An Examination of the European Union's Use of Lawfare Since 2001

By Morgan Harris

Abstract

The European Union is typically regarded as a soft power institution that influences others through co-option and cultural integration. Research now indicates, however, that the EU is beginning to explore coercive hard power tools and tactics. In other words, instead of strictly *enticing* actors to behave through diplomatic soft power, scholars suggest that the EU is now *forcing* desired action. A key concept related to hard power is "lawfare" or the use of law and legal mechanisms in substitution of hard-military practices. Archival data collection of EU sanctions and flight bans from 1993—when the union was formally established—to 2017 reveals that the European Commission, European Parliament, and the Council of the European Union have been actively engaged in lawfare since the 1990s. The analysis finds that the European Union enacted 439 separate instances of lawfare against its enemies from 1993 to 2017 and that its lawfare usage is nuanced, either to cripple an enemy's capability, condemn or punish a government or actor's behavior, or to substitute specific military action. These findings complicate and challenge the idea that European Union is a strict soft power institution and that its possible hard power tactics are a recent development. In addition to providing critical insight into how the EU responds to domestic and international threats, this study, as both the first quantitative analysis of lawfare and of lawfare's usage by a supra/multi-state institution, extends the literature to provide valuable insight into measuring and analyzing the global usage of law as a weapon of war.

Introduction

The European Union (EU) has been in a state of continual transformation since its beginnings in the early post-World War II years. In 1946, Winston Churchill envisioned a "United States of Europe" that would serve to unify European countries and prevent war amongst its members (Churchill 1949, 197). To receive aid from the Marshall Plan and to facilitate cooperation between states, the Europeans established the Organisation for European Economic Co-operation (OEEC) in 1947 (Zeff and Pirro, 2015, 3). Following the signing of the Treaty of Paris, the creation of the European Coal and Steel Community (ECSC) in 1952, and the European Community in 1958, European countries began to accept a model where sovereignty was willingly ceded in exchange for mutually-beneficial cooperation and protection (Zeff and Pirro, 2015, 3). Since its inception, the European Union has adapted to serve the growing number of countries it represents. With this growth, this governing body has also been changing how it leverages power against states and individual actors.

Although the EU has traditionally attempted to gain influence by coopting others through diplomacy and attractiveness of culture, research now suggests that the union is slowly, but surely, employing coercive, hard power tactics. The EU's current use of military Peace Support Operations are indicative of its ability to utilize hard power in combination with soft power. As the EU's legitimacy thus far has rested upon its use of soft power, using blatant military hard power may damage and undermine the institution's international reputation. For that reason, EU institutions cannot, even today, when terrorism and national security are at the forefront of member states' collective minds, simply use hard military force. Therefore, understanding how

the EU may be using lawfare, especially in the years after 9/11 when the United States bolstered its global anti-terrorism efforts, is crucial to understand the security strategy of the European Union.

Overview of Soft Power, Hard Power, and Lawfare

The European Union has traditionally wielded power through the use of soft power (Kugiel 2017). Soft power is defined by Nye as "the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment" (Nye 2008, 94). With its commitment to soft power, the European Union has been historically viewed as a normative power and a champion of human rights, regional cohesion, and democracy; the body even received a Nobel Peace Prize for its work in 2012 (Kugiel 2017). Lawfare, however, is more so related hard-power strategy. Charles J. Dunlap, Jr, a Colonel in the U.S Armed Services, first coined the term "lawfare" in 2001 to describe how laws may be used in substitution of military action. Just like "traditional" military actions, the legal mechanisms described by Dunlap are a form of hard power as they use coercion instead of co-option to achieve their objectives. This use of law, as a hard power coercive mechanism, contrasts laws' traditional purpose of regulating behavior and norm-setting. The European Union has been strictly seen as a soft power entity, but by using coercive legal mechanisms, they demonstrate their willingness to explore hard power.

Conceptualization of Soft Power

The term "soft power" was first introduced in 1990 by Joseph Nye to describe the ability to affect others through persuasion or attraction rather than coercion or payment (Nye 2008). Long-term soft power tactics include fostering legitimate democratic institutions, strong humanitarian intervention capabilities, public diplomacy, and promoting domestic culture and minority rights (Cross 2011). Short-term soft power tactics include cooperative treaties, media

rhetoric, and aid programs (Cross 2011). Cooper (2004) describes soft power as any tactic other than using military or economic power. Nye, on the other hand, argues that the type of power (hard or soft) must be thought of as separate from merely the type of tool they use (Nye 2007). In this conceptualization of soft and hard power, the primary difference between the two is whether countries coerce or co-opt others to act in the desired way. In international politics, Nye finds that soft power "arise[s] in large part from the values an organization or country expresses in its culture, in the examples it sets by its internal practices and policies, and in the way it handles its relations with others" (Nye 2008, 95). Power is typically thought of as the ability to get others to act in the way one would like (Nye 2008). The *power* of soft power, therefore, rests in an actor's ability to shape others' preferences and decisions by making the desired decision/action attractive and appealing. Desired outcomes are achieved by enticing—and not forcing—others to act in the preferred way.

Soft Power and the European Union

The European Union has traditionally been thought of as a soft power institution. Even before the term soft power was coined by Nye, the European Union was utilizing soft power tools and tactics. Sianos (2017) describes how the institution of the European Capital of Culture (ECOC) became a powerful source of soft power for the European Union following the post-1989 asymmetrical relationship between Western and Eastern Europe. He found that the ECOC title — a title given to one European city chosen by the EU each year — was perceived by both Eastern and Western European countries and cities as an indicator and pathway to modernity. Although the ECOC itself highlights the diversity of cultures present within the EU, the city chosen to be the ECOC organizes cultural events throughout the calendar year that have a strong pan-European focus. Sianos notes that this is a prime example of soft power because the

"EU had convinced the European countries to 'surrender' voluntarily the ownership of their culture to 'Europe'" through the ECOC (Sianos 2017, 23). The Weimar culture became "European" instead of just German, just as the cultures of Prague, Liverpool, Krakow, and other countries that received the ECOC title too became "European."

The European Union's enlargement process — the means through which new countries join the EU — is a key element of the union's soft power. In an April 2007 speech in Helsinki, Olli Rehn, the first Commissioner for Enlargement and European Neighborhood Policy in 2004, stated that "enlargement has proven to be the most important instrument of the EU's soft power. The quest for EU membership has driven democratic and economic reforms forward more effectively than any rod or sword could" (Rehn 2007, 2). In 1973, the first round of enlargement occurred with the admittance of the UK, Ireland, and Denmark. Another enlargement round occurred in 1981 with Greece entering into the EU. Spain, Portugal, and Greece all entered into negotiations together to enter the EU in 1981; however, only Greece gained immediate admittance (Zeff and Pirro, 2015, 4). The difficulties Spain and Portugal had in being accepted into the European Union demonstrates how the EU has wielded soft power to co-opt others to act. Both previously ruled under authoritarian governments, it took Spain and Portugal over ten years to prove their "democratic credentials" in order to be fully admitted into European Union (Zeff and Pirro, 2015, 5). The countries were not forced or coerced into proving their commitment to democracy. However, the attractiveness of the EU was enough to co-opt the countries to act in the way that would please the EU. The 2004 round of enlargement included the former Soviet states of the Czech Republic, Hungary, Slovakia, Latvia, Lithuania, and Poland along with Cyprus and Malta (Zeff and Pirro, 2015, 5). This EU expansion reunified Eastern and Western Europe and "swept away the last vestiges of the divisions of the cold war era" (Rehn

2007, 2). Rehn points to Turkey as an example highlighting the importance of expansion to countries' policy-making. Before accession talks effectively stopped between the EU and Turkey following the country's constitutional referendum in April 2017, Rehn stated that without accession negotiations, "the EU's chances of influencing Turkey's development would be extremely slim, or non-existent" for the negotiations are "the only process that gives the EU real influence over the implementation of Turkey's reforms" (Rehn 2007). The accession process not only influences how countries act, but also demonstrates a *conscious* use of soft power.

Although soft power does not traditionally encompass military action, the European Union utilizes non-coercive military action that can be considered soft power (Cross 2011). Whereas all military action was previously categorized as hard power, scholars, including Nye, now understand that the principle difference between hard and soft power is not dependent on the use of military action, but whether the action's aim is to coerce or co-opt (Nye 2001). Cross (2011) illustrates this point in her description of the EU's Common Security and Defense Policy (CSDP). She explains how EU military actions are cases of humanitarian intervention or peacekeeping where the people tend to ask for this kind of aid. For example, individual countries help organize the Commission for EU election monitoring campaigns. Before a CSDP program is launched, the EU also gains consent first through a UN mandate to gain legitimacy (Cross 2011). Because the intent is not to coerce, but rather to co-opt, the military program is arguably a form of soft power. However, a transition to coercive military action would arguably limit the EU's normative strength that is rooted in their reputation as a soft power institution (Manners 2006, Cross 2011).

