

CONTENTS

Foreword by R. James Woolsey, Jr., former Director of the Central Intelligence Agency and General Counsel to the Senate Armed Services Committee xiii
Acknowledgments xix

1. A Conceptual Overview of Lawfare's Meaning, Variety, and Power	1
I. The Meaning and Study of Lawfare	4
A. The Origins and Definition of Lawfare	4
B. A Brief Overview of the Lawfare Literature	8
C. This Book's Goals, Structure, and Methodology	10
II. A Lawfare Typology	11
A. The Instrumental Use of Legal Tools	12
B. Compliance-Leverage Disparity Lawfare	17
III. An Overview of the United States' Approach to Lawfare	28
A. The U.S. Executive Branch's Unsystematic and Largely Defensive Approach to Lawfare	28
B. Instrumental Lawfare in the Context of the U.S. Legal System and the Rule of Law	33
C. U.S. Instrumental Lawfare in the Context of the United Nations System	35
D. Questions to Guide U.S. Government Development of a Lawfare Strategy	38
IV. Reasons for Lawfare's Increasing Influence	40
A. The Mutually Reinforcing Increases in Influence of Lawfare and Other Asymmetric Warfares	40
B. The Increased Number and Reach of International Laws and Tribunals	44
C. The Rise of NGOs Focused on Law of Armed Conflict and Related Issues	45
D. The Information Technology Revolution	48
E. Globalization and Economic Interdependence	48

2. Lawfare Waged by U.S. Private Sector and Non-Governmental Organization Attorneys	51
I. Private Civil Litigation Against Terrorists, Their Material Supporters, and their State Sponsors	53
A. The Anti-Terrorism Act	53
B. The Terrorism Exception to the Foreign Sovereign Immunities Act	70
II. U.S. Non-Governmental Attorneys and Lawfare Outside the Litigation Arena	80
A. Non-Governmental Lawfare and the President's Foreign Policy Authorities	82
B. Non-Governmental Lawfare Tools and Executive Branch Shortcomings	85
III. The Potential Future Role in Lawfare of U.S. Private Sector and Other Non-Governmental Attorneys	103
A. New Sources of Funding	103
B. New Sources of Non-Governmental Attorneys	106
3. The U.S. Government's Financial Lawfare Against Iran	111
I. U.S. Financial Lawfare Against Iran in Conceptual Context	114
II. Iran's Use of the International Financial System to Accomplish Its Nuclear and Terrorism Sponsorship Objectives	118
III. Innovative Elements of U.S. Financial Lawfare Against Iran	119
IV. Impact of U.S. Financial Lawfare Against Iran	122
V. Implementation of U.S. Financial Lawfare Against Iran	125
A. U.S. Imposition of Unilateral Financial Restrictions Targeting Iran's Nuclear and Terrorism Sponsorship Activities	125
B. Promoting Financial Measures Against Iran by Key International Organizations and Foreign Countries	132
C. Direct Outreach to Key Foreign Financial Institutions	136
VI. Lessons Learned and the Future of U.S. Financial Lawfare	147
A. Incomplete Success	147
B. Iranian Countermeasures	149
C. Concerns About Collateral Damage	151
D. The Risk of Setting a Precedent Useful Against the United States	152
E. The Challenges of Waging Lawfare Amid Negotiations with the Target	155
F. The Challenges of Unwinding Financial Lawfare	156
G. Financial Lawfare's Role in Future U.S. Strategy	158

4. The Chinese Government Adopts and Implements a Lawfare Strategy	161
I. Lawfare in Chinese Strategy and Culture	161
II. PRC Instrumental Lawfare	165
A. Maritime and Aviation Lawfare	165
B. Outer Space Lawfare	168
C. Insisting That the Law of Armed Conflict Does Not Apply in Cyberspace	169
III. The PRC and Compliance-Leverage Disparity Lawfare	172
A. The PRC, the United States, and Compliance-Leverage Disparity Lawfare	172
B. PRC Compliance-Leverage Disparity Lawfare in the Nonproliferation Arena	173
IV. Future PRC Lawfare and Potential U.S. and Allied Responses	186
A. The Future of PRC Lawfare	186
B. Potential U.S. and Allied Responses to Future PRC Lawfare	191
5. The Palestinian Authority's Lawfare Against Israel	197
I. Introduction	197
II. Lawfare, the Rival Palestinian Governments, and a Few Words About Terminology	199
III. Seeking Full Statehood and U.N. Membership Outside the Negotiations Process	200
A. The Campaign for Recognition of Palestine as a U.N. Member State	201
B. The U.S. and Israeli Response and the PA's Two-Year Pause in Efforts to Use Lawfare to Achieve Statehood without Negotiation	202
C. PA Statehood Lawfare Resumes: The April 2014 Tranche of Accessions	207
IV. The PA Deploys Its Most Powerful Lawfare Weapon: Joining the International Criminal Court	208
A. The Palestinian Decision to Join the ICC	209
B. Potential Next Steps by the PA and ICC	217
C. Potential Responses by Israel	226
D. Potential Responses by Israel's Allies	230
V. PA Use of International Organization and Treaty Processes to Attack Israel	233
A. PA Efforts to Use Its UNESCO Membership Against Israel	233
B. PA Efforts to Use the International Court of Justice Against Israel	234

