territorial entitlement.

The nomenclature “Sea of Japan” has been a source of contention among South Korea, North Korea, and Japan. The dispute emanates over the accepted international name of the water body bordered by Japan, Korea (North and South) and Russia. While Japan advocates exclusively for use of the name “Sea of Japan” (日本海), South Korea supports the alternative name “East Sea” (동해), and the North Korean claim favors exclusive use of ‘Korean East Sea’ or ‘East Sea of Korea’ (조선동해).

While South Korea has been raising the allegation that the term “Sea of Japan” was established when Japan colonized the Korean Peninsula, making it an ‘imperialistic term’ that should be abolished, Japan counters this argument by asserting that the term “Sea of Japan” was established before the colonization of the Korean Peninsula and so has no threads binding it to imperialism. The genesis of this disputation can be traced back to 1992 when objections to the name “Sea of Japan” were first raised by North Korea and South Korea at the Sixth United Nations (UN) Conference on the Standardization of Geographical Names.<sup>1</sup> In 1992, South Korea put claim to the name ‘East Sea’ during its participation in this UN Conference.<sup>2</sup> While the United Nations has never directly addressed the issue of establishing an official standardized name for the sea, several resolutions and statements by the UN have had relevance to the topic. Japan joined the United Nations in 1956, while South and North Korea both joined it in 1991.

In 1977, the Third UN Conference on the Standardization of Geographical Names (UNCSSGN) adopted Resolution III/20, entitled “Names of Features beyond a Single Sovereignty.” The resolution recommended that, when countries sharing a given geographical feature do not agree on a common name, it should be a general rule of cartography that the names used by each of the countries concerned be accepted. A policy of accepting only one or some of such names

\* Dr. Monika Chansoria is a Senior Fellow at The Japan Institute of International Affairs (JIIA) in Tokyo, and a Senior Contributing Author on Asia's geopolitics for the JAPAN Forward Association, Inc., Tokyo.

<sup>1</sup> For details, and related references see, *The Issue of the Name of the Sea of Japan*, Ministry of Foreign Affairs of Japan, February 7, 2017, available at <https://www.mofa.go.jp/policy/maritime/japan/index.html>

<sup>2</sup> “[East Sea (1)] East Sea/Sea of Japan, what is the problem,” *The Korea Herald*, May 23, 2010, available at <https://www.koreaherald.com/view.php?ud=20100520000904>

while excluding the rest would be inconsistent as well as inexpedient in practice. As with the International Hydrographic Organization's (IHO) Technical Resolution A.4.2.6, Japan and South Korea disagree about whether this policy applies to the Sea of Japan.<sup>3</sup> In April 2004, the United Nations affirmed in a written document to the Japanese government that it will continue using the name "Sea of Japan" in all its official documents stating "The use of an appellation by the Secretariat based on the practice is without prejudice to any negotiations or agreements between the interested parties and should not be interpreted as advocating or endorsing any party's position, and can in no way be invoked by any party in support of a particular position in the matter."<sup>4</sup>

It has been observed that international maps and documents predominantly use the name "Sea of Japan" (or its equivalent translation). Alternatively, both "Sea of Japan" and 'East Sea' are used, with 'East Sea' listed in parentheses (marked as a secondary name). Geographically speaking, the marginal "Sea of Japan" is separated from the Pacific Ocean by the Japanese archipelago. In November 2006, during the Asia-Pacific Economic Cooperation (APEC) summit in Hanoi, South Korean President Roh Moo-hyun informally proposed to Japanese Prime Minister Shinzō Abe that the sea in question instead be called the 'Sea of Peace' or 'Sea of Friendship'— a proposal that was rejected nearly instantaneously by Abe. Subsequently, in January 2007, Japan's Chief Cabinet Secretary Yasuhisa Shiozaki opposed the idea on record, arguing that there was no need to change the name of the Sea of Japan.<sup>5</sup>