Conceptualization of Hard Power

Hard power is distinguished by its ability to coerce, and not co-opt, others to act. Similar to soft power, hard power also influences actors, but it is typically through punishments including payments or threats (Nye 2008). Hard power, advocated by neorealist thinkers, emphasizes military intervention, coercive diplomacy, and economic sanctions (Wilson 2008). Examples of long term hard power tactics besides sanctions and military posturing include refusal of cooperation, distrustful rhetoric, and direct or indirect coercion (Cross 2011). Commonly-used short term tactics include military invasion, cutting-off diplomatic relations, freezing bank accounts, leaking information, and issuing threats (Cross 2011). Persuading actors, a hallmark of the soft power theories advocated by liberal institutionalist scholars, is not a component of hard power; rather, actors are forced to behave in the way the inflicting actor intends under threat of punishment (Wilson 2008).

Hard Power and the European Union

The European Union is utilizing hard power tools and tactics to obtain its objectives. Matlary (2006) explains how the EU's militaristic Peace Support Operations (PSOs) set the framework for a EU strategic, coercive culture. She argues that the EU may continue to justify coercive practices by claiming they have a "human security" basis for acting. However, the risks involved in EU military activism are significant. Traditionally, military activism has not been generally supported in democracies, especially when there is not an apparent security threat to one's own nationals (Matlary 2006, 106).

Kugiel (2017) argues that recent events in 2016 indicate that the strategic culture of the European Union is moving more towards hard-power. First, the EU's change in refugee policy from openness to defensiveness undermined the body's high moral standards, reducing their "attractiveness" on the global stage (Kugiel 2017, 60). In addition to limiting their ability to

attract with a soft power approach, the EU discouraging people from migrating to Europe is a more hard-power tactic itself. Second, the rise of populism in the EU highlights the democratic vulnerabilities within the EU. The upholding of liberal democratic political systems has always been a hallmark of EU soft power. With the democratic institutions in decline, Kugiel argues there is a detectable transformation from soft to hard power. Finally, the integrity and power of the European Union itself has weakened after the British referendum to leave the institution. Kugiel describes the Brexit referendum as the "last blow to European soft power" (Kugiel 2017, 67). When the separation is finalized, the EU will lose an influential negotiating partner, its largest donor to official development assistance (ODA), and will cease being the world's second largest economy (Kugiel 2017, 67). As a result, the EU's ability to influence others only through soft power will be significantly diminished.

Smart Power and Lawfare

An emerging field of scholarship focuses on the intersection between hard and soft power. Nye (2011) defines smart power as the ability to effectively combine hard and soft power. Moving from Nye's (2011) definition, Cross (2011), in an attempt to discover how to make the term more analytically useful, found that the "effectiveness" component of the definition ought to be removed. If one, like Nye (2011), measures smart power as the ability to combine hard and soft power *effectively*, then the failures would not be taken into account. To gain a more comprehensive understanding of how states have used smart power, she argues that the successes and failures must both be studied. Therefore, Cross (2011) redefines smart power as the "strategic and simultaneous use of coercion and co-option" (Cross 2011, 698). Lackey conceptualized smart power as "soft power, with a chance of victory" (Lackey 2015, 125). In

Lackey's (2015) view, smart power typically uses non-coercive means to achieve hard-power objectives.

Lawfare is a concept related to, or arguably a subset of, smart power. In November 2001, Charles Dunlap, a Colonel in the U.S Armed Forces, introduced the term "lawfare" to the legal and international relations literature (Kittrie 2016). He defined lawfare as "the strategy of using — or misuing — law as a substitute for traditional military means to achieve an operational objective" (Dunlap 2001, 7). The term incorporates the coercive nature of hard power, yet retains an element of soft power, as it bases itself upon the soft power tradition of respect for international law.

Orde F. Kittrie advances Dunlap's definition in his 2016 book *Lawfare: Law as a Weapon of War*. The book, notably the only one published in English on the subject, provides an overview of case studies on the subject of law as a weapon of war, and explains how "lawfare" can include legal tactics varying from sanctions to non-recognized states' attempts at gaining legalized, international recognition. Kittrie (2016) notes that to be considered lawfare, each action must fulfill a two-pronged test. First, the actor uses lawfare "to create same or similar effects as those traditionally sought from conventional kinetic military action — including impacting the key armed force decision-making and capabilities of the target" (Kittrie 2016, 5). Second, a motivation of the actor must be "to weaken or destroy an adversary against which the lawfare is being deployed" (Kittrie 2016, 5). Tactics, including sanctions, are considered lawfare only if they meet the two-pronged test.

History of Law as a Weapon of War

The potential for law as a weapon of war is not a new phenomenon. Rather, it can be traced back to the Dutch humanist and political philosopher Hugo Grotius (1583-1645), now best

known as the father of modern international law. Grotius prepared his critical work *Mare Librerum* at the behest of the Dutch East India Company (VOC) to during the negotiations of a truce between the Dutch and Spanish to end the decades of conflict that started with the sixteenth century Dutch revolt (Hakluyt 2004, 12). One of the most critical issues to the VOC was Dutch access to the growing markets and trade in the East Indies where the Dutch were engaged in "cut-throat competition," including military maneuvers against the Spanish, and English (Hakluyt 2004, 12).

The VOC hired Grotius to devise a legal argument so that a "war might rightly be waged against, and prize taken from the Portuguese" (Anand 1981, p. 440 and 442). Although the Spanish and Portuguese claimed that they had exclusive rights to the sea routes through the Treaty of Tordesillas of 1594, Grotius argued in *Mare Liberum* that the seas could not belong to anyone. Thus, a nation could not claim sovereignty over them (Van Demaan Magoffin, 1916):

Freedom of trade is based on a primitive right of nations which has a natural and permanent cause; and so that right cannot be destroyed, or at all events it may not be destroyed except by the consent of all nations. So far is that from being the case, that any one nation may justly oppose in any way, any other two nations that desire to enter into a mutual and exclusive contractual relation. (Van Demaan Magoffin, 1916, 1)

The aforementioned action demonstrates that even centuries before Dunlap coined the term lawfare, Grotius and others were using law as a weapon to achieve that which the military itself could not accomplish.

Although the term was popularized by Dunlap in 2001, one of the first passing mentions of the term "lawfare" can be found in the 1999 book *Unrestricted Warfare* written by Qiao Liang and Wang Xiangsui, two of China's People's Liberation Army officers. Liang and Xiangsui

conceptualized lawfare as "seizing the earliest opportunity to set up regulations" and being a "trendsetter in international standards" (Werner 2010, p. 64). Lawfare is only briefly analyzed in the book along with other forms of warfare including psychological warfare, smuggling warfare, media warfare, technological warfare, and economic aid warfare (Werner 2010 p. 64). These forms exemplify Liang and Xiangsui's central argument that warfare is no longer waged just on the battlefield, but is penetrating all sectors of society (Werner 2010, p. 65). The idea of lawfare, however, did not gain traction until 2001 when Colonel Dunlap published his writings on the subject following the 1999 Kosovo Campaign.

The Lack of Research on the European Union's Use of Lawfare

Although Kittrie (2016) notes that international organizations, and not just states, have utilized lawfare, he does not include an analysis on the European Union — a body that has previously relied upon the rule of law, but is now facing external security threats. Dunlap only focuses on how the United States has used lawfare in the past. The lack of lawfare literature on the European Union is especially surprising as numerous studies indicate that the European Union may be subtly shifting from a recognized soft power body to a hard power institution.

The EU's largely-unchallenged reputation as a soft power entity may explain why its use of lawfare has been thus far unrecognized. The academic research on soft and hard power suggests that the EU has been inching towards more of a hard-power approach with the intention to coerce and not co-opt international actors. As lawfare may be considered a soft power tactic with hard power implications, the examination of the European Union's use of this tool is especially important to fully understand how the body is attempting to wield power against other states and actors. I hypothesize that in the years since 2001 when the term "lawfare" was first

popularized, more instances of lawfare will have been taken by the three primary EU institutions responsible for policy-making — the European Parliament, Council of the European Union, and European Commission.

How to Explore the European Union's use of Lawfare

As discussed above, recent research indicates that the European Union, once championed as a model soft power institution, has been exploring and using hard power tactics. This insight, combined with a lack of lawfare research on the European Union specifically, and on international institutions generally, makes this research on the EU's use of lawfare all the more necessary. If the European Union, which prides itself on the rule of law, is willing to engage with coercive, hard-power tactics, then lawfare—using law and legal mechanisms to achieve hard power objectives—is a form of coercion that the EU likely would have utilized against security threats. To determine if and how the European Union has used lawfare, I performed a mixed-methods institutional study of the three policy-making bodies of the EU—the European Commission, the Council of the European Union, and the European Parliament. I predicted that the more years since 9/11, the more instances of lawfare I would find. Similar to Kavaliunaite (2011) who used the database Eur-lex.europa.eu to find examples of EU soft power, I use the database to locate instances of lawfare published by the three bodies in the *Official Journal of the European Union*.

Before using the database to locate instances of lawfare, I first used the Council of the European Union's Foreign Affairs Council's meeting outcome documents to determine what the EU considered to be their key national security issues. I intended to use these concepts as the search terms for the database. The Foreign Affairs Council, comprised of the Foreign Ministers of the Member States, meets once a month to discuss timely issues related to national security,

defense, and development. After finding all of their published their meeting documents (only available from 2015-2017) on the European Union External Action Service Register database, I examined each of the available documents—that numbered thirty-nine in total—for the "key issues debated" listed in the table of contents on the first few pages (see Appendix A for list of issues). These "key issues" primarily comprised of countries' names, issues relating to infrastructure and development, and security/military policy.

