



Conference on

Lawfare & PAKISTAN



TABLE OF CONTENTS

Chairman Advisory Board, CLAS	_____	04
Executive Director, CLAS	_____	05
Executive Summary	_____	06
Findings and Recommendations	_____	07
The Evolution of Lawfare	_____	08
Disconnect between International Obligations and Domestic Law	_____	15
Countering Lawfare: Strategies and Way Forward	_____	19
The Evolving Global Order	_____	21
National Security and Lawfare	_____	25
Lawfare: An Opportunity for Pakistan	_____	27
Contemporary Lawfare Challenges and Strategy	_____	29
Pakistan's Existing Mechanism for Countering Lawfare	_____	31
Lawfare: Case Studies from Pakistan	_____	40
Universal Jurisdiction: A Tool for Lawfare	_____	43
Developing a Lawfare Strategy: An Opportunity for Pakistan	_____	45
The Seven Cardinals of Building a Lawfare Strategy	_____	47
Conclusion	_____	49

Message By CHAIRMAN ADVISORY BOARD, CLAS

The Centre of Law and Security CLAS is an independent, non-partisan private sector research and policy institution dedicated to providing thought leaders, policy makers and the public with instruments to better understand today's national security issues in light of national and international laws thereby providing the stakeholders tools to make informed decisions on country's domestic and foreign policies.

Our mission at CLAS is to engage government institutions, private sector and non-governmental organizations for promulgating effective national security strategies. Responding to such varied stakeholders require new bridges across public and private divide. New legal questions accompany each of these challenges which cast doubt on once-settled legal doctrines and thus present an opportunity for forging new areas of law, which in turn raises an array of legal and policy concerns.

The fact that real-world situations calling for national security and legal focus are themselves hard to pin down with any present-day certainty. What was once a domestic criminal matter can now be a national security concern. What was once an issue of international law can now be used as a lawfare move. Therefore, it is imperative that

domestic and international laws are better understood and explained in context to Pakistan and its security.

The Centre for Law and Security seeks to understand and illuminate the relationship between international law and its political use in the shape of lawfare and examine Pakistan's present approach to it. International law is today being used as a form of asymmetric warfare by using the international legal system against their adversaries. We endeavor through the medium of this report to engage policymakers, experts to shape and elevate the national security debate. A key part of our mission is to inform and prepare the national security leaders of today and tomorrow.



A handwritten signature in black ink that reads "Faisal Mushtaq".

Chaudhry Faisal Mushtaq
Chairman Advisory Board, CLAS

Message By EXECUTIVE DIRECTOR, CLAS

Pakistan is at the forefront of a new form of warfare in the shape of lawfare today. Adversarial states are taking advantage of international law to advance their geostrategic interest. From the large disinformation campaign against the country in the form of Indian chronicles to the trial of Kulbushan Jadhav at the International Court of Justice.

In the 21st century, it is all about building narratives and using legal acumen to pursue issues of national interest. Pakistan's policymaking has to take into account the evolving order of the global world. Major state powers today have a dedicated teams of international law experts who help devise sufficient responses to any potential lawfare moves. Similarly, Pakistan must build a proactive policy that takes account of all the newest global development so that a future threat is identified well in advance.

In light of the above, The Centre for Law and Security has drafted this report titled, 'Lawfare and Pakistan'. This report has been made with the help of diplomats, international lawyers, policymakers, government officials, former military generals, and our team of research experts. The purpose of the report is to devise new and identify existing strategies that may advance Pakistan's interests in the international system. It is imperative that Pakistan evaluates existing and potential future threats from a legalistic point of view to advance its narrative and preserve its national security.



Rehman Azhar

Rehman Azhar

Executive Director, CLAS

EXECUTIVE SUMMARY

Presently, lawfare is being viewed a useful tool for both state and nonstate actors to achieve strategic goals that have traditionally solely been attainable through diplomatic or military means. Accordingly, Lawfare is defined as one or more of the following characteristics: a form of asymmetric warfare using a legal system against an adversary; an instrument of state power; or a strategy that stipulates how a state should engage in international law and foreign relations.

Within the field of international law, the scope, nature, and employment of lawfare focuses on the perspective of a state's influence within the international system, the interests of that country, and what purpose that state is seeking to achieve with the use of lawfare. Whereas, in contemporary international politics, the concept of lawfare is illustrated through the diplomatic creation and signing of international laws and agreements.

In the case of Pakistan, the increased use of law and legal systems by its adversaries has become apparent through the large-scale disinformation campaign launched against it by India, the on-going grey-listing of Pakistan by FATF, the annexation of Jammu and Kashmir, and the trial of Jadhav at the International Court of Justice, among others.

These instances highlight Pakistan's lack of capacity in international law and the scant attention it pays to the legal dimensions of strategic issues. Most major disputes that Pakistan faces today are primarily legal in nature. Moreover, Pakistan's responses to developments against it have been



inadequate. Pakistan needs to devise a mechanism concerning lawfare i.e. whether to adopt an offensive lawfare strategy that advances their interests or a counteroffensive strategy that addresses the offensive lawfare strategies of adversarial states in the near future.

The idea is to identify existing and defining new strategies that may advance Pakistan's interests in the international system. Hence, it is imperative that Pakistan evaluates existing and potential future threats from a legalistic point of view in order to advance its narrative and preserve its national security.



FINDINGS AND RECOMMENDATIONS



The report makes the following recommendations:

- Lawfare i.e. the use of law as a weapon of war to advance one's strategic interests has become a globalized theme used by countries as a substitute for armed conflict. In this globally integrated world, expertise in international law has assumed great importance, as its relevance crosses into various domains such as economic, cyber, space and information, etc. In the current atmosphere, Pakistan needs to aggressively use existing international legal norms and mechanisms to its advantage.
- Pakistan needs to weaponize lawfare and use it effectively as a tool in its strategic arsenal. Pakistan can do this through institutionalizing the concept as a state policy. Accordingly, relevant stakeholders in Pakistan need to increasingly use lawfare in their advocacy to shape public opinion which is simultaneously supplemented by academics working to support interpretations of international law favorable to Pakistan's position.
- Pakistan needs to take all relevant stakeholders on board including, Ministry of Foreign Affairs, Ministry of Law, Ministry of Defense, National Security Division, Army, Ministry of Information and Think Tanks. It is imperative that there is constant engagement and cooperation between these institutions to weigh the best available lawfare options at any given time. This will in turn lead to a more proactive lawfare policy.
- Pakistan's lawfare efforts can solely benefit from qualified and capable international lawyers and policy makers who can defend Pakistan's interests at international forums and launch successful lawfare maneuvers against its adversaries in various domains including legal, economic, cyber, space, and information, among others.
- Due to a dearth of international law capabilities, Pakistan's lawfare strategy is almost non-existent. International law is an extremely complex area of study, which Pakistan has not given importance to. In this situation it is important that Pakistan builds sufficient expertise and knowledge in international law and its usages, and has the will and strength to utilize the expertise at the

international stage. It is important that Pakistan participates in the continuous process of interpretation and reconstruction of international treaties and agreements, which would then allow Pakistan's legal minds to examine what can benefit Pakistan's national and strategic interests and those that can be detrimental to the state.

- In the increasingly polarized international environment where competing alliances led by China and U.S. conflictual regional dominance, Pakistan needs to build up its human resource and organizational capacity to mount robust lawfare. Pakistan has faltered on numerous occasions at the international stage due to inadequate legal expertise and lack of understanding of the law and its substance. Hence, a lawfare strategy and legal experts need to be embedded in Pakistan's planning, policy making, and execution stages. Pakistan needs legal experts to be a part of a core group that can advise the government following consultation with relevant stakeholders and craft an executable strategy to advance the interests of the state on the global stage.
- Pakistan needs to promote and invest in research on international law by building associations with legal think-tanks and law schools. It is crucial that Pakistan has continuous and up to date information about any occurring changes in international law. Furthermore, Pakistan needs to collaborate with educational institutions and introduce courses and curriculum at academic institutions that explain the importance of international law and its political use.
- Apart from this, capacity building of Pakistan is necessary, and one needs to be careful in accepting international law obligations and considering whether they can be fulfilled. Signing of treaties and agreements should be carefully undertaken. For example, negotiating trade and investment treaties wisely can lead to the economic revival of Pakistan but such agreements are incredibly complex and require a dedicated team of international law experts to be able to defend Pakistan's economic rights. The Ministry of Law and Justice needs to take all factors into account while reviewing these international agreements to ensure Pakistan can successfully fulfill its international duties and protect its national interest.



- International law is a powerful tool - one that bears significant costs for actual or alleged violations of international law. As such, a State must ensure that its legal framework and domestic practice are in line with its international obligations. Lack of compliance with one's international obligations can be used against it through a strategically crafted lawfare attack. Accordingly, it is imperative that Pakistan seeks a review of all its laws and identify provisions which can be used against Pakistan as a lawfare tactic. Moreover, if necessary, Pakistan should undertake the exercise of amending its legislations to be compliant with international law to prevent its misuse.
- In addition to this, it is pertinent that Pakistan creates a streamlined archive of original historical, legal and political documents on various issues of national importance such as Kashmir, and other disputes. An updated and simplified archive of documents that can be accessed from a single source, either from an institution or digitally, can assist lawyers and policymakers in developing a greater understanding over the background and context of legal and political developments in the State. As such they can provide stronger legal analysis and creative policy solutions. Moreover, an

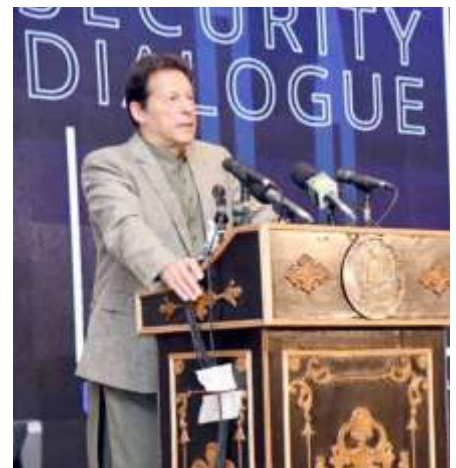


archive of such nature will allow Pakistan to build consistent strategic narratives and cogent legal arguments before international forums. The same would also serve as a repository for further scholarship.

- It is imperative that Pakistan empowers its private sector and other non-governmental attorneys to participate and contribute to the development of a lawfare strategy. These institutions and individuals can spur the government to act or help it to act effectively. Often, non-state actors may have greater expertise or more useful information to help a government act. This does not solely include binary actions such as lobbyists persuading additional legislators to support or oppose a bill that has already been introduced, or advocates pressuring a prosecutor to indict or not indict someone who has been described in the media as violating an existing law. Sophisticated non-governmental practitioners of lawfare do not limit themselves to such binary actions. Rather than simply supporting or opposing an existing option, they will, when the situation calls for it, create a new option and persuade government to adopt and deploy it. For example, they may write a new

draft law or devise a proposed new regulatory step, or they may collect and share new evidence that will enable and persuade a prosecutor to bring charges or a regulator to blacklist a foreign entity and/or impose sanctions upon it.