As per the International Hydrographic Organization, the principal governing body for the naming of water bodies around the world, it was decided in 2012 that the 1953 version of its publication *S-23-Limits of Oceans and Seas*, which includes only the single name "Sea of Japan" will remain, and has not been revised.<sup>6</sup> In fact, *Limits of Oceans and Seas* has consistently used the name "Sea of Japan" (or 'Japan Sea') as the name for the concerned sea area since its first published edition in 1928. Japan did not participate in the process of the establishment of this name. In addition, Japan did not undertake any kind of *démarche* to have the name "Sea of Japan" put in the first edition of *Limits of Oceans and Seas*. Japan's delegation made the following remark which was recorded in the minutes of the first Supplementary International Hydrographic Conference in April 1929:

Japanese Delegates had objected to the proposal submitted to the previous Conference of 1926, since it was rather a political and diplomatic question and exceed the scope of the Conference. Nevertheless, the Japanese Delegation was in favor of a delimitation of the seas

<sup>3</sup> For further details see, *Sea of Japan: The One and Only Name Familiar to the International Community*, Ministry of Foreign Affairs of Japan, February 2009, available at <https://www.mofa.go.jp/files/000080252.pdf>

<sup>4</sup> As cited in, "The Policy of the United Nations Concerning the Naming of Sea of Japan," June 2004, available at <https://www.mofa.go.jp/policy/maritime/japan/un0406.html>; also see, *The Issue of the Name of the Sea of Japan*, n. 1.

<sup>5</sup> "Shiozaki: No need to change name of Sea of Japan," *The Japan Times*, January 10, 2007, available at <https://www.japantimes.co.jp/news/2007/01/10/national/shiozaki-no-need-to-change-name-of-sea-of-japan/>

<sup>6</sup> "Sea of Japan name dispute rolls on," *The Japan Times*, May 3, 2012, available at <https://www.japantimes.co.jp/news/2012/05/03/national/sea-of-japan-name-dispute-rolls-on/>; also see, Jon Rabirot, "Agency rejects South Korea's request to rename Sea of Japan," *Stars and Stripes*, April 27, 2012, available at [https://www.stripes.com/theaters/asia\\_pacific/agency-rejects-south-korea-s-request-to-rename-sea-of-japan-1.migrated](https://www.stripes.com/theaters/asia_pacific/agency-rejects-south-korea-s-request-to-rename-sea-of-japan-1.migrated); and for additional reading and references on the subject of geographical maps in territorial disputes between Japan and South Korea, see, Arnon Medzini, "The Role of Geographical Maps in Territorial Disputes between Japan and Korea," *European Journal of Geography*, vol. 8, no. 1, pp. 44–60, February 2017.

after due study of the problem in accordance with the guiding principles laid down by the Bureau.

What emerged is that, if Japan had any intention to actively propagate the name “Sea of Japan” (or ‘Japan Sea’) worldwide, it would not have had any concern about the political and diplomatic problems regarding the names and limits of seas as such, nor objected even temporarily to a proposal to prepare guidelines.<sup>7</sup>

### Early Origins of the Nomenclature

In the map *Kunyu Wanguo Quantu*, drawn up in 1602 by an Italian missionary priest of the Jesuit Order, Matteo Ricci, more than 400 years ago, the “Sea of Japan” was written in *kanji*. This world map is the oldest extant map describing the sea area between Eurasia and the Japanese islands using the term “Sea of Japan.”<sup>8</sup> The missionary spread the term “Sea of Japan” to Europe with a new awareness of geographical features. It is said that the copy of *Kunyu Wanguo Quantu* sent by Ricci is kept in the Vatican Library. In addition, maps and books written in European languages by those connected with the Society of Jesus were circulated, and maps with the term “Sea of Japan” began to be drawn in Europe based on them.<sup>9</sup>