I first used the names of various countries as the search terms for the Eur.lex.europa database. I thought that using the individual names would provide me with the most comprehensive results of legislative action, some of which might be considered lawfare. This tactic had to be ruled out, however, because the legislative results contained thousands of irrelevant documents on countries that did not relate to national security or military affairs. For similar reasons, the terms relating to international development were inapplicable. The term "sanctions" ultimately provided me with a reasonable number of results that appeared, from an initial analysis, to have potential for lawfare. In this initial review of the search results from "sanctions," I came across legislative acts pertaining to flight bans. As this measure appeared to have the characteristics of lawfare, I included "flight bans" as a search term along with "sanctions". Combined, these two terms resulted in a reasonable and most applicable number of legislative acts for analysis.

Within the Eur-lex.europa.eu database, and using the search terms "sanctions" and "flight ban," I specifically limited my searches to those legislative acts that were published in the *Official Journal of the European Union* from 1993—when the European Union was created — to 2017. The database publishes a wide array of documents from the EU, but the *OJ* contains all *approved* legislative acts. Only looking at acts that have been approved by the European Union

ensures that I will not include an instance of lawfare that was perhaps considered, but not

enacted. The *OJ* is also published every working day, so there was still a substantial number of

results even with just limiting it to those published within the *Journal*.

      After using the advanced search option with the two terms in the database and selecting

results only for the *OJ*, I separated the preliminary results by year. As the term "lawfare" was

only found twice during an initial search, my standard for considering an act lawfare is not the

incorporation of the term within the legislative act, but rather if the action meets the two-pronged

test established by Kittrie (2016). First, the actor uses law and legal mechanisms to "create the

same of similar effects as those traditionally sought from kinetic military action—including

impacting the key armed force decision-making and capabilities of the target" (Kittrie 2016, p.

8). Second, one of the motivations for the act is to "weaken or destroy an adversary against

which the lawfare is being deployed" (Kittrie 2016, p. 8). Specifying that lawfare is created to

have the same effect of traditional military action and to destroy or weaken an adversary

safeguards against the inclusion of "routine" legal acts being considered lawfare simply because

they are imposing a restriction or regulation against another entity. This is the separation between

the traditional view of law versus the use of law as a weapon of war and conflict.

      The majority of the database search results were legislative acts pertaining to "restrictive

measures," sanctions, and flight bans. After separating the results by year, I analyzed each of the

documents to see if they would meet the two-pronged test. Specifically, I looked for target and

justification for the measure. In some cases, especially in years of EU enlargement, I found that

sanctions were imposed against states wanting to join the European Union during the beginning

of the accession process. These cases were not counted as instances of lawfare because the EU

was not trying to impose a legal measure that would have the similar effects of military action

nor were they attempting to "weaken an adversary." In other cases, when analyzing the legislative acts, the EU body creating the measure specifically condemned the actions of an entity and described them as a threat to international security and peace. I considered the action lawfare only after further analyzing the piece of legislation and determining that the goal is to cripple the enemy's capabilities in accordance with the two-pronged test.

I counted each separate legal act published in the *OJ* that met the criteria as one instance of lawfare. When quantifying the results, the name of the target was based off of the title of the legislative act. For instance, "Council Regulation (EC) No 1064/1999 of 21 May 1999 imposing a ban on flights between the European Community and the Federal Republic of Yugoslavia" was counted as one act of lawfare against Yugoslavia. I could have individually counted each of the entities or individuals listed within each piece of legislation (for instance, specifying which aircrafts were banned from Yugoslavia), but chose not to. The majority of each legal act only published one common target (i.e sanctions against Afghanistan or all flights from Yugoslavia). As the EU did not list specific entities in the "all entities from xyz country" pieces of legislation, it was more precise to list the act as an act against a common target as the names were not always present. The procedure was to count whatever main target the EU listed in the title of the legal act. Even in the instances where specific individuals were listed within the act, they were still grouped under targets against a specific country or government in the title and not main targets themselves.

The only exception were the sanctions against Osama bin Laden. He was the only individual the EU specifically listed as a primary target in the title of the legal acts. Osama bin Laden and Al-Qaeda (referred to as Usama bin Laden and Al-Qaida in the *OJ*) and the Taliban were routinely grouped together in the sanctions. To decrease the risk of double counting targets,

I grouped the three together as one combined target (Usama bin Laden/Al Qaida/Taliban) during the quantitative analysis.

Oftentimes, the EU bodies updated their sanctions against a specific target—especially Usama bin Laden/Al Qaida/Taliban—multiple times. Each of the updates that are published independently in the *OJ* are counted as separate instances of lawfare because it provides insight into the EU's continual use of law as a weapon of war. When separating the instances of lawfare into categories based off of type, three primary categories—flight bans, sanctions, and restrictive measures — emerged. The title of many acts specified that they were enacting "restrictive measures" against a country. To be listed under "restrictive measures" for my categorization purposes, the measures had to include both flight bans and sanctions. If not, the measure would be listed under either "sanctions" or "flight bans." Once again, I did not want to double count the instances of lawfare, so each act was only counted towards one category.

Findings: European Union's Use Lawfare

Using the above-mentioned method, the European Union enacted 439 separate instances of lawfare (comprising of flight bans, sanctions, and restrictive measures) against its enemies from 1993 to 2017. Figure 1 illustrates a steady upward trend in lawfare usage by the EU in the years since 1993. Notably, the number of lawfare instances more than double from 2001 to 2002. By early 2002, the European Union would have begun to develop more comprehensive counterterrorism tactics following the 9/11 attacks in the United States. This increase shows the EU's almost immediate willingness to use lawfare when faced with international threats.
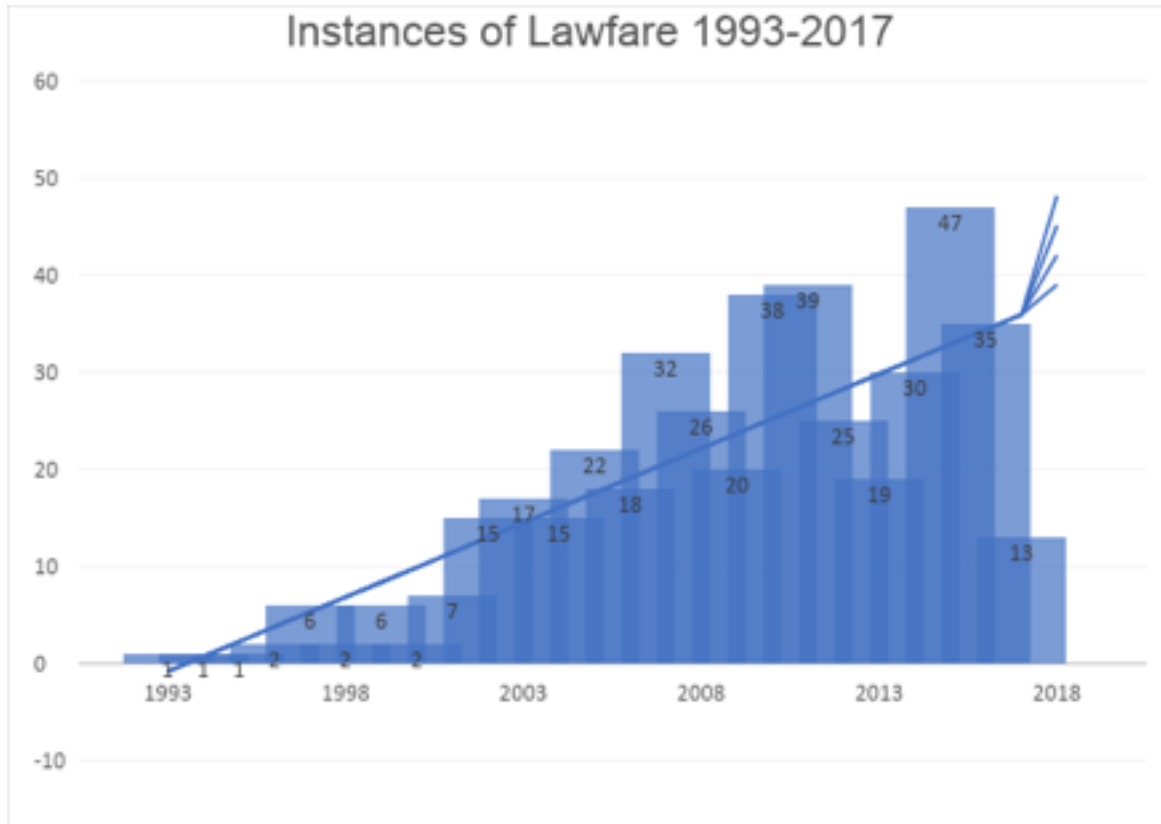
Figure 1. Instances of lawfare from 1993 to 2017