- Pakistan should have a bipartisan lawfare policy that engages all relevant stakeholders. It is important for Pakistan to build a political consensus as compliance with international obligations often requires incorporation in domestic legislation first. Pakistan must create a parliamentary committee on lawfare whose job is to review Pakistan's domestic legislation and bring it in compliance with international law where necessary. The committee can update the parliament on compliance of international law with domestic legislation biannually.
- Pakistan should establish a Counter-Lawfare Commission to produce a comprehensive review of the impact of lawfare on Pakistan's national security. This review in turn should inform the forthcoming national security strategy. The Commission should be appointed with care and should comprise of various stakeholders including policy makers, legal experts, defense leaders, and government representatives. The review should be salient and provide significant contribution to the discourse on international law, including the law of armed conflict, encroachment of international human rights law, cyber and space law among others. This will allow to improve the operational effectiveness of the state and avoid surrendering initiative in legal change to courts or hostile powers.



- It important that political and legal developments be monitored since events in the long run could potentially have a direct or an indirect impact on Pakistan's national security as it continuously changes the global order and new developments in international law are made.
- Pakistan should also take a proactive stance towards adopting law and international instruments against its adversaries to advance its own strategic interests at the international stage, rather than adopting a reactive approach. Pakistan reacts when proceedings have already been initiated against it on international forums; thus, Pakistan needs to change its approach to international law

mechanisms. It is vital that Pakistan starts to build its own narrative which is based on strong legal arguments. Once that narrative has been established, Pakistan needs to take advantage of the events arising in the world to reinforce that narrative and use it accordingly.

- While building such narratives, Pakistan must be mindful of its own faults which can be duly highlighted by external powers. Accordingly, Pakistan must simultaneously highlight its compliance with international obligations on the global stage. This should be deployed through a consistent and cohesive legal and administrative response.
- Pakistan must also employ diplomatic offensive tactics. This means that diplomats on international missions must record and highlight Pakistan's compliance with its international obligations before the international community to dispel any misconceptions. In addition to this, Pakistan should register its objections against the international violations committed by its adversaries before other states, international organizations and the media.
- Furthermore, it is important to note that the global experimentalist governance will likely influence and contribute towards the global governance of other areas of international law such as climate change. Accordingly, it is important that Pakistan contributes to the development of various other areas of law from its inception. This would ensure that Pakistan is not subjected to lawfare maneuvers concerning those areas from hostile states in the future.
- Moreover, Pakistan should, and even must, adopt a lawfare strategy as part of its foreign policy arsenal. Therefore, Pakistan must start engaging with not only select states but also other nations which will provide with the perfect opportunity to construct the basic foundations and fundamentals of a more prominent Pakistan lawfare strategy that is effective, engaging, and firmly rooted in cooperation between Pakistan and its international allies. This is particularly useful when considering the goals at hand and the complexity of international law which requires consensus and cooperation across the globe.
- In addition to this, Pakistan should also look towards fully integrating its eventual lawfare strategy into its overall national security framework. Pakistan has rarely enacted lawfare maneuvers and as such are isolated tactics that are employed in particular situations. Pakistan needs to operate tactically on par with major powers such as China, and the US. Pakistan should learn from these states such as China which has a wide-reaching lawfare strategy integrated within and throughout their overall national security strategy. An integrated lawfare strategy would allow for Pakistan to proactively participate in the lawfare domain, instead of waiting to be attacked.
- Moreover, it is vital that any lawfare strategy adopted by Pakistan comprises of both offensive and defensive tactics and operations. This does not mean that Pakistan should adopt the role of an international aggressor without cause, as doing so would subject it to international disrespect. While defensive lawfare appears to be increasingly necessary for open conflict, it also appears to be less helpful during times of consistent adversarial competition. Accordingly, Pakistan must take proactive and offensive steps now such as the formulation of a shared lawfare strategy to remain competitive in the short term and establish tactical footholds for the long term.
- Pakistan must take all think tanks and research institutions on board and collect all their research on international law and Pakistan's national security into one forum. The National Security Division of Pakistan has already introduced a portal for all think tanks to collaborate and share research on national security. It is vital that such a portal be made active at the earliest and its potential must be utilized to the fullest.

THE EVOLUTION OF **LAWFARE**

by **Abdul Aziz Bhurgri**, *Research Associate CLAS*

The world today has moved on from kinetic use of force to a more hybrid and asymmetrical form of warfare in the shape of lawfare. However, the discourse around lawfare has been set by countries in the west through a binary of non-state actors and their ability to use international humanitarian law against them to gain an advantage. While, it may be true that lawfare can be conducted through international humanitarian law, this narrow understanding of it excludes the experiences of countries like Pakistan where a comparative lack of resource and capacity can be used against them by more powerful countries like India to conduct a structured lawfare.

Lawfare is defined as the use of law to advance strategic or military advantage. The use of law as a weapon is not an entirely novel idea; law has been used politically since time immemorial to advance policy objectives.

However, the use of international law to gain an asymmetrical advantage has gotten enormous attention in the last few decades. The event that gave lawfare its most recent shape occurred after the terrorist attack of 9/11 in New York on the twin towers. Terrorism emerged as the single biggest threat to world peace and security.

The United Nations passed two resolutions which can now be labeled as the beginning of lawfare against terrorism in the 21st century. Resolution 1267 which imposed sanction regime against those supporting Al-Qaeda and Osama bin Laden. And resolution 1373, which called for the prevention of terrorist funding and support. The second resolution of the UN was later used by countries like India in the global south to its advantage by declaring freedom fighters as terrorists and blaming Pakistan (without evidence) as the state sponsor of terror to build a new narrative against it.

As a matter of rule, all countries within the international system follow international law, be it in the shape of international humanitarian law, law of war or the justification of engaging in combat or using force. Moreover, international law can be used offensively and positively but its parameters are determined by a few powerful countries. An example of a positive use of lawfare would include the regime of FATF where countries can be sanctioned if they don't abide by certain norms or standards that need to be incorporated to fight money laundering and terror financing.



Lawfare and Pakistan



Lawfare can also be used offensively as the case of NATO forces and Taliban in Afghanistan showed. NATO forces in Afghanistan announced that they would not fire towards a Taliban base if there were civilians nearby, the Taliban took advantage of that announcement and regularly placed civilians near its post, which greatly affected NATO's ability to conduct attacks against the Taliban. On the other

hand, the Israeli authorities have regularly blamed Hamas for conducting lawfare against Israel by using human shields; it claims that since Hamas can't defeat Israel in traditional warfare so it uses external means to attack and use human shields to take advantage of international humanitarian law.

Some western countries in response to that proclaimed that using civilians deliberately as human shields also causes a war crime.



However, it is now important here to deconstruct lawfare and understand that its historical usage has been centered around western powers and their wars. Some states like the United States and Israel have even used the excuse of lawfare to evade accountability for their war crimes. Whereas, countries in the global south like Pakistan have been at the forefront of attacks of lawfare too. However, they have often not been given similar weightage. Non-state actors and international humanitarian law have dominated the discourse of lawfare in the world with the exception of

Russia's annexation of Crimea. Nonetheless, in the global south, it's been rich and powerful countries who have been the biggest benefactors of lawfare and they have been the most successful in exploiting international laws.

A rich country like India has successfully waged lawfare since the emergence of the threat of terrorism. India has strategically conducted warfare over the years by first changing their domestic laws to label freedom fighters in Kashmir as terrorists and then started vouching for and building a narrative to get those terrorists sanctioned under

UN resolutions. India by achieving these targets belittled the Kashmiri self-determination without using force.

Similarly, the Indian state started a similar campaign against Pakistan through measures like FATF and the EU disinformation campaign. Lawfare in the global south is not used by non-state actors but rather by more powerful states against weaker states for their failure to ratify international law due to a lack of capacity. This is precisely the lawfare that Pakistan faced, whereby Pakistan's lack of capacity and proactiveness played a

huge role in making it vulnerable to such lawfare attacks.

India also uses its power to spread disinformation against Pakistan so that a narrative can be built later for the exercise of violent or kinetic means of force. The use of unwilling or unable doctrine to prove the justification of self-defense is a lot easier if a narrative around the same has already been built on the international stage. India was able to successfully achieve this after blaming Pakistan's inaction for Uri attacks to later violate Pakistan's airspace without international outrage.

Similarly, countries like Pakistan in the global south lack capacity and are often left unprepared which makes them more vulnerable to lawfare attacks. It is here that we can see how lawfare has changed in its traditional meaning that was used by western states which included non-state actors and international humanitarian law. The world is evolving fast and so is lawfare. Today it's used geo-strategically as well as to build narratives that can be used later to even attain military advantage or sanction countries economically.

The term lawfare will further evolve with time as regulations around climate change continue to change and take force. And as lawfare around the world changes it's important to not fall into the binary of what it means to conduct lawfare. Major powers like the United States and European Union who have monopoly over the definition of lawfare must take the experience of countries like Pakistan into account within an ever-evolving definition of lawfare.



DISCONNECT BETWEEN INTERNATIONAL OBLIGATIONS AND DOMESTIC LAW

by *Mehreen Naushad, Research Associate CLAS*



Law has become an increasingly important weapon in the strategic arsenal. Due to the legalization of international relations, the role of law and legal institutions has become a powerful tool to achieve operational objectives that have a strong resonance on international and national security concerns.

Recognizing the increasing utility of law as a weapon of war, Major Charles Dunlap of the U.S. Air Force Judge Advocate General Corps, first coined the term 'lawfare' in 2001 to describe the "strategy of using or misusing law as a substitute for traditional military means to achieve an operational objective." However, this definition over the years has evolved. Accordingly, lawfare, today, is defined as having one or more of the following characteristics: a form of asymmetric warfare using a legal system against an

adversary; an instrument of state power; or a strategy that stipulates how a state should engage in international law and foreign relations.

Lawfare can be waged using various legal tools including international, national, and sub-national laws and forums, and combinations thereof. States can rely on international law in international forums to put their adversaries at a disadvantage. This includes, creation of new international law, reinterpretation of existing international law, using international law to make a case of criminal persecution in international tribunals, generate investigations by international organisations, lobby for international organisations, votes, or pursue international law advisory opinions in international forums. Similarly, States can use international laws in national forums to the detriment of their adversary. A few examples of the same are using international law to prosecute third-country officials or international companies for alleged war crimes, or as a defense against criminal prosecution in national courts.