Of these maps still in existence, the term “Sea of Japan” was first adopted by Christopherus Blancus, who made a map of Japan in 1617. After that, the term ‘North Sea of Japan’ was adopted by Sir Robert Dudley in 1646, while the term “Sea of Japan” was adopted by Vincenzo Maria Coronelli in 1690 and subsequently by Nicolaas Witsen in 1692. These terms gradually started to gain currency in the 17<sup>th</sup> and 18<sup>th</sup> centuries respectively. From the end of the 18<sup>th</sup> century onward, the name of this sea area began to be standardized as the “Sea of Japan.”<sup>10</sup> In the late 18<sup>th</sup> century, considerable improvements to surveying technology such as the invention of the chronometer (a watch to measure correct time on the sea) enabled the measurement of longitude with high precision and became indispensable for accurate surveying.<sup>11</sup> Further surveys into the Sea of Japan (Japan Sea) were successively conducted by European cartographers, explorers, and navigators. By the beginning of the 19<sup>th</sup> century, the name “Sea of Japan” (Japan Sea) became established internationally as the name indicating this sea area.

In Japan the term “Sea of Japan” was not established right away. The term was first used in Japan in 1802 when Saisuke Yamamura, a scholar who specialized in Western sciences by means of the Dutch language, made a map attached to a revised *Sairan Igen*, a form of geographic documentation. After that, the term “Sea of Japan” eventually started to be used mostly in maps for the study of Western sciences in Dutch. This trend resulted from the widespread adoption of the term “Sea of Japan” in Western maps drawn from the end of the 18<sup>th</sup> century onward.<sup>12</sup>

<sup>7</sup> For further details and references see, “The name - Sea of Japan (Japan Sea),” Hydrographic and Oceanographic Department, Japan Coast Guard, available at [https://www1.kaiho.mlit.go.jp/nihonkai/index\\_eng.html](https://www1.kaiho.mlit.go.jp/nihonkai/index_eng.html)

<sup>8</sup> As per Hiroo Aoyama, Associate Professor, National Museum of Japanese History, “The History of the Name of the Sea of Japan,” Selected Papers, *Ship and Ocean Newsletter*, No. 55, Ocean Policy Research Foundation, November 20, 2002.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> For related and further details see, *Voyage Round the World in the Years 1803, 1804, 1805, and 1806*, (Published by Facsimile Publishers).

<sup>12</sup> Aoyama, n. 8.

## Japanese and South Korean Positions on the Issue

The involved countries (especially Japan and South Korea) have put forth many arguments in support of their stance on this issue. The South Korean argument primarily revolves around history, asserting that the more common name was 'East Sea,' 'Sea of Korea,' or a similar variant. On the other hand, Japan argues that the name "Sea of Japan" has been the most cited international name of the water body since at least the beginning of the 19<sup>th</sup> century. Importantly, this long period precedes the annexation of Korea that South Korea often uses as a reference timeline. South Korea argues that the name 'Donghae' ( 동해 , literally "East Sea") has been used in Korea for over 2000 years, including in *History of the Three Kingdoms*<sup>13</sup> (1145), on the monument of King Gwanggaeto, and in the *Map of Eight Provinces of Korea* ( 八道總圖 , 1530). The South Korean argument is that the current name reflects active promotion by Japan at a time when Korea could not represent its interests internationally, and that no standard name existed prior to Japan's military expansion in the region.<sup>14</sup>

On the other hand, successive Japanese governments have claimed that the name "Sea of Japan" has been used internationally since the 17<sup>th</sup> century, only to become established by the early 19<sup>th</sup> century – the period (1639–1853) during which Japan was following the Tokugawa shogunate's isolationist policy of *Sakoku*. Seeking almost complete isolation from the rest of the world, the shogunate during the *Sakoku* phase primarily restricted any cultural exchange and commerce with foreign countries except China and the Netherlands until 1854.<sup>15</sup> Consequently, Japan could not have cast any influence on the international community at that time regarding the naming of the sea, contrary to what South Korea tends to base its argument on.

