

*The Continuous Judicial and the Judiciary Wars in Colombia:
Critical Dimensions of Insurgent Political Warfare*

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As Clausewitz wrote in Book VIII of his opus *On War*: “the events of every age must be judged in the light of its own peculiarities.”² In Colombia, we were in a battle against an enemy that we could not see; an enemy we had to learn to know. I believe those wars—the ones we do not see, the ones we are not prepared for—are the worst wars. These wars end up in destroying us morally. The Colombian war is complex with many dimensions which are invisible to those whom have not been fighting in its midst. I would like to share my thoughts on the hidden peculiarities of our war.

The armed conflict emerged in the 1960s due to a combination of economic, political and social factors. We also had to respond to a narco-terrorist threat that fuelled the Colombian conflict during the 20th and 21st century. As the formal negotiation of the Colombian peace process ended in 2016, some of our best soldiers are facing a new threat; a hostile judicial system. This system does not take into account our work as defenders of all national institutions, including the judiciary, during the war.

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² Carl von Clausewitz, *On War*. Translation and edition by Micheal Howard and Peter Paret. (Princeton: Princeton University Press, 1976), p. 593.

The Colombian military is currently suffering the moral and psychological effects of what we know as judicial and judiciary warfare, two sub-categories of political warfare imposed on us by the Marxist insurgents. Moreover, our enemies found a horde of groups and allied organizations, coupled with a legion of lawyers. Those lawyers found an immeasurable source of income amid the armed conflict. As the Executive Director of military criminal justice (2004-2006) and later the Director of the Military Ombudsman (2008-2009), I experienced the asymmetric struggle that is viscerally attacking the legitimacy of the Colombian State. In this note, I will share some of my thoughts regarding the peculiarities of the political war we currently face as soldiers.

Let me first mention a few observations regarding the evolution of warfare in general and in Colombia.

Political Warfare in Colombia

The changing character of war is quite evident in the Colombian case and takes the form of political warfare. As borders collapse with information technologies, local issues become global phenomenon. This contributes in transforming the public perception of events. As Col. (Ret.) Thomas X. Hammes, USMC stated in 1994: "The move toward fourth generation warfare is occurring in parallel with the move into the information age—i.e., with the political, economic, and social changes affecting society as a whole—and the essential characteristics of this new form of warfare have been clearly illustrated in recent conflicts."³ Therefore, as states lose their monopoly over war, globalization changes war itself. What Hammes highlights regarding fourth generation war is that it is not only a military issue.

As most analysts of the Colombian case are aware, our type of war is not only about military issues. Our war is, above all, a political, social and moral revolution

³ Thomas X. Hammes, "The Evolution of War: The Fourth Generation," *Marine Corps Gazette* (September, 1994). See also: William S. Lind, Colonel Keith Nightengale (USA), Capitan John F. Schmitt (USMC), Colonel Joseph W. Sutton (USA), and Lieutenant Colonel Gary I. Wilson (USMCR), "The Changing Face of War: Into the Fourth Generation," *Marine Corps Gazette* (October 1989): pp. 22-26 and Martin Van Creveld, *The Transformation of the War: The Most Radical Reinterpretation of Armed Conflict Since Clausewitz*. (London: Free Press, 1991).

