

Loboda Y. O. candidate of philosophic sciences, associate professor, leading scientific fellow of National Defence University of Ukraine named after Ivan Cherniakhovskyi
<https://orcid.org/0000-0002-9121-6696>

THE TOOLS OF “HYBRID WARS”: LAWFARE

In the article “The tools of “hybrid” wars: lawfare” is considered the importance and complexity of the dealing with misuse of legal norms during the contemporary “hybrid wars”. Geneva conventions, defining status of noncombatants, according to US veterans of Afghan war, entail fatal tactical complexities in favor of enemy. The same situation is observed in Russian-Ukrainian war. The problem persist, being a subject of consideration of exclusively specialists in legislation. The situation could be changed if practitioners from both tactical and strategic levels would be involved into discussion.

Key words: lawfare; hybrid wars; non-combatants; international legislation.

Defining the core issue. Waging war within the frameworks of legislation, both national and international, has become a feature of civilized nations. Besides this, law can be misused in war. To what extent contemporary “hybrid wars” include “lawfare” as a misuse of law?

Analysis of the latest publications. The following scholars focused their attention on the lawfare: Bartman Ch.S. [1], Voyger M. [7]. Luttrell M. [4] again raised the question on the role of law in military tactics.

The aim of the article: to analyze the main aspects of the emergence of “lawfare”, its definition and complexity from the non-juridical standpoint, i.e. from the strategic point of view.

Exposition of the main material. Law cannot be neither neutral, nor ideal for everyone. There could be always people who will be unhappy with legal decisions; the legal acts itself can be obsolete, ideologically biased or merely unjust; law can leave too many chances for its misuse against these whom it supposed to defend. Law is a subject for change, it should refer to realities of actual life, but its normative character, complicated political and bureaucratic sources not always allow overcoming its conservatism. Law still has contradictory nature: it unites its essence as one of the highest achievements of human civilization in realm of rationalization of power, with sometimes tragic non-applicability of its general rules to the concrete real situations. For example, the examining of the role of legal status of civilians in the Ukrainian conflict will be conducted within the frameworks of this controversy.

The legal definition of “a civilian” is given in the Article 50 of the Fourth Geneva Convention:

“1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) [javascript:openLink\('https://ihl-databases.icrc.org/_c125672200286a21.nsf/9ac284404d38ed2bc1256311002afd89/2f681b08868538c2c12563cd0051aa8d&Name=CN%3DGVALNBD1%2FO%3DICRC'\)](https://ihl-databases.icrc.org/_c125672200286a21.nsf/9ac284404d38ed2bc1256311002afd89/2f681b08868538c2c12563cd0051aa8d&Name=CN%3DGVALNBD1%2FO%3DICRC); of the Third Convention and in Article 43 [javascript:openLink\('https://ihl-databases.icrc.org/_c125672200286a21.nsf/9ac284404d38ed2bc1256311002afd89/af64638eb5530e58c12563cd0051db93&Name=CN%3DGVALNBD1%2FO%3DICRC'\)](https://ihl-databases.icrc.org/_c125672200286a21.nsf/9ac284404d38ed2bc1256311002afd89/af64638eb5530e58c12563cd0051db93&Name=CN%3DGVALNBD1%2FO%3DICRC); of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

The excluded non-civilian persons are:

“(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such

organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.”

and

“1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.” The negative definition of the status of a civilian, according to commentators, clears out the essence of this notion, but causes further complexities: “The aim of this negative definition is to avoid the likelihood of loopholes arising in the law. If the law defined ‘civilians’ and ‘combatants’ separately and did not relate the two definitions to each other, there is a real possibility that a gap could be left, and a person could be seen as neither a civilian nor a combatant... The attempt to avoid any such lacuna, and indeed any further uncertainties that operate to the detriment of civilians, is further