In the late 18<sup>th</sup> century, the invention of the marine chronometer enabled Western explorers from France, Britain, and Russia to measure time and longitudes on the sea precisely, and map the detailed shape of the Sea of Japan.<sup>16</sup> Adam Johann von Krusenstern, a Baltic German admiral of the Russian Empire and the explorer who led the first Russian circumnavigation of the Earth in 1803–1806, popularized the name "Mer du Japon" (literally, *Sea of Japan*) across the West. Chronicled in von Krusenstern's 1812 work *Reise um die Welt in den Jahren* (1812) it was cited, "... People also call this sea area the Sea of Korea, but because only a small part of this sea touches the Korean coast, it is better to name it the Sea of Japan."<sup>17</sup> This original book was published in St. Petersburg in German and Russian, and then translated into Dutch, French, Swedish, Italian and English for wider distribution throughout Europe.<sup>18</sup> Consequently, the international name of the sea was established as the "Sea of Japan" and named so in multiple kinds of maps drawn by countries other than Japan/Korea stretching between the 17<sup>th</sup> and 20<sup>th</sup> centuries.<sup>19</sup>

According to the Japan's Hydrographic and Oceanographic Department of the Japan Coast Guard, the name 'East Sea' is ill-suited as an international geographic name because the local

<sup>13</sup> "The history of the name Donghae (*Tokai*) goes back 2000 years? Korea is said to have originated 2000 years ago," *Korea World Times*, November 23, 2020, available at <https://www.koreaworldtimes.com/topics/news/8195/>

<sup>14</sup> United Nations, Group of Experts on Geographical Names, *Information Paper*, no. 10, Twentieth Session, January 17–28, 2000, available at [https://unstats.un.org/unsd/geoinfo/ungegn/docs/20th-gegn-docs/20th\\_gegn\\_INF10.pdf](https://unstats.un.org/unsd/geoinfo/ungegn/docs/20th-gegn-docs/20th_gegn_INF10.pdf)

<sup>15</sup> *The Issue of the Name of the Sea of Japan (Study in the Russian Federation)*, Ministry of Foreign Affairs of Japan, available at <https://www.mofa.go.jp/policy/maritime/japan/study-6.html>; for additional details and references see, Hydrographic and Oceanographic Department, Japan Coast Guard, n. 7.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

name for a variety of seas can be translated into English as ‘East Sea,’ e.g., the Government of Vietnam uses ‘East Sea’ for the South China Sea in its English-language publications. Likewise, the Ministry of Foreign Affairs of China uses ‘East Sea’ for the East China Sea in its English-language publications. For that matter, even within Japan itself, the term ‘East Sea’ (東海, *Tōkai*) is used to refer to the parts of the Pacific Ocean lying east of middle and upper Honshu (seen in the naming of the Tōkaidō route and the Tōkai region).<sup>20</sup>

### Surveys of Global Antiquarian Maps

Both Japan and South Korea have conducted antiquarian map studies on the subject. The underlying geography of the sea has also been employed to put forth additional arguments. From 2003 to 2008, Japan conducted several surveys of different collections and published its conclusions in 2010. Exhaustive comparative analysis showed that, among 1,332 maps from the Berlin Library, 279 used ‘Sea of Korea,’ ‘Oriental Sea,’ or ‘East Sea’ (or a combination thereof); 579 exclusively used “Sea of Japan”; 47 used ‘China Sea’ (with or without other names); 33 used another term; and 384 used no term at all.<sup>21</sup>

Out of 79 maps in the Struck Collection, (a collection of antiquarian maps owned by a European map collector)<sup>22</sup>, 35 used “Sea of Japan,” nine used ‘Sea of Korea,’ two used ‘Oriental Sea’ and 33 were unmarked.<sup>23</sup> Further, antiquarian map research reveals that, among four Russian libraries and document archives holding 51 maps, 29 used “Sea of Japan,” eight used ‘Sea of Korea,’ one used ‘Korea Strait,’ one used ‘East Sea,’ one used ‘Sea of China,’ and 11 used no name.<sup>24</sup> Among 1,213 maps surveyed from the US Library of Congress, this water body was named ‘Sea of Japan’ in 87 percent of the maps; eight percent used ‘Sea of Korea’; five percent used other terms; and none used either ‘Oriental Sea’ or the ‘East Sea.’<sup>25</sup> Similarly, 86 percent of the 58 maps from the British Library and the University of Cambridge examined used the name “Sea of Japan,” 14 percent used ‘Sea of Korea,’ and none used ‘Oriental Sea,’ ‘East Sea,’ or other terms.<sup>26</sup> A survey of 215 maps published in the 19<sup>th</sup> century in the French National Library revealed that 95 percent of 204 French maps used the term “Sea of Japan.”<sup>27</sup>

