THE USE OF "LAWFARE" IN INTERNATIONAL RELATIONS: EXPLORING THE INDIA-PAKISTAN CONFLICT

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ABSTRACT

This paper argues for Pakistan's urgent need to broaden its national security focus to include non-traditional threats, specifically emphasizing the role of lawfare as a critical area of concern. The March 18th speech by Chief of Army Staff General Qamar Javed Bajwa marks a progressive step, yet it must be accompanied by concrete strategies and actions to counteract lawfare effectively. The concept of lawfare—using legal means to undermine a nation's sovereignty and security—has proven to be highly damaging, as evidenced by the impact of U.S. actions in Abu Ghraib and Russia's tactics against Ukraine. Through this analysis, the paper illustrates how India's deliberate and systematic use of lawfare seeks to destabilize Pakistan, targeting projects like the China-Pakistan Economic Corridor (CPEC), promoting terrorism and insurgency, and pushing Pakistan further into scrutiny under the Financial Action Task Force (FATF). The findings sufficiently address the research questions and conclude that lawfare poses a significant threat to Pakistan's sovereignty, warranting its prioritization within the country's national security strategy.

Keywords: International Law, India-Pakistan Conflict, Lawfare, International Affairs, International Relations, Pakistan, National Security, Non-Traditional Threats, Sovereignty, Chief of Army Staff, General Qamar Javed Bajwa, India-Pakistan Relations, CPEC, FATF, Terrorism, Insurgency, Geopolitical Strategy.

INTRODUCTION

On 16th July 2019, former Federal Minister of Law, Justice, Parliamentary Affairs and Human Rights and head of the Research Society of International Law, Ahmer Bilal Soofi declared that Pakistan needs a "battalion" of "young lawyers and legal experts working within the government" due to the rising importance of "lawfare" (Islamabad Policy Research Institute, 2019).[1] This is a very interesting proposition considering that Pakistan has traditionally favored notions of "hard power" and military security over soft power and favorable perceptions.[2] Furthermore, what is even more interesting is the use of the word "battalion" instead of, say, "team" or "council", terms more often used to refer to the legal fraternity. However, the use of battalion seems very fitting in regards to the subject matter being refer to: lawfare. The word seems to have an uncanny resemblance to the word "warfare", and that is exactly what the connotation is. The use of "law" as a means of warfare is a strategy that is gaining currency in the geo-political scenario of today. As such, this paper seeks to analyze the importance, use and role of Lawfare in International relations (Cook, 2015). Furthermore, to consider the concept more closely, this paper will also spotlight the India-Pakistan conflict and analyze the growing importance of this new strategy of war between the two hostile neighbors. As such, this paper shall address two main questions; First, what are the potential harms that 'lawfare', as opposed to warfare, can inflict on states

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in today's international system? Second, how far is Pakistan at risk of harm as a result of the Indian strategy of Lawfare?

THE IMPORTANCE OF INTERNATIONAL LAW IN INTERNATIONAL AFFAIRS

In order to effectively analyze the concept of Lawfare, it will first be useful to evaluate the role that international law plays in international relations and the contemporary global order. This is primarily due to the arguments often advanced by Realist International Relations scholars who argue that international law holds no real importance in the global order, and that it is merely a gimmick. Thus, the concept of Lawfare can only be relevant to a discourse in our contemporary times if we are able to prove that international law does in fact hold merit and significance. As a result, this chapter shall dedicate itself to briefly exploring the significance of international law and thus show that lawfare is a valid and a concerning strategy of warfare today. The following headings explain this role.

The Realist Approach

Realists are generally very skeptical of international law. It is argued that the international realm is not one of hierarchy, but one of "anarchy". Though different strands of Realism exist, all of them accept the so-called "three S", that is: Statism, Survival, Self-help.

Statism presumes that the main actor in international relations is the State. It is the fundamental unit of analysis, and is inextricably linked with every moral, legal, political change and movement in the analysis.[3] Because Realists believe the state has the monopoly of power, it must be accorded "sovereignty" so that it has the supreme authority to enact and enforce laws within its territory. This is expressed in Hobbes' idea of the social contract, whereby we sacrifice some of our freedoms in exchange for security[4]. In that regard, the second concept of Survival propounds the idea that the ultimate goal of all states is to "survive".