6. Palestinian NGOs and Their Allies Wage Lawfare Against Israel	239
I. The Boycott, Divestment, and Sanctions Movement Against Israel	
A. Overview of the BDS Movement	240
B. Palestinian NGO Lawfare Uses Organization for Economic Cooperation and Development Against Israel	243
C. The EU Guidelines Restricting Grants to Israel	245
D. BDS Activists Cite Israeli “War Crimes” as Legal Justification for Disrupting and Physically Damaging Israeli-Affiliated Businesses	246
E. Pro-Israel Activists Use Lawfare Against BDS Targeting of Israeli Products	249
II. Use by Palestinian NGOs and Their Allies of Third-Country “Universal Jurisdiction” Statutes Against Israeli Officials and Former Officials	259
III. Palestinian and Allied NGO Legal Actions Against Foreign Companies for “Aiding and Abetting Israeli War Crimes”	263
A. Lawsuit in the United States Against Caterpillar Incorporated	264
B. Lawsuit in France Against Veolia Transport, Alstom, and Alstom Transport	265
C. Dutch Criminal Investigation of Riwal/Lima	266
IV. Israel’s Systemic Responses to PA and Allied NGO Lawfare	269
V. Palestinian Lawfare and the Role of Law in Palestinian Society	271
VI. Lessons Learned and the Future of Palestinian Instrumental Lawfare and Israeli Responses	276
A. Lessons Learned and the Future of PA Lawfare Against Israel	276
B. Lessons Learned and the Future of Lawfare Against Israel by Palestinian NGOs and their Allies	278
C. Lessons Learned and the Future of Israeli Responses to Palestinian Instrumental Lawfare Challenges	279
7. Hamas Battlefield Lawfare Against Israel	283
I. How Hamas Wages Battlefield Lawfare Against Israel	284
II. Allegations Israel Violated the Law of Armed Conflict During the 2014 Gaza War	292
III. Israel’s Responses to Hamas Battlefield Lawfare	295
A. Changes to Israeli Battlefield Tactics—Airstrikes and Warnings	295
B. Combating Lawfare by Enhancing Israel’s Legal Public Diplomacy	298
C. Expanding the Role of Lawyers in Israel’s Combat Decision-making	302

D. Enhancing Israel's Investigations into Alleged War Crimes by Its Troops	303
E. Media Campaign Explaining Targeting Decision-making	304
IV. Lessons Learned and the Future of Hamas Battlefield Lawfare and Israeli Responses	305
A. Lessons Learned and the Future of Hamas Battlefield Lawfare Against Israel	305
B. Lessons Learned and the Future of Israeli Responses to Hamas Battlefield Lawfare	306
8. Israeli Offensive Lawfare	311
I. Using Offensive Lawfare to Prevent a Gaza-Bound Flotilla from Leaving Greece	312
A. Warnings to Maritime Insurance Companies	314
B. Warnings to the Inmarsat Global Satellite Company	315
C. Lawsuit to Seize the Boats	317
D. Prodding the Greek Government	317
II. Suing Bank of China for Financial Transfers to Terrorists	318
A. "They Asked Us to Do the Lawsuit"	319
B. Priorities Shift	319
C. An "Embarrassing Situation"	320
III. Deploying Kinetic Warfare in Support of Lawfare	322
IV. Lessons Learned and the Future of Israeli Offensive Lawfare	325
A. Public/Private Partnerships	325
B. Offensive Lawfare by Israel Directly Against Palestinian Governments	327
Conclusion	329
I. What Can Lawfare Learn from Scholarship on the Efficacy of Economic Sanctions, and Vice Versa?	331
II. What Kinds of Data Sets can and Should be Collected to Inform the Study of Lawfare?	332
III. What Are the Key Sources of Lawfare Power? How Can the Lawfare Power of Different Actors Be Compared?	333
IV. What Can Compliance Theory Learn from Lawfare Scholarship, and Vice Versa?	334
A. Increasing Costs of Noncompliance?	335
B. Widening Compliance-Leverage Gap Between State and Non-State Actors?	338
V. What Can Scholarship on the Role of Non-State Actors Learn from Lawfare Scholarship, and Vice Versa?	338
A. International Organizations	339
B. Sub-State Actors	339

C. Terrorist Groups and Other Violent Non-State Actors	340
D. Non-Governmental Organizations	340
E. Multinational Corporations	341
F. Individuals	342
<i>Notes</i>	345
<i>Index</i>	461