In November 2007, the National Geographic Information Institute of South Korea published a report on a survey of 400 ancient maps. According to the report, nine maps used ‘East Sea’ for the water body that is predominantly referred to as the “Sea of Japan” while 31 maps used ‘East Sea’ for the water body currently called the ‘East China Sea.’ Conspicuously, however, the number of maps using “Sea of Japan” has not been disclosed, thereby casting a serious cloud over the credibility and veracity of the South Korean institute’s findings. That aside, the report states, “*In the late 18<sup>th</sup> century (1790–1830) the name Sea of Japan emerged... From the 19<sup>th</sup> century (1830 onward), there was a rapid increase in the use of the name Sea of Japan.*” In a way, South Korea seemingly is contradicting its own assertions on the subject and wavering in its position/

<sup>20</sup> Ibid.

<sup>21</sup> *The Issue of the Name of the Sea of Japan (Study in Germany)*, Ministry of Foreign Affairs of Japan, available at <https://www.mofa.go.jp/policy/maritime/japan/study-7f.html>

<sup>22</sup> For further references and reading see, James R. Akerman, “A View from America: Map Collecting, ‘Treasure-House’ Libraries, and American Civic Influences on the History of Cartography,” *Imago Mundi*, [People, Places, and Ideas, in the History of Cartography: Supplement] vol. 66, pp. 21-43, 2014.

<sup>23</sup> *The Issue of the Naming of the Sea of Japan*, n. 21.

<sup>24</sup> *The Issue of the Naming of the Sea of Japan*, n. 15.

<sup>25</sup> For details see, *Sea of Japan*, n. 3.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

arguments.<sup>28</sup>

### **International References to and Acceptance of “Sea of Japan”**

The International Hydrographic Organization coordinates any and all hydrographic issues between its member-nations.<sup>29</sup> A key function of the organization is to standardize delineation of nautical regions. In 1929, the organization (then known as the International Hydrographic Bureau) published *Edition I* of “IHO Special Publication 23” (IHO SP 23) – *Limits of Oceans and Seas*. This edition included the limits of the sea area between the Korean Peninsula and Japan, and the name “Sea of Japan.” In fact, the name “Sea of Japan” remained in the subsequent editions too, including *Edition III* of S-23 published in 1953.<sup>30</sup> In 1974, IHO released a Technical Resolution A.4.2.6. which stated:

It is recommended that where two or more countries share a given geographical feature (such as a bay, a strait, channel, or archipelago) under different names, they should endeavor to reach agreement on a single name for the feature concerned. If they have different official languages and cannot agree on a common name form, it is recommended that the name forms of each of the languages in question should be accepted for charts and publications unless technical reasons prevent this practice on small scale charts.

Japan argued that the resolution does not apply to the “Sea of Japan” because it does not specify this body of water and only applies to geographical features for which sovereignty is shared between two or more countries.<sup>31</sup> In 2011, the IHO agreed to conduct a survey of available evidence. In April 2012, after several attempts over many years to revise the 1953 edition of S-23 – *Limits of Oceans and Seas*, the IHO Member States decided that it was not possible to make progress with a revision. As a result, only “Sea of Japan” continued to appear in S-23.