Domestic laws in domestic forums also play a huge part in how lawfare may be waged against other states. The same can be done through the creation of new national laws that are designed to put foreign vendors of strategic products to make a choice between that State's own market, and that of the adversary State. A State can also create new laws that allow for criminal or civil prosecution of terrorist groups, their supporters and state sponsors including those individuals and organisations that provide funding to these terrorist groups. National governments can also take criminal and civil enforcement actions against rogue state or terrorist groups. Multinational companies and non-governmental organisations can also be subjected to a civil lawsuit for their activities in third

countries if they are found to be running afoul of national laws.

Within the field of international law, the scope, nature, and employment of lawfare focuses on the perspective of a state's influence within the international system, the interests of that country, and what purpose that state is seeking to achieve with the use of lawfare. Whereas, in contemporary international politics, the concept of lawfare is illustrated through the diplomatic creation and signing of international laws and agreements. This suggests that lawfare has strong connotations attached to the national security of a country, and also plays a vital role in the development of a country's national security policy.

A successful lawfare operation by a foreign State not only infringes on the sovereignty of a State. It also undermines its standing in the international sphere that can lead to varying degrees of adverse consequences on the national security of a state in terms of economic security, human security, and

foreign policy, among others.

In the context of Pakistan, India has successfully been mounting increasingly effective lawfare campaigns against Pakistan. Using the media, India has created a perception before the international community of Pakistan as a state sponsoring terrorism. Furthermore, they also utilized the Financial Action Task Force (FATF) in an effort to place Pakistan on FATF's blacklist for failing to curb money-laundering and terrorism financing. These have had negative impact on Pakistan's economy as States are reluctant to trade with Pakistan. An economic security crisis is likely to then have a larger impact on human security, particularly in light of COVID-19 pandemic. In 2019, India effectively used the international law norm of 'unwilling and unable' to legitimize their entry into Pakistan's airspace following the Pulwama incident, therefore infringing upon Pakistan's sovereignty. These are just a few of the examples of how Pakistan has been a target of lawfare operations and how they affect



Pakistan's national security.

In recent years, Pakistan has been a target of numerous lawfare operations by non-state actors and other states, and Pakistan's responses to these developments have been inadequate. Pakistan has predominantly taken a more defensive approach. Accordingly, it is important that Pakistan should move towards using law as potential tool for advancing its national security and foreign policy objectives in the international arena. With respect to the same, Pakistan needs to devise a mechanism concerning lawfare i.e. whether to adopt an offensive lawfare strategy that advances their interests or a counteroffensive strategy that addresses the offensive lawfare strategies of adversarial states in the near future. The idea is to identify existing and defining new strategies that may advance Pakistan's interests in the international system.

The most important step in this respect is bridging the gap between Pakistan's domestic legal framework and its international obligations. Once Pakistan begins to highlight the fault lines of its adversaries as violations of international law, it must also expect blowback from the hostile states on its strategic vulnerabilities, which will attempt to highlight and exploit Pakistan's domestic fault lines. India has already launched an offensive lawfare against Pakistan by focusing on its record on human rights and terrorism. Hostile states are likely to highlight the alleged abuses by Pakistani security forces in the former FATA region and capitalize on judgments of the Peshawar High Court and observations by the Supreme Court on detentions/internment of missing persons etc.

Accordingly, Pakistan needs to anticipate these responses and neutralize them through internal procedures which project accountability, transparency and respect for rule of law. In addition to this, it is important that Pakistan conducts a review of all of its legislations and state practices to ensure that it is compliant with its international obligations. Pakistan needs to build upon this momentum to upgrade its criminal justice system and build a focused structural reform to improve capacity across the board. It should not grant an opportunity to hostile powers



to take advantage of its weaknesses and discredit Pakistan's credibility before the international community.

Pakistan must make an active attempt to dispel the existing international perception of Pakistan being a state sponsor of terrorism and clarify potential misconceptions regarding its role in countering terrorism. It also needs to focus on building its own narrative of its compliance with international legal obligations. It is pertinent to mention that Pakistan has promulgated numerous laws protecting human rights of the country, and it is important that they are adequately highlighted in the international community. For instance, Pakistan is in the process of developing a National Action Plan on Business and Human Rights, and established a Human Rights Information Management System. Other than this, several legislations have been introduced and numerous judgments pronounced by the superior courts specifically regarding human rights concerns including gender-based violence, arbitrary detentions, due process, right to fair trial, terrorism, migrant smuggling, child-abuse and prohibition of corporal punishments. Furthermore, Pakistan's diplomats on international missions brief the international community on these developments. Such progressive legislations and developments must be recorded and highlighted in the international community to dispel all misconceptions regarding Pakistan's compliance with its international obligations.



COUNTERING LAWFARE: STRATEGIES AND WAY FORWARD

by Mahnoor Islam, Junior Research Associate, CLAS



The term 'lawfare' as first introduced by Colonel Charles Dunlap is the use of international law as an instrument to advance a state's own interests. Orde Kittrie defines lawfare as the use of law as a weapon. It is interesting to note that lawfare doesn't have a universal definition. Thus, lawfare is a clever play on words that needs to be deconstructed in order to understand its linguistics and political power.



As the significance of international law rises, so does the use of law as a way for states to achieve their objectives. Lawfare plays an important role when it comes to Pakistan's

strategic interests as it has been established several times that lawfare has been used against Pakistan by foreign powers especially India on different issues such as human rights, targeted killings, cyber security and non-proliferation. It has been predicted that in the future, pressure shall be put on Pakistan regarding climate change. However, while Pakistan is recognizing the threat lawfare poses to its interests, Pakistan's response is not enviable.

In 2019, India was able to build upon the narrative that Pakistan was sponsoring terrorism through the Pulwama attacks. By doing so, India was successful in putting diplomatic pressure on Pakistan and secured the votes in its favour before the United Nations Security Council. This was a severe blow to Pakistan's image especially in front of FATF.

Pakistan missed an opportunity to highlight India as an aggressor that violated the UN Charter during the Balakot Strike.

Furthermore, when Pakistan captured Kulbhushan Jadhav, Pakistan further missed an opportunity to shift the narrative and portray India as a state sponsor to terrorism. India cleverly portrayed Jadhav as a civilian who was denied human rights in Pakistan such as consular access. India was able to effectively maneuver the perspective into its own favour. Thus, the lesson learnt from this incident should be that Pakistan needs to develop a very strong narrative that can counter that of India's. It needs to think of ways India has been using lawfare as a tool and can do so in the future and thus plan accordingly. Pakistan can use the abrogation of Article 35-A as a lawfare move against India by highlighting the UN Resolutions India has violated, the human rights atrocities it has committed and even draw comparisons with the Israel and Palestine crisis in order to make the international community better understand its position.

Pakistan reacts when proceedings have been initiated against it on international forums, thus Pakistan needs to change its approach to international law mechanisms. Pakistan has failed to understand the importance of international law and how it can be used to push one's own agenda. Pakistan needs to build its own narrative that is backed by a legal foundation. Once that narrative has been established, Pakistan needs to wait for events that reinforce that narrative and use it accordingly.

Judgements by the Supreme Court and the Peshawar High Court regarding detentions and missing persons can also be used by India as a strategic lawfare move. Thus, Pakistan needs to seek a review of all its laws and identify provisions which can be used against Pakistan as a lawfare tactic. It is also very important that all institutions in Pakistan be on the same page, thus avoiding any action that may cause harm later on.

Pakistan also needs to adopt measures that build its image in a positive manner in front of international communities since India can influence investigations in Pakistan regarding

FATF recommendations. Pakistan has faced the threat of being black-listed by FATF due to the constant lobbying by India who is the co-chair of the group which heads the assessment process. Attention needs to be given to governance, legislation and national security aspects. Pakistan needs to recognize India's lobbying and its use of lawfare and be able to effectively detonate it. For this to occur, it is important that Pakistan invests in research and international lawyers who are able to understand international law and different aspects of lawfare and advise accordingly. Pakistan also needs to show its presence at international forums in order to strengthen itself and its image.

The South Asian region continues to change and evolve and this is something that Pakistan needs to focus on. Prime Minister Modi has recognized that India had a role to play in Bangladesh's independence in 1971. Furthermore, changes in the Indian Constitution, especially the repeal of Articles 370 and 35-A need to be given due attention. Scholars and policy makers need to focus on what India plans to do next that may have an impact on Pakistan's own national security and create a strategic defense accordingly.

It is very important that Pakistan starts working on countering the threat of lawfare which has already created trouble for Pakistan. In order to counter lawfare effectively, Pakistan needs to recognize the significance of international law and what an important tool it can be. Pakistan needs to start thinking from the point of view of the enemy in order to recognize what lawfare moves its enemies can make. Effective capacity building and coordination at national level is going to be successful in countering lawfare tactics against Pakistan.



THE EVOLVING GLOBAL ORDER

by *Sardar Masood Khan, Former President Azad Jammu and Kashmir*

The growing rivalry between the United States of America and China is one of the prominent countenances of 2021 that is altering known patterns about equilibrium of the international system. This rivalry, in recent years, has accelerated and further been accentuated with the ascendancy of the Democrats in the United States and under the strong leadership of Xi Jinping in China.

However, this particular period in the shaping of a new global order is not reminiscent of the Cold War period, or the developments that followed thereafter. It is important to note that the anarchy observed during First and Second World Wars and the interwar period between them, and the Cold War between the Soviet Union and US, is not synonymous with the current situation.

A number of scholars and practitioners are of the view that the rivalry between China and US is a revival of the recrudescence of the Cold War. This estimation may be answered with yes and no. No, because while there were some rules for the old cold war, there are no rules applicable to the new cold war, and yes because the anarchy currently seen has become a matter of fact wherein the international rule of law has been greatly diminished. International organizations that regulate world order, such as the United Nations, have been sidelined. This to some extent also relegates the notion of international lawfare.

With respect to China, it is gradually becoming a force to be reckoned with in the international community, as its influence continues to extend over the world. This transmits into strategic advantages. An example of the same would be the Belt and Road Initiative which contain ancillary flagship projects such as China-Pakistan Economic Corridor. Initiatives such as these not only

have strong economic dimensions but also strategic ones.

Moreover, China has also invested heavily in building its defense and military strength that is likely to equal that of the US. This fact is not commonly known by ordinary people. China's foreign policy has been long guided by the doctrine of Deng Xiaoping, the former paramount leader of China i.e. "hide your strength, bide your time, never take the lead." However, the West has come to realize China's strength does not only extend to economic leadership, but also extends to the field of defense which is supplemented by technology. China is a leader in cyber security and many other areas of developmental technologies.



