



In this Issue

War to Lawfare: Spotighting the India-Pakistan Conflict

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Introduction

Lawfare, or the use of legal fora and devices for military and diplomatic advantage, has become a critical component of South Asia's dynamic conflict landscape. In the context of the India-Pakistan conflict, this policy brief examines India's efforts to instrumentalise a policy of "lawfare" designed to support military action against Pakistan, supporting state-sponsored terrorism, ratcheting up armed oppression of Kashmiri civilians, and pushing for Islamabad's diplomatic isolation. Meanwhile, Pakistan, with a virtually nonexistent international law team, continues to remain politically passive, reacting to strategic "issue-framing" by India. As of this writing, the brutal murder of bus passengers travelling along the Makran coast by Baloch separatists has thrown this shortcoming into sharp relief. This brief underscores the urgent need for Pakistan to update and employ the forums it uses to highlight these acts as state-sponsored terrorism.¹ Both the UN and the OIC must be utilised effectively to spotlight Indian activities in Balochistan. Legal arguments should be built and deployed as soon as possible. It concludes with some recommendations that will enable Pakistan to become more proactive in using legal devices to counter India when necessary.

Section 1: Lawfare for Military Ends

On April 7, 2019, Pakistan's Foreign Minister summoned a press conference to suggest India was planning another attack on Pakistan in the third week of that month. The attack, it was believed, would take place between April 16 to 20, and that it would be preceded by another 'Pulwama' style false flag operation in Indian Occupied Kashmir. The Foreign Minister further revealed that he had briefed the UNSC Permanent-5 Members and called on the international community to take notice of Indian aggression against Pakistan.² While the attack did not materialise on the suggested dates, the Ministry of Foreign Affairs, for once, was proactive in establishing a narrative and appearing to be on the front foot – a welcome change from the erstwhile troubling habit of being caught unawares by Indian designs. Against an evolving background, India and Pakistan are also caught in a tidal current of opposing geopolitical forces – the US and China. Geopolitical positions have been further complicated with China's veto, and subsequent agreement, to India's bid to name Masood Azhar as a global security terrorist at the UNSC under Resolution 1267. China's veto had earlier been met with a significant backlash from the international community. Of particular concern for Pakistan is

Germany's expected move at the European Union to designate JeM and Masood Azhar as global terrorists. While no formal resolution has been submitted yet, it is expected that all 28 countries will put their weight behind this, with France already having imposed financial sanctions on Azhar. The US is also currently seeking UN sanctions against JeM. In recent months, Pakistan has taken a number of religious seminaries into governmental control but further concrete steps will be required to face off mounting international pressure. It still remains to be seen whether mainstreaming attempts by the government will actually move towards preventing and prosecuting violence and alleged criminal activity.

The Jhadav Affair

An alarming nexus between India and insurgent groups in Pakistan became apparent with the capture of Khulbushan Jhadav in March 2016 from the Mashakhel area of Balochistan. Jhadav, an Indian spy,³ was arrested through a counter intelligence operation. In confinement, Jhadav, alias Hussein Mubarak Patel, 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. The Jhadav case is now being heard at The Hague. In terms of national security and geopolitics, the Hague case has distorted what could have been a political win for Pakistan. Consider: the Jhadav affair should have validated Pakistan's well-founded claims of state-sponsored terrorism by India; instead, the case has turned into a commentary on diplomatic etiquette, concerning rights and obligations under Article 36 of the Vienna Convention on Consular Relations.⁴ Pakistan failed to build a narrative on state-sponsored terrorism before India diverted the global conversation to focus on consular relations. Had the terrorism narrative been fleshed out sooner, the consular access issue could have been sidestepped. On the other hand, Pakistan could have avoided the current morass by granting consular access to Jhadav immediately. There was little to lose. Rejecting India's request for consular access to Jadhav, Pakistan arguably violated section 36(1)(c) of the Vienna Convention of Consular Relations. Presently, Pakistan is arguing on the basis of lack of protections under customary international law to those convicted of 'espionage.' Pakistan has argued that while there is no exception in cases of espionage under the Vienna Convention, the state practice and customary international law preceding the VCCR imply such an exception. However there is no clear prevailing state practice from the time and it is unlikely that the VCCR can be whittled down in face of vague sources of customary international law.⁵

Even after the Jhadav case became an issue of consular access, Pakistan's strategic response ought to have been better framed. The global focus on this episode should have been on Pakistani sovereignty, the sanctity of domestic law, and national security. The United States was able to do this in a consular access case when the stakes were much lower: *Medellín v. Texas*, 552 U.S. 491 (2008), an ordinary criminal case against a Mexican national, rather than a case of state-sponsored terrorism. Even though the United States denied consular access to Medellin, the US Supreme Court ensured that the narrative focused on the independence of domestic law and national interests over international law.