Further, Russia refers to the sea as “Япо́нское мо́ре” (*Yapónskoye more*; Japanese Sea). China exclusively uses the name 日本海 (*riběnhǎi*; Japan Sea). In 2003, the French Defense Ministry issued nautical maps which included both “Sea of Japan” and ‘East Sea’; however, it reverted to using “Sea of Japan” exclusively in the map issued in 2004. Further, the United Kingdom and Germany officially use the term “Sea of Japan.” The United States Board on Geographic Names (BGN) continues to advocate the use of “Sea of Japan,” and *The World Factbook* published by the US Central Intelligence Agency (CIA) follows the BGN’s guidance. In August 2011, a spokesperson for the United States Department of State stated that the US BGN considered the official name of the sea to be “Sea of Japan.”<sup>32</sup> In the following year [June 2012] US Assistant Secretary of State for East Asian and Pacific Affairs Kurt M. Campbell affirmed the BGN’s position concerning the usage of “Sea of Japan.” Campbell stated, “It is longstanding United States policy to refer to each sea or ocean by a single name. This policy applies to all seas,

---

<sup>28</sup> *The Issue of the Name of the Sea of Japan*, n. 1.

<sup>29</sup> The International Hydrographic Organization is headquartered in Monaco and is an intergovernmental organization that works to ensure all the world’s seas, oceans and navigable waters are surveyed and charted. Established in 1921, it coordinates activities of national hydrographic offices and promotes uniformity in nautical charts and documents. It issues survey best practices, provides guidelines to maximize the use of hydrographic survey data and develops hydrographic capabilities in Member States; for details see, <https://iho.int/en/>

<sup>30</sup> “East or Sea of Japan,” *IHO Special Publication*, no. 23, Korea Hydrographic and Oceanographic Administration, 2004.

<sup>31</sup> For details see, *Sea of Japan*, n. 3.

<sup>32</sup> “Sea of Japan is the official name, not East Sea: U.S.,” Jiji Press cited in *The Japan Times*, August 10, 2011.

including those bordered by multiple countries that may each have their own names for such bodies of water. Concerning the body of water between the Japanese archipelago and the Korean Peninsula, the longstanding US policy is to refer to it as the “Sea of Japan.”<sup>33</sup>

The *Manual of Style* of the National Geographic Society states that, in cases of disputed placenames for international waters or waters jointly controlled by two or more countries, the conventional name should be used first, with other names following in parentheses.<sup>34</sup> As such, their policy on this sea states, “The internationally accepted name is *Sea of Japan*, although Korea prefers *East Sea*. When scale permits, geographic maps show the alternative name *East Sea in parentheses after Sea of Japan*.”<sup>35</sup> Most encyclopedias using a similar pattern, including *Microsoft Encarta* and the *Columbia Electronic Encyclopedia*. In the 2007 edition of *Encyclopedia Britannica*, the primary article is called “Sea of Japan,” while a secondary article called ‘East Sea’ notes “see Japan, Sea of...” On that encyclopedia’s map of Japan and other Asian maps, the “Sea of Japan” appears as the primary label, and ‘East Sea’ appears as a secondary label in parentheses. Moreover, hydrographic authorities of the UK (since 1863), the US (since 1854), Russia, and France (since they began publishing nautical charts of the sea area around the Sea of Japan (Japan Sea)) have solely used “Sea of Japan” (Japan Sea) in their nautical charts to represent this sea area since their first edition.

### **Employing Lawfare for Territorial Claims: The Contemporary Strategy**

Legal warfare, also referred to as lawfare, is a broader strategy/means by which nations undertake churning out of new laws domestically to serve their territorial claims externally/internationally. Backed by military stealth, employing these legal tactics has become instrumental in attempting to win favorable settlement terms in existential territorial disputes across Asia. The goal of waging lawfare is not simply to exploit the compliance of global players with the international rule of law but is in fact to weaken their legitimacy.<sup>36</sup> The objective is to forestall the need for kinetic conflict and to control the narrative of the dispute/conflict. In military-speak, these states may be said to be engaging in legal preparation of the battlefield, setting the conditions under which they will negotiate for peace—or go to war.<sup>37</sup>