If put into the context of Greek mythology, China is 'Hyperion' and US is 'Apollo' – the rising power and the declining power, respectively. Considering the current state of affairs, it is reasonable to question the impact the financial war between these two countries will have on the existing global order. This is the reality the world is currently grappling with. This notion was further reinforced by Xi Ping who stated that China and US should avoid falling into the trap of military conflict with each other. It is instead recommended that both countries sort out their outstanding matters through negotiations, cooperation, and collaboration rather than confrontation, as the former approach would be costly not only for them but the entire world.



Is the new global order broken? Or is it simply frayed around the corners? While, the international system is not broken, it is however beginning to rot at the core. There is a semblance of equilibrium in the system. It is not total anarchy. This in particular is very important to understand in order for Pakistan to adjust its position accordingly.

Pakistan is currently facing several existential challenges in the current global order, which begs the question of whether Pakistan should develop a doctrine of lawfare to protect its national interests. The first challenge is national security which must be looked at holistically as it directly resonates with human development. If a state does not cater to human development, if it marginalizes its people, it greatly disadvantages the society, and the establishment of a strong and prosperous state would remain an elusive dream.

At this stage, it is imperative to focus on Pakistan's nuclear capabilities. While, Pakistan has built a great nuclear arsenal and has strong deterrence resources, it should remain cognizant of the fact that it is still vulnerable to external threats and should regularly develop and upgrade its facilities. To not do the same would allow Pakistan's adversaries to undermine its deterrents. An example of the same would be that if India becomes a member of the Nuclear Suppliers Group (NSG), Pakistan is likely to face several difficulties. This would allow India to create an environment which would be unfavorable towards Pakistan.

Pakistan's nuclear capabilities have been for some time an object of propaganda to ensure it is dismantled since it is the only Muslim country to acquire nuclear deterrence abilities. In the current global order, in particular with the Biden Administration in power, Pakistan may be subjected to pressure to scale back its nuclear program. The same was done during Obama's Administration. Therefore, Pakistan should ensure that its nuclear industrial infrastructure is of superior quality, and that it has the requisite legal tools to defend itself when required against external forces.

An unstable western border is another challenge that Pakistan is currently tackling. The rapidly deteriorating security situation in Afghanistan is a point of concern for Pakistan's national security, particularly with the foreign troops evacuating the country. Pakistan should continue to stand its ground and not capitulate to any external pressure under any circumstances.



India's lawfare doctrine poses a great threat to Pakistan. It is quite proactive in utilizing lawfare both internally and externally to advance its interests on the global stage. With respect to Kashmir, India has introduced a number of domestic legislations that justify its illegal annexation of Jammu and Kashmir. They have created an occupational constitution wherein Jammu and Kashmir have been made a territory of India. The same idea has been further reinforced by judicial judgements. In addition to this internal lawfare, they have also influenced international bodies and other states to support their claim through the use

of international law. The argument adopted by India before the international community is that Pakistan's actions in Kashmir amount to terrorism and have delegitimized the concept of self-defense and self-determination, both of which are recognized under international law. India has created a narrative which it continues to reinforce about Pakistan being a state sponsoring terrorism.

Furthermore, India has also employed bilateral lawfare against Pakistan. An illustration of the same would be inserting legal formulations against Pakistan's position on Kashmir at summit levels. This, therefore, has created barriers for Pakistan to operate internationally. India has approached the UN Security Council and changed the narrative by undermining the importance of the UN resolutions on Kashmir.

On the other hand, Pakistan has either been reactive or retroactive in this respect. Pakistan is still in the process of learning the basics of lawfare, which is an unending exercise until practised in real life. Hence it is vital that Pakistan starts being an active participant at forums where lawfare is practiced. In the context of Kashmir, Pakistan hasn't produced sufficient domestic legislation to consolidate its legal standing on Kashmir. There is Article 257 of the Constitution of Pakistan, but other than that there are not many interpretative articles written about that particular provision. Therefore, there is a wide legal deficit that needs to be catered to. In addition to this, Pakistan hasn't also passed strong resolutions in its own sovereign institutions like the Parliament to support its position on Kashmir. Cross-party resolutions that can be constituted as a form of soft law, have not even been established by Pakistan to bridge its legal position on the Kashmir dispute and lawfare.



Pakistan needs to prepare its lawfare strategy and communicate it in an efficient manner through representations and third-party intersessions at UN Security Council, Human Rights Council, the International Court of Justice, International Commission of Juris, International Law Commission, International Criminal Court, European Court of Human Rights, International Court of Arbitration and other relevant international institutions and judicial forums.

With respect to Pakistan's relationship with China, it is important that we establish and maintain strong ties with them. However, Pakistan's approach to the matter needs to be revised. Pakistan's current approach is similar to its approach during the Cold War era with the US i.e. it was heavily dependent on the US in various aspects, and now it is showcasing comparable dependency on China. It is important that Pakistan stops relying on external powers to provide it financial assistance and bail it out in calamitous times. As such, Pakistan must invest in the mindset that it is capable of standing on its own feet and doesn't need external powers to assist in turbulent times. This will help in building a healthy robust self-image about the state. The aforementioned in no way means that Pakistan should not engage or maintain ties with external powers such as China and US and have a hostile relationship. Pakistan must actively engage in dialogue with the other states to remove any misgivings the international community might have. However, it should not be done at the cost of its national sovereignty and interests.



NATIONAL SECURITY AND **LAWFARE**

by *General (Retd.) Zubair Mahmood Hayat NI(M), Former Chairman Joint Chiefs of Staff Committee*



Lawfare is not only conventional but also futuristic in nature. The very concept of national security, its ethics and ethos are constantly evolving. Accordingly, lawfare deals with this soft power generation, in form of an asymmetrical warfare which has come into play because of the evolution of international law. As a consequence, lawfare has become an instrument of state policy and of foreign policy. For countries this becomes more relevant because in the domain of national security all major disputes and challenges faced by them have strong legal connotations attached to them. For example, all territorial disputes of Pakistan, such as Kashmir and Siachen to name a few, have a strong legal angle to them. Therefore, lawfare has gained a formidable status.

National security deals with a complete spectrum of a nation's existence; its well-being, its strength, its weaknesses, and therefore deals with all elements of national power. It deals with the fundamental questions of sovereignty, territorial integrity, prosperity, wellbeing and ideology. Hence, in the time-tested triangulum of ends, ways and means, lawfare is a new means which can be applied to achieve politico-military objectives.

In the traditional sense the direct deprecation

of any legacy, concept, or strategy was more profound and fundamental. However, with the introduction of hybrid warfare, grey hybrid warfare and unrestricted warfare, mechanisms such as lawfare are increasingly becoming the tools of choice. An example of the same would be the case of Kulbhushan Jadhav. Jadhav is an individual, however Pakistan cannot just reduce his status as an individual since he represents a state as well. Hence, Pakistan needs to apply law not only against the individual but execute a well-coordinated and thought out lawfare move to hold the state which Mr. Jhadav represents accountable for its actions. Another example is the Operation Swift Retort. On February 26, 2019, India conducted an airstrike in Balakot, Pakistan. This breach of sovereignty required a military response by the Pakistan military which Pakistan carried out on February 27, 2019. However, it is imperative to note that it also required a lawfare response to hold India accountable for having attacked the sovereign land of Pakistan.

A core national security issue of Pakistan is water. In recent years, the Indus Water Treaty has come under great stress. Another emerging national security concern is climate change. However, Pakistan is a law repairing state and has very strong international law

protecting its water and environmental rights. It is important that Pakistan develops a strong legal case and defence against these concerns on grounds of them impacting its national security, its health and wellbeing, along with the economic repercussions.

A lawfare move initiated by Pakistan is the submission of dossier on India's terrorism campaign against Pakistan to the United Nations on November 20, 2020. However, the mere submission of these dossiers is not enough. It requires follow up action, and that too on multiple fronts including lawfare. Pakistan has collected evidence, but the relevant evidence needs to be introduced in the relevant judicial forums. The fear of India's rebuttal to the accusations at these forums should not deter Pakistan from using all options and exercising them not only judicially but proactively to its advantage in an effort to increase Pakistan's strategic space and to gain the relevant advantage that it deserves.

Lawfare has a complexity. It is not only a tool of the oppressor but it is equally a tool of the oppressed, and therefore it not only gives you challenges but also provides you with opportunities. In the future context, national security's boundaries will be defined by what's happening in the cyber domain and national sovereignty will also be decided by what is happening in the space domain. Both in cyber and space domains, the questions of sovereignty, strategic space, prosperity and wellbeing will be fought.

Laws in cyberspace are being made but for whom are these laws made? And what is Pakistan's participation in this debate and this course in a meaningful fashion other than attending conferences? This is what the future generations will face if a nation does not enjoy cyber security and cyber sovereignty; it will stand exposed in the 21st century and beyond. Similarly, for space and beyond, if you are not party to treaties and don't legally and lawfully secure your strategic space, how will the future generations of Pakistan secure themselves from that angle? So not only does

Pakistan need understanding but it also needs to apply what it knows. New things and patterns of attack, counter attack and defense will emerge where lawfare will have to be applied.

Lawfare should not be seen as a challenge alone. Pakistan has the resources to convert this into an opportunity. But that is easier said than done. It is really important that Pakistan bolsters its capability and capacity at the international, national, institutional and organizational levels. This requires human resources that not only understand the law, but also possess the ability to apply it at the international level to win. It must be noted that lawfare and law experts need to be embedded in Pakistan's planning, policy making, and execution stages. Pakistan needs law experts to be part of a core group that can advise the government and, based upon the advice of the relevant stakeholders, craft a strategy and execute it for the betterment and interest of Pakistan. That is what is required and that is what the end state is. Lawfare is not an end state, it is not a policy tool but it is one of the instruments. It is an increasingly effective and potent instrument; one which Pakistan cannot do without as a nuclear power state.



LAWFARE: AN OPPORTUNITY FOR PAKISTAN

by Ahmer Bilal Soofi, Advocate Supreme Court of Pakistan, Managing Partner at Ahmer Bilal Soofi & Co., President of the Research Society of International Law, Advisor Centre of Excellence for International Law at ISSRA, NDU.

When one invests their entrepreneurial skills and resources in an area of research and knowledge, that commitment is rewarded. Pakistan is not short of think tanks that work on matters concerning international law, there is however a lack of research. In recent years has only Pakistan seen initiatives towards developing the field of international law to advance its national interests.

Pakistan should aim to be the leader in research on international law matters, as international law is the new frontier that will open opportunities on a global scale. When one looks at legal developments, one can easily predict what the next step will be after resolution. 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. There is a pressing need to include legal expenses for an international legal division or international law directorate.

Lawfare regime is an opportunity regime. Pakistan should develop a practical dialogue between Muslim countries. The Federal Government should also be encouraged to set up a lead think tank on international law where scholars are dedicated to law relating to human rights, counterterrorism, international trade and finance, economic development and infrastructure, and providing the government with vital input into the intricacies and nuances of international law.