reinforced by the presumption of civilian status... Furthermore, it should be noted that intentional or reckless attacks on civilians are war crimes” [3, p. 127-128]. Legal norms of warfare, so clear and obvious for lawyers, cause extreme concerns for military. For example, the latest American “Operational Law Handbook” and “Department of Defence Law of War Manual” together with W.H.Boothby’s “The Law of War. A detailed Assessment of the US Department of Defence Law of War Manual” makes roughly a bunch of 2230 pages in total. It may take long time for a military professional to memorize main principles, exclusions, sanctions, precedents, processual particularities, the “spirit of law” etc to become skilled in all the legal aspects of military profession. In practice not all the military are happy with the legal requirements which they have to obey. Carrying out the simultaneous tasks of destroying an enemy, staying alive and matching the requirements of a battlefield tactics with the legal codes within the frameworks of the criminal responsibility – all these duties makes the military profession extremely complicated. Perhaps, Marcus Luttrell expressed a popular sentiment among the soldiers of the Western armies: “...we read the newspaper headlines from all over the world about serving members of the armed forces who have been charged with murder in civilian courts for doing what they thought was their duty, attacking their enemy. Our rules of engagement in Afghanistan specified that we could not shoot, kill, or injure unarmed civilians. But what about the unarmed civilian who was a skilled spy for the illegal forces we were trying to remove? What about an entire secret army, diverse, fragmented, and lethal, creeping through the mountains in Afghanistan *pretending* to be civilians? What about those guys? How about the innocent-looking camel drovers making their way through the mountain passes with enough high explosive strapped to the backs of their beasts to blow up Yankee Stadium? How about those guys?... And we were taught that we were necessary for the security of our nation. We were sent to Afghanistan to carry out hugely dangerous missions... But we were also told that we could not shoot that camel drover before he blew up all of us, because he might be an unarmed civilian just taking his dynamite for a walk. And how about his buddy? The younger guy with the stick, running along behind, prodding the

freakin' camels? How about him? How about if he can't wait to scamper up those mountains and find his brother and the rest of the Taliban hard men? The ones with the RPGs, waiting in the hidden cave? We wouldn't hear him reveal our position, and neither would the politicians who drafted those ROEs. And those men in suits won't be on that mountainside when the first grenade explodes among us and takes off someone's leg, or head. Should we have shot that little son of a gun right off the bat, before he had a chance to run? Or was he just an unarmed civilian, doing no harm to anyone? Just taking his TNT for a walk, right? These terrorist/insurgents know the rules as well as they did in Iraq. They're not their rules. They're *our* rules, the rules of the Western countries, the civilized side of the world. And every terrorist knows how to manipulate them in their own favor. Otherwise the camel drovers would be carrying guns. But they don't. Because they know we are probably scared to shoot them, because we might get charged with murder, which I actually know they consider to be on the hysterical side of laughable. And if we did shoot a couple of them, they would be on their cell phones with the speed of ten thousand gigabytes, direct to the Arab television station al-Jazeera: BRUTAL US TROOPS GUN DOWN PEACE-LOVING AFGHAN FARMERS *US Military Promises SEALs Will Be Charged Well*, something like that. I'm sure you get my drift. The media in the United States of America would crucify us. These days, they always do. Was there ever a greater uproar than the one that broke out over Abu Ghraib? In the bigger scheme of things, in the context of all the death and destruction that Muslim extremists have visited upon this world, a bunch of Iraqi prisoners being humiliated does not ring my personal alarm bell. And it would not ring yours either if you ever saw firsthand what these guys are capable of. I mean, Jesus, they cut off people's heads, American heads, aid workers' heads. They think nothing of slaughtering thousands of people; they've stabbed and mutilated young American soldiers, like something out of the Middle Ages." [4, p. 94-95]. The thing that Luttrell calls "manipulating our rules in favor of enemy" received the name of "lawfare".