Lawfare as a subject was extensively debated in a 2001 paper titled *Law and Military Interventions: Preserving Humanitarian Values in 21<sup>st</sup> Conflicts*.<sup>38</sup> The paper cited “lawfare” as a term which identifies the use of law as a weapon of war as the newest feature of 21<sup>st</sup> century combat. The direction and momentum of nations’ application of their legislative systems suggest they are heading on a course wherein, if international law is to remain a viable force for good in

<sup>33</sup> For details see, Kurt Cambell, “Response to We the People Petition on the Sea of Japan Naming Issue,” The White House, [President Obama Archives], June 29, 2012, available at <https://obamawhitehouse.archives.gov/blog/2012/06/29/response-we-people-petition-sea-japan-naming-issue>

<sup>34</sup> For additional reading see, “Place Names and the Manual of Style,” by the National Geographic Society.

<sup>35</sup> Ibid.

<sup>36</sup> For further details see, Jill I. Goldenziel, “Law as a Battlefield: The US, China, and the Global Escalation of Lawfare,” *Cornell Law Review*, vol. 106, no. 5, October 2021, p. 1088; for more about lawfare see, Orde F. Kittrie, *Lawfare: Law as a Weapon of War*, (New York: Oxford University Press, 2016), pp. 172-173.

<sup>37</sup> As per the US Army *Field Manual*; Intelligence Preparation of the Battlefield, [Headquarters, Department of the Army] Glossary-7 (July 8, 1994), available at <https://fas.org/irp/doddir/army/fm34-130.pdf>, as cited in Goldenziel, p. 1088.

<sup>38</sup> Colonel Charles J. Dunlap, “Law and Military Interventions: Preserving Humanitarian Values in 21<sup>st</sup> Conflicts,” Prepared for the Humanitarian Challenges in Military Intervention Conference, Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, Washington, D.C., November 29, 2001.

military interventions, lawfare practitioners cannot be permitted to commandeer it for malevolent purposes.<sup>39</sup> Charles J. Dunlap, a colonel in the US Air Force Judge Advocate General's Corps, introduced the term "lawfare" into the mainstream legal and international relations literature in November 2001. He defined "lawfare" as the strategy of "using—or misusing—law as a substitute for traditional military means to achieve an operational objective."<sup>40</sup>

However, the term "lawfare" first appeared in a 1975 manuscript by John Carlson and Neville Yeomans entitled *Whither Goeth the Law - Humanity or Barbarity*, cited in an edited volume.<sup>41</sup> Lawfare was described as a method of warfare where law is used as a means of realizing a military objective. Carlson and Yeomans set out a history of mediation and first introduced the term "lawfare" wherein lawfare replaced warfare, with countries dueling with words rather than swords.

The concept and consequences of statehood play a crucial role within the body of international law. However, statehood in international law has historically been an ambiguous amalgam of law and fact.<sup>42</sup> The relevance of the traditional criteria for statehood and territory in international law is increasingly being challenged by conflicts and issues arising from the doctrine of statehood, territory, and title.

The usage of domestic and international laws to shape the legal context to support unilateral state actions externally has been well-elucidated in the 2016 book titled *Lawfare: Law as a Weapon of War*. It also appears that lawfare has been adopted principally as an offensive weapon capable of hamstringing opponents and seizing the political initiative. Nations are preparing legal war plans aimed at controlling their adversaries through the law or using the law to constrain them. At a time when lawfare is being used by revisionist states to make optimal use of the existing vacuum in the international legal arena, it is more than about time that Asia's democratic stakeholders take proactive steps to deal with the possibility of nations waging legal warfare via strategic, operational, and tactical policy initiatives across its borders, be they land or maritime neighborhood spaces.