Figure 2 and Figure 3 compare the number of worldwide terrorist incidents from 1992-2016 to the number of lawfare instances from 1993-2016. The terrorist incident data is taken from the Global Terrorism Database. In this database, terrorism is defined as: "the threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation" (Global Terrorism Database 2018). Targets of EU lawfare policies are not limited to terrorist groups (see Appendix B, Appendix C, and Appendix D for list of targets by type of measure). However, the graph comparison does indicate that the European Union steadily responds to worldwide threat trends.
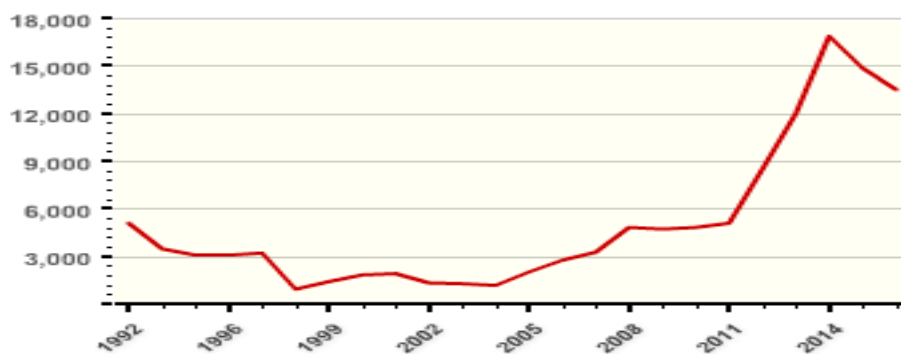
Figure 2. Worldwide terrorist incidents from 1992-2016 (Source: Global Terrorism Database)
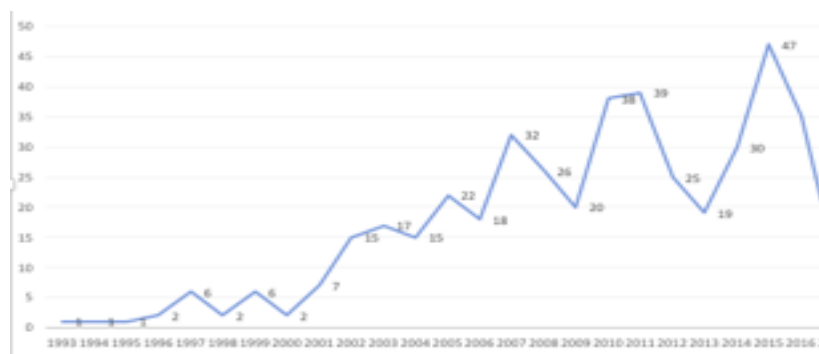

Figure 3. Lawfare instances from 1993-2016

As further illustrated in Figures 4 and 5, there was a noticeable drop in lawfare instances and restrictive measures from 2011 to 2013 and then a subsequent rise from 2013 to 2015. An explanation for the sudden decrease may be Osama bin Laden's death on May 2, 2011. Table 1 shows how in 2010, Osama Bin Laden was specifically named in twenty-seven restrictive measures. In 2011, the number decreased to eighteen which would account for the months in 2011 after Osama bin Laden died. Increased concerns regarding the security environment with the Assad regime Syria also appears to account for the increase in lawfare instances from 2013 to 2015. Table 1 illustrates how there was only one restrictive measure against Syria in 2011 compared to thirteen measures in 2015. The increase in lawfare actions against Syria from 2011

to 2014 coincides with the death toll in the country from those years. The Syrian Observatory, a

UK-based information office, found that there was a total of 76, 021 civilian deaths in 2014

compared to 73,447 in 2013, 49, 294 deaths in 2012, and 7,841 in 2011 (Gladstone and Ghannam
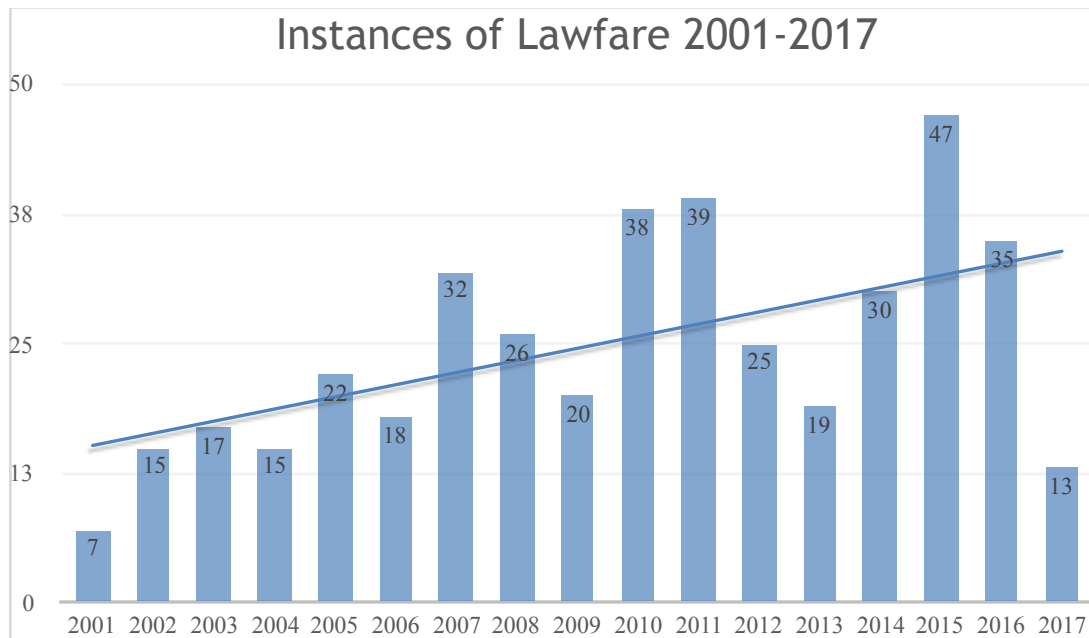
2015).

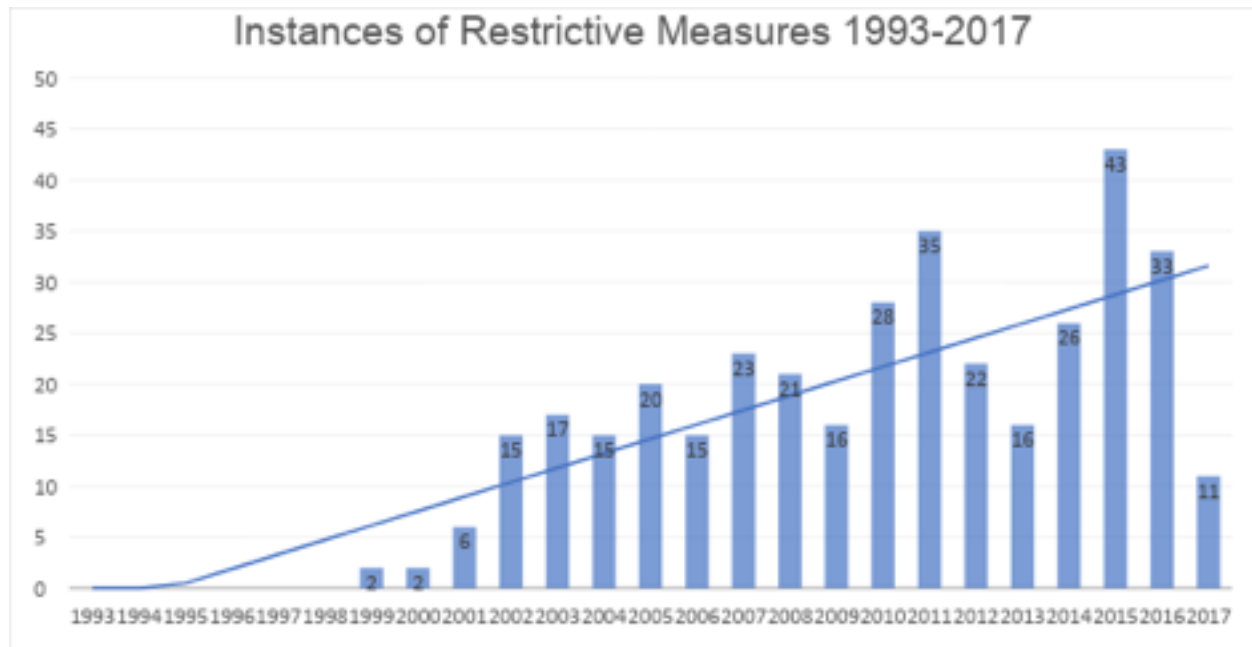Figure 4. Instances of lawfare from 2001 to 2017

Figure 5. Restrictive measures from 1993 to 2017

Table 1. Restrictive Measure Targets 2010-2015

Year	R.Measures	Targets
2010	28	Usama Bin Laden/Al Qaeda/Taliban (27), Congo (1)
2011	35	Usama Bin Laden/Al Qaeda/Taliban (18), Al Qaeda (2), Libya (11), Afghanistan (3), Syria (1)
2012	22	Al Qaeda (2), Afghanistan (4), Syria (6), Iran (5)
2013	16	Al Qaeda (3), Afghanistan (4), Syria (6), Iran (3)
2014	26	Al Qaeda (3), Afghanistan (2), Syria (10), Iran (3), Ukraine independence (5), Sudan/South Sudan (1), Libya (2)
2015	43	Al Qaeda (12), Libya (7), Afghanistan (2), Syria (13), Iran (5), Ukraine 4)