Survival is the "precondition for attaining all other goals, whether these involve conquest or merely independence".[5] In order to survive, states will maximize their power. This may allow them to either amass enough power in order to ensure their survival, as per Kenneth Waltz (Waltz, 1979) ; or they may amass enough power so as to achieve hegemony, according to Mearsheimer[6]. Finally, Self-help indicates that because war is always a possibility, the state must rely on itself only to ensure its survival. For that, it must augment its security. Read with this context, it can thus be understood why Realists are skeptical of international law.

George Kennan, (Kennan, 1996) the author of the famed Kennan's Long Telegram, doubts even the existence of international law in arguing that it "undoubtedly represents in part an attempt to transpose the Anglo-Saxon concept of individual law into the international field and to make it applicable to governments as it is applicable here at home to individuals".[7] This statement is incredibly significant. Kenneth Waltz argues that the international system is one of structural anarchy whereby each state is condemned to pursue power due to the lack of an overarching authority above states.[8] Thus, the absence of such an authority means there will be a failure to legislate, adjudicate and enforce international law. According to Realists then, International Law is not "law" at all. Morgenthau claimed it is a "primitive law" at best (Morgenthau, 1985), similar to that of "preliterate societies, such as the Australian aborigines and the Yurok of Northern California".[9]

Thus, for Realists, international legal obligation is a farce. In the domestic realm of the state, there exists a hierarchy and sanctions that punish illegal and wrong behavior, and

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thus the full force of the law may be applied, however, such is not possible in the international realm. Thus, as Austin put it, "law is the command of the sovereign" and due to the lack of an international sovereign and the lack of sanctions, international law cannot be real law (Shaw, 2008).[10] Therefore, to argue that states should be accrued with binding legal obligations is illogical and irrational to Realists.

THE ALTERNATE VIEW: A CASE FOR INTERNATIONAL LAW

However, the Realist view is often discarded in what is known as today's "rules-based system" under the theoretical foundations of Neo-Liberalism. It is often accepted that war is a recurrent feature of international life, but authors such as Hedley Bull argue that states have historically devoted much effort to liberating themselves from the conditions of war. This is achieved by creating an international order that not only discourages, but also reprimands the use of force. It could be argued that the bedrock of such an international order is the existence of legal obligations that provide a shadow of legitimacy and an objective yardstick to determine and differentiate good behavior from bad behavior. Thus, the existence of international law becomes necessary. As Kleffens noted, "international law is the only objective and impartial yardstick in international relations; a solid basis for any international policy worth of that name…… International optimism, confidence and tranquility are in direct proportion to its strength and advancement (Van, 2009)".[11]

It may be argued that international law is an inevitable instrument for the conduct of international relations. Without it, there can be no international order. Critics often make reference to the famed peace of Westphalia of 1648 and the Congress of Vienna of 1815 and argue that the order set at the period was enforced primarily through a crude implementation of balance of power politics (Thompson, 1981).[12] However, this claim may be dismissed in arguing simply that both the historical peace processes were based on the concept of "legitimacy" which was codified in treaties and enforced under the garb of international law (Peacock, 2018).[13] Thus, it may be clearly argued that balances of power, in the absence of an international law of legitimacy, may be no different than the much cited "Hobbesian state of nature".

Finally, it may also be argued that International Law is the legitimizing body of international institutions such as the United Nations, the European Union, International Monetary Fund and the World Trade Organization, among a plethora of others. It is for this reason why states actually give importance to international law. For example, Chander, (2010) the constitution of India and the constitution of the USA emphasize the binding nature of International Law.[14] Chander argues that International Relations is directly influenced by the purview of international organizations in today's globalized world (Burney, 2008), and thus it is only natural to emphasize the importance of international law which is necessary for the regular functioning of these international organizations, and it is where they derive their legitimacy from.[15]

THE CONCEPT OF LAWFARE

Having proved the utility of international law in the system, it can thus be rationally assumed that lawfare is a valid strategy of war and conflict in today's international system. Thus, this chapter will consider the concept of lawfare in more depth by understanding its definitions and how it has historically been used by states.

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DEFINITIONAL CHALLENGES

As a preface to the concept of lawfare, it is believed necessary to establish the importance of lawfare to those obsessed with hard power in international relations. This is put eloquently by Nathaniel Burney (Burney, 2008);

"Lawfare is often misused by those who claim that there is too much law, and that the application of law to military matters is a bad thing that hamstrings commanders in the field. The fact of the matter is that lawfare is out there; it happens. It is not inherently good or bad. . . . It might be wiser for such critics to take it into account, and use it effectively themselves, rather than wish it didn't exist."[16]

However, much like the status of the concept of "R2P" about a decade and a half ago, Lawfare does not seem to have any international recognition. As result, there is no objectively clear definition of what lawfare is as a concept. Many different definitions exist, but almost all of them seem to have the same subject matter. This section will explore the concept of lawfare by discussing how authors define the concept.

