

USE INTERNATIONAL LAW, CALL OUT CHINA'S VIOLATIONS

Relevant for: International Relations | Topic: International Treaties & Agreements, and other important organizations

Change in lawfare is the key | Photo Credit: Getty Images/iStockphoto

During the recent meeting of the Foreign Ministers of the Quadrilateral Security Dialogue or the Quad, India's External Affairs Minister, S. Jaishankar said that the situation at the India-China Line of Actual Control (LAC) has arisen due to the "disregard" by China of "written agreements". But what China has been doing at the LAC is not a mere "disregard". It is a blatant violation of international law as part of a larger game of Chinese expansionism. Let us understand how.

The India-China LAC engagement is guided by a series of bilateral agreements that the two sides have signed over the years. A central tenet of all these agreements is the complete proscription on the threat or use of force. For instance, a 1993 agreement between India and China provides that neither side shall use or threaten to use force against the other by any means. It further enunciates that the India-China boundary question shall be resolved through peaceful and friendly consultations. Likewise, Article I of the 1996 agreement on confidence-building measures between the two sides prohibits the use of military capability against the other side. The prohibition on the use of force is also enshrined in Article I and Article VIII of the 2005 and 2013 agreements, respectively. States being forbidden from using force in international relations is a cardinal rule of international law codified in Article 2(4) of the United Nations (UN) Charter. The UN Charter recognises two exceptions to this rule — self-defence under Article 51 and UN Security Council authorisation under Chapter VII of the Charter.

The June 15, 2020 military scuffle between India and China in Galwan, [that led to the deaths of 20 Indian soldiers](#), was a clear case of China using military force against India. This Chinese aggression not only violates all the bilateral treaties between India-China but also the UN Charter. Moreover, the Galwan military showdown was not an isolated incident. Since then, a muscular and assertive China and its belligerence toward India has continued unabated through multiple transgressions at the LAC. China has backed these transgressions by other developments such as implementing a new border law that renames several places in Arunachal Pradesh and aims to set up boundary markers on all its land borders. The LAC transgressions and the new border law violate Article IX of the 2005 agreement that mandates both sides to "strictly respect and observe" the LAC, pending a final solution to the boundary question.

[Comment | The road from Galwan, a year later](#)

Furthermore, there are disconcerting reports of a huge military build-up by China with heavy weaponry including missiles in the Eastern Ladakh Sector. This amassing of armed forces along the LAC unabashedly breaches another key tenet of both the 1993 and the 1996 agreements. This relates to both countries reducing or limiting military forces along the LAC. Article III of the 1996 agreement specifically requires the two sides to reduce armaments such as combat tanks and vehicles, missiles, and mortars and big mortar guns. China has not complied with these legal requirements, instigating India to beef up its military deployment.

China's bellicosity towards India, exhibiting complete violation of international law, fits in the larger pattern of China's conception of rule of law. Known as the 'socialist rule of law with Chinese characteristics', China views law as an instrument in the service of the state or, more

precisely, the Chinese Communist Party (CCP). This is diametrically opposed to the rule of law theory in liberal democracies where law's function is to constrain unbridled state power. Internationally, there are several examples of China weaponising international law to further the will of the CCP.

First, China fervently denounced a 2016 ruling in favour of the Philippines by an arbitration tribunal under the aegis of the UN Convention on the Law of the Sea (UNCLOS), in a maritime dispute between the two sides in the South China Sea.

Second, although China claims to be a defender of the international trade law regime at the World Trade Organization, the fact is that it has ingeniously exploited the system to pursue its policy of mercantilism by hiding behind a non-transparent and complex economic system. It is accused of providing illegal subsidies, manipulating currency to make exports competitive, stealing intellectual property, and forcing companies to transfer technology.

Third, as American scholar Orde F. Kittrie writes in his book, *Lawfare: Law as a Weapon of War*, China "has a long history of gaming the international legal system by entering into legally binding nuclear nonproliferation obligations with which its rivals (including the United States, Japan, and South Korea) tend to comply while [China] secretly violates these obligations by providing nuclear technology to its allies, often through proxies".

In the case of India, China uses the sovereignty argument to cover up its barefaced illegalities. The Chinese unethical legal warfare or lawfare is aimed at hamstringing the opponents without actually fighting a war.

This practice of weaponising international law sours relations between countries, generating an atmosphere of distrust.

New Delhi should develop its strategy of ethical lawfare by mainstreaming international law lexicon into its diplomatic toolkit to respond to Beijing's challenge. Rather than pussyfooting around, India should make a strong legal case by painstakingly marshalling all the international treaties, including the UN Charter and customary international law, at every forum to call out China's illegal actions. An unequivocal proclamation should be made at all international platforms that India reserves the right to act in self-defence under Article 51 of the UN Charter to counter any Chinese misadventure. Enacting a national security law aimed at imposing restrictions or sanctions of various kinds (trade, economic, military) on those countries with whom India shares a land border can be an option. The purpose of India's lawfare should be to ably demonstrate to the world that China's international law violations pose a threat to the entire international community — not just India.

There is no gainsaying that for India, a liberal global order dominated by American exceptionalism, notwithstanding its flaws, is a lesser evil than a world order subjugated by Chinese exceptionalism that strikes at the heart of cherished liberal democratic values.

Prabhash Ranjan is Professor and Vice Dean, Jindal Global Law School, O.P. Jindal Global University. The views expressed are personal

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