



“One of the more esoteric arts of warfare is legal subversion, or lawfare.

Lawfare is not something in which persons engage in the pursuit of justice, nor is it aimed at applying the law in the interests of freedom and democracy. Rather the intent is to pervert the law and undermine the very system of laws being manipulated.”

I. Why is Lawfare a Threat?

“Lawfare is an increasingly emergent form of asymmetric warfare that must be countered, both tactically and strategically.”

There are two fronts in the war against terrorism: the violent and the non-violent. **The greatest non-violent threat posed to the United States and its allies is lawfare: the abuse of the law as a weapon of war to achieve strategic military and political ends.** Terrorists and their sympathizers understand that when they cannot win by advocating and exercising violence, they can attempt to undermine our willingness and capacity to fight them using “legal” means. Thus, an orchestrated campaign seeks to shape and define international and national law to render them inadequate guarantors of human rights and the right to self-defense.

Moreover, serious legal questions remain unanswered that must be solved congruently with the tenets of democracy, such as:

- *What legal limits should be placed on those who fight the war against terrorism and what rights should be granted to the terrorists we are fighting?*
- *Should a U.N. voting bloc comprised largely of non-democratic member states have the power to dictate international human rights norms?*
- *Where does the power of a state end and the power of an international tribunal begin?*
- *What consists of incitement to imminent violence and what is legitimate criticism of religion?*

The legal precedents set by lawfare actions threaten all liberal democracies equally. It is imperative that lawfare be opposed and that human rights law and its interpretation be congruent with the tenets of democracy. The Lawfare Project **is therefore dedicated to re-examining the processes by which human rights laws are currently enforced, the bodies by which they are being defined, and the procedures that dictate the membership of those bodies, as well as the sources of bias within international and national tribunals.**

II. Goals of Lawfare Proponents

Lawfare consists of the negative manipulation of international and national human rights laws, as well as the laws of armed conflict, to accomplish purposes other than, or contrary to, those for which they were originally enacted.

The goal is to exploit domestic and international legal systems in order to implement laws, and legal precedents, inconsistent with general principles of liberal democracy and self-defense.

Over the past 10 years, we have witnessed a steady increase in lawfare tactics being used largely to achieve five strategic aims:

1. To silence and punish free speech about issues of national security & public concern;
2. To delegitimize the sovereignty of democratic states;
3. To frustrate and hinder the ability of democracies to fight against and defeat terrorism;
4. To confuse laws of armed conflict with human rights law; and
5. To prevent the application of human rights law in situations where it is needed the most by, amongst other tactics, facilitating the disproportionate, biased, and incorrect application of the law and legal terminology.

These goals are interconnected; any one instance of lawfare may serve to achieve more than one of the aims listed above.

III. Lawfare Against Free Speech

Lawfare against free speech most commonly takes the form of strategic defamation and hate speech lawsuits filed in the United States, Canada, and Europe (as well as various administrative actions) against anyone brave enough to write on, speak publicly about, (or even parody) militant Islam and its sources of financing. It is the most imminent and identifiable lawfare threat to the United States.

This form of lawfare has been termed “libel lawfare” (or “Islamist lawfare”) because it aims to impede open discussion and the free flow of public information about the threat of Islamist terrorism, thereby limiting our ability to understand and effectively combat it.

Libel lawfare suits are frivolous and often dropped before the discovery process; that is, before the defendant is entitled by law to gain access to internal financial and other documents (which lawfare plaintiffs do not want subject to court and/or public scrutiny). Regardless of whether a lawfare defendant wins in a court of law, s/he still loses in time and money spent defending his/her rights. Such lawsuits, combined with violent threats against the speakers and publishers, have created a detrimental chilling effect on free speech about issues of national security and public concern. Consequently, many publishers and authors have censored themselves out of fear of being the next target.

This tactic has been complemented by high-level maneuvering at the United Nations, spearheaded by the Organization of the Islamic Cooperation (OIC), and has resulted in successive UN General Assembly resolutions attempting to outlaw the criticism of Islamist terrorism and the criticism of religion, as well as calls to effectively reinstate blasphemy laws on both the international and state levels.

