



## Diploma Thesis Evaluation Form

Author: Wietse Straatsma

Title: China's Maritime Lawfare in the South China Sea

Programme/year: International Security Studies / 2019

Author of Evaluation (supervisor/external assessor): Tomáš Bruner

Criteria	Definition	Maximum	Points
<b>Major Criteria</b>			
	Research question, definition of objectives	10	10
	Theoretical/conceptual framework	30	23
	Methodology, analysis, argument	40	35
<i>Total</i>		<i>80</i>	<i>68</i>
<b>Minor Criteria</b>			
	Sources	10	7
	Style	5	5
	Formal requirements	5	4
<i>Total</i>		<i>20</i>	<i>16</i>
<b>TOTAL</b>		<b>100</b>	<b>84</b>



## Evaluation

Major criteria:

I highly appreciate author's choice of the **topic**: the application of the concept of warfare on China's activities in South China Sea. Lawfare itself is currently very popular concept, using it to assess Chinese activities in South China Sea is innovative, informative and it helps to understand Chinese behaviour in particular region as well as generally.

Key **research question** is well formulated (*How does China use lawfare as a strategy to strengthen its maritime power in the South China Sea?*); the set of 4 subsidiary research questions works also well: as long as those questions are auxiliary, it is fine that they imply yes/no answers. **Methodologically**, qualitative single-case study fits the research purpose. I highly appreciate that the author attempted to include Chinese **resources**, despite the language barrier. I also believe that great contribution of the thesis is that it demonstrates that *falū zhan* is actually integral part of Chinese strategy.

In regard to **theory**, the author uses the concept of lawfare as described by Dunlap and Kittrie, occasionally accompanied by references to Cheng. The author demonstrates satisfactory knowledge of chosen concept and sufficient ability to apply it. However the literature review could have been broader. The author refers to some important articles from 2010 issue of *Case Western Reserve Journal of International Law* that dedicated intense attention to lawfare (the author probably by mistake refers to the journal itself sometimes as *Case Western Reserve Journal of International Law* sometimes as *CASE W. RES. J. INT'L L*). Other articles from this journal/issue unfortunately remain disregarded, cf. ANSAH, T. *Lawfare: A Rhetorical Analysis*. BLANK, L. R. *Twist on an Old Story: Lawfare and the Mixing of Proportionalities*. LEBOWITZ, M. J. *The value of claiming torture: An analysis of Al-Qaeda's tactical lawfare strategy and efforts to fight back*. NEWTON, Michael A. *Illustrating Illegitimate Lawfare*. NOONE G. P. 2010. *Lawfare or Strategic Communications*. SCHEFFER, David. *Whose Lawfare is It, Anyway?* Similarly, the author omitted other academic works and discussions relating to lawfare (cf. below). As a result, the conceptual analysis is not as nuanced as it could have been, the quality of **argumentation** is slightly weakened and the thesis contains several disputable statements.

Firstly, the author mentions some of conceptual criticism (based e.g. on Sadat and Geng) that lawfare is regarded as destructive practice and too broad notion. Nonetheless, the author entirely misses the critique that the term lawfare might be inherently biased: Dunlap might have unconsciously used this concept to discredit US opponents as perfidious misusers of international law on the one hand and to honour the US as inventive users of lawfare intended to spare human lives on the other. From this critical perspective, western lawfare is portrayed as life-saving, clever tactics, while the eastern lawfare is portrayed as "an effort by the Lilliputians to bind Gulliver in a network of rules" (LUBAN, D. 2008. *Lawfare and Legal Ethics in Guantánamo*, p. 2020). This distinction between "our good lawfare" and their "bad lawfare" might have been of certain relevance; firstly as an opportunity for the author to reflect own position, secondly to emphasize fur-



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ther Chinese way of incorporating *falu zhan* into regular strategy – both points are present in the thesis, but not examined from this perspective.

Secondly, I also disagree with author's claim that "*the United States has not taken advantage of the full potential of the subject, nor has it realized any consolidated efforts to counter other's lawfare strategies*" (p. 19) and that "*in the West lawfare is still a concept mostly relegated to academic circles*" (p. 45). United States do use lawfare, e.g. in regard to Guantanamo, where the lack of presence of captured aliens inside the sovereign territory of the US has been presented as a reason to deprive them from habeas corpus (cf. Luban quoted above, but also authors like Raustiala 2005; Gregory 2006, or Kaplan 2005). Moreover, the US concept of global war on terror might serve to present the causalities caused by the US as justifiable collateral damage in wartime regime as regulated by international humanitarian law (cf. writings of Richter-Montpetit, Stampnitzky, or Horton whom the author also refers to). Generally, Western countries frequently project their norms and regulations to different parts of the world, which Snukal and Gilbert (2015. *War, law, jurisdiction, and juridical othering...* p. 662) denoted as "an exemplary tactic of lawfare".

Thirdly, the following reference to Kittrie would deserve further attention: "*Customary international law can be nullified or even changed through state practice undertaken in conjunction with an assertion that such practice is consistent with international law*" (2016a, 166). There is a legal principle *ex injuria jus non oritur*, which counters this statement and which actually could be used as a long-termed basis for countering "China's continued misinterpretations of international law" (p. 48).

Fourthly, I believe that *compliance disparity leverage* lawfare does not intend to benefit from one's simple non-compliance; the benefit of this type of lawfare is that the others comply and thus remain restricted. It is something like legal bullying, or exploiting the law obedience of others for one's advantage. This might not entirely fit Chinese behaviour in the South China Sea, which is rather closer to *instrumental lawfare*. But I agree that compliance disparity would be definitely caused by China entering into international agreements without any will to obey them, as the author rightly mentions. Compliance disparity gets lawfare closer to other types of hybrid warfare. Although the author did mention asymmetric lawfare, this link between lawfare and hybrid or asymmetric warfare would deserve a bit more attention. Why is China in asymmetric position to the others stakeholders in South China Sea? What motivates China to use hybrid warfare or lawfare instead of other means? Where is the thin borderline between lawfare and an attempt to legally justify one's own intention?



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Fifthly and finally, the author deals with the attribution problem: “*Oftentimes ostensibly privately-owned fishing vessels were used to harass these ships. This adds another facet to the lawfare strategy, giving the Chinese government plausible deniability.*” (p.22) This type of lawfare has also already received certain attention, which the author could have reflected (cf. GILLICH, I. 2015. *Illegally Evading Attribution? Russia’s Use of Unmarked Troops in Crimea and International Humanitarian Law*. BACHMANN, S. D. and MOSQUERA, A. B. M. 2015. *Lawfare and hybrid warfare – how Russia is using the law as a weapon*. BRUNER, T. FAIX, M. 2018. *The Attribution Problem as a Tool of Lawfare*).

Minor criteria:

The thesis is well written and very pleasant to read.

Overall evaluation:

I recommend the thesis for defence.

Suggested grade:

1 – 2 (excellent or very good), depending on the persuasiveness of thesis defence.

Signature:

A handwritten signature in blue ink, appearing to read 'Tomáš Dvořák', is written over the signature line.