As international law lacks clarity on protections in place for acts of espionage, Pakistan must now rely on the 'national security' and territorial sovereignty narratives to vindicate the sidelining of obligations of consular access towards India.⁶ However, these arguments notwithstanding, it appears that the key issue of Indian state-sponsored terrorism in Pakistan has been relegated to the background, supplanted by the lesser issue of consular access that has taken center stage. It is likely that the ICJ will decide on domestic courts in Pakistan being the correct forum for an appeal by Jadhav.

Crisis in Kashmir

On September 18, 2016, an attack was carried out on an Indian army brigade headquarters in Uri, near the Line of Control in Indian Occupied Kashmir. India termed the attack one of the deadliest to have ever taken place on Indian forces. This attack occurred against a backdrop of escalating tensions and clashes in IOK following the killing of Burhan Wani in July 2016 by Indian security forces. Again, Pakistan's narrative on the Uri attack was lost in translation. The Uri attack should have been recognised as the inevitable result of India's misguided policy of suppressing Kashmiris and their right to self-determination. The discourse should have been about when, if ever, armed resistance to an occupation is justified. Pakistan should have diplomatically campaigned on the consistent flouting of the UN Security Council Resolutions by India. The best forum to do this would be at the UN. UN fact-finding missions do not have access to Indian Occupied Kashmir, and this is a space for Pakistan to leverage to build international pressure to spotlight human rights abuses by the Indian state.

In retaliation to Uri, India alleged it had carried out 'surgical strikes' on terrorist safe havens on the Pakistani side of the Line of Control. India termed the incursion a preemptive strike against terrorists planning further attacks, and claimed a heavy number of casualties. Pakistani authorities denied this claim and stated that India had not crossed the LOC; maintaining instead that there had been skirmishes between security forces at the border. Once again, India's version of events shone light on the diplomatic differences between Pakistan's reactive approach and India's proactive approach in shaping conflict narratives. Several legal points bear repeating: first, the link between the Uri attack and Pakistan was never established, and only alleged; second, preemptive strikes are virtually always illegal under international law.⁷ While India was able to turn the Jhadav case into a story about violating consular relations, Pakistan was unable to make either the Uri attack a story about self-determination, or the claimed 'surgical strikes' into a narrative about India's disregard for international law.

Pulwama, and then Balakot

The Armed Forces Special Powers Act (AFSPA) 1990 allows Indian forces to arrest and kill, and to search and destroy property virtually at will. Increasing human rights violations, especially gender-based violations against women in Kashmir, are adding to the outrage.⁸ More recently, increasing war hysteria and border confrontation with Pakistan, in the run up to India's general elections, has added to regional security concerns. Two incidents featured prominently in this context in 2019: a deadly bomb attack in Pulwama in Occupied Kashmir, and airstrikes by India on Balakot in Pakistan.

The Pulwama attack was carried out on February 14, 2019 by Adil Ahmad Dar, a Kashmiri youth, who drove an explosive laden vehicle into a Central Reserve Police Convoy in Pulwama, Indian Occupied Kashmir. Dar was a native of Indian Occupied Kashmir who was radicalised following the killing of Burhan Wani – an incident in which he was shot in the leg while protesting Wani's death in IOK.⁹ The Pulwama attack resulted in over 40 casualties -- the deadliest attack on the Indian military since 2001. The attack was followed by little introspection in New Delhi on its regressive approach towards Kashmir. Once again, Pakistan failed to highlight the calendar of Indian atrocities in the Valley that resulted in Pulwama; how India was using pellet shotguns, a notoriously indiscriminate weapon that has injured and blinded scores of civilians¹⁰; how the IOK government was supporting torture¹¹; and how human rights organisations in Kashmir were being charged with sedition.¹² The attack drew condemnations from Pakistan as well as the international community and the UN Security Council. But once again, Pakistan missed out on a number of crucial opportunities to present and exert pressure on India at the correct forums, e.g. at the OIC where Pakistan has considerable support.¹³

While the United Nations Security Council statement on Pulwama did not name Pakistan, the implication was clear enough. Despite public evidence of Indian atrocities in Kashmir and the absence of any Pakistani link to the attack, India succeeded in turning the Pulwama attack into a diplomatic and media trial with Pakistan in the dock. In Islamabad, the National Security Committee discussed the aftermath of the Pulwama attack and called for banning the Jamaat-ud-Dawa (JuD) and its welfare organisation, the Falah-i-Insaniyat Foundation (FIF). As an afterthought, the meeting also highlighted the need for India to introspect on violations in Kashmir.¹⁴ Based on mounting pressure against Masood Azhar and JeM, Pakistan must now intensify and broaden its control over these organisations. These attempts need to be taken at the federal level and translate into solid policy measures for de-radicalization aimed at these organisations.