Vertical (Value) Axis Major Gridlines

From 1993 to 2017, the European Union passed instances of lawfare comprising of flights bans, sanctions, and restrictive measures. The European Union's term "restrictive measures" encompasses both flight and sanction bans on a particular target. Restrictive measures may have also included additional measures such as petroleum bans. Whereas restrictive measures were specific against a singular target, flight bans and sanctions were usually updates to a preapproved list of targets. However, in certain instances, there were specific targets listed for the sanctions and flight bans (see Appendix C and Appendix D for targets). Although there are additional targets within the flight and sanctions lists, the graph shows the comparison of how many times one of the types of actions was passed.
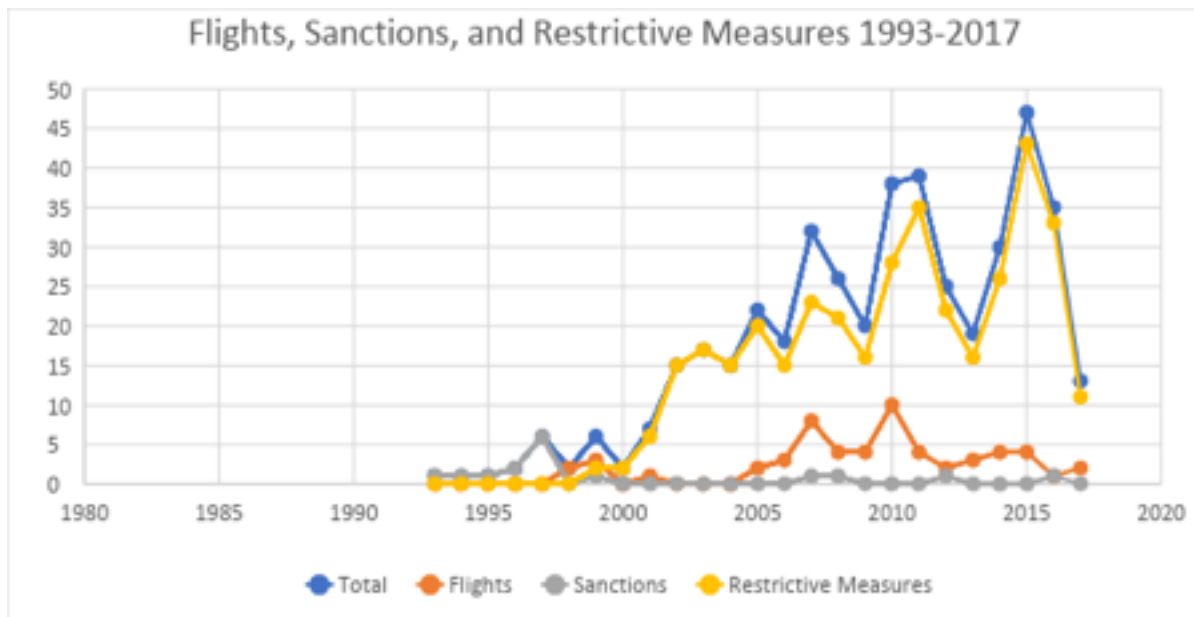
Figure 5. Flight bans, sanctions, and restrictive measures from 1993 to 2017

Each of the three policy-making institutions of the European Union enacted instances of lawfare. As there were overall more instances of restrictive measures compared to flight bans and sanctions (see Appendix E for lawfare instances by type 1993-2017), there was also more variation in the institutions that enacted the lawfare legislative acts (see Appendix F, Appendix G, and Appendix H for institutions that enacted lawfare by type of restriction).
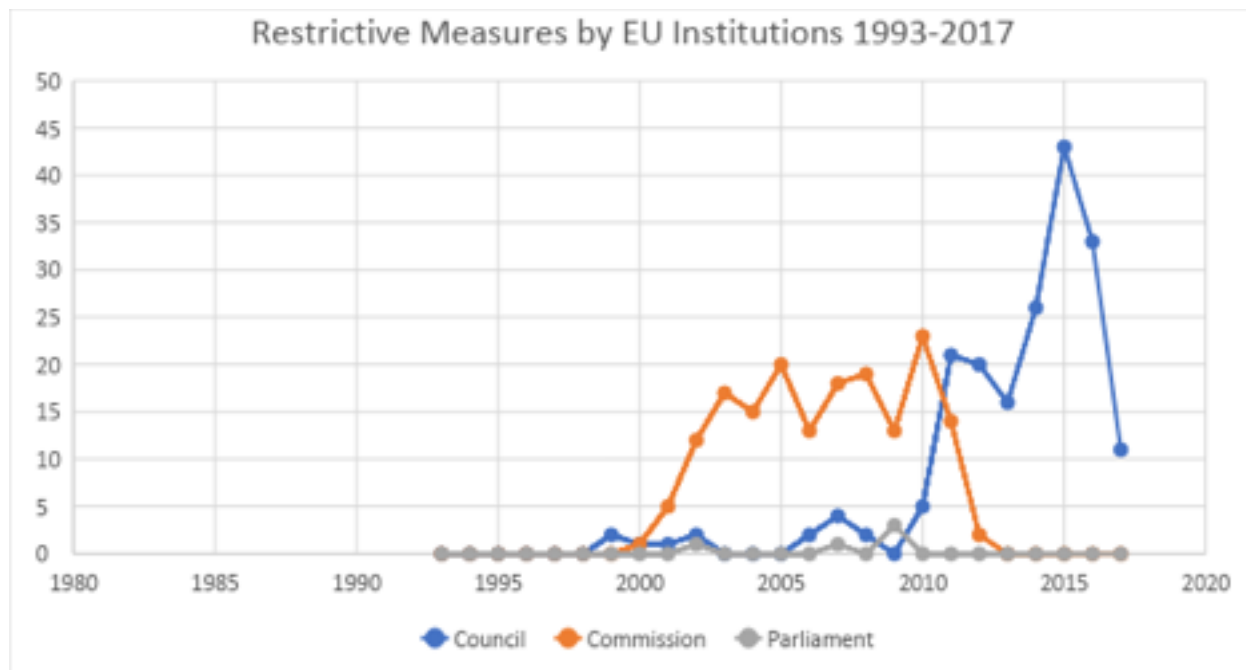
Figure 6. Restrictive measures enacted by the EU Council, Commission, and Parliament 1993-2017

Ways Lawfare Has Been Used by the EU

An analysis of the EU legal documents reveals that the body has used restrictive measures, sanctions, and flight bans as lawfare in three ways: in substitution of specific military action, to condemn and punish a government or actor's behavior, and to cripple an enemy's capabilities.

Specific military action

The European Council threatening the Taliban in 1999 with restrictive measures if they did not "turn over" Osama bin Laden is a prime case of the European Union attempting to achieve a specific military objective through the use of a coercive legal mechanism. The Council Common Position of October 15, 1999 (see Appendix I) outlined how the EU would impose restrictive measures against the Taliban unless they surrendered bin Laden to proper authorities in a country where he would be brought to justice within one month. The restrictions would comprise of a ban on flights operated or owned by the Taliban and a freezing of funds. The EU action came

after bin Laden and a number of his associates were indicted by the United States for conspiring to kill U.S nationals and for the August 7th 1998 bombings of the U.S embassies in Kenya and Tanzania. The EU published the action the same day the United Nations Security Council unanimously voted to freeze the Taliban funds and restrict their aircraft movements. Although the threat of restrictive measures was not successful in achieving the hard-power objective of retrieving Osama bin Laden, this is a model example of the European Union using lawfare in substitution of specific military action.

Condemn and punish a government or actor's behavior

The European Union also used lawfare to condemn and punish the behavior of government and actors. The only actor specifically mentioned in the title of a legal act considered lawfare is Osama bin Laden. The majority of condemnation is aimed at specific governments and states. For instance, from 1998 to 2000, the Council of the European Union imposed and repeatedly added sanctions and other restrictive measures against the Federal Republic of Yogoslavia. In a May 10th 1999 Council resolution, the EU stated that the "extreme and criminally irresponsible policies and repeated violations of United Nations Security Council Resolutions by the Federal Republic of Yugoslavia (FRY) has made the use of the most severe measures, including military action, both necessary and warranted" (See Appendix J for full text). Similar language is used when describing the justification of punishments of states such as North Korea, Syria, and Afghanistan.

Cripple an enemy's capabilities

To have been considered lawfare in this study, one of the aims of the legal action must have been to cripple and enemy's capabilities. In many instances, the EU clears describes their intentions of banning aircrafts out of security concerns. However, of the more surprising aspects

of EU lawfare is that the bodies attempt to cripple an enemy's capabilities, yet they justify the actions in language that is not security-oriented.