The concept was first popularized in 2001 by Charles J. Dunlap, Jr, who was an active-duty US Air Force colonel and Staff Judge Advocate, and extrapolated the concept of the law to a military-centric interpretation (Dunlap, 2009). He defined it as, the "use or misuse of law as a substitute for traditional military means to achieve military objectives".[17] Dale Stephens argues (Stephens, 2021) that the "use or misuse" denotes a level of neutrality in the word Lawfare, in that there are no value judgements on the goodness or badness of the use of lawfare.[18] However, other authors argue that Dunlap's definition does reflect a negative connotation. For example, Mosquera and Bachmann (Mosquera et al., 2016) notes that "lawfare has traditionally been seen to have a negative connotation, namely as the use of law by the opponent and not as means of own war fighting capacities, when used affirmatively to achieve own military and political objectives as we will show in this short submission (DAWN, 2021)".[19] Similarly, Lisa Hajjar argues that "it [Lawfare] has a negative connotation among those who oppose efforts to legally constrain state prerogatives, to fetter the discretion of officials in their pursuit of national security goals, and to pursue accountability for violations (Hajjar, 2013)".[20]

In fact, perhaps the most comprehensive definition of Lawfare is provided by Ordre Kittrie. Kittrie defines Lawfare actions as (Kittrie, 2015):

(1) the actor uses law to create the same or similar effects as those traditionally sought from conventional kinetic military actions – including impacting the key armed forces decision making and capabilities of the target; and (2) one of the actor's motivations is to weaken or destroy an adversary against which the Lawfare is being deployed.[21]

So as is clear from the arguments above, Lawfare is a relatively new concept and does not have an objectively acceptable definition in the international community, but if one thing is clear, it is that all definitions do involve the element of using the law for the benefit of military gains and the achievement of military objectives.

TAKING ADVANTAGE OF AMBIGUITY

As argued above, Lawfare is an ambiguous concept and still requires a lot epistemological development in order to become a peremptory norm of international law. Seen from the lens of international law, at this stage, lawfare could be argued to be a very basic custom in its development stages (Bruner et al., 2018). Thus, it is necessary for the concept to fulfill all the necessary requirement of *opinion juris* in order to be considered a

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"custom" of international law. However, due to this ambiguity, states (and even non-state actors) have attempted to use this concept to achieve their political gains.

One example of this is discussed by Mosquera and Bachmann in the Russia-Ukraine conflict. At the precipice of the Ukrainian invasion and Crimean annexation, Russia classically used Lawfare by creating a state of confusion whereby they took advantage of the lack of a definition of the type of conflict that they had unleashed on Ukraine- was it an international armed conflict, non-international armed conflict, or civil unrest? This ambiguous situation was deliberately manipulated and created confusion as to what legal regime or paradigm of law would be applicable to the situation and what, if any, resulting action will be taken to ascertain legal responsibilities and demand accountability of the aggressor state. By creating this confusion, Russia effectively avoided objective legal conviction, and had a moral ground to stand on.[22]

In international law of conventional conflicts, the most important legal regime under International Humanitarian Law is that of *Jus ad Bellum* (regulates WHEN states may go to war) and *Jus in Bello* (regulates HOW states may conduct war). As regards Jus ad Bellum, Russia clearly denies being an active agent in the conflict, and argues that Russian troops never directly invaded Ukraine, but they were in fact rebels which seized territory in eastern Ukraine and so *Jus ad Bellum* cannot possibly be a concern here, thus the law is evaded and misused.[23] Naturally, because *jus ad bellum* was never satisfied, *jus in bello* cannot be a concern either. However, just to illustrate how *Jus in Bello* may be misused (Dunlap, 2001), Dunlap has argued that the Al-Qaeda and the Taliban in Afghanistan have effectively exploited this concept by deliberately hiding in civilian concentrated areas so as to avoid NATO airstrikes, and thus using international law against the West through the use of creating narratives on illegalities through the media and riling up anti-West public opinion.[24]