Pakistan should manage economic lawfare. The country's security is directly linked with

the economic revival of the state, and economic revival is linked with private entrepreneurship. Pakistan should learn from other countries such as China who have taken advantage of their legal brain fund to obtain positions in international organisations such as the World Trade Organization (WTO) that regulate trade between countries. Today trucks are travelling from Pakistan to Afghanistan and further on, these are openings of land-based trade which are of a huge advantage to Pakistan.



There is a lack of awareness in Pakistan, so think tanks working on matters concerning national security should continue to contribute towards international law development in Pakistan. In addition to this, young lawyers should be provided with the necessary resources, activities and societies focusing on international law should be encouraged in leading schools to foster and develop future international law experts.



There is a lot that Pakistan can achieve through determination and if Pakistan focuses on lawfare, there is plenty it can achieve from a strategic point of view and an economic point of view. Negotiating trade and investment treaties wisely can lead to the economic revival of Pakistan but such agreements are incredibly complex and require a dedicated team of international law experts to be able to defend Pakistan's economic rights. Therefore, the Federal Government and also the Provincial Governments need to create or house centers of international law.



CONTEMPORARY LAWFARE CHALLENGES AND STRATEGY

by **Amb. (Retd.) Aizaz Ahmad Chaudhry, Director General, Institute of Strategic Studies**

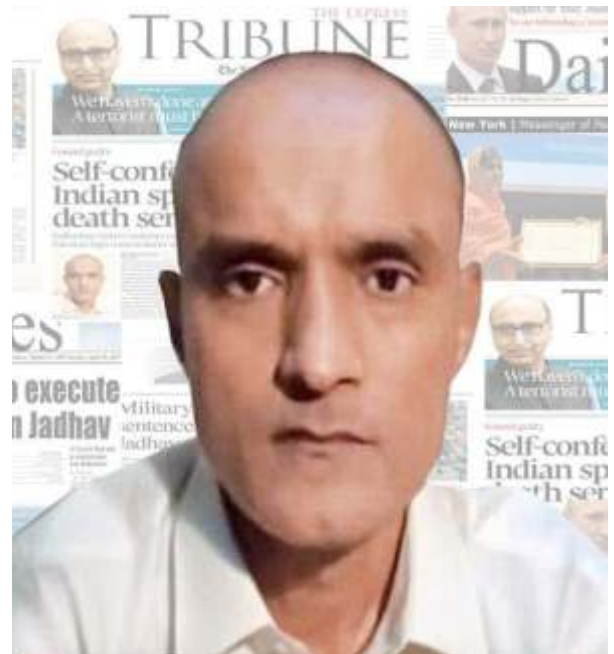
Lawfare isn't just an offensive term. It is also a neutral term. It can be likened to an instrument of war or national power through which a state can attack its adversary, and as well as defend itself from its adversaries. So, it depends entirely on the state of how they choose to play in this domain, just like any other element of national law.

Lawfare is not simply a kinetic use of national power. It is a component of hybrid warfare which is currently the domain where states engage in conflict, and one that the world is seeing intensify further. Lawfare is a dynamic tool which can be used by a state or used against it in multiple ways.

Lawfare can be used by a state to gain compensation – primarily in terms of monetary benefit. In terms of Pakistan, this form of lawfare attack is quite evident. The recent case of Karkey vs. Pakistan, while not an illustration of a devious lawfare strategy against Pakistan, is reflective of how states use law as a tool to achieve their interests. In this rental power dispute, the Turkish company Karkey approached the International Centre for Settlement of Investment Disputes (ICSID) against Pakistan for not following its international obligations, and were successful in their endeavor to recover \$800 million damages from Pakistan. It is evident that Pakistan's loss stems from the lack of international expertise. Hence, it is imperative that Pakistan builds upon its legal mind-set, particularly in the field of international law.

However, the most prominent use of lawfare is to damage the international standing of one's adversary. The case of Kulbhushan Jadhav at the International Court of Justice (ICJ) is a

perfect example. India at that time was facing serious criticism from the world due to its duplicity towards Pakistan with respect to terrorism claims. India, which has strongly advocated Pakistan as a state sponsoring terrorism, was suddenly facing setback with the capture of Jadhav, an Indian spy perpetrating terrorist activities in Pakistan. In this respect, India initiated a counter-lawfare strategy by approaching the ICJ and changing the narrative from Jadhav being a spy/terrorist to an Indian national deprived of his right to consular access and fair trial in Pakistan. Pakistan was unable to properly assess and predict India's moves, and as a result was found to be in violation of the Vienna Convention on Consular Relations.



Pakistan needs to strongly develop its capacity to anticipate threats and vulnerabilities in international law that hostile powers may rely

on to advance their strategic narrative and discredit Pakistan's standing in the international community.

Pakistan has a complicated legal system. According to the Rules of Business, any legal matter that the Government of Pakistan needs to decide upon has to gain approval from the Ministry of Law and Justice. However, it is perceived that while claims are placed before the Ministry of Law and Justice to opine upon and grant approval, there is a limitation to the extent of their expertise in the areas. Accordingly, it is vital that all departments of the state institutions develop their area of legal expertise. This means also investing in academic institutions to produce high quality legal experts.

In addition to this Pakistan needs to develop clear-cut political and economic objectives that can strengthen its national security. India has developed its lawfare strategy to attain its political objectives with respect to Kashmir. India has successfully revoked Article 370 and 35A from its Constitution to remove the special status of Kashmir and change the demographic in the region to the extent that the dispute becomes irrelevant.

The grey-listing of Pakistan by the Financial Action Task Force for not meeting its anti-money laundering and counter-terrorism financing obligations was pursuant to India, US and UK's efforts to meet their own personal political and strategic objective.

At every stage lawfare strategy has been used to achieve a certain political or economic objective. Hence, it is important that Pakistan develops its own national laws and uses international law and forums to advance its own political objectives.

Can a weak and vulnerable State use lawfare to protect itself from hostile powers? Yes, provided it has other instruments of national power in its arsenal. A lawfare strategy cannot be imposed on its own, it is important to have support from the international community. An

example of the same is US invasion of Iraq in 2003 which was heavily opposed by the international community as evidenced from the UN Security Council's unanimous vote prohibiting US use of force in Iraq. However, US was able to sustain an attack in Iraq despite international scrutiny as it is a major player in the global order. However, weak and vulnerable states may not be able to do the same. Hence, they can only use lawfare if they also have the ability to use other instruments of national power.

Lawfare is necessary but it is not sufficient. It is simply an instrument of national power, and it is imperative for Pakistan to invest in other instruments, only then can its bolster its national security and sovereignty.



PAKISTAN'S EXISTING MECHANISM FOR COUNTERING LAWFARE

By *Anwar Mansoor Khan, Senior Advocate Supreme Court of Pakistan*

Zeus must not give up in spite of Hades' temporary successes

This line (using the Greek gods with their respective powers) implies that physical fight must not be given up even in the era of lawfare.

The perception that Pakistan has lost all international cases is incorrect. Out of almost 18 major claims in International Arbitration, Pakistan has lost three. This in fact is a major achievement. Unfortunately, we have not fared very well on the political side despite having numerous laws to favour us. In fact, Pakistan does not have a team for that purpose.

Pakistan from its very inception continues to face a lot of issues not only within but from all over internationally. From 1947 onwards, Pakistan continues to face actions from its neighboring country, first of which led to the conflict with India on the Kashmir issue. No sooner the war started, India took refuge between the United Nations Charter whereby, it chose to approach the United Nations Security Council (UNSC), blaming Pakistan of 'Aggression'. It is the UNSC which ruled that both India and Pakistan ought to stop the conflict immediately.

Subsequently, UNSC passed directions, being United Nations Resolution No. 47 of 1948, calling upon India to withdraw its forces and cause a climate within Kashmir, so that plebiscite could be held for the Kashmiris to choose whether they wish to be with India or Pakistan. India at the right time used law to stop or halt the conflict immediately such that pressure could mount on Pakistan, the newly



formed State. Though the United Nations Security Council caused the stoppage of the conflict but ruled actually in favour of Kashmir. Subsequently, seeing that in fact the Resolution 47 of 1948 would not favour India, India manipulated through the various legal methods available to both Pakistan and India, to prolong the occupation of Kashmir, with a view that the Resolution 47 of 1948 would not have any effect.

General A.G.L. McNaughton, the President of the Security Council of the United Nations, pursuant to the decision of the Security Council taken at its 457th meeting, on 22 December 1949 in his report included the part of Kashmir in Pakistan and further extended the dispute up to the entire Gilgit and Baltistan area. The question is, why did Pakistan at that stage succumb to India who



used the law in its favour? If that be so it needs to be understood, what is it that Pakistan could have done to avoid the inclusion of Pakistan held Kashmir and Gilgit and Baltistan, not to be a part of the Resolution No. 47 of 1948. This, could possibly be defined as "Lawfare". India used law as a weapon against Pakistan, to stop the conflict and create a dispute to extend its occupation of Kashmir.

Having given the example, there is a need to also examine as to what is 'Lawfare' in order to explain the mechanisms available to Pakistan. Military and the profession of law, both professions deal in tactics and preparation of conflict armed with weapons. One by physical contact and use of rifles and rockets as weapons, and the other in courtrooms through arguments with the help of laws as weapons. The use of the terms 'Warfare' or 'Lawfare' has some similarity and therefore remains an interesting question.

Having touched on the use of law as a tool against its opponent we can say that the theory and practice of the use of laws, domestic or international, as an instrument that could advance one's interest, could be termed as "Lawfare". In the book authored by

Orde Kittrie's on 'Lawfare', it is said that 'the use of law as a weapon of war is what we can call as Lawfare'. Whether it be the creation of the League of Nations or the United Nations, it is the major powers of the world that have drawn out laws so that they could have control over the other weaker nations of the world through the use of law.



It is in this era of global and regional pre-eminence, the use of military force is being replaced by hybrid wars, what we usually term as fifth generation warfare. This would include 'Lawfare' or using the media, the internet,

spreading false news, and other similar methods to cause change in thinking and thought process of the targeted state in some specific region. This has become the ideal environment for strategic use of law and other actions supported by international laws, conventions, practices, and resolutions to gain advantage over its adversaries.

This recently coined phrase has found attraction in the international political discourse, and which has since been interpreted to refer to variety of different elements. When law is used as a weapon or let me say as a tactical ally or strategic asset or as an instrument, a state can often accomplish what could not have been done by use of physical force through deadly arms and ammunition to secure territory, to resolve political issues, or even break the will of political opponents like we see being done by Israel against the Palestinians, where they use both forces.

In this globally integrated world with institutions like United Nations and its judicial organ the International Court of Justice (ICJ) along with the International Criminal Court (ICC), the organizations of Human Rights and other similar institutions, expertise in international law has assumed great importance. In this situation it is important that Pakistan has sufficient expertise and knowledge in international law and its usages, has the will and strength to utilize expertise such that Lawfare could be used not only as an offensive weapon but for the purpose of defending Pakistan.

