

- Introduction

- What is Lawfare?

- [illegible]

e. On the other hand, if the state does respond, it is faced with a situation where it is essentially guaranteed that a legal challenge against the state's leadership or combat troops can be brought. Officials can be charged with crimes, have warrants issued for their arrest, can be detained and tried, and even convicted and sentenced. The repercussions are:

- i. **Diplomatic:** High level personnel have an inability to conduct their responsibilities such as conducting international relations (i.e. traveling to other countries)
- ii. **Strategic:** Inability to effectively construct and execute military operations given the potential for knee-jerk lawsuits



- iii. **Operational:** Lower-level military personnel will second guess themselves in combat situations, thereby making them less effective and increasing the risk of casualties for themselves and their fellow soldiers
- iv. **Public Relations:** Legal action carries with it assumed legitimacy in the minds of many. International law is less rigid and is more amorphous than domestic law in developed countries. It is frequently cited because either the concepts or the original reasoning for the laws are oftentimes misunderstood or entirely unknown to the everyday person. When images of battle and national security scenarios and combined with accusations, the default is frequently an assumption of guilt.

SLIDE 3:

- How is the strategy being employed against Israel?
 - a. Hamas Leader Khaled Mashal: "Jihad through legal channels"
 - b. Examples: Hamas explicitly stated it is behind Livni case

SLIDE 4:

- Lawfare is not just an Israeli problem – it's a problem facing all democracies fighting terrorism.
- The US has also been a victim of Lawfare (Holder vs. Humanitarian Law Project):

Holder v. Humanitarian Law Project, was a case decided in June 2010 by the [United States Supreme Court](#) regarding the [USA PATRIOT Act](#). The case was petitioned by attorney [Eric Holder](#) and pertained to the section of the USA PATRIOT Act which prohibits [material support](#) to [groups designated as terrorists](#).

The case challenged support proposed by the [Humanitarian Law Project](#), saying that their intended support fit the definition of assistance to terrorists. The USA PATRIOT Act bans such assistance. The Project attempted to challenge the definition of material assistance to terrorists but failed in that attempt. The Project wanted to advise groups which for years have been on the U.S. terrorist list.



The court concluded that Congress intended to prevent aid to these groups, even aid for the purpose of helping the group to enter into peace negotiations and [United Nations](#) processes. The Court found that the type of aid intended did fit into the law's category of material aid: "training," "expert advice or assistance," "service," and "personnel." The finding was based on the principle that any assistance could help to "legitimate" the terrorist organization, and free up its resources for terrorist activities.

The court noted that the proposed actions of the Humanitarian Law Project were general and "entirely hypothetical," implying that a post-enforcement challenge to the application of the 'material support' provisions is not foreclosed.

The plaintiffs had sought to help the [Kurdistan Workers' Party](#) in [Turkey](#) and the [Liberation Tigers of Tamil Eelam](#) learn means of peacefully resolving conflicts. This case represents the only time in U.S. First Amendment jurisprudence that a restriction on political speech has passed the [Brandenburg v. Ohio](#) test.

SLIDE 5:

- George Bush: In February 2011 it was widely reported that former US president George W. Bush had cancelled a visit to Switzerland following moves by human rights activists to submit a complaint against him to Swiss prosecutors for allegedly ordering the torture of terrorist suspects.
- Use of foreign courts and Universal Jurisdiction
 - a. Belgium, Spain and the UK
 - b. Examples: Rumsfeld lawsuit, Bush forced to cancel visit to Switzerland, Tzipi Livni and the UK
 - c. Eventually changed their laws

SLIDE 7:

- **Civil claims** made against companies for involvement with Israel. For example, in France a civil complaint was made against Veolia Transport for its involvement in the light-rail project in Jerusalem.