THE GROWING IMPORTANCE OF LAW AND "LEGAL WEAPONRY"

Any reasonable reading of International Relations and Political Science With the fall of the USSR and the end of the cold war, the United States achieved as the preeminent power and "Western ideology", as opposed to Communism, was said to have won over. It was celebrated as the "End of History" which rejoiced the triumph of liberalism over all other ideologies, contending that liberal states were more stable internally and more peaceful in their international relations.[25]

Part of this triumph was the promotion of liberal democracies all over the world, and the establishment of a so-called "rules-based system" where there would be respect for the rule of law, separation of powers and parliamentary sovereignty (Haass, 2017).[26] Thus, the importance of legal regimes was entrenched within the consciences of societies. Dunlap argues that "the new emphasis on law in war derives from the larger, worldwide legal revolution (Kiyani et al., 2017). Indeed, George Will has described the United States as the "Litigation Nation" to describe how deeply legal consciousness has been entrenched within American society.[27] This means that States cannot just commit acts of aggression and war crimes during conflict without repercussions. War is no longer just a means to an end. Dunlap gives the example of the Iraq war. He notes emphatically:

"One need only pose the following question: what was the U.S. military's most serious setback since 9/11? Few knowledgeable experts would say anything other than the detainee abuse scandal known as "Abu Ghraib". That this strategic military disaster did not involve force of arms, but rather cantered on illegalities, indicates how law has evolved to become a decisive element—and sometimes the decisive element—of contemporary conflicts."[28]

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Thus, with societies increasingly respecting the rule of law and developing legal conscience, lawfare has become a necessity of states. However, one might argue that such a situation only exists for Western countries where societies actually give weight to the law, and that such a problem is not relevant for developing countries such as Pakistan, that rely on hard power means to achieve their political goals, no matter what the legal costs. However, such arguments may be countered with an example from the legal issues arising out of Pakistan's land mining operation in its tribal areas. Much of the tribal areas in Pakistan has gone through installations of landmines which (Faruqi, 2020) were considered strategically necessary in Pakistan's war against terror.[29] The interesting part is that even though Pakistan has not signed the Mine Ban treaty, many Non-Governmental Organizations (NGOs), Civil society elements and indigenous social movements such as the "Pashtun Tahafuz Movement" (PTM) have used legal reasoning to remind the State that the decades long installations of landmines are a violation of Customary International Law and Geneva Conventions.[30] This just goes to show that in almost all states (perhaps we could make an exception for the most totalitarian ones), there is a value of the rule of law, and so states must devise rational strategies to imbue legal discourses within their military and strategic thinking in order for their narratives on warfare to be legitimized.

LAWFARE IN THE INDIA-PAKISTAN CONFLICT

Rarely has any geopolitical rivalry been as stringent and enduring as the India-Pakistan conflict. The countries have a troubled history over seven decades comprising 3 wars, uncountable and regular border skirmishes and a plethora of issues that started with the inception of both countries. The new states initiated with intense and bloody migrations, uncertain boundaries, water disputes, religious minorities issues, and the critical issue of the disputed status of Jammu and Kashmir. However, with both countries having achieved nuclear capability by 1998, the possibility of total wars between the two countries was severely limited. What is more, even limited objective conflicts became very difficult as the risk of them moving up the escalation ladder and resulting in some strategic miscalculation was a very real possibility. As Dr. Zafar Nawaz Jaspal put it (Jaspal, 2005);

"*Since the dawn of the nuclear weapons era classical definitions and objectives of war seem irrelevant. Total war is in neither the interest of India nor Pakistan…..It seems that limited war is possible between India and Pakistan, but the threat of its escalation from limited to total and finally nuclear war cautions both sides to avoid resort to a limited war option during a crisis.* [31]

So, with total war, and even limited war, out of the question, authors have argued that India has changed the nature of its approach and moved from "warfare" to "lawfare". Laraib Fatima Hassan argues (Hassan, 2021); "during such times when India cannot overpower Pakistan, it has gone on a course of following a radical lawfare strategy by alleging Pakistan's involvement in the 2008 Mumbai attacks and by its ill motivated attempts to associate Indian Illegally Occupied Jammu and Kashmir's freedom struggle with global terrorist networks and has even gone to UNSC to get Pakistan sanctioned".[32] Thus, a thorough examination of India's lawfare strategy would be useful before we can analyze the need for a Pakistani response.