From 1998-2017 the Commission routinely publishes updated lists of air carriers that are subject to an operating ban, either a partial or full one, within the EU Community. The carriers are referred to in Chapter II of Regulation (EC) No 21111/2005 of the European Parliament and of the Council and are only, according to the regulation, supposed to be banned for aircraft safety reasons. Before the creation of the flight ban list in 2005, however, there were thirteen instances of the European Commission banning air craft carriers from certain countries that they deemed a threat to national security and not just a threat to passenger, airline, safety.

The banning of Iran Air in 2010 is an indicator that these flight bans are instances of lawfare and not merely airline safety precautions. In July 2010, as soon as the United States placed airline and financial sanctions against Iran in an effort to curb and coerce the non-compliant state, the European Union followed suit, suddenly finding that that Iran Air had to be banned out an abundance of safety. In June 2016, after the Iran Deal was coming into effect and the United States removed sanctions, the European Union also took Iran Air off of their banned list, demonstrating that this legal mechanism was previously used in a coercive way to not only attempt to control Iran's flights, but to impact their key military operations which Iran Air is an essential part of.

Criticisms, Conclusions and Implications

There is a pressing need for further research on lawfare, and in particular the European Union's use of lawfare. However, the concept has not gone without criticism. Before championing it as a "value-neutral" term, Dunlap, speaking at the Kennedy School of Government in 2001, first presented lawfare as a negative development of 21st century warfare.

Warning of the largely injurious effects it may have, especially for U.S national security, Dunlap stated there is "disturbing evidence that the rule of law is being hijacked into just another way of fighting, to the detriment of humanitarian values as well as the law itself" (Dunlap 2001, 38). In tracing the history of lawfare, Wouter Werner, Professor at Vrije Universiteit in Amsterdam, similarly warns that the tactic is "undermining the integrity of law and closing off debates about accountability for the use of lethal force" (Werner 2010, p. 71). Most concerning for Werner, however, is *reflective* lawfare used as a tool to delegitimize opponents. He states that "this way of using lawfare gives a one-sided perspective on the role of law in contemporary conflicts" (Werner 2010, p. 71). For instance, Palestine's instigation of the Boycott-Divestment-Sanctions movement in an attempt to delegitimize Israel would be considered an example of reflective lawfare.

Going one step further, Professor Leila Nadya Sadat of Washington University School of Law, argues that lawfare is "an unhelpful term that has no real fixed meaning" (Sadat and Geng 2010, p. 153). Although the concept may be "catchy in media communications," she argues that the lawfare discussion is a "fruitless—and even dangerous—rhetorical debate" (Sadat and Geng 2010, p. 153). Sadat posits that terrorists, and not just states, might use the rule of law to gain advantage over their adversaries which would undermine general respect for the rule of law.

The concern that lawfare may undermine the rule of law is valid. It is especially well-founded when it is waged in the courtroom. However, in the case of the European Union, it is the three policy-making bodies—and not the courts—that have been steadily using the tactic since 9/11. With at least 439 instances of lawfare since the EU was formally established in 1993, it does not appear as though the EU intends to stop their lawfare strategy in the near future.

This study provides valuable insight into four key areas. First, it adds to the overall research on lawfare. Second, as this is the first quantitative study of lawfare, it provides valuable understanding into how future quantitative research on the subject may be conducted. Third, it shines light on how international organizations' use of lawfare can be studied. Finally, the research adds to one's understanding of the European Union and how it has been using lawfare to explore hard power tools and tactics.

Despite the sharp criticisms against lawfare, as long as powerful bodies like the European Union continue to use it, the tactic and concept is worth studying and examining. Future iterations of the research may focus on the *conscious* usage of lawfare by advocates and policy-makers, how lawfare usage coincides with election cycles, and the effectiveness of the tactic. As US Army Officer Phillip Carter explains "we have every reason to embrace lawfare, for it is vastly preferable to the bloody, expensive, and destructive forms of warfare that ravaged the world in the 20th century" (Hughes 2016, 35). We may not be at the point where battles can be won and lost solely through law; whether that is a goal the international community should strive towards is not even clear. What is clear, however, is that the tactic is increasingly being waged by one of the most powerful bodies in the world. To not give it its due attention would not only be foolish, but unquestionably irresponsible.

Appendix A

List of "Key Issues Debates" From European Union's Foreign Affairs Council's Meeting
Outcome Documents 2015-2017

Meeting #	Date	Doc #	Items Discussed
3482	7/18/16	ST 11355 2016 INIT	fight against terrorism, EU global strategy, China, Latin America, Migration, Somalia, Afghanistan, Pakistan, South Sudan, Azerbaijan, restrictive measures Democratic Republic of Congo, EUCAP Sahel Niger, EU Civilian CSDP mission, Syrian refugees,

3477	6/20/ 16	ST 10495 2016 INIT	Arctic, Sahel, Yugoslav Republic of Macedonia, Middle East peace process, Visa liberalisation in the context of EU-Georgia relations, EAC countries, Myanmar/Burma, business and human rights, child labour, Lifting of sanctions against Liberia
3466	5/23/ 16	ST 9300 2016 INIT	Syria and Iraq as well as the Da'esh threat, security policy, migration, EUNAVFOR MED operation Sophia, Georgia, Republic of Moldova, Democratic Republic of Congo, South Sudan, Restrictive measures in view of the situation in Libya, Mexico, Republic of Korea
3463	5/13/ 16	ST 8737 2016 INIT	trade doc
3462	5/12/ 16	ST 8736 2016 INIT	Afghanistan, Migration and development, Tajikistan, Turkmenistan, Operation Althea, EU NAVFOR Atalanta, EUAM Ukraine, Border controls – Schengen
3460	4/18/ 16	ST 8022 2016 INIT	migration, eastern partnership, Libya, European Defence Agency Steering Board, Hybrid threats, Capacity building, Afghanistan, Peace in Colombia, Sergio Jaramillo, Mission Support Platform, Middle East Peace Process, Central Asia, Temporary reception of certain Palestinians, , Iran sanctions, EUTM Central African Republic, , EU crisis management exercise MULTILAYER 2016,
3457	3/14/ 16	ST 7042 2016 INIT	Iran, Russia, Middle East peace process, Central African Republic, Al-Qaida: EU amends restrictive measures in line with UNSC resolution, Burundi, Central African Republic - military training mission, Control of exports of military technology and equipment
3447	2/15/ 16	ST 6122 2016 INIT	Climate diplomacy, Moldova, Syria, Belarus, EU-Kyrgyz Republic Cooperation Council, Burundi, Somalia, Zimbabwe - sanctions, EU border assistance mission in Libya - mandate extension, exercise-related activities under the CFSP,
3443	1/18/ 16	ST 5304 2016 INIT	Syria developments, Iraq, Ukraine, Bosnia and Herzegovina, Middle East Peace Process, Libya sanctions, EUCAP Sahel Mali, Biological and Toxin Weapons Convention, EUNAVFOR MED Operation Sophia,
3440	12/15 /15	ST 15315 2015 INIT	EU-Canada negotiations, Western Balkans - Bosnia and Herzegovina - Trade measures,
3438	12/14 /15	ST 15278 2015 INIT	Eastern partners, Counter-terrorism, Libya, Iraq, Turkey, European Neighbourhood Policy, Morocco - Court appeal, Afghanistan - EU police mission, Court of Auditors report on EU support for the fight against torture,

3430	11/27 /15	ST 14688 2015 INIT	trade		
3426	11/16 /15	ST 14120 2015 INIT	Middle east peace process, migration, syria, mutual defense clause, European action defense plan, Capacity building for security and development, CSDP operations, European Defence Agency steering board, Burundi, Sri Lanka, EU support to transitional justice, Yemen, EU police mission in Afghanistan, European Union Special Representative in Kosovo, Tunisia, Afghanistan, Somalia, biological weapons, south-east Europe - Albania, Central African Republic, negotiations with the US, EU-Bosnia and Herzegovina,		
3420	10/26 /15	ST 13400 2015 INIT	humanitarian affairs, Migration, refugees and development, Gender and development, EU-ACP relations, Guinea, Transnistrian region of Moldova, Afghanistan, Kazakhstan, Tunisia, Zimbabwe, Yemen, EU Police Mission in Afghanistan, EUNAVFOR Med , Georgia		
3416	10/12 /15	ST 13313 2015 INIT	Libya, Syria, Migration, EU-ACP, Bosnia and Herzegovina, South Sudan, Armenia, Non-proliferation of weapons of mass destruction, Syria, combating terrorism, European Defence Agency, Operation ALTHEA		
3404	7/20/ 15	ST 11095 2015 INIT	Iran, Libya, Tunisia, Middle East peace process, human rights and democracy, migration, climate diplomacy, energy diplomacy, Afghanistan, Pakistan, Central African Republic, Mali, Belarus, weapons of mass destruction, Euro-Mediterranean agreements, EU and South Africa, Kazakhstan,		
3400	6/22/ 15	ST 10185 2015 INIT	energy diplomacy, Asia, Yugoslav Republic of Macedonia, Burundi, Lebanon, Russia: extension of economic sanctions, Humanitarian assistance, Bosnia and Herzegovina, EUNAVFOR Med,		
3391	5/26/ 15	ST 9240 2015 INIT	development, Libya, EU and Moldova,		
3389	5/18/ 15	ST 8966 2015 INIT	military CSDP operation s	Middl e East peace proce ss	Burundi, Uzbekist an, Gulf Cooperat ion Council,
3384	5/7/1 5	ST 8639 2015 INIT	trade, Central African Republic restrictive measures, South Sudan restrictive measures, EU-Switzerland free movement of persons		

