




# THE EMERGENCE OF LAWFARE

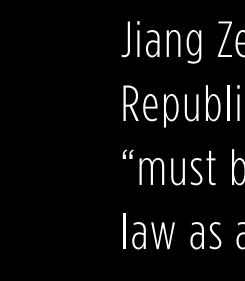
“*‘Lawfare,’ THE USE OF LAW AS A WEAPON OF WAR, is becoming an increasingly prevalent and powerful factor in international conflicts.*”

— Professor Orde F. Kittrie

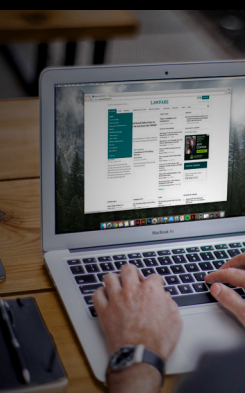
## DEVELOPING LAWFARE



The use of law as a weapon of war arguably goes back to Hugo Grotius, the “father of international law,” who advocated that international law includes freedom of the seas.



Jiang Zemin, President of the People’s Republic of China, asserts that China “must be adept at using international law as a weapon.”



The Lawfare blog is launched.

1600s

1975

1996

2001


2010

2015

The word “lawfare” seemingly first appeared when it was mentioned in a paper on mediation by John Carlson and Neville Yeomans, who wrote, “[l]awfare replaces warfare and the duel is with words rather than swords”.

Maj. Gen. Charles J. Dunlap, Jr. introduced the term “lawfare” into the mainstream legal and international relations literature.

“Lawfare” is the only term widely used in English to refer to law as a weapon of war.



## WHAT FACTORS DRIVE THE CONTINUED DEVELOPMENT OF LAWFARE?

- The high costs of military operations
- The increased number and reach of international laws and tribunals
- The information technology revolution
- The rise of non-governmental organizations focused on law of armed conflict and related issues
- The advance of globalization and thus economic interdependence

## LAWFARE STRATEGY AROUND THE WORLD



The U.S. government has only occasionally engaged with the concept of lawfare and lacks lawfare strategy or doctrine. It does not have an office or interagency mechanism that coordinates U.S. offensive lawfare or U.S. defenses against lawfare.

Law has become a dominant weapon in the ongoing conflict between Israel and Palestine, and the Israeli Government has an office concentrated on waging and defending against lawfare.

The analogous concept of “legal warfare” has been adopted by the PRC as a major part of its strategic doctrine.

## WHO USES LAWFARE?

### INTERNATIONAL ORGANIZATIONS

The Arab League and the European Union

The Arab League included in the International Criminal Court statute an offense intended to make Israeli settlements a war crime. Although Israel claims the settlements serve its security needs, the new international law puts Israeli officials at risk of ICC prosecution.

### MILITIAS

Hamas and Hezbollah

Hamas and Hezbollah use “universal jurisdiction” laws to try to arrest senior Israeli officials when they visit countries in Europe. Such laws authorize courts to prosecute all perpetrators of particular crimes even absent traditional bases of jurisdiction such as the crime’s location.

### ADVOCACY NETWORKS & NON-GOVERNMENTAL ORGANIZATIONS

The Boycott, Divestment, and Sanctions Movement; Shurat HaDin

In 2011, non-governmental organization Shurat HaDin threatened to sue maritime insurers and hold them liable in U.S. courts for Hamas terrorist attacks if they insured boats departing from Greece to break Israel’s blockade of Hamas-controlled Gaza. The insurers withdrew their coverage and the fleet did not depart.

### INDIVIDUAL ACTIVISTS & LITIGATORS

Raphael Lemkin, Gary Osen, and Steven Perles

Raphael Lemkin was the main thinker and lobbyist of the campaign that led to the U.N.’s 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the first international law prohibiting genocide and related acts. Lemkin was a private citizen who formed a committee to appeal to the individual interests of the U.N. delegates and his efforts culminated with 147 states ratifying the convention to date.

### SOVEREIGN STATES

Israel, the People’s Republic of China, and the United States

The U.S. waged a sophisticated financial lawfare campaign designed to curtail Iran’s nuclear program, which otherwise might only have been curtailed by armed force.

### QUASI-SOVEREIGN STATES

The Palestinian Authority

In 2013, Israel agreed to release 78 Palestinian prisoners, many of them convicted of brutally murdering Israeli civilians, in exchange for the Palestinian Authority refraining for eight months from joining the International Criminal Court and other international organizations and treaties.

### US STATES

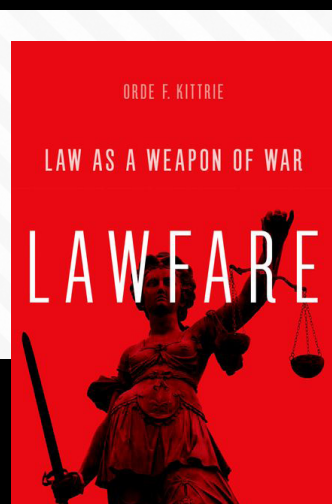
California, Florida, Massachusetts, & New York

At least 27 states have divested from foreign companies engaged in particular types of business with Sudan, and at least 24 states have done so with regard to Iran.

### US CITIES

Los Angeles, CA and New York, NY

At least 22 cities—including Newton, MA and New Haven, CT—divested from foreign companies engaged in particular types of business with Sudan. Several cities—including Los Angeles, CA and New York, NY—divested from foreign companies engaged in particular types of business with Iran.



How is lawfare being waged and defended against, and what is its impact? In what ways are private sector and other non-governmental attorneys playing a leading role in lawfare, and how and why is their involvement likely to increase? These facts and more can be found in *Lawfare: Law as a Weapon of War* by Orde F. Kittrie.

Available online at [oup.com/us](http://oup.com/us)

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