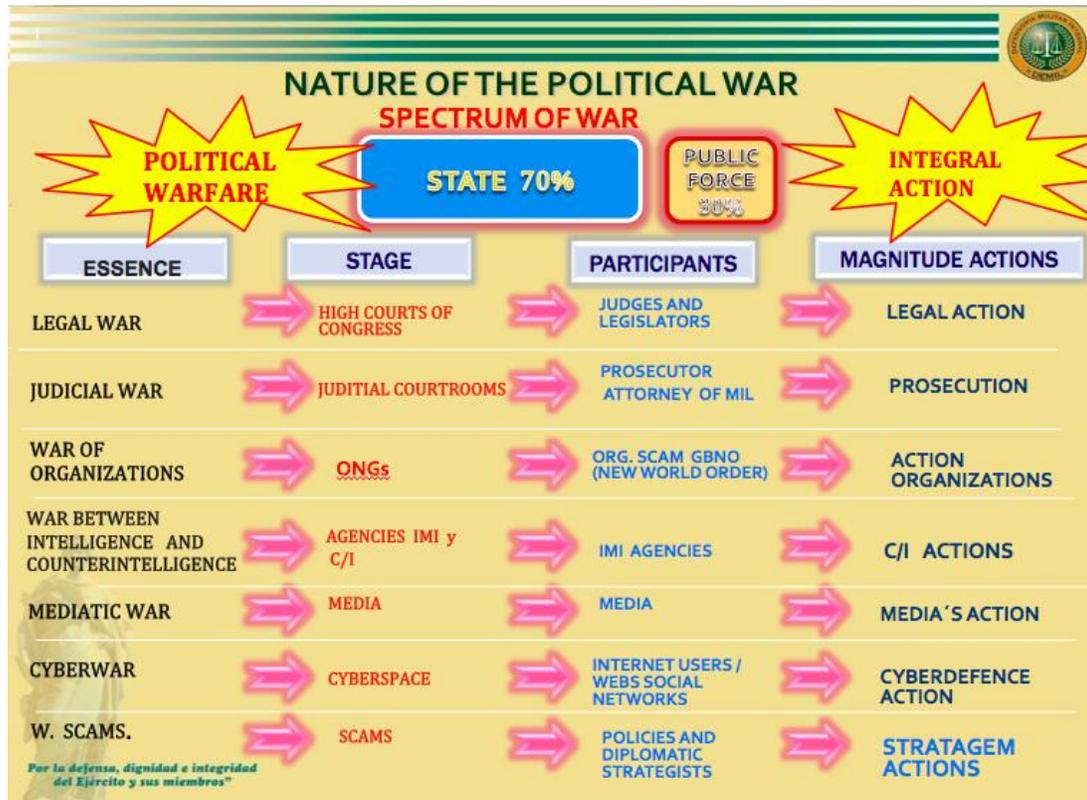
rooted in a crisis of legitimacy of the Colombian state. How the characteristics of fourth-generation warfare apply to an asymmetric conflict like the one in Colombia?

Spanish author, Frederico Aznar Fernández-Montesinos⁴ offers an interesting and pertinent reflection on warfare in the 21st century that may enlighten us on this issue. According to Aznar, contemporary conflicts are mostly a discursive clash of political powers where military factor loses prominence over other aspects, such as media power. Therefore, it is necessary to put emphasis on the differences in media capabilities of parties involved in asymmetric conflicts. All sorts of procedures restrict military actions and discourses while the weakest party of a conflict, that is in our case the guerrilla, can take advantage of these restrictions to delegitimise us through media manipulation or international law.

In this discursive war, there are numerous sets of actions taken by the insurgency to influence and infiltrate organs of political power of the state in order to reduce its ability to react to a subversive threat. This is what I call our 'invisible war'—that is, how they attack us in different scenarios. Fighting back is our main effort in this war. The implementation of military force represents about 30% while the management of political discourse is about 70% of the political war. Therefore, this invisible war has a single well-defined goal: to attack the legitimacy of the State using the legitimate instruments of the State—that is, in my view, political warfare. The only part that is visible in Colombia is the action of the Colombian military forces but all the attacks bellow the surface that our enemies force on us remain hidden. If we do not understand this reality, it is impossible to understand the situation of political warfare in Colombia.

⁴ See Aznar Fernández-Montesinos, *Entender la guerra en el siglo XXI*. Ministerio de Defensa, Madrid: Complutense, 2011.

Figure 1: The Nature of Political Warfare in Colombia



Source: Extracted from my power point presentation at the international workshop ‘Hybrid Warfare: New Concepts for Canadian Armed Forces’ organised by Philippe Beaulieu-Brossard and Philippe Dufort, Canadian Forces College, Toronto, Canada, October 17th, 2016.

In Colombia, the 6 scenarios of the political warfare presented by Colonel Ruiz Mora in another article⁵ in this issue of the *Journal of Military and Strategic Studies* can be deployed in 22 sub-scenarios such as judiciary warfare, judicial warfare, war of organizations, media warfare, semantic warfare, stratagems warfare, diplomatic warfare, masses warfare, to name a few.

In this context, illegal armed groups and related organizations (national or international NGOs as well as political parties linked to the extreme left) rely on distorted, psychological and propagandistic actions. They do so by manipulating

⁵ Colonel Ruiz Mora, “Learning through our Mistakes: the Legacy of Marxism in Colombian Counter-Insurgency Strategy,” *Journal of Military and Strategic Studies* 17, no. 4 (2017).

information with misrepresentations. Those actions are designed to undermine the legitimacy of the state. The role of NGOs in our country is really important. Although, some journalists highlight their impartiality in Colombia,⁶ a lot of them have been responsible for tarnishing the image of our country abroad with biased reports. They did not base these reports on reality. Instead, they misrepresented information about the situation of our country, and they thus misinformed the international community leading to charges against the State and its Armed Forces. Some NGOs did not even mention that some members of the narco-terrorist organisations are primarily responsible for the violence in our country. Obviously, I am not suggesting that promoting the fundamental rights of citizens is not a noble and just cause deserving recognition. I want to stress here that this cause is dishonoured when these organisations become an active part of the conflict and when they are inclined towards the interests of armed opposition, mainly those considered subversive.