Development of international legislation of armed conflict has been followed by the parallel process of elaboration of the methods of exploitation of laws in favour of belligerent

sides. The concept of "lawfare", originally developed by US military [2], in fact was widely realized in politics of Soviet Union and Post-Soviet Russia [1, p. VI]. In conditions of "hybrid warfare", when non-military means are used widely, methods of "lawfare" have become more important. This is relevant to all main dimensions of war: political, strategic, operational and tactical, which makes elaboration of counter-measures more complicated, especially regarding the issues of relevance of the international legislation of armed conflict which was created well before the contemporary time when new methods of warfare emerged. Analysts place "lawfare" in the center of the strategy of contemporary "hybrid" wars waged by Russia: "Lawfare is the offensive exploitation of international and domestic law that is employed by the Kremlin against its adversaries abroad, but also against the Russian population... Customary international law, however, is not carved in stone, as it derives from the practices of states ("International law is what states make of it"). This fluid, interpretative nature of international law is being used by Russia extensively and in the most creative ways in its current hybrid campaigns. Unfortunately, the current international system based on the rule of law, the respect for treaties and the authority of international institutions has so far failed to shield countries such as Ukraine and Georgia from the ongoing Russian hybrid aggression. While Russia does not exert full control over the international legal system, it is actively trying to erode its fundamental principles. Its ongoing lawfare activities have shaken the pillars of the post-WWII security architecture in Europe, such as the inviolability of national borders; the mutual respect for treaties and the full sovereignty of nation-states in Europe... At the tactical level, the deployment of Russian troops abroad requires a formal (quasi-legal) justification, which is also a form of Lawfare. On the other hand, the legalized use of force against popular protests to prevent or crush a "Colour Revolution" in Russia, is an example of domestic Lawfare." [7].

One of the biggest problems here is distinction between combatants and civilians, which seemed to be clear during conventional wars in the first half of the XXth century and Cold War period, but the current conflicts challenge legal theorists to reconsider the traditional approach: "Today, the axiom itself

is challenged by reality on the ground, in particular by the increasing “civilianization of armed conflicts”. If everyone who is not a (lawful) combatant is a civilian, in many asymmetric conflicts the enemy consists exclusively of civilians. Even if, in non-international armed conflicts, members of an armed group with a fighting function are not to be considered as civilians, it is in practice very difficult to distinguish them from the civilian population. Furthermore, private military and security companies, whose members are usually not combatants, are increasingly present in conflict areas. On all these issues of “civilianization”, the concept of direct participation in hostilities is crucial, because civilians lose their protection against attacks while they so participate and may therefore be treated in this respect like combatants.” [6, p. 1-2].

The term “hostilities” in contemporary “hybrid” wars became way wider: in some cases, like in the current Russian-Ukrainian war, even unarmed actions of non-combatants can cause fatal results for one of the belligerent sides. The identity of a non-combatant is changed: a concept of “hybrid war” can even destroy it, turning limited conventional wars into total wars, when civilians will participate without necessary understanding their sometimes lethal roles. This adds complexity to the theory of international law, both humanitarian and law of armed conflict.

Current Russian-Ukrainian war is not declared by aggressor – Russia annexed Crimean Peninsula and invaded East of Ukraine (Donetsk and Luhansk regions) without any declaration or any other official claims. Ukraine on the 14th of April 2014 declared an “Anti-Terrorist Operation” (“ATO”), and on the 6th of May 2014 was adopted the law defining the persons who participate in ATO: they include soldiers of officers of Ukrainian Army, National Guard, Security Service, Border Service, Ministry of Interior Affairs, other armed troops and members of all the other organizations who participated in operations on the battlefield. According to the changes to the recent law “About Volunteer Activity in Ukraine” the members of the non-armed volunteer groups have the equal rights with soldiers and officers of the Ukrainian armed forces.

The role of the civilians from both sides in the Russian-Ukrainian war is different which influences the identification of their legal status.