India's Lawfare Strategy

As noted above, India has radically adopted a lawfare strategy whereby it is making absolute efforts to instrumentalize a legal framework to legitimize and support military action

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against Pakistan, supporting state-sponsored terrorism, giving legitimacy to oppression of Kashmiri civilians and abusing their human rights, and pushing to diplomatically isolate Pakistan. The headings that follow will analyze some elements of the Indian Lawfare approach.

The Kashmir Issue

Perhaps one of the biggest issues on which India has weaponized the law is the Kashmir issue. A territory that was imagined to be a natural part of the new state of Pakistan on the basis of partition of "Muslim" and "Hindu" dominated areas (Jaffrelot, 2015). [33], was made complicated and have de facto Indian control established on it from a deliberate strategy of lawfare. Despite UN resolutions calling for the right to self-determination of Kashmiris through the holding of impartial referendums, India has legally manipulated these resolutions and skewed an interpretation to perpetually delay any such referendum. On this, India made two assertions; First, that India has already legally fulfilled all necessary requirements of self-determination in Kashmir through elections of the Constituent Assembly of Kashmir in 1951. Similarly, the second claim was that the UNSC resolutions that were passed were non-binding in nature.

On the first point, renowned lawyer and vice President of Research Society of International Law Ali Sultan argued (Sultan, 2019) that the 1951 elections were "massively rigged by New Delhi", and that the chair of the UN Commission on India and Pakistan had remarked, "no dictator could do better (DAWN, 2019)".[34] It is for this reason that the UNSC even noted in its Resolution 122 that such a fake electoral exercise does not fulfill the requirements of self-determination and that such may only be achieved through an impartial plebiscite.

On the second point, Ali argues that even though it is correct that resolutions passed under Chapter VI of the UN Charter do not constitute a binding instrument, it does however become binding under International Law when Heads of States or Heads of Governments make unilateral declarations that manifest the will to be bound.[35] In this regard, there are several pieces of evidence. For example, on October 26, 1947, Nehru, in a famous speech at Lal Chowk in Srinagar, promised Kashmiris that they will be given the full right to a referendum in the near future and that such shall be impartial.[36]

Similarly, Nehru's October 30 1947 telegram to Liaquat Ali Khan clearly made the promise (Khan, 2001): "Our assurance that we shall … leave the decision about the future of the state to the people of the state is not merely a pledge to your government but also to the people of Kashmir and to the world".[37] Another example is when on November 25, 1947, Nehru told the Indian Parliament that "we have suggested that when people of Kashmir are given a chance to decide their future, this should be done under the supervision of an impartial tribunal such as the United Nations."[38] This just goes to show the relentless policy of India to pursue lawfare as a means to delegitimize the just claims of Pakistan.

Terrorism

Similar to the Kashmir issue, India has pursued a relentless policy of lawfare in regards to declaring Pakistan a state that sponsors terror and as such has pushed for diplomatic isolation as well as sanctions on Pakistan under the UN Resolution 1267 and 1373. As such, India has largely remained successful in this venture as it has increased its influence on the international community by successfully being invited to OIC meetings and having had success in lobbying to put Pakistan on the Grey list of the Financial Action Task

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Force.[39] Similarly, it has also convinced the world community that Pakistan has played a "double game" during the war on terror and harbored terrorists against India in Kashmir and against NATO in Afghanistan (Rath, 2011).[40] Ahmer Bilal Soofi concurs with this in arguing;

"A lawfare move by India is an attempt to link the Kashmiri mujahideen to terrorist organizations. In doing so, India is trying to draw upon the international zeitgeist of the global, 'war on terror' and making efforts to ensure that the Kashmiri self-determination movement loses some of its shine on the international stage.[41]

In essence, there is no doubt that India has effectively manipulated International Law to its own designs through the strategy of lawfare to delegitimize the Kashmiri people's genuine right and struggle for the right to self-determination under the garb of the War on Terror. Through its interpretation of international law, it has managed to declare the Kashmiri "freedom fighter" as a "terrorist".

The Khulbashan Jadhav Affair

An interesting development in the past few years has been the capture of Khulbashan Jadhav from Pakistani territory. Kulbhushan Jadhav (Jadhav, 2019), who is an alleged Research and Analysis Wing (RAW) agent operating under the cover name of Hossein Mubarak Patel, was arrested in a counter-intelligence operation from Balochistan for his involvement in espionage and sabotage activities against Pakistan.[42] This discovery was an alarming fact that Pakistan must "arm itself to deal with threats of a hybrid conflict"[43], as there is now concrete evidence that there is a nexus between insurgent groups in Pakistan and India's RAW, which are working to destabilize Pakistan. But this is where the mastery of India's lawfare tactic came in full swing.