In response to the Pulwama attack, India carried out airstrikes on Balakot. As outlined above, Art. 2(4) of the UN Charter advocates refrain in the use of force. The Caroline Test under Customary International Law employed at the Nuremberg Trial lists four components for the use of force in self-defense. These are that the threat be (1) instant, (2) overwhelming (3) leaving no choice of means and (4) no moment for deliberation.¹⁵

Since the attack, India's Foreign Minister has admitted that no Pakistani citizens or soldiers were killed in the Balakot Airstrike.¹⁶ It has also since been proven that Indian planes dropped their payload in open ground, as opposed to their original claims of successfully targeting a militant camp.^{17,18} While India claimed a large number of casualties in the attack, they were unable to produce intelligence corroborating these claims. Pakistan denied casualties and said that the Pakistan Air Force jets had forced the Indian jets back across the Line of Control.¹⁹ The airstrikes were played up on Indian media, as part of the war hysteria framing the general elections. The attack, termed once again as preemptive strikes, does not hold up under international law, as India was unable to state any imminent threat in this case.²⁰ It is unlikely that India could satisfy the action under the Caroline Test outlined above.

On February 27, 2019, Pakistan Air Force jets shot down two Indian jets and captured an Indian pilot. In the initial reports, there were claims that Pakistan had in fact captured two pilots, one of whom was being treated at the Combined Military Hospital.²¹ However, this count was later revised to one pilot. India confirmed that one of their pilots flying a MIG-21 Bison was missing. The captured pilot, IAF Wing Commander Abhinandan Varthaman was arrested in the Horran Village of Azad Jammu and Kashmir. In video footage released later, Abhinandan was seen in custody and stated that he was being treated well by the Pakistan Army. In attempts to de-escalate, the Prime Minister Imran Khan announced in Parliament that Pakistan would be releasing the captured pilot as a 'peace gesture'. Abhinandan was released on Friday night, through the Wagah border. India termed the pilot's release a diplomatic victory. On Pakistan's end, a heavily edited video of the pilot was released, in which he could be seen criticising the Indian media and praising the way he was treated by the Pakistani authorities following his capture.²² This edited video was widely circulated on the eve on Abhinandan's release back to India. The edited video was a diplomatic misstep by Pakistan, negatively impacting what was otherwise a positively perceived step towards de-escalation by Pakistan.

Overall in the Abhinandan affair, Indian missteps overshadowed those by Pakistan. Indian claims of downing an F-16 fighter jet belonging to the Pakistan Air Force have been negated by a fleet count by US defence officials. On April 4, 2019, *Foreign Policy* magazine reported: "India's claim that one of its fighter pilots shot down a Pakistani F-16 fighter jet in an aerial battle between the two nuclear powers in February appears to be wrong. Two senior US defense officials with direct knowledge of the situation told *Foreign Policy* that US personnel

recently counted Islamabad's F-16s and found none missing. The findings directly contradict the account of Indian Air Force officials, who said that Wing Commander Abhinandan Varthaman managed to shoot down a Pakistani F-16 before his own plane was downed by a Pakistani missile."²³ This revelation negates India's stance on the PAF entering Indian Air Space. In case Pakistan decides to pursue this against India at an international forum, they will not be able to provide a pretext for breaching Pakistan's territorial integrity and sovereignty.

Section 2: Lawfare for Economic and Diplomatic Ends

CPEC

The China-Pakistan Economic Corridor (CPEC) is part of the larger Belt and Road Initiative (BRI) undertaken by China. Specifically, the China-Pakistan Economic Corridor is a mega project between the People's Republic of China and Pakistan, focused broadly on project financing. CPEC is valued at over 60 billion dollars and expected to cross 100 billion dollars by 2030.²⁴ The project is likely to have significant geopolitical ramifications in the region. One of the main objectives of CPEC is to connect the Chinese border city of Kashgar to the Southern Port of Gwadar in Pakistan. Under immense pressure due to sanctions imposed by the United States, neighbouring Iran is rapidly developing the Chabahar port, with a steady dose of investment from India.²⁵ Both Pakistan and Iran share a testy security climate: while Iran's security concerns stem from unrest in West Asia and the Persian Gulf, Pakistan's security climate is primarily focused on India's involvement in Kashmir and Balochistan and its increasing influence over Afghanistan.²⁶ Pakistan has tried to steer clear of dragging Iran into the Khulbushan case. An official is quoted by DAWN as saying "In reply to a question about Iran, the official said the government was convinced that Iran had no role in Jadhav's episode though he remained there for some time. "India wants to drag Iran into this dispute but we will not let it happen," he said."²⁷