The cornerstone of liberal democracy is the right to speak freely and critically about government and religion. We are fortunate in this country to have the First Amendment, which guarantees our right to free speech about controversial and even offensive issues. Echoing Chief Justice John Roberts, as a nation, we have chosen rightfully not to silence offensive speech about religion and to protect even hurtful speech on public issues to ensure that we do not stifle public debate. While libel lawfare aims to abrogate the right to free speech, the First Amendment standard must be upheld.

Some, but by no means all, examples of Islamist lawfare against free speech include:

A. In the United States:

- 2001: Frivolous defamation lawsuit by the Specially Designated Global Terrorist organization **Global Relief Foundation (GRF)** against a number of media organizations, including the New York Times, ABC, and the Associated Press, for publishing articles reporting on the fact that GRF was under federal investigation for alleged ties to terrorist organizations and that the charity might have its assets frozen as a result. The court held in favor of the defendants based on its finding that they had proved the substantial truth of their statements.
- 2003: Erroneous defamation lawsuit filed by the **Council on American Islamic Relations (CAIR)** against former Congressman Cass Ballenger after The Charlotte Observer reported on the fact that Ballenger testified to the FBI describing CAIR as a “fundraising arm for Hezbollah.” U.S. District Judge Richard Leon dismissed the case on the grounds that Ballenger’s comments were made “in the scope of his employment as a federal employee.” The dismissal was upheld on appeal.
- 2005: Frivolous lawsuit by the **Islamic Society of Boston (ISB)** against more than 30 media defendants, including the local Fox News affiliate, the Boston Herald, and Steven Emerson, Executive Director of the Investigative Project on Terrorism, for raising awareness about Saudi funds going towards the financing and building of an ISB Islamic center/mosque in Boston. ISB dropped the suit shortly after the defendants had begun the discovery process of ISB’s financial records.
- 2007: Meritless defamation lawsuit filed by seven Dallas-area Islamist organizations (including the **Muslim Legal Fund**, and the **Muslim American Society**) against investigative journalist Joe Kaufman over an article by Kaufman about a planned “Muslim Family Day” at the Six Flags Over Texas amusement park, hosted by the **Islamic Circle of North America (ICNA)** and the **Islamic Association of North Texas (IANT)**. The article called ICNA “a radical Muslim organization that has physical ties to the Muslim Brotherhood and financial ties to Hamas.” The Texas Court of Appeals dismissed the suit on the grounds that plaintiffs had no standing to sue due to the fact that they were not named in Kaufman’s article.



- 2008: Defamation lawsuit against American-Iranian blogger Hassan Daiopleslam by the **National Iranian American Council (NIAC)** for Hassan’s blogs describing NIAC as a “lobbying” arm of the Iranian government. This suit is ongoing.
- 2008: Spurious complaint by the **Council on American Islamic Relations (CAIR)** filed with the Federal Elections Commission (FEC) against the nonpartisan Clarion Fund over the release of the film *Obsession*, alleging that the film, which analyzes the nexus between militant Islam and terrorism, constituted unlawful lobbying for then-presidential candidate John McCain, because McCain (and President Barack Obama) declared terrorism to be a central national security policy issue. CAIR filed the complaint with the FEC in order to get Clarion’s nonprofit status revoked. LP Director Brooke Goldstein filed a response¹ to the FEC arguing the DVD in question was not partisan, that CAIR failed to prove its contention by a showing of evidence, and that CAIR brought the complaint to silence a viewpoint of which it was critical. The FEC rejected CAIR’s claim and allowed Clarion to retain its 501(c)(3) status. Nonetheless, in 2009, Council Rock High School in Newtown, Pennsylvania was pressured into dropping *Obsession* from its lesson plan by its local CAIR chapter.
- 2009: Libel counterclaim filed by the U.S. government-funded **Tarek ibn Ziyad Academy (TIZA)** against the American Civil Liberties Union (ACLU) over the ACLU’s statement that TIZA was a “theocratic school” that unlawfully promoted Islam. The court dismissed TIZA’s counterclaim because it failed to show that the ACLU’s statement was false and malicious.