Political warfare actions in Colombia include disinformation with international organizations or false reports by transnational NGOs, defamation, public protests, book publications, newspaper columns and other means targeting political discourse. These actions lead to broader political and even legal consequences including external hostility and reduction of external support by the international community and a discredit towards national institutions.

The Colombian political war should be viewed as a dispersed battlefield to analyse the actors and actions that are carried out. The intensity and the scope of this political war needs to be put forward to understand how soldiers and law enforcement organizations in Colombia got entangled in various ways in the war against an 'invisible' subversive adversary. Legal and judicial wars in Colombia are among the various new forms of confrontation seeking to undermine morale and break the will to fight of security forces. Legal and judicial wars are directed against Armed Forces and other representatives of the State. These are presented to the international community as cynical violators of human rights. As a lawyer I believe that, of all dimensions of political warfare, the ones that were most destructive on us were legal and judicial warfares.

⁶ See Apuleyo Mendoza, Plinio. ¿Son santas las ONG? *Revista Semana* Ed. 815. 12 Enero 1998. <http://www.semana.com/opinion/articulo/son-santas-las-ong/34893-3>

The 'Juridical War' developed in the high courts and legislative branches of the state. Its action can be perceived in contradictory statements contained in sentences, provisions and jurisprudence, which leave our military and police 'against the wall' and defenceless for the actions of the public forces. Its existence is also evident in several of the norms emanating from the legislative branch of the government. These norms may baffle or worse, they can leave 'between the sword and the wall' those who defend the institutions and carry with pride the arms of the Republic, faithful to their sacred oath of service to the Fatherland.

The so-called 'Judicial War' occurs in a different context; within the judicial stages of our common justice that says, 'look at all with the same standard.' Which implies that the ordinary jurisdiction that will not take into account the condition of the accused as being a member of The Public Force, nor will it respect the constitutional protections when the acts examined were conducted in the operational context or during service. It will disregard its status as a 'qualified subject' and worse still, denying guiding principles underpinned in our Political Charter, such as: access to the administration of justice, due process, natural judge, military jurisdiction, technical defense, prison military and other fundamental guarantees established in our supreme Statute.

Although they are different scenarios, we could say that Juridical and Judicial Wars are consistent with each other. That is, the one as a consequence of the other. I will develop more on the effects of two invisible effects of our war.

The Moral and Psychological Effects of Judicial and Judiciary Warfare

The politicization of law, human rights and the media are an intrinsic part of the spectrum of our war. In 2011, I wrote a paper entitled "The Invisible War" [La Guerra invisible] in the *Colombian Journal of Armed Forces*. In this paper, I sought to show the manipulation of human rights as another weapon used in the broad arsenal of political warfare. The reaction of critics did not wait,⁷ especially from certain Non-governmental

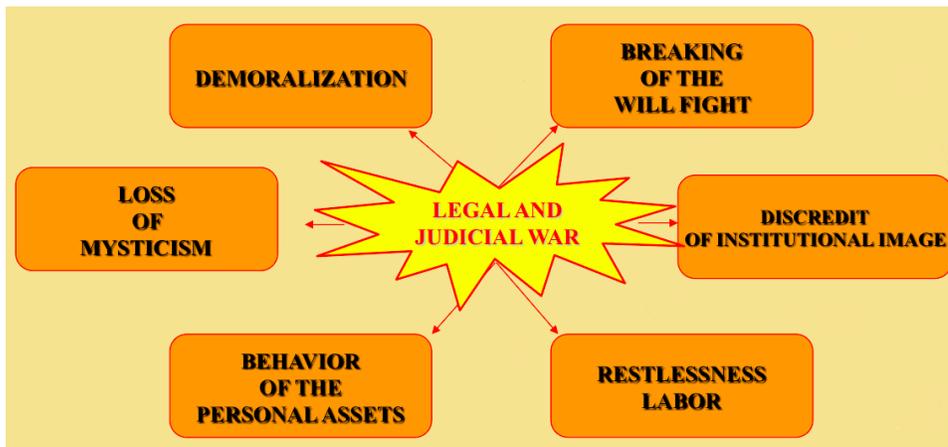
⁷ See for instance an article written by Luis Javier Correa Suárez, president of the National Union of Food Industry Workers better known in Spanish as *Sindicato Nacional de Trabajadores de la Industria de Alimentos* (SINALTRAINAL) in *Rebelión* : <http://www.rebellion.org/noticia.php?id=140822>

Organizations (NGOs) and organisations linked to the FARC. These critics pricked my interest further on this subject. In our field, we developed this subject within our understanding of the Maoist concept of subversive war called ‘using all forms of struggle.’