Putin outlined the role of the civilians at the outbreak of the annexation of Crimea: “We will stand behind the Ukrainian women and children and I want to see that person who would issue the order to shoot at them”. Putin initially planned to use the local civilians as a shield for his troops, this perfectly matches the soviet-style KGB mindset. The essential feature of such tactics is using civilians who support these warriors who are standing behind them. This approach has been used by the terrorist groups, and this makes essential difference: at first time such tactics was announced by a political leader of a state. According to Geneva conventions these civilians cannot be identified as combatants – they were unarmed, situationally organized (Ukrainian security service denies this) and allegedly expressed their own political views, no matter how they match the political agenda of the aggressor.

In 2014 civilians in Ukraine were used widely for the war effort from the both sides. This allowed Russian propaganda to use this fact in their endeavours to convince people from other countries that in Ukraine happens a “civil war”, not the foreign invasion. In the “civil” actions participated not only Ukrainian citizens, but Russian civilians as well – they were deployed to Ukraine as tourists and substantially enforced pro-Russia demonstrations in Crimea, Donetsk, Luhansk, Odessa, Kharkiv, Dnipropetrovsk.

On the initial phase of the war exploitations of the civilians was primarily aimed to block Ukrainian troops at their Crimean bases and to stop advance of the Ukrainian forces towards Eastern border of Ukraine. Being aware that Ukrainian soldiers will not shoot at the civilians, the organizers achieved their plans: Ukrainian bases were blocked and lately seized by the Russian troops, and deployment of the Ukrainian troops to the Donbass region was essentially slowed by the organized civilian groups. Methods of the non-violent (i.e. exceptionally legal) resistance, codified by Gene Sharp, initially aimed against dictatorship, were used in favour of dictatorship. These actions were not lethal: during annexation of Crimea 7 Ukrainian soldiers were killed, up to 5 pro-Ukrainian Crimean Tatar activists were found murdered, up to 20 Crimean Tatars are still missing. In

Donbass region civil unarmed activists covered Russian snipers who killed several Ukrainian soldiers and officers during blockade of the roads in 2014.

Using civilians as shields for military is prohibited by international law, no matter citizens of which state they are: “Both the law of armed conflict and international human rights law prohibit the use of human shields. Civilians used as human shields retain their status as civilians and are protected against direct attack unless and for such time as they directly participate in hostilities. This section is applicable to ‘active hostilities’ and ‘security operations’. The law of armed conflict prohibits the use of human shields. Article 51(7) of Additional Protocol I states: The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations. International human rights law reinforces this prohibition on the use of civilians as shields. International human rights law establishes an obligation to protect individuals’ right to life, including from the activities of third persons. States are subject to a positive obligation ‘to take preventive operational measures to protect an individual for whom they are responsible’. Accordingly, States are prohibited from directly placing civilians in danger by using them as human shields. In such circumstances, the armed forces are fully aware ‘of the existence of a real and immediate risk to the life’²⁹² of the individuals in question that is posed by the adverse party.” [5, p. 156 – 157]. In the case of the Russian-Ukrainian war these “alive shields” participated in the counter-Ukrainian actions voluntarily, led by propaganda or being paid by Russia or both, eliminating possible complaints from their side. According to Ukrainian law, their activity is identified as a criminal offence of terrorism (in case when these actions resulted in deaths of other people); Ukrainian citizens also can be the subjects of the criminal conviction of state betrayal. The Criminal Law of Ukraine does contain the cases when civilians can act as non-combatants according to international law, but

still as criminals: “providing foreign countries any help in their subversive activity against Ukraine and her interests: i.e. by assisting foreign spies, recruiting agents for subversions, or any other crimes against fundamentals of national security of Ukraine”.

Also, this activity contains informational actions against Ukrainian security, which are widely used in “hybrid wars”. This include:

- Manipulating public opinion in Ukraine and internationally in favour of Russian strategy – demoralizing Ukrainian people and troops, convincing them to surrender, scaring them with false information about strength and technical superiority of Russian army, benefiting from betrayal to Russia etc.

- Broadcasting fake news aimed to influence the outcome of possible criminal processes against Russia (downing Malaysian Boeing, massacre in Mariupol 2015, Volnovakha in 2015 etc).