B. In the International Arena:

- 2002: Lawsuit filed by the Saudi **Al Rajhi Bank** against the Wall Street Journal (Europe) for reporting that Saudi authorities were monitoring Al Rajhi Bank accounts at the request of the United States in a bid to prevent them from being used to funnel money to terrorist groups. The bank dropped the suit in 2005.
- 2005: Defamation lawsuit filed by Saudi billionaire **Khalid Bin Mahfouz** against American author Rachel Ehrenfeld on the grounds that her book, *Funding Evil*, described Bin Mahfouz as funding terrorist organizations. Ehrenfeld lost in the UK court by default as she refused to travel abroad to defend herself in a court with no connections to the issue at hand. The case prompted New York State to enact the Libel Terrorism Protection Act (“Rachel’s Law”), banning the enforcement of foreign libel suits against American authors unless specific free speech standards are met.
- 2006: **Islamic Supreme Council of Canada** founder Syed Soharwardy filed a complaint with the Alberta Human Rights Commission (AHRC) against media personality Ezra

1. Brooke Goldstein, *Islamist Watch Response to the Federal Election Commission: Regarding CAIR's Complaint Against the "Obsession" DVD*, Islamist Watch, Nov. 15, 2008, <http://www.islamist-watch.org/1066/islamist-watch-response-to-the-federal-election>.



Levant for republishing cartoons of Mohammad (from Danish newspaper *Jyllands-Posten*) in the now defunct *Western Standard* magazine. The complaint was eventually withdrawn. An identical complaint was filed in 2008 by the **Edmonton Council of Muslim Communities** and was dismissed by the AHRC based on the context of publication and the importance of freedom of speech.

- 2007: Complaints filed with the Ontario Human Rights Commission, British Columbia Human Rights Tribunal, and Canadian Human Rights Commission against *MacCleans* magazine by **Canadian Islamic Congress** president Mohamed Elmasry for republishing an excerpt of author Mark Steyn’s book, *America Alone*, about the demographics of Muslims in America. In 2008, the Ontario Human Rights Commission ruled they did not have jurisdiction to hear the complaint, the British Columbia Human Rights Tribunal head and dismissed the complaint in 2008, and the Canadian Human Rights Commission dismissed the complaint.
- 2009: Lawsuit initiated in Denmark by the Saudi law firm of **Ahmed Zaki Yamani** on behalf of more than 94,000 alleged descendants of Islam’s prophet Mohammad against the Danish newspaper *Politiken* for republishing a cartoon of Mohammad. After a public apology and settlement reached by the newspaper (including removing the cartoons), Yamani, on behalf of his clients, decided not to pursue further legal action.
- 2009: An unincorporated charitable trust responsible for the management of the **North London Central Mosque** filed a libel claim against Policy Exchange, a UK-based nonprofit think tank, for a journal in which they published an exposé about literature calling for violence that was available in the mosque. The court struck down the claim because the trust was unincorporated and therefore did not exist as a legal entity.
- 2011: An Austrian appellate court upheld the conviction of Austrian citizen Elisabeth Sabaditsch-Wolff for “denigrating religious beliefs” after presenting at a series of seminars on militant Islam, and for questioning whether the marriage of Islam’s prophet Mohammed to his child bride Aisha was pedophilic. Sabaditsch-Wolff was found guilty of blasphemy and fined despite the court’s confirmation that she did not make the “offending” comments maliciously.
- Ongoing: The UN Human Rights Council’s (HRC) successive passing of resolutions attempting to outlaw the “defamation of religion,” of Islam, and ideas (!) deemed “Islamophobic,” a move entirely inconsistent with liberal democratic principles of free speech. Note in particular:
 - HRC Resolution 7/19: References the Durban Declaration and the Islamic Conference of Foreign Ministers (part of the OIC), and
 - Calls for “legal strategies” to combat “defamation of religions,”
 - Alleges that the defamation of religion “leads to violations of human rights” and “contributes to the denial of fundamental rights,”
 - Criticizes “attempts to identify Islam with terrorism, violence and human rights violations,”