China and other nations have made 'legal preparation of the battlefield' an essential component of their conceptual warfare tenets. Governments have increasingly altered and deployed law both to augment their own power and constrain that of their adversaries. Perhaps it would be apposite to assume that the greatest strength of lawfare lies in its proposed antidotes. This becomes especially challenging when placed in the context of the "Three Warfares" (*san zhan*) cited often in Chinese writings. Incidentally, *san zhan* comprises:

- 1) public opinion/media warfare
- 2) psychological warfare that provides the underpinning for both public opinion/media warfare and legal warfare
- 3) legal warfare – one of the key instruments of psychological and public opinion/media warfare

Law is becoming an increasingly powerful and prevalent weapon of war. The reasons for this development include the increased number and reach of international laws and tribunals, the rise of non-governmental organizations (NGOs) focused on the law of armed conflict and related issues, the information technology revolution, the advance of globalization, and the resultant

---

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> This paper authored by John Carlson and Neville Yeomans was first published in 1975, in Margaret Anne Smith and David J. Crossley, eds., *The Way Out - Radical Alternatives in Australia*, (Melbourne: Lansdowne Press, 1975).

<sup>42</sup> On *Statehood, Territory, and Title*, exclusively see, Malcolm Shaw, *Title to Territory in Africa: International Legal Issues*, (Oxford University Press, 1986).



economic interdependence. Lawfare is comparatively less deadly than traditional warfare “for it is vastly preferable to the bloody, expensive, and destructive forms of warfare that ravaged the world in the 20<sup>th</sup> century.” Lawfare is also financially less costly than traditional warfare and can sometimes be more effective than kinetic warfare. If some portion of warfare can be shifted from kinetic combat to the legal arena, that should prove to the advantage of the revisionist powers.<sup>43</sup> For instance, People’s Republic of China (PRC) President Jiang Zemin in 1996 advised a group of Chinese international law experts that Beijing “... must be adept at using international law as a weapon.”<sup>44</sup> China has the most well-developed lawfare strategy, having defined lawfare as a major part of its military strategy as early as 1999.<sup>45</sup> In that year, a book titled *Unrestricted Warfare*, authored by two colonels in the People’s Liberation Army (PLA) and published by the PRC’s military, repeatedly referenced the concept of using law as a weapon, sometimes referring to it as “legal warfare.”<sup>46</sup> The book provided a list of “examples of non-military warfare,” which included “establishing international laws that primarily benefit a certain country.”<sup>47</sup> The list also included “the use of domestic trade law on the international stage,” which, as the book asserted, “can have a destructive effect that is equal to that of a military operation.”<sup>48</sup>

## Conclusion

While usage of the term “Sea of Japan” in no way implies an opinion regarding issues pertaining to sovereignty, the ways nations with revisionist tendencies are developing lawfare strategies in the broader sense and context for strengthening their territorial claims is concerning. Be it China that goes as far as to define lawfare as one of the pillars underlying its military strategy or Russia where law serves to substantiate actions taken under its current military strategy, the Gerasimov Doctrine—a whole-of-government concept that fuses hard and soft power across many domains, transcending the boundary between peacetime and wartime.

Comparatively speaking, nations such as the US and Japan have not developed a full-fledged lawfare strategy or, for that matter, focused on lawfare intently and exclusively. Because of this, they appear to be passing up opportunities to employ lawfare against their adversaries and thereby losing control of the narratives critical to their strategic and military objectives, especially on territorial issues.<sup>49</sup> To prevail against their adversaries and to better collaborate with partners and allies, Japan and the US need to focus on their respective lawfare strategies. This would unify and improve their whole-of-government efforts to combat their adversaries via lawfare. The increased use of lawfare amplifies the theory that law is a non-lethal but potent weapon impacting the battlefield in a far greater strategic sense. Renaming territorial areas/spaces/places is an integral part of the lawfare strategy, wherein countries seek to claim the legal high ground to press for their territorial claims, or at least attempt to put a cloud of dispute over the existing name and its patron/host nation.

---

<sup>43</sup> For details see, Kittrie, n. 36, p. 3.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., also see, Goldenziel, n. 36, p. 1088.

<sup>46</sup> Kittrie, n. 36.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> For further details see, Goldenziel, n. 36, p. 1171.