Since we are still in the midst of a judiciary and judicial war in Colombia, the State should recognise the special circumstances of the Colombian conflict by defending those who defended it with the weapons of the nation. Nonetheless, if the state takes away the military courts for judging soldiers: what are the incentives for soldiers to risk their lives in defending national sovereignty and internal public order when this commitment can unjustly lead them to jail? We must teach our soldiers that their actions during an operation and the fulfillment of their sacred duty of service to the country may lead to investigations. This is part of the contingencies of war. Yet, if they act in legal ways, they should be safeguarded. The problem with political war is that soldiers may be punished despite righteous actions.

The following figure illustrates the main moral and psychological effects of judicial and judiciary warfare in Colombia.

Figure 2: Moral and Psychological Effects of Judicial and Judiciary War in Colombia



Source: Extracted from my power point presentation at the international workshop ‘Hybrid Warfare: New Concepts for Canadian Armed Forces’ organised by Philippe Beaulieu-Brossard and Philippe Dufort, Canadian Forces College, Toronto, Canada, October 17th, 2016.

The nature of our asymmetric conflict, understood as political warfare, had a profound influence on the center of gravity (CoG). From our understanding, we had to focus our main effort on a redefined CoG corresponding to the legitimacy of state actions in order to achieve security and peace. In order to respond to the various dimensions of the political war aimed at destroying the legitimacy of the state, we developed a response to each of these challenges under the concept of Integrated Action (IA). Stemming out of this understanding of the peculiarities of our war, Integrated Action is our new approach to state-building and counterinsurgency.

The Integrated Action Doctrine as an Adaptation of Political Warfare

It is indeed to confront the plurality of challenges stemming out of political warfare in Colombia that we developed the Integrated Action Doctrine as our own concept of interagency cooperation. The Integrated Action doctrine is the operational design that we created to counteract and neutralize the insurgent political warfare. This doctrine seeks to protect the state's own CoG, which General Ospina Ovalle defined as legitimacy as commander of the Armed Forces.⁸

State legitimacy rests on an interdependent relationship between the government, media coverage, armed forces and the Colombian people. The Integrated Action Doctrine is the main tool for the coordination of the legitimate use of force and social action of the Colombian state across the territory where there is a political competition for legitimacy. It is our tool to confront the adversaries who enter into the institutions of the State in order to harm us from within. Nonetheless, there is still an on-going invisible war in Colombia seeking to attack the legitimacy of the Colombian state.

Raising Integrated Action principles to the level of operational doctrine makes it imperative to include social development, human security and local governments in the planning and execution of military and development operations.

⁸ See Carlos Ospina Ovalle, "Notes from the Battlefield," *Journal of Military and Strategic Studies* 17, no. 4 (2017).

Conclusion: Political Warfare as a Continuing Battlefield for Colombian Soldiers

The Colombian conflict generated scenarios unknown to its soldiers. They were prepared to face an enemy in a conventional battlefield, using means and methods allowed by humanitarian law with full 'faith in the cause.' Nonetheless, the worst of the war begins when the noise of guns and rifles cease and when those who defended their people and their homeland are tried without mercy. Successive failures in judicial reforms and a dislocation of military courts left our soldiers without technical defence. As Clausewitz put it: "every age had its own kind of war, its own limiting conditions, and its own peculiar preconceptions."⁹ Unfortunately, our adversaries are using an arsenal of judiciary and judicial weapons with a well-defined objective: attack the legitimacy of the State with the State's legitimate instruments. In sum, we must understand and dispassionately analyse the existence of judiciary and judicial warfare against members of the security forces. This is part of the political war against the legitimacy of the Colombian state. We must also accept that we may have committed serious errors due to a lack of operational discipline; in which case, not everything that happened during the armed conflict is judiciary or judicial warfare.

⁹ Carl von Clausewitz. *On War*. Translation and edition by Micheal Howard and Peter Paret. (Princeton: Princeton University Press, 1976), p. 593.