- Representing Russian-Ukrainian war as internal “civil war” waged by “local insurgents” against “illegal Ukrainian regime” etc.

State Ukrainian resistance of this activity is twofold: it is waged by Ukrainian security service officially and by Ukrainian civil activists as well – journalists, OSINT investigators.

The other type of anti-Ukrainian strategic civil activity is active spying on the Ukrainian armed forces, police, security service. Non-professionals in espionage, civilians transmit sensitive data about quantity, armament, routes of manoeuvre and logistics of Ukrainian troops to Russian side, helping them to organize ambushes, mining and other types of subversions which cause deaths among Ukrainian troops and other civilians.

This unarmed activity which is identified by Ukrainian authorities as forms of terrorism, is fundamentally related to other forms of subversion, like aiming artillery raids (as it happened in January 2015, when Russians shelled with multiple rocket launchers Mariupol, caused 31 civilian dead and 117 wounded – this case was included to Ukrainian appeal to UN International Court of 2017). Pro-Russian civil activists with Ukrainian (or DNR/LNR) citizenship also participate in UAV surveillance of the locations of Ukrainian troops, helping aggressors to identify targets for Russian artillery which is recognized by Ukrainian criminal law as participating in terrorist activity.

Activity of unarmed pro-Russian civilians which falls under the definition of war crime includes: torture of Ukrainian prisoners of war, which massively happened in 2014, delivering poisoned food and drinks to Ukrainian troops (Ukrainian army has lost up to 5 soldiers dead in these cases).

Non-lethal activity of pro-Russian activists includes non-military supply of the troops with food, clothes, money, building materials for their check-points, bunkers etc along with logistical services with private cars, vans, trucks. They also help to build trenches, checkpoints and bunkers for Russian forces and pro-Russian proxies.

Unarmed civilians with Ukrainian citizenship who escaped from war zone to Ukrainian territory are officially recognized by Ukrainian authorities as internal refugees, sometimes deliver pro-Russian propaganda to locals, which is recognized by Ukrainian security service as informational subversion and in cases of its essential scale are prosecuted.

Unarmed civilians are represented from Ukrainian side as well. Their activity is organized in groups, but not necessary; this started from the late Fall of 2013, when Maidan began its self-organizing. The initial aim of the civil resistance was self-defence and supplying the unarmed civil forces, later it developed to full-scale official military, unofficial paramilitary and unarmed pro-military civil activists.

The function of self-defence on the initial stage of the war was realized by volunteer armed groups called “Volunteer battalions”, which had their own supply services, medical platoons, logistics, informational services. Their activity was funded by Ukrainian society directly by means of “crowdfunding” – direct donations from the Ukrainian and foreign citizens. These battalions managed to resist foreign aggression on the first months of war, realizing functions of Ukrainian army. They consisted of previously military trained people, veterans of Soviet-Afghanistan war, UN peacekeeping operations, but mostly – of civil volunteers which did not get professional training before – they were trained on the battlefield. In summer 2014, volunteer battalions were officially incorporated to Ukrainian armed forces and National guard as separate regiments.

Non-military divisions, specialized in medical aid, supply, training, informational

work located on home front territories of Ukraine, remain non-official groups of representatives of Ukrainian civil society. Phenomenon of numerous armed and paramilitary groups is unusual for the modern Ukrainian history.

Ukrainian state officially recognizes unarmed civil volunteer groups and individuals as pro-Ukrainian activists which have social benefits and guarantees equal to these which have Ukrainian soldiers. The variety of Ukrainian civil pro-military activism are wider that pro-Russian, because Russian forces and proxies are directly supported by the Russian state.