Defense in this context, solely does not mean securing the state, but also includes all that goes with it. Any attack whether physical, or through lawfare methodologies is an offensive that has taken place, and it is through the knowledge of law and all that which is included in it, one can defend the state from being run over. This was done by ISIS with such a view; by exploiting the laws being followed by the Western world, where ISIS created a human shield, taking support of the compulsion and compliances under the International Humanitarian Law (IHL), such that it would become difficult for a physical attack on them.

An offensive through Lawfare could be launched using politics and would be lawful. It is the method that a state needs to evolve by using the same or other laws to counter it. The United Nation's Resolution 1267 whereby sanctions were imposed against Al-Qaeda and Usama Bin Laden is an example of offensive Lawfare. Resolution 1373 calling for prevention of terrorist funding and support can also be termed as offensive Lawfare strategy against terrorism.





It is when a state exhibits and is bound by international law, the state is obliged to act in the manner required. The FATF action against Pakistan is another offensive by the Western countries, apparently orchestrated against Pakistan by its enemy India and supported by the United States and many other western countries to keep pressure on Pakistan. Why Pakistan failed to counter this is the lack of knowledge / expertise of International Laws or not having sufficient friendly states. However, after being placed in the Grey List, Pakistan moved well to restrain the FATF to place Pakistan in the Blacklist. Pakistan having signed the obligation is bound to act, lest it is placed in the blacklist causing various sanctions against Pakistan. Failing to abide by said

obligations and compliance of said international law would earn international isolation. It is thus a requirement that Pakistan has domestic laws to cover the 21 points by FATF to ensure compliance. Even though Pakistan has complied with almost all except three of them, to keep the pressure on Pakistan FATF have chosen to keep Pakistan in the Grey List. This requires aggressive Lawfare through all its modes.

International laws are extremely complex and are increasingly being used to pursue strategic or political objectives. It is unfortunate that Pakistan has not given importance to this especially important field where other countries have chosen to excel. It is even more unfortunate, that Pakistan has not been able to protect

itself from such attacks through application of the law.

As stated earlier, India in 1948 sought the protection of the United Nations immediately, which could have been done by Pakistan under the UN Charter, instead of going to war with India. Pakistan is aware that the entire Gilgit and Baltistan was obtained by force after independence and taken over, where two of the four states had chosen to accede themselves completely with Pakistan. Despite this fact, Pakistan chose to sign the Karachi Declaration and allow Gilgit and Baltistan to be taken up in 1951 as a part of Kashmir dispute which it should not have been.

Notwithstanding Pakistan has not been able to use the

numerous Conventions and Resolutions of the United Nations Security Council, which in fact are the means to be utilized as a Lawfare weapon against India or for that matter the world, such that India could have been brought down to its knees to conduct the plebiscite in Jammu & Kashmir.

India had caused Article 370 to be introduced and subsequently Article 35-A to be brought into its Constitution. The special Status given by India to Jammu & Kashmir was an intelligent move as Lawfare, under Article 370 and Article 35-A. Article 370 (1) however had in it the entire power where the President could modify the special status. It was by using the power and authority under Article 370(1) that India in the recent days caused the special status of Jammu & Kashmir to be removed and brought it within the dominion of India, making them unions and bringing them within the ambit of the Constitution, even though J&K has its own Constitution and UNSC Resolution 47 of 1948 still is in force.



In spite of this, Pakistan has not been able to convince the United Nations of the illegality or take steps under various international laws including but not limited to Human Rights Violations, the annexation of Jammu & Kashmir, removing the special status of Jammu & Kashmir and making them a state of India, thus violating the United Nations Security Council Resolution 47 of 1948 and subsequently 14 other Resolutions of the United Nations Security Council. One cannot forget the judgment against Myanmar by the International Court of Justice on the abuse of and violation of Human Rights against the Rohingya Muslims. The question is why did Pakistan fail to move and file proceedings against India despite available laws. Action at the right time and at the right place makes the difference.

Another method used by India to attack Pakistan through Lawfare is the Pulwama and Balakot attack. India's intention was to use international law relating to terrorism to turn the world's perception against Pakistan. The Ministry of Foreign Affairs, for once, was extremely proactive and a narrative was built that the action of India was maliciously motivated. It is important for Pakistan to be on the front foot to ward off such attempts. This surely is a welcome change in the methodology previously employed, being caught unawares of the Indian designs.

The Foreign Office has raised concerns on the violation of international law in Indian occupied Kashmir such as the use of pellet guns by Indian Security Forces in Kashmir, which is a grave breach

of Human Rights laws with equivalence to war crimes. However, Pakistan chose not to move this under the Geneva Convention for Human Rights, whereas Pakistan ought to have moved for war crimes. As per the United Nations' various resolutions, an Aggressor is the state who causes forcible entry in another state. Kashmir is internationally considered a disputed state, and India was to only administer it, not annex it. Thus, India invaded it and became an aggressor, causing various internationally accepted crimes, which constitute war crimes.

Under the Resolution 47 of 1948 the Indian Army was to withdraw from within Kashmir but instead, the Indian army forced their entry in Kashmir with a view to capture it. They started entering residence, detaining victims, torturing them, arresting them, killing people including children and women, all of which are serious violations of the United Nations International Laws on civil and political rights (ICCPR) Article 427. Also, under the Human Rights Watch (HRW), the State is liable to abide by the IHL.

Pakistan had in its authority and power to have used these laws in its favour but, despite India's clear violation of the

above laws in occupied Kashmir, for some reason Pakistan chose to avoid entering that domain of Lawfare. The use of law at the right time and at the right place would naturally hurt its enemies and choosing to remain quiet on every front, without using laws in our favour surely encourages the enemies. This possibly is on account of the fact that we have not been able to create expertise or the will in the use of international laws.

Both India and Pakistan are party to many of the core UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC), and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and the Convention on the Rights of Persons with Disabilities (CRPD).

As a member State of the United Nations, India and Pakistan are bound by the resolutions of the Security Council. India must also act to give effect to resolutions of the General Assembly and authoritative legal standards of the United Nations. India may not invoke provisions of its domestic law to justify non-compliance with its treaty obligations. However, it is the duty of Pakistan to take up the issue with the United Nations.

Pakistan must place pressure on India in terms of the Law. Kashmir is administered under Article 77(1) (a) & (c). India violated the provisions of Article 73 and Pakistan did not take any action. In violation of the mandate given by the UN, Pakistan had the choice of moving the UN on account of threat of peace for a 'Trusteeship Council' under Article 76(a) to maintain peace. Why Article 4, 10 and 32 of the Geneva Convention was not invoked. India is an Aggressor as defined in the various





resolution Nos. 3105(XXVIII), 2967(XXVII), 2781(XXVII), 2644(XXV), 2549(XXIV), 2420(XXIII)M 2330(XXII), 1181(XII)M 895(IX), 688(VII), 599(VI) of UN.

Another lawfare example is the case of Kulbhushan Jadhav. Cmdr. Jhadav, a serving Naval Officer of India, operating in Pakistan as an Indian spy. After capture and whilst in custody, Jhadav, operating under a false name of Hussein Mubarak Patel, whilst giving the entire details as to what he was doing in Pakistan, confessed to planning and carrying out anti-Pakistan activities. India's involvement in these activities is a clear indication of Indian state-sponsored terrorism in Pakistan. India, to divert attention and win politically, chose to file the issue before the ICJ. The Hague case was presented in a manner showing that in fact Pakistan was in violation

of the Vienna Convention, refusing to give Consular Access under Article 36 thereof.

The delay by Pakistan to present the Jhadav affair as validating Pakistan's well-founded claims of state-sponsored terrorism by India; instead, the case was turned into a commentary on diplomatic etiquette, concerning rights and obligations under Article 36 of the Vienna Convention on Consular Relations. It is unfortunate that at that stage and before the filing of the case by India in the ICJ, Pakistan failed to build its long outstanding narrative on state-sponsored terrorism. Naturally, once the case was filed, it diverted the global perception causing a focus on consular relations instead.

Pakistan in such a situation was bound to use the

international terrorist laws against India. Had the terrorism narrative been fleshed out sooner, the consular access issue could have been sidestepped. Pakistan missed the window which could have avoided the current issue of granting consular access to Jhadav immediately. Consular Access should have been given in the first place, as this would have immediately taken the issue on a greater pedestal, as India would have had to immediately admit him as its citizen, would not have time to divert international perceptions and would have been a gain to Pakistan.

Even after the Jhadav case became an issue of consular access, Pakistan's strategic response through the Foreign Office ought to have been better framed and projected to the world through the various mediums. Though the issue

of sovereignty was argued before the ICJ, but denying consular access was the prime issue. Sovereignty of Pakistan was accepted by the ICJ, and thus passed the order that the laws of Pakistan would remain applicable.

After the decision of the ICJ the Indians tried to create chaos regarding not appointing a lawyer for Jhadav, attempting to go back to the ICJ. However again Pakistan played well by passing a law for appointing a counsel for Jhadav, thus preempting India.

In the state of security lockdown including but not limited to other communications, India remains in violation of Article 56 of the Fourth Geneva Convention. Failure of India to facilitate international relief efforts in an administered area granted by the United Nation, and their failure as an aggressor and occupation forces to honour obligations vis-a-vis health and security constitute a serious breach of international law. Again, Pakistan has not used this law in its favour.

It was the duty of Pakistan to act in a manner by collecting evidence of Indian Human Rights violations, document them to categorize and present the same as war crimes in international forums like United Nations Human Right Council and General Assembly. The Prime Minister of Pakistan did address the General Assembly bringing about the facts of India's brutality and unlawful activity in Indian occupied Kashmir but, thereafter, Pakistan has not been able to utilize the Human Rights



violations, the brutality, the killings, and genocide being committed by India in Kashmir to move against India. This offensive Lawfare should have been taken up very seriously. Kashmir should have been assisted in undertaking the Universal Jurisdiction Clauses of domestic laws by countries like, U.S., U.K., Argentina, Australia, Germany, Belgium, Canada, Norway and Sweden.



In the increasingly polarized international environment where competing alliances led by China and U.S.' conflictual regional dominance, Pakistan needs to build up a big human resource and organizational capacity to mount robust Lawfare offensive rather than acting possibly in reactive mode. Pakistan has faltered on its FATF because of its inadequate legal expertise and lack of understanding of the substance of FATF. Apart from this, capacity building of Pakistan is necessary, and one needs to be careful in accepting international law and obligations, whether they can be fulfilled. Signing of treaties and agreements should be carefully undertaken.