- Denounces the “deliberate *stereotyping* of religions . . . and [their] sacred persons in the media,”
 - “Urges States to take actions to prohibit the dissemination, including through political institutions and organizations, of racist and xenophobic *ideas and material* aimed at any religion or its followers that constitute incitement to . . . religious hatred,”
 - Asserts, incorrectly, “that the prohibition of the dissemination of all *ideas* based on [religious] hatred . . . is compatible with the freedom of opinion and expression,”
 - Condemns the use of the media, including the Internet, “to incite acts of . . . xenophobia . . . towards Islam,”
 - And invites the Special Rapporteur and the High Commissioner for Human Rights, respectively to (1) “report on all manifestations of defamation of religions, . . . the serious implications of Islamophobia,” and (2) to “submit a study compiling relevant existing legislations and jurisprudence concerning defamation of and contempt for religions.”
- HRC Resolution 16/18:² an initiative of the Organization of the Islamic Cooperation, supported by the United States, and adopted by the General Assembly, it has been criticized as the latest of many attempts by the OIC to use human rights law to squelch speech that it deems insulting to Islam under the guise of advocating “human rights.” The resolution reiterates a concern with the “negative projection of the followers of religion,” and indicates that organizations and groups that raise awareness about Islamist terrorism are “extremist.”

Examples of the chilling effect of self-censorship include, but are not limited to:

- Random House reneging on a deal to publish *The Jewel of Medina*, a 2008 fiction novel by author Sherry Jones centering on Mohammed’s child bride, Aisha. After the British publishing house Gibson Square subsequently announced it would publish the novel, Gibson publisher Martin Rynja’s London home was firebombed.
- Yale University Press excising Mohammad cartoons from a scholarly book entitled *The Cartoons that Shook the World*.
- White House-instituted review of counter terrorism training and federal law enforcement so that it does not offend Muslims, a process which has resulted in the blacklisting of several recognized authorities and is expected to forbid future use of terms such as “jihad” and “Islamist terrorism.”
- Department of Defense’s report on the Fort Hood shootings omitting the word Islam as well as making no mention of the killer, Nidal Malik Hasan’s “well-documented

2. Human Rights Council Res. 16/18, 16th Sess. (Apr. 12, 2011), *available at* <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/RES/16/18&Lang=E>.

jihadist sympathies” such as his speech on suicide bombing and an essay arguing for the “painful punishment and liquidation of non-Muslims.”³

IV. Lawfare Targeting National Security

Here, lawfare takes the form of a complementary legal campaign to terrorism and asymmetric warfare and seeks to denigrate societies’ legitimate interests in security and self-defense. It manifests at both the state and international level and often includes tendentious or deliberately misapplied use of legal principles and terminology.

As U.S. Air Force Maj. Gen. Charles Dunlap (Ret.) pointed out in his 2001 Harvard Law Review essay,⁴ **the strategy is twofold: (1) to undermine the American people’s support for our troops by making us believe that war is being conducted in an unfair, inhumane way; and (2) to restrict the operational space available to US forces, so that officers issue rules of engagement that may be overly restrictive in order to forestall “legal” challenges down the line, thereby putting troops themselves at greater risk.**

Unfortunately, the laws of armed conflict are evolving at a much slower rate than are the techniques used by terrorists on the battlefield. Thus, we are now faced with a situation in which there is great need to update, remove ambiguity from, and prevent misinterpretation of humanitarian law. In addition, we are witnessing an environment where human rights laws already on the books are not being applied to the greatest state and non-state violators thereof.

Note, however, that while many lawfare actions in this arena have targeted Israel, the nature of the legal system creates precedents that can, and will, be similarly used against other nation states. In fact, Israel is now being used on the legal front, just as it has been used on the physical battlefield, as the testing ground for lawfare actions that abrogate the rights of a democratic state to exert control over its territory and defend its citizens from terrorism.