Ukrainian groups of unarmed civilians differ from the types of their activity:

- volunteer groups of supply;
- groups of medical aid in home front;
- “Black Tulip” group (unofficial service of collection of non-buried bodies of Ukrainian soldiers);
- OSINT groups;
- groups for exchange of captured Ukrainian soldiers and civilians;
- unofficial journalists;
- medical training groups;
- engineers and construction;
- technical supply and maintenance of weapons and vehicles;
- drone supply and maintenance;
- encrypted radio communication supply and maintenance;
- homeland and international volunteers coordination groups;
- current psychological help at the battlefield and post-service traumatic syndromes care.

Unarmed civil volunteers are usually targeted by Russian and pro-Russian forces, especially volunteer medical services. Detained volunteers are treated by Russians and their proxies as prisoners of war equally to members of Ukrainian armed forces. Ukraine exchanges Russian prisoners of war captured from regular and proxy troops to Ukrainian volunteers from DNR/LNR prisons equally as she does to captured Ukrainian soldiers.

Contemporary hybrid wars add complexity to internal issues of the international humanitarian law. Conventional wars offered bigger chances for distinguishing civilians from combatants, but reality of contemporary hybrid armed conflict eliminated that opportunity. The concept of “hostility” becomes much wider

than ever before: a regular civil activity can now easily lead to deaths from opposing armed forces, being incorporated to traditional informational/cultural warfare. International humanitarian law requires not to treat human shields as enemy (Human shields remain civilians and are protected from direct attack unless and for such time as they take a direct part in hostilities. While there has been discussion about different levels of protection to be accorded to different categories of human shields, whether voluntary or involuntary, it may in practice be exceptionally difficult for armed forces to determine whether an individual is a voluntary or involuntary human shield. Further, in certain situations, although an individual may prima facie appear to be a voluntary human shield, the circumstances may preclude genuine consent. The criterion for protection is simply whether or not the individual can be regarded as taking a direct part in hostilities. [5, p. 157-158]), but in Crimea and Donbass in 2014 they acted even more effectively than any landmines or active enemy armed resistance, which clearly showed how international humanitarian law can be misused in favour of one of the belligerent states.

Conclusions. Contemporary Russian-Ukrainian war is undeclared; Ukraine did not declare a state of war on the Ukrainian territory (except the period of Martial law of 26 November 2018 till 26 December 2018 on the 10 regions of Ukraine), thus the soldiers of regular Russian army, Russia-supported proxies and unarmed pro-Russia civilians are treated by Ukrainian criminal law as terrorists and state traitors, as numerous legal processes showed. At the same time, about 9 000 of Ukrainian soldiers were accused as criminals during doing their military duties, for example for checking the documents of the civilians being armed, which is usually recognised as “illegal detention and death threat to civilians” in the courts, majority of this number of soldiers were imprisoned.

The complexity of the definition of “hostile action” and realities of contemporary warfare on tactical and technical levels, where unarmed civilians can participate, offers

essential possibilities for belligerent states to manipulate the law in their favour, which urgently requires academic initiative for discussions about endeavours of making International Humanitarian legislation more relevant to realities of contemporary warfare, including primarily complexities of hybrid war, which engage unarmed civilians into lethal actions even actively than ever before. Until that time the practice of lawfare will be the evidence of misuse of the law, which contradicts its fundamental essence. The outlined issues may seem a stalemate when the principles of law contradict the tactical needs of the soldiers on a battlefield and nothing than a rigid dichotomy of “legal nihilism (of the military)/legal perfectionism (of the criminal courts)” would appear. New realities of a new types of war have to initialize the academic debate about changing the legal norms of the soldiers, who have to deal with unarmed civilians which stop the military convoys more effectively than the landmines; who bring poisoned meals and beverages to soldiers causing their death; torturing the prisoners of war; spying and propaganda etc. Soldiers in times of “hybrid wars” should not only be aware about legal norms of the military service; maybe they should have basic skills of civil investigations, counterintelligence, OSINT, and finally receive permission to act as local police for law enforcement goals, when the civil police is inaccessible. Contemporary Ukrainian military police has only authority to control the military; police forces have no access to the battlefield and “grey zones” and National guard currently acts as Ukrainian army, as just other units of armed forces; Security service of Ukraine is outnumbered by the suspects and it not always has its representatives on the battlefield. New types of the civil-military relations during “hybrid wars” require changes of legislation and change of armed forces. It is the objective need, it is not a fancy of the military who prefer to make the easiest way of legal nihilism. The academic debate on “lawfare” should include people, who have to deal with in on the battlefields and elaborating military strategy.