The Indus Water Treaty does provide options for Pakistan but Pakistan has not fared well in relation to the Indus Water disputes. A most notable loss was the Kishanganga dam dispute with India, due to Pakistan's late reaction. India is planning to build other dams, but like before Pakistan is not proactive in taking note of these concerns and working towards resolving them in their favor. There is an urgent need to proceed on this immediately lest India starts off with its nefarious designs to cut off or substantially reduce the



quantum of water for Pakistan as has been said by its Prime Minister.

Similarly, the international law on the flow of water for protection of riparian states at the lower end of rivers is also available. Pakistan is a riparian nation and all nations agree that only riparian nations—nations across which, or along which, a river flows—have any legal right, apart from an agreement, to use the water of a river. International water law helps enable nations to peacefully share a river basin and the waters it contains. International law provides a wealth of precedents on water use rights and obligations for both upper and lower riparians. The customary international law for transboundary fresh water resources provide for equitable utilization, the Madrid Declaration of 1911 says that the regime of rivers and lakes, contiguous or successive, could not be altered by one state to the detriment of a co-riparian without the consent of the other. This law was also an offshoot of the same customary law.

Though Pakistan has many difficulties, it is internationally accepted as a nuclear country. Pakistan is being perceived as a country where nuclear assets could cause further difficulties for the world. Pakistan is the only Islamic country to have nuclear weapons with a very strong military base. There are those who know that a cut off in 1990 failed to prevent Pakistan from testing the nuclear weapon in 1998.

Pakistan is not likely to fail. In fact, Pakistan is one of the most stable country, as put, it is has survived in 1971 war, in which it lost half of its country and the population. It has survived calamities, natural disasters and it has managed to survive the corruption of its own leadership. Pakistan is poised against terrorists who are causing terror throughout the country and are killing the local population. Pakistan has succeeded to a great extent in eliminating terrorists, which is what Pakistan should be communicating to the world, and has now survived the Covid pandemic through well managed and good policies.

This article provides a few of the laws that could be used by Pakistan for its benefit and in Lawfare. The only suggestion is that Pakistan should be proactive and act rather than being reactive and waiting for others to move, only proceeding in reaction to the move of the adversary.

LAWFARE: CASE STUDIES FROM PAKISTAN

by *Senator Mushahid Hussain, Chairman Senate Defence Committee*



International law and legal principles are a new favorite tool for many players in the current global order to be used to advance and reinforce a specific foreign policy narrative.

This article focuses on certain case studies of lawfare strategies employed against Pakistan by hostile powers. India is at the forefront of conducting lawfare against Pakistan. According to India, Pakistan is a master of conventional hybrid warfare that utilizes non-state actors to the detriment of India. Therefore, they have launched their own version of hybrid warfare which includes a mix of covert action, cyber war, disinformation, narrative building, diplomacy, and most importantly lawfare.

India has launched an offensive lawfare against Pakistan. They have done this by focusing on Pakistan's fault lines, which is not difficult for them to widen further. India's primary focus has been on Pakistan's record of human rights violations and terrorism. They

have not simply identified perpetrators, but also the supporters of terror acts. More importantly, it has then approached international institutions such as the UN Security Council, International Court of Justice, the Financial Action Task Force to name a few, to advance their objectives and interests. India has been building this strategy for decades now, and the outcomes of the same are quite apparent now.

An illustration of the above is the narrative India has built of Pakistan as a state-sponsoring terrorism. It made a successful case of Pakistan supporting terrorist networks i.e. the Jaish-e-Mohammad (JeM) to sponsor terrorism in India despite lack of evidence. The same is already evident through India's success in convincing the US, UK and France to declare JeM Chief, Masood Azhar a global terrorist under UNSC Resolution 1373. Moreover, India has also started claiming credit for any positive action taken by Pakistan against terrorist networks, as seen in the case of Pakistan's National Security Council

reinstating the ban on JeM and other proscribed organisations. India in this case claimed that the pressure they placed on Pakistan has forced them to take this positive action.

In addition to this, India had also been able to influence the Financial Action Task Force (FATF) to investigate Pakistan's anti-money laundering and counter-terrorism financing regime. India has actively lobbied for Pakistan to be black-listed by FATF. Black-listing by FATF means that Pakistan would be subjected to economic sanctions and other prohibitive measures by not only FATF member states, but also other international organisations such as International Monetary Fund and the World Bank. The same did not do Pakistan any favors and instead cost Pakistan heavily as the incident came about during the time Pakistan's FATF review was ongoing.

Kulbhushan Jadhav is another example of India's lawfare and counter-lawfare strategy. Jadhav, an Indian national was caught by Pakistan's armed forces in Balochistan and tried on grounds of espionage and perpetrating terrorist activities in the country. The fact that he was caught unveiled the duplicity of India. Otherwise, continued acts of terrorism in Pakistan would have played into India's decade long lawfare strategy of building the narrative that Pakistan is a state-sponsoring terrorism. Furthermore, once on the brink of facing international condemnation, India successfully created a counter-lawfare strategy by approaching the International Court of Justice on grounds of Pakistan denying Jadhav the right to consular access and fair trial. India completely changed the narrative once again.

India also uses its lawfare measures tactically. When the incident of Pulwama occurred, India without a shred of evidence quickly blamed the incident on Pakistan, which did two things in turn: first, it gave India the time to manufacture a narrative against Pakistan, and second, it allowed India the time to prepare for another lawfare attack, which came when

the Indian State claimed that it violated Pakistani airspace in self-defense and killed more than 300 terrorists in Balakot.

India has also used lawfare to change the status of Indian-occupied Kashmir by removing articles 370 and 35-A. India is now slowly changing the demography of Kashmir as it has introduced a new domicile rule that allows Indian State officials and military personals who are residing in Kashmir to obtain a Kashmiri domicile. There have been more than 22,000 domicile certificates that have already been given to Indian nationals. India has managed to achieve all this through lawfare and without firing a single bullet.

A more recent case of lawfare against Pakistan is the 15-year disinformation campaign launched by India against Pakistan and recently uncovered by the EU DisInfo Lab Report. This network apparently served interests in India in two ways. First, it amplified New Delhi's foreign policy ambitions and influenced decision-making at the UN Human Rights Council (UNHRC) and the European Parliament. Second, it cast Pakistan in a negative light before the international community.



In terms of way forward with respect to lawfare for Pakistan, it is important that all state structures work together to create a cohesive and comprehensive lawfare strategy. Lawfare is a new territory. It is multi-disciplinary. A lawfare strategy can't be crafted by a single ministry or a single government. The Ministry of Law and Justice, Ministry of Foreign Affairs, the Parliament, Armed Forces, Intelligence Agencies and other relevant stakeholders, all need to work together and create a multi-dimensional task force. There needs to be a hub and a focal point to take it forward. Pakistan has always had a reactive approach towards lawfare. If Pakistan continues to deal with lawfare like an ad hoc situation, it will face numerous difficulties. Pakistan is a key country therefore it needs to have an institutional focal point that includes the collective wisdom of all the institutions in the country. Moreover, Pakistan needs to invest heavily in building legal expertise in various areas of international law, and equip its lawyers with the capabilities to approach international forums to serve its strategic interests.

The international community has a bias against Pakistan. Accordingly, it is important that Pakistan understands when to pick issues and fight battles. The state needs to learn from other international global players and learn from its own past mistakes in order to develop its own lawfare strategy.



UNIVERSAL JURISDICTION: A TOOL FOR LAWFARE

by Justice (Retd.) Ali Nawaz Chowhan, Honorary Chairman of Legal Forum for Oppressed Voices of Kashmir



The use of law as a weapon of war is the definition which is given to lawfare, and this definition became bolder when the Harvard Center started talking about it in their articles. Although, a culture of developing a hub to confront lawfare matters must be established, it is still a developing jurisprudence. Currently, Kashmir is suffering; there are violations of human rights while we ponder over going to the ICJ. The norm of respect to protection was developed in 2005 at the Summit of the head of the State in New York and later reinforced in 2007 by Mr. Bush, concerning acting through a legal fare against states, who violate laws of humanity that kill citizens or non-citizens. Pakistan has worked hard on this remedy but found indolence in the right quarters, still pondering over this remedy.

Under Article 99 of the Charter of the United States, the Secretary-General shall bring the remedies suggested to the notice of the Security Council and then let the Security Council adjudicate upon the petition that has been filed. So, this is one way forward. However, in the case of Pakistan, there were not one but several opportunities for availing this remedy, but it has not been effective.

In Chinese, lawfare is called "Falu Zhan" and the Chinese used it very successfully in the case of South China Sea where they were not allowing entry of any outsiders and this is one way of lawfare being used. Lawfare was also used in the case of Palestine when a court of Israel took action. We can also see the Al-Haq petitions in the U.K, and these petitions against Israel are other examples of use of lawfare.

When we talk about lawfare we know that it curtails sovereignty. In the treaties of the west, sovereignty questions were determined once for all, but these questions were always eclipsed by the concept of world order. Henry Kissinger in his book mentions that in world order you go to the world authority to settle things, but in the absence of world authority, we have forums like the UN, where you can go for curative measures.

Moreover, the treaties about which there was a talk by the Law Minister, 27 of them were tilting towards human rights. These treaties are lawfare, because they curtail our sovereignty and internal bodies can always look into our record of human rights violations.

The GSP plus is another method of lawfare, where we can get our economic benefits and if you break the 27 human rights treaties, these benefits will be taken away. Another lawfare move comes from FATF, where Pakistan has to observe certain norms against terrorist activities and money laundering by outside powers. Pakistan has luckily fulfilled 26 of the terms, but one more term is left and the matter is deferred.

Furthermore, there is the absence of a hub of international level lawyers to fight Pakistan's case. The country will not suffer with a strong team of lawyers who can handle such cases. As it can be seen from the case of Kulbhushan Jadhav, Pakistan could have stressed further that national security is the top priority where a person is guilty of espionage. The argument to be pursued was that such a person could not have consular access as it threatens the national security of the nation. In cases like Texas, it has been argued that national security could not be sacrificed over international law. So, what Pakistan needs right now is to have a direction to use lawfare as a greater advantage to our country, especially in the case of Kashmir.

It is no secret that India has cleverly used international law to penalize Pakistan and

Pakistani citizens to build pressure on us. However, a viable option for Pakistan is to pursue the law of Universal jurisdiction, which allows states to try or assert their domestic jurisdiction over persons, irrespective of their nationality and country of residence, if they have committed war or crimes against humanity.



DEVELOPING A LAWFARE STRATEGY: AN OPPORTUNITY FOR PAKISTAN

by *Senator Ali Zafar, Chairman Law and Justice Senate Committee*

Lawfare is a new concept. It is a fairly new concept in the world, and it is very, very new for Pakistan. While the world started using law, in particular international law and treaties for advancing their personal objectives and strategies, as far back as 1975, the word 'lawfare' was not commonly used until 2001.