3382	4/20/ 15	ST 8084 2015 INIT	Libya, Latin America and the Caribbean, Strategic review, Iran, Yemen, Sahel Regional Action Plan, European Neighbourhood Policy, Chile, Fight against the proliferation of nuclear weapons, Zimbabwe restrictive measures, Restrictive measures - Côte d'Ivoire, Restrictive measures - Democratic Republic of the Congo, EU crisis management military exercise, security sector reform
3385	4/20/ 15	ST 8146 2015 INIT	migra tion
3379	3/16/ 15	ST 7265 2015 INIT	Burundi, Ebola, Gulf of Guinea, Mali, Libya, Migration, eastern partnership, Syria and Iraq, ISIL/Da'esh threat, Bosnia and Herzegovina, Ukraine, Republic of Moldova, Tunisia, Horn of Africa, UN and EU in crisis management, training mission in Somalia, military advisory mission in the Central African Republic,
3367	2/25/ 15	ST 6044 2015 INIT	Libya, Iraq and Syria, Counter-terrorism, Yemen, Africa, Boko Haram, Nigeria elections, Mali, Central African Republic, Ukraine - restrictive measures, Restrictive measures - Côte d'Ivoire , Relations with Tunisia, UN human rights fora,
3369	2/5/1 5	ST 5755 2015 INIT	Ukraine, restrictive measures Ukraine,
3348	1/28/ 15	ST 15792 2014 INIT	trade, Operation Atalanta - Anti-piracy operation off the Somali coast
3364	1/27/ 15	ST 5411 2015 INIT	Russia, fight against terrorism, climate change diplomacy, Democratic Republic of the Congo / FDLR, Tunisia, EU Special Representative in Bosnia and Herzegovina, EU-Armenia relations, EU action against the proliferation of weapons of mass destruction, EUCAP SAHEL Mali, EU terrorist list, EU military advisory mission in the Central African Republic ,

Appendix B

Lawfare Targets-Restrictive Measures

Year	Restrictions	Target
1998	0	0
1999	2	Taliban (1), Yugoslavia (1)
2000	2	Taliban(2)
2001	6	Taliban(6)
2002	15	Usama Bin Laden/Al Qaeda/ Taliban (12), Afghanistan (3), T
2003	17	Usama bin Laden/Al Qaeda/Taliban (17)

2004	15	Usama bin Laden/Al Qaeda/Taliban (15)
2005	20	Usama bin Laden/Al Qaeda/Taliban (20)
2006	15	Usama bin Laden/Al Qaeda/Taliban (15)
2007	23	Usama bin Laden/AlQaeda/Taliban (18), Afghanistan (2), Zimbabwe 1
2008	21	Usama Bin Laden/Al Qaeda/Taliban (13), Afghanistan (1), North Korea (2), Iran (3), Congo (1)
2009	16	Usama Bin Laden/Al Qaeda/Taliban (14), Zimbabe (1), Somalia (1)
2010	28	Usama Bin Laden/Al Qaeda/Taliban (27), Congo (1)
2011	35	Usama Bin Laden/Al Qaeda/Taliban (18), Al Qaeda (2), Libya (11), Afghanistan (3), Syria (1)
2012	22	Al Qaeda (2), Afghanistan (4), Syria (6), Iran (5)
2013	16	Al Qaeda (3), Afghanistan (4), Syria (6), Iran (3)
2014	26	Al Qaeda (3), Afghanistan (2), Syria (10), Iran (3), Ukraine independence (5), Sudan/ South Sudan (1), Libya (2)
2015	43	Al Qaeda (12), Libya (7), Afghanistan (2), Syria (13), Iran (5), Ukraine 4)
2016	33	ISIL/Al Qaeda (3), Libya (13), Afghanistan (1), Syria (9), Iran (3), Ukraine (2), North Korea (2)
2017	11	Afghanistan (1), Syria (10)

Note: There were not any restrictive measures pre-1998

Appendix C

Lawfare Targets-Sanctions

Year	Sanctions	Target	
1993	1	Haiti (1)	
1994	1	Serbia and Montenegro	
1995	1	Nigeria (1)	
1996	2	Burundi (1), Burma/Myanmar (1)	
1997	6	Sudan(3), Nigeria (2)	Burma/Myanmar(1)
1998	0	0	
1999	1	Yugoslavia(1)	
2000	0	0	
2001	0	0	
2002	0	0	
2003	0	0	
2004	0	0	
2005	0	0	
2006	0		
2007	1	Darfur (1)	
2008	1	Evaluation of sanction list	
2009	0	0	
2010	0	0	
2011	0	0	
2012	1	creating standards for listing	
2013	0	0	
2014	0	0	
2015	0	0	
2016	1	new terrorist financing plan	
2017	0	0	

Appendix D

Lawfare Targets-Flight Bans

Year	Flights #	Target
1998	2	Yugoslavia (2)
1999	3	Yugoslavia(3)
2000	0	
2001	1	Taliban
2002	0	0
2003	0	
2004	0	0
2005	2	Creation of list
2006	3	Creation of List
2007	8	Creation of list
2008	4	Creation of list
2009	4	list
2010	10	list
2011	4	list
2012	2	lst
2013	3	list
2014	4	list
2015	4	list
2016	1	list
2017	2	list

Note: There were not any flights that met the criteria for lawfare before 1998.

Appendix E
Number of Lawfare Instances by Type 1993-2017

Year	Lawfare Tot	Flights #	Sanctions	Restrictive Measures
1993	1	0	1	0
1994	1	0	1	0
1995	1	0	1	0
1996	2	0	2	0
1997	6	0	6	0
1998	2	2	0	0
1999	6	3	1	2
2000	2	0	0	2
2001	7	1	0	6
2002	15	0	0	15
2003	17	0	0	17
2004	15	0	0	15
2005	22	2	0	20
2006	18	3	0	15
2007	32	8	1	23
2008	26	4	1	21

Year				
2009	20	4	0	16
2010	38	10	0	28
2011	39	4	0	35
2012	25	2	1	22
2013	19	3	0	16
2014	30	4	0	26
2015	47	4	0	43
2016	35	1	1	33
2017	13	2	0	11
Total:	439	57	16	336

Appendix F
EU Institutions That Enacted Flight Bans 1998-2017

Year	Flights #	EU Institution
1998	2	C(2)
1999	3	C (2), CM(1)
2000	0	
2001	1	CM(1)
2002	0	
2003	0	
2004	0	
2005	2	C(0), P (2)
2006	3	CM(3)

2007	8	CM(8)
2008	4	CM (4)
2009	4	CM (4)
2010	10	CM(10)
2011	4	CM(4)
2012	2	CM (2)
2013	3	CM(3)
2014	4	CM(4)
2015	4	CM(4)
2016	1	CM(2)
2017	2	CM(2)

Note: There were not any flights that met the criteria for lawfare pre-1998.

C-Council
CM-Commission
P-Parliament

Appendix G
EU Institutions That Enacted Sanctions 1993-2017

Year	Sanctions		EU Institution
1993	1		C(1)
1994	1		C(1)
1995	1		C(1)
1996	2		n/a, C(1)

Year	Count	Body
1997	6	C(1)
1998	0	
1999	1	C(1)
2000	0	
2001	0	
2002	0	
2003	0	
2004	0	
2005	0	
2006	0	
2007	1	C(0), CM(0), P(1)
2008	1	C(0), CM(0), P(1
2009	0	
2010	0	
2011	0	
2012	1	P(1)
2013	0	
2014	0	
2015	0	
2016	1	n/a
2017	0	

C-Council
CM-Commission
P-Parliament

Appendix H
EU Institutions That Enacted Restrictive Measures 1993-2017

Year	Restrictions	EU Institution
1998	0	0
1999	2	C(2)
2000	2	C(1), CM(1)
2001	6	CM(5), C (1)
2002	15	C(2), CM(12), P(1)
2003	17	C (0), CM (17), P(0)
2004	15	C(0), CM(15), P(0)
2005	20	C(0), CM (20), P(0)
2006	15	C(2) CM(13), P(0)
2007	23	C(4), CM(18), P(1)
2008	21	C(2), CM(19), P(0)
2009	16	C(0), CM (13), P(3)
2010	28	C(5), CM (23)
2011	35	C(21), CM (14), P(0)
2012	22	C(20), CM(2)
2013	16	C(16), CM(0), P(0)
2014	26	C(26), CM(0), P(0)
2015	43	C(43), CM(0), P(0)
2016	33	C(33), CM(0), P(0)
2017	11	C(11)

Note: There were not any restrictive measures that met the criteria for lawfare pre-1998.

