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To deepen that analysis, I would like to give the floor first to Anne-Thida Norodom to provide us with some doctrinal background to this phenomenon. Anne-Thida, please, the floor is yours.

Anne-Thida NORODOM

Thank you very much Laurent. I would also like to take this opportunity to thank Thierry de Montbrial for inviting me to participate again in this very beautiful conference.

I am going to speak in French because fortunately we have interpreters. I am going to present the doctrinal framework for the use of law as a weapon, including a theoretical and historical presentation of the concept of lawfare.

This session will primarily focus on the economic aspects of weaponizing the law because it fits into the framework of the study of globalization. But the strategic use of the law takes place within a much wider framework than just the economic context. It began in the military sphere well before crossing over into the economic sphere.

I would like to sketch out the theoretical and historical framework of this session's theme with a brief presentation of the concept of lawfare, a neologism based on the contraction of the words law and warfare.

What is lawfare? In 2001 Major Charles DUNLAP coined the term in a publication where he defined it as "the use of the law and the legal process as a weapon in modern warfare either to achieve a military objective or to deny an objective to the enemy". This definition was later expanded to include illicit manipulation of the legal system to attain strategic political or military goals. Today there is no consensus on the meaning of lawfare. The term has spread on the sidelines of the war against terrorism led by the United States, although it is no longer limited to it.

In this context, the law has evolved to describe and denounce various forms of international legal commitment. Often, it is used by non-State actors: individuals, non-governmental organizations, international institutions or militant sub-State groups aiming to impose and manipulate legal standards, especially international ones, in order to limit traditional military means and operations, such as States' responses to terrorism, and the use of force. More recently, lawfare has come to mean the strategic use by States of the information they master in order to achieve a specific objective, often military but sometimes also economic, which accounts for the key role new technology plays in the phenomenon's spread. In these cases, lawfare means the use of law as a propaganda weapon and a tool to rally public opinion. The concept of lawfare has been stretched so much that it is now misused, having even been invoked to denounce political interference in the development of the rule or the exercise of national justice in democratic States.

We will limit the concept here to the use of law for the strategic purpose of destabilizing the enemy. There are two historical examples of this. Firstly, the use of lawfare in the context of the 2003 U.S. invasion of Iraq sparked a legal fight over that intervention's legitimacy. In particular, NGOs wanted to prove its illegality in order to delegitimize the use of force. Secondly, Islamist groups used lawfare to condemn human rights violations carried out by the United States at Guantanamo Bay, or by Europeans, in order to restrict public information on radical Islam. What lessons can be drawn from these examples? Firstly, the law tends to be used as a weapon against countries where the rule of law is strong. Secondly, it is more often used in asymmetrical relations or wars in order to influence public perception abroad and gain a moral and political edge over the enemy to make up for a military or economic disadvantage.



This phenomenon illustrates a mutation of warfare, although it has always existed. Wars are not won by armies alone. Today we are seeing an extension and diversification of the phenomenon, which has reached the economic sphere. It is no longer limited to the military sphere. You can see three manifestations of this shift on the slide:

- The first is a political need to justify by law military interventions in the court of national and international public opinion.
- More broadly, debates over political stakes are taken up and couched in legal terms because the law is considered a supposedly neutral and consensual terrain, which it actually is not. Moreover, in this discourse there is some confusion between legality and legitimacy.
- Lastly, lawfare is also based on changes in digital technology in both the civilian and military spheres that facilitate the dissemination of the legal argumentation used.

Lawfare is used in three main ways:

- The bringing of proceedings before international and domestic courts. An example is filing defamation suits against counter-terrorism experts to discourage them from sharing their expertise
- The misuse of legal terminology to manipulate and influence public opinion and international institutions
- The extraterritorial reach of national law, which is something new. Examples can be seen in the area of economic sanctions, the use of universal competence and, more recently, the protection of private data.

The question can then be asked: "Is this a pathology that absolutely requires treatment or a change inherent to international society?" The use of new technology facilitates disinformation and the mobilization of public opinion. In this sense, lawfare is inherent to international society. Likewise, globalization increases interdependence between States and the transnational dimension of activities. By using the extraterritoriality of laws, lawfare takes advantage of the interdependence between economies.

The last question I will ask is this: "Is there really a pathology of the law? Can the use of law be pathological?" The answer is yes. In that case, the concept of the abuse of rights can be used, i.e. the fact that a person who oversteps the bounds in exercising a right conferred on him, either by diverting it from its original purpose or with the aim of harming others, is in the wrong. Article 17 of the European Convention on Human Rights mentions this.

In conclusion, lawfare can be a useful tool when it comes to communicating how to utilize the law in modern conflicts and appears as a substitute for traditional weapons. Lawfare also works because it acts on the victim State's values. In that case, respect for the rule of law becomes the Achilles' heel of democratic States. Does this mean we should abandon the principle of the rule of law? I do not think so. I am a professor of law, so I will preach to the choir. In my opinion, we must fight lawfare with lawfare and use the law because it is still the best alternative to war. Thank you.