In Pakistan, today, this term is still unusual to the public at large. This shows exactly how seriously Pakistan lacks the capacity to meet this new challenge. Consequently, lawfare has to be Pakistan's first and foremost priority. In modern times military warfare has lost its appeal and is very scarcely used. What has gained more importance is the use of silent power, and it is interesting to see how major powers actually yield to it in practice. This silent power is the use of law.



Since the world is now moving from warfare towards lawfare, Pakistan needs to equip itself with the same to achieve its strategic objectives and national interests. Lawfare is a defense and offense mechanism. Pakistan needs to develop a lawfare strategy that caters to both.

Lawfare can be used before the rise of a conflict, and even during armed hostilities. Afghanistan is a perfect example of how the US employed a successful lawfare strategy during an armed conflict. The US, in order to attain exclusive rights over the data collected from Afghanistan, chose to enter into agreements and contracts with the relevant authorities, instead of using force. This was a successfully executed lawfare maneuver by US who managed to attain its objective.

A successful lawfare strategy prior to the rise of a conflict involves the support of the international public at large. As such states create an environment through the use of law that justifies its use of force and influences the support of the international community towards its cause. An example of the same would be the US sanction campaign against Iran. Being one of the world's largest economies, the US has the capability to impose sanctions on its import-export trading relations with another state, which results in significant pressure being applied to the target state. The US has also used its seat on the UN Security Council to pursue multilateral sanction efforts against countries like Iraq, Iran, and North Korea for noncompliance of international laws and weapons of mass destruction proliferation issues. US created legal forums within the international system to attain public's consensus over the US invasion of Iraq to address the aggressive operations of the Saddam Hussein regime.



Hence, it is important that Pakistan uses law as a strategic tool to safeguard and advance its interests. Laws whether domestic or international can and are no longer made through a legal angle, it carries a strategic angle as well. An illustration of the same would be the two-fold situation Pakistan is finding itself with the destabilized Afghanistan, in particular with the evacuation of foreign troops from the country. In the context of Pakistan, it not only faces the issue of catering to the influx of refugees estimated to arrive at its borders, but also the risk of increase in sectarian violence. Pakistan needs to understand the law on refugees and strategize accordingly as to whether it can refuse to accept refugees on humanitarian grounds or allow them entry within its territory till a certain geographical limitation. With regards to curbing sectarian violence, the State needs to understand whether the creation of new laws and institutions can create further conflict or curb the rising discord between sects.

Furthermore, it is important to note that any law, whether domestic or international can be used by Pakistan in its favor or can be used by hostile powers towards the detriment of Pakistan. The Indus Water Treaty which is recognised by and can be enforced under international law is a perfect example. Under the Treaty, Pakistan has the right to the usage of water from Jhelum River. However, India states that it has the right to use the water from the river therefore limiting Pakistan's water supply and has successfully argued the same before the relevant international institutions. It is an effective lawfare strategy on behalf of India. India has invested in legal experts in the area of international maritime law and international water disputes who had the capability to advance their position before international institutions and win. Similarly, Pakistan needs to build its own capacity and invest in developing legal expertise in the area of international law.

Moreover, it is important to note that an offensive lawfare strategy against Pakistan can also prove beneficial to the state, after all 'in every adversary, there is an opportunity.' For example, the greylisting of Pakistan by the Financial Action Task Force (FATF) on grounds of money laundering and terrorism financing. It was a lawfare strategy employed by India to place economic sanctions on Pakistan. However, FATF provided Pakistan with 28-point action plan to improve its anti-money laundering and counter-terrorism financing regime. This has proved to be an opportunity for Pakistan to improve the said regimes through the drafting of new laws and amendments to the existing legal framework, which it has done so successfully. As of today, Pakistan has achieved 27 out of the 28 recommendations, and is close to achieving the last.

Pakistan needs to work on making and using laws that are effective towards its strategic interests without comprising on its sovereignty and its international obligations. Pakistan needs to develop its lawfare strategy while still adhering to the rule of law because at the end of the day international law has to work for democracy and rule of law, but it cannot be abused or misused.

THE SEVEN CARDINALS OF BUILDING A LAWFARE STRATEGY

by *Dr. Muhammad Farogh Naseem, Federal Minister of Law and Justice*

In the aftermath of World War II, the world observed the emergence of a new world order altogether with the power to control international institutions and economies, sanction countries and placing other obstacles on countries who failed to comply with the international establishment, resting in the hands of a few major powers.

While the nomenclature 'lawfare' is new, the concept can be dated back to as far as 1950s. However, the concept is constantly evolving. In contemporary times there are two definitions. One was Major General Charles J. Dunlop of the U.S Air Force who defines lawfare as using or misusing law as a substitute for traditional military means to achieve a war-fighting objective. In contrast, David Kennedy, a professor at Harvard Law University defines lawfare as '... the law as a weapon and as a tactical ally, law as a strategic asset, an instrument of war... Law can often accomplish what might once have been done with bombs and missiles: seize and secure territory, send messages about resolve and political seriousness, even break the will of a political opponent.'



Pakistan has been a victim of international warfare on numerous occasions; however, it is only recently that the discussion on lawfare has emanated in Pakistan. The concept of lawfare carries seven cardinals. The first cardinal is international law experts who understand and have the ability to use law, reconstruct it and develop strategies to advance Pakistan's objectives.

The second most important cardinal is the domestic law of Pakistan. Pakistan needs to develop further laws and show its compliance with its international obligations. This would ensure that no hostile power can use the gap in Pakistan's own domestic legal framework against it. If needed, Pakistan must undertake the exercise of amending the existing laws as well. The third cardinal is to understand the domestic laws of the hostile powers that have the capability to launch lawfare attacks against Pakistan. In this regard, Pakistan needs to better prepare itself for any number of possible lawfare attacks against it, in order to counter them timely and effectively. Pakistan also needs to take a more offensive lawfare strategy, without becoming an aggressor.

The fourth cardinal is that Pakistan needs to engage with the media. It is important that Pakistan should engage not only with the domestic media networks, but also international networks. In order

for a lawfare attack to be successful, it needs to influence public opinion at a global stage. Informational activity that aims to affect the cognitive, psychological, motivation, ideational, ideological and moral characteristics need to be undertaken. As such lawfare needs to use communications-related and informational activities through media.

Diplomacy is the fifth cardinal that needs to be strengthened. Pakistan needs to empower and train its diplomats on international missions in the art of developing and maintaining international relations. These diplomats are a vital part of any active lawfare strategy adopted by Pakistan whether defensive or offensive, as they can influence key players to the benefit of Pakistan. Pakistan needs to equip its diplomatic missions with legal capacity to push Pakistan's narrative in their direct engagement with external entities and governments.

Furthermore, Pakistan needs to invest in the capacity building of its state and private institutions in international law. As a state, it needs to facilitate research and robust analysis of national security issues and international law that will help foster objective, public, and transparent discussions around government decision-making, and work towards improving state and private sector institutions alike. International law has many faces. It is a complex area. It is vital to develop expertise in this area.



The seventh cardinal is to identify the fault lines. There are ethnic fault lines, sectarian fault lines, and many other fault lines that Pakistan needs to understand and work

towards mitigating them. Moreover, Pakistan also needs to uncover and understand the fault lines of its adversaries that it can then use them to its advantage and strategize a lawfare attack accordingly.

Lastly, in order to develop a comprehensive and cohesive lawfare strategy, it is important for government institutions and private entities to work together. It is important that the Government, Armed Forces, Intelligence agencies, media, and civil society members cooperate and collaborate in developing Pakistan's lawfare doctrine which is conscious and consistent with its state practice and international obligations.

CONCLUSION



Center for Law and Security (CLAS) held a seminar on 'Lawfare and Pakistan' to analyse the role of law-fare in the modern world, evaluate Pakistan's capacity to conduct and counter lawfare operations, and how to develop a set of operational objectives that Pakistan's lawfare doctrine should look to attain. The discussion served as a basis for providing concrete recommendations with respect to the way forward for Pakistan in the domain of lawfare.

The seminar was conducted in three sessions. After the welcome note by Chaudhry Faisal Mushtaq Chairman Advisory Board, CLAS, President Sardar Masood Khan delivered the inaugural keynote. He stated that though the term lawfare has been frequently used in Pakistan, it is necessary that 'our experts on international law should sit together and prepare a strong case against India to ensure the protection of the national and strategic interests of Pakistan and Kashmir'. General Zubair Mahmood Hayat emphasised that Pakistan needs to effectively convert Lawfare into an opportunity for itself in the international legal domain while Ahmer Bilal Soofi further stressed on capitalising lawfare

opportunities for Pakistan.

While delivering the key note, Senator Mushahid Hussain stressed that Pakistan needs to take a more proactive approach towards Lawfare and that all state structures must work together to create a cohesive and comprehensive lawfare strategy. Mr Aizaz Ahmad Chaudhry highlighted that it is important for Pakistan to develop its national laws and use international law and forums to advance its political objectives. Anwar Mansoor Khan also advocated for a more proactive approach by Pakistan with respect to Lawfare while Justice (Retd.) Ali Nawaz Chowhan stated that Pakistan needs to develop a clear direction to effectively use lawfare for its national interests.

Federal Minister for Law and Justice, Dr Farogh Naseem emphasised the significance of lawfare capacity building within Pakistan. He highlighted the need for reconciling domestic laws with international law to address any possible shortcomings. He further stated that it is crucial for Pakistan to identify the weaknesses of its adversaries to effectively employ lawfare strategies in its favour. Finally,

Dr Naseem called on all political parties to rise above politics to deal with law fare against Pakistan.

Mr Fawad Chaudhry, Federal Minister for Information and Broadcasting highlighted the increasing use of lawfare around the world. He went on to emphasise that we must focus on capacity building to counter threats against the country and develop legal expertise in this particular area. International legal frameworks are being used against Pakistan and there is a dire need to meet these new challenges swiftly and effectively.

Dr. Moeed Yusuf, National Security Advisor, talked about the need for different institutions to come together to develop a lawfare doctrine for Pakistan. Meanwhile, Special Advisor to the Prime Minister, Senator Syed Ali Zafar stressed that lawfare should be used as a defence and attack mechanism in order to prevent Pakistan from being trapped in international legal disputes, such as the Kalbhushan Jadhav case. He further stated that lawfare strategies should be taken into account when enacting laws and developing policies. He assured that the Senate's Law and Justice Committee will ensure that approved laws will be in our national interests.

Ultimately, once the discussions concluded, it was agreed that the way forward for Pakistan was to take a more proactive approach against its adversaries to advance its own strategic interests, and its lawfare strategy must be integrated into its overall national security framework.





051 4866181-87



info@clas.org.pk



**No. 68, South Street, Sector
H-11/4, Islamabad**



centreforlawandsecurity