A. Lawfare Aimed at Frustrating the Ability of Democracies to Fight Terrorism

- Al-Qaeda manuals that instruct captured militants to file false claims of torture in order to reposition themselves as victims in the eyes of the law and media.⁵

3. Dorothy Rabinowitz, *Major Hasan, ‘Star Officer,’* WSJ, Feb. 16, 2011, <http://online.wsj.com/article/SB10001424052748704409004576146001069880040.html>.

4. Maj. Gen. Charles Dunlap, *Law and Military Interventions: Preserving Humanitarian Values in 21st Century Conflicts* (2001), available at <http://www.hks.harvard.edu/cchrp/Web%20Working%20Papers/Use%20of%20Force/Dunlap2001.pdf>.

5. See *Al Qaeda Training Manual*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/network/alqaeda/manual.html> (last visited Jan. 16, 2012).



- Misinterpretations of the laws of armed conflict so as to require, for example, the reading of *Miranda* rights to terrorists captured on the battlefield, and for Osama Bin Laden to be captured alive and tried on U.S. soil (thereby undermining the rights of a state to hold enemy combatants for the duration of hostilities and to kill enemy combatants on the battlefield, respectively).
- Lobbying efforts by the OIC at the UN to exclude attacks on American, Israeli, and coalition force civilians from any international definition of the crime of terrorism (so long as the civilians are citizens of what the OIC has termed an “occupying power”).
- Failure by the UN to declare suicide bombing a crime against humanity, thereby inhibiting the prosecution of this crime.
- Failure by human rights groups and the legal community, to consistently condemn the illegal, state-sponsored indoctrination of innocent Muslim children towards violence, including the recruitment of children as young as 6 years old to become suicide bombers, child soldiers, and to act as human shields. Turning a blind eye to these crimes, combined with the failure to hold the perpetrators accountable, sends a green light to terrorist groups that they may continue these activities with impunity.

B. Lawfare Aimed at Delegitimizing the Rights of Sovereign Democracies

The following are examples of lawfare aimed at chipping away the ability of liberal democracies to exert sovereign control over their territory, protect their citizens, and to undermine the integrity and efficacy of their legal systems.

- The Goldstone Report and other legally flawed and politicized attempts to interpret international law so as to deny democratic states the right to self-defense.⁶
- Unilateral determinations by national courts to further political agendas by exerting universal jurisdiction over heads of states and charging them with “war crimes,” including efforts to charge U.S., UK, and Israeli government officials with war crimes in the United Kingdom, Belgium, and Spain (and even Iran), with the goal of impeding the free movement of democratic state officials and in violation of the legal principles of complementarity and universal jurisdiction as a basis of last resort.⁷
- The International Court of Justice’s (ICJ) partisan 2004 advisory opinion on the legality of Israel’s security barrier, which blatantly ignored the fact that the barrier contributed to a sharp decline in the loss of human life. Additionally, the ICJ refused to hear testimony from victims of terrorism.

6. Note the legal conclusions made in the Goldstone Report were subsequently retracted by the report’s namesake, Judge Goldstone.

7. The principles of universal jurisdiction as a last resort and complementarity require foreign courts to allow local courts to first determine whether a crime has indeed been committed and to exert jurisdiction only when local courts have proven inadequate.



- Deliberate misapplication and redefinition of legal terms such as “apartheid” and “genocide” with the goal of diluting their meaning and feeding the inability to distinguish between real instances of human rights violations and actions done in the defense of human lives, and leading to misguided (and potential unlawful) Boycott, Divestment and Sanctions (BDS) initiatives.
- Following the acquittal of Dutch politician Geert Wilders on charges of “inciting hatred against Muslims” on the grounds that Wilders speech consisted of legitimate public debate about religion, the filing of a complaint against the Netherlands in the UN Human Rights Commission by three Dutch Moroccans, attempting to undermine Dutch sovereignty and Dutch free speech laws, by charging the state with the failure to protect the plaintiffs from hatred and discrimination. This latest maneuver is part of a continued attempt to silence Wilders, a democratically elected official, for speaking to his constituents about issues of national security and the threat of Islamist terrorism.
- The international flotilla movement designed to break a legal counter-terror Israeli naval blockade in place to prevent specially designated terrorist group Hamas from acquiring weapons.