Artur Lukaszczyk

Email: alukaszczyk@uwaterloo.ca

Digitizing 'Use of Force': Problems with the Analogy Approach to Evaluating Harms Within Cyberspace

In this paper, I argue that the 'use of force' distinction employed in tight-to-the-law evaluative frameworks for cyberwarfare is overly narrow, rendering them incapable of adequately addressing cyberattacks resulting in novel harms. While these approaches acknowledge that a cyberattack may constitute a use of force, this distinction is contingent on whether an attack achieves the same effects as kinetic operations. Although this approach offers a compelling evaluative account of cyberattacks resulting in familiar harms such as physical destruction or bodily injury, it is poorly equipped to account for cyberattacks causing disanalogous harms beyond the scope of conventional attacks. Employing Walzer's work on state sovereignty and aggression, I argue that the legal classification of 'use of force' underpinning contemporary efforts at governing cyberwarfare ought to be supplemented with further normative considerations of harm in order to adequately encompass disanalogous attacks. I draw particular attention to cyberattacks facilitating mass infrastructure disruptions and widespread disinformation to illustrate the existential threat they pose to the common life at the heart of Walzer's sovereignty. In conclusion, I argue that the resulting non-physical harms render such attacks aggressive uses of force, irrespective of whether they result in tangible destruction.