



College of Security Studies

Daniel K. Inouye Asia-Pacific Center for Security Studies

Lawfare and Geopolitics:

The Use of Legal Rhetoric
in the Rules-Based International Order

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The views presented are those of the speaker and do not necessarily represent the official policy or position of the U.S. Government, the U.S. Department of Defense, or any of its Components.

Theories on the Role of Law

- Normative



“Rule of Law”

“Respect for International Law”

“Rules-Based Approach”

“Norms, Standards, Rules, and Laws”

- Instrumental



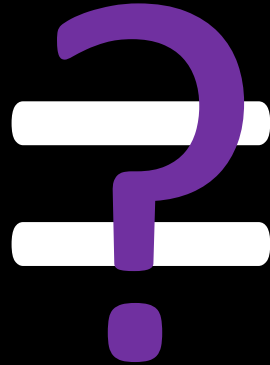
“Rule by Law”

“Law-Related Political Warfare”

“Legal Warfare”

“Lawfare”

one
nation's
"lawfare"



another
nation's
application
of law

The 4 Cs of Diamond Quality



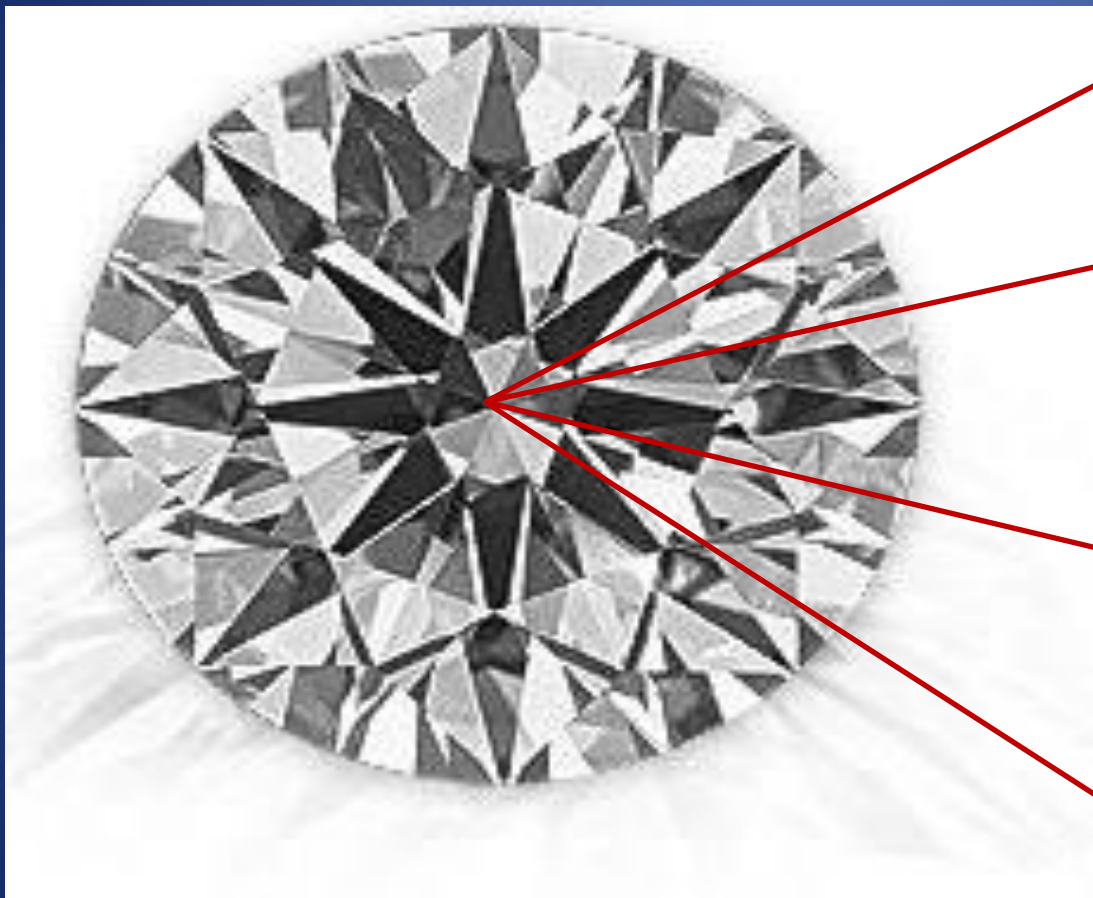
Carat Weight

Color Grade

Clarity Grade

Cut Grade

4 Cs of the International Rules-Based Order



Construction

Clarity

Conformity

Consistency

noun \ 'lē-gəl 're-tə-rik \

legal rhetoric

*The assemblage of
law-related language*

“of or relating to the law”

to make a political argument.

*“the art of speaking or writing
effectively as a way to persuade
or influence”*

10. If you are written solely by a nation's political and policy officials without any legal review or legal advice,
9. If the only international court or tribunal where you are submitted is the world court of public opinion,
8. If you twist the ordinary meaning of the terms of a treaty,
7. If you take the terms of a treaty out of their context,
6. If you ignore legitimate supplementary means (i.e., negotiating history) to determine the meaning of a treaty's terms that are ambiguous,

... you might be legal rhetoric.

5. If you explain a position by only Tweet-size conclusions,
4. If you repeatedly keep a policy position and its legal rationale ambiguous after repeated requests to clarify it,
3. If you refer solely to a nation's laws as the basis for declaring another nation's actions as "unlawful" *and* those laws do not conform to international law,
2. If you provide one rationale to domestic audiences and a different rationale to international audiences,
1. If you provide a legal position for a international situation in one location in the world but a different legal position for a similar situation in a different location,

... you might be legal rhetoric.