The Jhadav case was heard at The Hague. The Jhadav case was the perfect opportunity for Pakistan to validate and legitimize its narrative of India violating Pakistan's territorial integrity through nexuses with insurgent groups. However, India masterfully instead transformed the legal nature of the case from one of state-sponsored terrorism to "diplomatic etiquette, concerning rights and obligations under Article 36 of the Vienna Convention on Consular Relations".[44] Indeed, "Had the terrorism narrative been fleshed out sooner, the consular access issue could have been sidestepped".[45] Similarly, Ahmad Shah (Shah, 2019) and Uzair argue there was nothing to lose for Pakistan in allowing consular access. Doing so would have precluded these legal technicalities and kept the focus on Pakistan's narrative on terrorism. Pakistan tried to argue that state practice is ambiguous on consular access for those convicted of 'espionage.'[46] However, because an established state in the form of Vienna Convention of Consular Relations (1963)[47], it is difficult to say if the court will give primacy to state practice over established statue.

CHINA PAKISTAN ECONOMIC CORRIDOR

If there is one area which is at critical threat from India's lawfare strategy, it is the China Pakistan Economic Corridor. The China-Pakistan Economic Corridor (CPEC) is part of the larger Belt and Road Initiative (BRI) undertaken by China. CPEC, however, is the Pakistan specific project of the BRI. CPEC is valued at over 60 billion dollars and expected to cross 100 billion dollars by 2030.[48] Naturally, such a mega project will definitely shake the geo-political balance between Pakistan and India (Kearney, 2010).

This project is incredibly important for the survival of Pakistan. It has been considered a "game changer" for Pakistan (Radio, 2020).[49] India, along with the US, has made an effort to legally discredit CPEC by arguing that "CPEC is an illegal project as it

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passes through disputed territory".[50] India's Foreign Secretary has stated; "CPEC passes through a territory that we see as our territory. Surely people will understand what [the] Indian reaction is. There needs to be some reflection and I am sorry to say that we have not seen signs of that."[51] Thus, Pakistan has to make all necessary efforts to deflect such legal attacks by building a narrative based on international law that espouses how CPEC is merely a connectivity project that does not change the status of the disputed territory, and is in fact no different from any form of infrastructure development.

LAWFARE AND PAKISTAN'S NATIONAL INTEREST

If the section above has shown anything, it is that India is using the Lawfare strategy to attack the core national interest issues of Pakistan in Kashmir, terrorism, insurgency and CPEC. What is more, using lawfare means that this attack is not overt or explicit in the same way that sending military forces on an enemy's soil, but it more implicit. Thus, no matter how strongly Pakistan maintains its hard power elements, it cannot counter an attack that is by its nature a soft power element. Pakistan has already expressed the need to change its doctrine from complete reliance on hard military power towards a more geo-economics approach. On March 18th, 2021, Pakistan's Chief of Army Staff Qamar Javed Bajwa stated that "no good can be expected from outside until we put own house in order (The Express Tribune, 2021)."[52] and that Pakistan is now focusing on geo-economics with four core pillars: "1) moving towards a lasting and enduring peace within and outside; 2) non-interference of any kind in the internal affairs of our neighboring and regional countries; 3) boosting intra-regional trade and connectivity; and 4.) bringing sustainable development and prosperity through establishment of investment and economic hubs within the region".[53] Thus, the state of Pakistan has already made it a policy to focus on soft-power elements. As such, one of those core elements must tacitly and implicitly include the *use of lawfare in international relations*.