References

1. Bartman Ch.S. Lawfare: Use of the Definition of Aggressive War by the Soviet and Russian Federation Governments. – Cambridge: Cambridge Scholars Publishing, 2010.

Питання психології

2. Dunlap Ch. J., Jr. Law and Military Interventions: Preserving Humanitarian Values in 21st Conflicts // <http://people.duke.edu/~pfeaver/dunlap.pdf>.
3. Kolb R., Hyde R. An Introduction to the International Law of Armed Conflicts. Oxford; Portland, OR: Hart Publishing, 2008.
4. Luttrell M. Lone Survivor: The Eyewitness Account of Operation Redwing and the Lost Heroes of SEAL Team 10. - New York: Little, Brown and Company; Hachette Book Group, 2007.
5. Murray D. Practitioners' Guide To Human Rights Law In Armed Conflict. – Oxford: Oxford University Press; Chatham House, 2016.
6. Sassoli M., Bouvier A.A., Quintin A. How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law. Volume I. Outline of International Humanitarian Law // <https://www.icrc.org/eng/assets/files/publications/icrc-0739-part-i.pdf>.
7. Voyger M. “Lawfare” – the Forgotten Element of Russia’s Hybrid War Against the West // <https://toinformistoinfluence.com/2018/12/22/lawfare-the-forgotten-element-of-russias-hybrid-war-against-the-west/>.

Резюме

Лобода Ю. кандидат філософських наук, доцент, провідний науковий співробітник лабораторії (гуманітарних проблем) кафедри суспільних наук гуманітарного інституту Національного університету оборони України імені Івана Черняховського

ЗАСОБИ «ГІБРИДНИХ ВОЄН»: ПРАВО ВІЙНИ

У статті «Засоби «гібридних воєн»: правовійна» на основі огляду сучасної західної літератури проаналізовано таку форму репрезентації відсутності нейтральності права як «правовійна».

У розділі «Визначення головної проблеми» зазначено, що важливим компонентом сучасних «гібридних воєн» є зловживання правовими нормами, міра цих зловживань та способи їх подолання досі залишаються невизначеними. У розділі «Аналіз останніх публікацій» вказано на теоретичні роботи західних дослідників з питань правовійни, а також на кейс, де розглядається проблема правового регулювання військової тактики. Головна мета статті – проаналізувати основні аспекти появи правовійни, його визначення та складність в умовах сучасних гібридних воєн з не-правової точки зору.

У розділі «Виклад основного матеріалу» було розглянуто, які складності пов'язані з дотриманням Женевської конвенції, яка визначає статус комбатантів та некомбатантів, в контексті кейсу Маркуса Латтрелла, який описав свій досвід участі в операції «Червоні крила» на сході Афганістану влітку 2005 року, де автор говорить про те, як на полі бою відбувається «маніпуляція правовими нормами на користь ворога». Сучасні дослідники зазначають, що правовійна може бути атрибутом не тільки тактичного рівня збройного конфлікту, але й стратегічного, перетворившись на потужний інструмент сучасних «гібридних воєн». Головна складність, яка характеризує цю проблему – принципова неможливість вирішити її в рамках теорії права. Російсько-українська війна знову акцентувала проблему, яка була завжди актуальною для сучасних західних країн – як вирішити протиріччя між нагальними вимогами військової тактики та міжнародним правом?

У висновках зазначається складність і важливість дослідження проблеми правовійни, а також причини відсутності її вирішення.

Ключові слова: правова діяльність; гібридні війни; не комбатанти; міжнародне законодавство.

Received/Поступила: 25.06. 21.