C-Council
CM-Commission
P-Parliament

Appendix I

Council of the EU Concerning Restrictive Measures Against the Taliban 15 November 1999

1999/727/CFSP: Council Common Position of 15 November 1999 concerning restrictive measures against the Taliban

Official Journal L 294 , 16/11/1999 P. 0001 – 0001

COUNCIL COMMON POSITION

of 15 November 1999

concerning restrictive measures against the Taliban

(1999/727/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) On 15 October 1999 the United Nations Security Council adopted Resolution 1267 (1999) setting out measures to be imposed against the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, unless the Taliban turn over Usama bin Laden by 14 November 1999; these measures concern a ban on flights by carriers owned, leased or operated by the Taliban and a freeze of funds and other financial resources held abroad by the Taliban;

(2) Action by the Community is needed in order to implement the measures cited below,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Flights to and from the European Community carried out by aircraft owned, leased or operated by or on behalf of the Taliban under the conditions set out in UNSCR 1267 (1999) will be banned.

Article 2

Funds and other financial resources held abroad by the Taliban under the conditions set out in UNSCR 1267 (1999) will be frozen.

Article 3

This Common Position shall take effect on the date of its adoption.

Article 4

This Common Position shall be published in the Official Journal.

Done at Brussels, 15 November 1999.

For the Council

The President

T. HALONEN

Appendix J
Council of the EU Concerning Restrictive Measures Against the Federal Republic of Yugoslavia

1999/318/CFSP: Common Position of 10 May 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union concerning additional restrictive measures against the Federal Republic of Yugoslavia

Official Journal L 123 , 13/05/1999 P. 0001 – 0002

COMMON POSITION

of 10 May 1999

adopted by the Council on the basis of Article 15 of the Treaty on European Union concerning additional restrictive measures against the Federal Republic of Yugoslavia

(1999/318/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

(1) Whereas on 8 April 1999 the Council concluded that extreme and criminally irresponsible policies and repeated violations of United Nations Security Council Resolutions by the Federal Republic of Yugoslavia (FRY) had made the use of the most severe measures, including military action, both necessary and warranted;

(2) Whereas on 26 April 1999 the Council expressed its strong and continuing support for maximum pressure on the FRY authorities to accept the five conditions prescribed by the International Community;

(3) Whereas the Council agreed to implement a ban on the sale and supply of petroleum and petroleum products by 30 April 1999 and to extend the European Union sanctions regime by extending the travel bans; extending the scope of the freeze of funds; prohibiting the provision of export finance by the private sector further to the existing moratorium on government-financed export credits; extending the ban on new investments; widening the scope of the prohibition on the export of equipment for internal repression and its extension to include goods, services, technology and equipment for the purpose of restoring or repairing

assets damaged in air strikes; discouraging the participation of the FRY in international sporting events; banning all flights between the FRY and the European Community;

(4) Whereas the Union will consider every opportunity to help Montenegro bear the burdens imposed upon it by the conflict in Kosovo;

(5) Whereas the European Union considers the alignment of its Associated Countries of Eastern and Central Europe and Cyprus, and the EFTA countries important to maximise the impact of this Common Position;

(6) Whereas action by the Community is needed in order to implement some of the measures cited below,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. No visas shall be issued for President Milosevic, his family, all Ministers and senior officials of the FRY and Serbian Governments, and for persons close to the regime whose activities support President Milosevic.

2. The visa bans established in Common Positions 98/240/CFSP(1) and 98/725/CFSP(2) are confirmed.

3. The persons listed in the implementing Council Decision have been identified as falling within the scope of the prohibitions identified in paragraphs 1 and 2 and shall be reported for the purposes of non-admission in the territories of the Member States. All updates of the list shall be subject to an implementing decision by the Council.

4. In exceptional cases, exemptions may be made if this would further vital Union objectives and be conducive to political settlement.

Article 2

The scope of the freeze of funds held abroad by the FRY and Serbian Governments will be extended, covering individuals associated with President Milosevic and companies controlled by, or acting on behalf of the FRY and Serbian Governments.

Article 3

The provision of export finance by the private sector to the Government of the FRY, the Government of the Republic of Serbia, a company, institution, undertaking or entity owned or controlled by those governments, or to any person acting on their behalf, will be prohibited.

Article 4

All flights operated commercially or for private purposes between the FRY and the European Community will be banned.

Article 5

No goods, services, technology or equipment will be exported to the FRY suitable for repairing damage caused by air strikes to assets, infrastructure or equipment which enable the Government of the FRY to conduct its policy of internal repression.

Article 6

The Presidency will ask the Associated Countries of Eastern and Central Europe and Cyprus and the EFTA Members to align themselves with this Common Position in order to maximise the impact of the above measures.

Article 7

This Common Position will be kept under constant review.

Article 8

This Common Position shall take effect on the date of its adoption.

Article 9

This Common Position shall be published in the Official Journal.

Done at Brussels, 10 May 1999.

For the Council

The President

H. EICHEL

(1) OJ L 95, 27.3.1998, p. 1.

(2) OJ L 345, 19.12.1998, p. 1

Works Cited

Churchill, Winston. "A Speech at Zurich University." In *Sinews of Peace*, edited by Randolph S.

    Churchill, 199-201. Boston: Houghton Mifflin, 1949.

Cross, Mai'i Davis. "Europe, A Smart Power?" *International Politics* 48 (2011): 691-706. http://

    www.jstor.org

Dunlap, Charles J., Colonel, USAF. "Law and Military Interventions: Preserving Humanitarian

    Values in 21st Conflicts." Paper Prepared for the Humanitarian Challenges in Military

    Intervention Conference, Carr Ctr. for Human Rights Policy, Kennedy School of

    Government, Harvard University (2001). http://people.duke.edu/~pfeaver/dunlap/pdf

Gladstone, Rick and Mohammad Ghannam, "Syria Deaths Hit New High in 2014, Observer Group Says," *The New York Times*, January 1, 2015, https://www.nytimes.com/2015/01/02/world/middleeast/syrian-civil-war-2014-deadliest-so-far.html

Global Terrorism Database. *Data Collection Methodology*, 2018. https://www.start.umd.edu/gtd/using-gtd/

Grotius, Hugo. *The Free Sea*. Translated by Richard Hakluyt with William Welwood's critique and Grotius's reply; edited and with an introduction by David Armitage. Indianapolis: Liberty Fund, 2004.

Grotius, Hugo. *The Freedom of the Seas, or the Right Which Belongs to the Dutch to take part in the East Indian Trade*. Translated by Ralph Van Deman Magoffin, introduction by James Brown Scott. New York: Liberty Fund, 1916.

Hughes, David. "What Does Lawfare Mean?" *Fordham International Law Journal* 40 (2016): 1-40. http://ir.lawnet.fordham.edu/ilj

Leila Nadya Sadat and Jing Geng, *On Legal Subterfuge and the So-Called "Lawfare" Debate*, 43 Case W. Res. J. Int'l L. 153 (2010)
Available at: https://scholarlycommons.law.case.edu/jil/vol43/iss1/9

Kavaliunaite, Sigita. "Comparative Analysis of Concepts 'Soft Security' and 'Soft Power' in EU Legislation." *Viesoji Politika ir Administravimas* 10 (2011): 231-246. http://www.jstor.org

Kittrie, Orde. *Lawfare: Law as a Weapon of War*. New York: Oxford University Press, 2016.

Kugiel, Patryk. "End of European Soft Power? Implications for EU Foreign Policy." *The Polish Quarterly of International Affairs* 1 (2017): 59-72. http://www.jstor.org

Lackey, Douglas. "Soft Power, Hard Power, Smart Power." *The Philosophical Forum* (2015): 121-126. http://www.jstor.org

Manners, Ian. "Normative Power Europe Reconsidered: Beyond the Crossroads." *Journal of European Public Policy* 13 (2006): 182-199. http://www.jstor.org

Matlary, Haaland Janne. "When Soft Power Turns Hard: Is an EU Strategic Culture Possible?" *Security Dialogue* 37 (2006): 105-121. http://www.jstor.org

Nye, Joseph. "Notes For a Soft-power Research Agenda," in F. Berenskoetter and M.J. Williams, eds., *Power in World Politics*. New York: Routledge, 2007.

Nye, Joseph. "Public Diplomacy and Soft Power." *The Annals of the American Academy of Political and Social Science* 616 (2008): 94-109. http://www.jstor.org

Nye, Joseph. (2011) The Future of Power. New York: Public Affairs.

Rehn, Olli. "The EU's Soft Power and the Changing Face of World Politics." Speech, Euroklubi, Helsinki, April 20, 2017.

R.P.Anand, *Maritime Practice in South-East Asia Until 1600 A.D. and the Modern Law of the Sea*, 30 INT'L & COMP. L.Q. 440, 442 (1981).

Sianos, Alexandos. "European Capitals of Culture: A "Soft Power" Resources for the European Union?" *International Journal for History, Culture, and Modernity* 5 (2017): 1-32. http://www.jstor.org

Wilson, Ernest. "Hard Power, Soft Power, Smart Power." *The Annals of the American Academy of Political and Social Science* 616 (2008):110-124. http://www.jstor.org

Wouter G. Werner, *The Curious Career of Lawfare*, 43 Case W. Res. J. Int'l L. 61 (2010) Available at: https://scholarlycommons.law.case.edu/jil/vol43/iss1/4

Zeff, Eleanor and Ellen Pirro. (2015) The European Union and the Member States. Boulder:

Lynne Rienner Publishers.