PAKISTAN'S INCAPACITY TO ADDRESS LAWFARE CHALLENGES

The first thing that Pakistan must do is analyze its incapacity to deal with lawfare challenges. There needs to be an acceptance that Pakistan has never had the respect for rule of law that a strong nation state should have. It has faced numerous challenges in first constructing a constitution, and then just as easily abrogated almost every constitution in its history, often justified through the "doctrine of necessity".[54] Ahmer Bilal Soofi has given some examples of how Pakistan severely lacks the capacity to mount any legal challenge on the international front to India. For example, he notes how "at present there is no proper legal division of international law practitioners at the Ministry of Foreign Affairs (MoFA) or the Ministry of Law and Justice (MoLJ)".[55] Similarly, the Judge Advocate General (JAG) branch of the armed forces lack the necessary expertise in international law, despite their work being dealing with UN law and International Humanitarian Law. Similarly, it is noted that neither the Ministry of Interior and Ministry of Defence also lack the necessary in-house expertise of an international lawyer who can advise the Ministries on issues such as "international cooperation in counterterrorism and criminal matters, extradition issues, the service of warrants internationally, the implementation of UN resolutions – particularly those relating to criminal justice and counterterrorism – and the effective implementation of the Investigation for Fair Trial Act, 2013".[56] Thus, Soofi concludes that "the cost of investment in international law is far less than the cost of ignorance of international law and at present the entire nation is paying the cost of our ignorance in international law", and must thus focus on capacity

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building of international lawyers, creation of legal thinktanks, and creating international law cells at national level to increase awareness.

THE WAY FORWARD FOR PAKISTAN

Finally, it can be argued that there is an opportunity for Pakistan. It must consider the lack of lawfare strategy a national crisis and prepare itself to face it. On Kashmir, BBC News (2019) Pakistan has an excellent opportunity to build a legal case after the abrogation of article 370 and 35A by the Modi government.[57] It may build the legal case that India's claim of the signing of an "instrument of accession" was subject to Kashmir's autonomous status within the union and its special privileges under article 35A. Hence, when the whole basis of the quid pro quo of the agreement has been nullified, then the instrument of accession itself is null and void.[58] Thus, India's whole claim to Kashmir stands on no grounds. Pakistan can weaponize such arguments of international law to invalidate India's claim to Kashmir.

Similarly, on the Jadhav affair, Pakistan must shift the legal narrative from one of consular relations and diplomatic etiquette to one of violation of sovereignty of a nation state and using insurgent groups to proliferate terrorism and sabotage a state. To that end then, it must link this narrative and delegitimize the Indian attempt to present the Kashmiri struggle for freedom as a terrorist operation, and then use legal arguments to build up a case for the freedom struggle. For example, Raashid Wali Janjua argues (Janjua, 2021) that Pakistan may pursue the option of convincing the international community to legally declare India as an "occupying force" under international law. He notes, International Humanitarian Law stipulates that unconsented and effective occupation by an occupying force that does not have sovereign title to the land constitutes occupation. the Indian army is an occupation force in Occupied Kashmir". He argues that "to achieve this objective, factual criteria as defined in international law to declare the Indian army as an occupation army needs to be highlighted in the form of a formal invocation to the UN Security Council".[59]

Finally, as Pakistan has chosen to focus on geo-economics, it must do all that it can to construct legal arguments in favor of CPEC. This is because not only does it face the Indian legal attack of the project passing through disputed territory, but the West, led by the USA, has declared the Belt and Road Initiative as against the rules based international system, that is a direct challenge to the established "Washington Consensus".[60] Thus, CPEC is at real risk of world isolation if it is attacked legally. Pakistan must work with China to reassure the world community of the purely economic nature of the project, rather than any political ambitions being attached to it. This could be achieved by making sure Pakistan presents the benefits of CPEC as absolute gain for all of South Asia, and offer all neighboring countries a stake in the project so as to increase interdependence.

CONCLUSION

If the arguments above have shown nothing else, they have clarified that Pakistan must diversify its lens of national security to focus also on non-traditional security threats along with other threats to national security. The March 18th speech by Chief of Army Staff General Qamar Javed Bajwa is a very positive step in the right direction. However, there must also be genuine efforts to implement and devise strategies for such measures. Thus, Lawfare should now become one of the core national security concerns for Pakistan so it may deflect the vicious lawfare strategy that India has adopted against it. Throughout this paper, it has been shown that Lawfare can have devastating effects on states, and the examples of the harm to USA by its actions in Abu Gharraib and the damage done to Ukraine by Russian use

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of Lawfare prove that if not countered, it can have a devastating impact on states. Similarly, much of this paper has also clearly proved how the robust Indian lawfare strategy is maliciously targeting the sovereignty, survival and the national interests of Pakistan in the form of destabilizing CPEC, promotion of terrorism and insurgency on Pakistani soil, and pushing Pakistan further down the conundrum of FATF. Thus, it may be claimed that both the research questions set at the start of this paper have been sufficiently answered.

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