Additionally, India, now backed by the US, has alleged that CPEC is an illegal project as it passes through disputed territory.²⁸ According to India's Foreign Secretary: "CPEC passes through a territory that we see as our territory. Surely people will understand what [the] Indian reaction is. There needs to be some reflection and I am sorry to say that we have not seen signs of that."²⁹ This is furthering the US-Indian alliance against CPEC and its implications in re-aligning geopolitical realities. However, China has denied this claim and terms CPEC a connectivity project that will not impact the Kashmir dispute. As reported by Economic Times: ""The BRI will bring benefits to more countries along the BRI. We also said many CPEC corridor is an economic cooperation not targeted any third party and does not involve territorial dispute," Hua said."³⁰ CPEC is a collaborative project and China's inclination in terms of cooperation with other neighbours including India, should dissipate India's concerns.

Indian Lobbying to Isolate Pakistan

Financial Action Task Force

On the back of its border escalation with Pakistan, India is also resorting to use of the Financial Action Task Force as a forum to lobby international opinion against Pakistan. Pakistani officials claim that India has been making attempts to convince other members to blacklist Pakistan.³¹ Although Pakistan has put some proscribed outfits on a high risk list, there needs to be further action domestically in order to debunk India's claims of terror financing in Pakistan. Pakistan has taken steps towards a more transparent currency declaration regime. However, the FATF review in January sees this as 'limited progress' and has outlined ten steps that need to be taken swiftly for Pakistan to address counter-terrorist financing issues, the next review by the FATF will be in June 2019.³² Pakistan has also claimed that lobbying by India is a

violation of the FATF process and has now written to the FATF asking its President to remove India as co-chair of the Asia Pacific Group Review.³³

Lawfare in Other Arenas

India has been making similar efforts to isolate Pakistan on various other forums including the International Cricket Council. After Pulwama, the Indian cricket team wore military caps for their last match with Australia on March 8, 2019. Pakistan issued a letter to the ICC, calling for action against the BCCI for using the caps to send a political message. However, the ICC denied Pakistan's claims and framed the cap issue as a 'fund-raising' drive and tribute to the armed forces by the Indian Cricket team. The ICC's position negated not only its own code of conduct but also its own precedents regarding Imran Tahir and Moeen Ali³⁴, simultaneously demonstrating India's growing influence on these forums. India also tried to deny visas to Pakistani shooters; on this instance, the International Olympic Committee termed this a violation of the Olympics Charter and threatened India with isolation in the future. The IOC statement read: "As a result, the IOC Executive Board also decided to suspend all discussions with the Indian NOC and government regarding the potential applications for hosting future sports and Olympic-related events in India."³⁵

The OIC

In another loss on the foreign policy/diplomacy front, India was invited as the Guest of Honour at the Organization of Islamic Cooperation conclave. Pakistan's foreign minister conveyed Pakistan's concern to the OIC over the invitation and threatened a boycott of the event if the invitation to the Indian external affairs minister was not withdrawn.³⁶ In another diplomatic setback, the invitation was not revoked, and the Foreign Minister from Pakistan boycotted the meeting, after opposition parties in Pakistan called on taking a strong position in the OIC, and sent a lower-level delegation instead. Although the OIC condemned Indian brutalities in IOK, the final declaration did not mention Kashmir. Instead, Kashmir was addressed in separate statements. This may have been a missed opportunity for Pakistan. The OIC forum could have been of prime importance in raising the Kashmir issue and attempting to resume dialogue with India in the tense climate that persisted at the time. Given Pakistan's position with other members of the OIC, this platform could have been better utilized by the FM in order to pressurize his India.³⁷

Despite the highly escalated skirmishes between the two countries, there has been an agreement in the form of the Kartarpur Corridor. The corridor is aimed at facilitating Sikh pilgrims by connecting the two Shrines on either side of the border and granting them visa-free entry. Originally proposed in 1999, during Nawaz Sharif's tenure, the corridor's groundbreaking was held in November 2018.³⁸ The project is expected to be inaugurated in November 2019. Delegations from both Pakistan and India are in negotiations in order to finalise an agreement regarding the modalities of the project. Delegates met at the Attari-Wagah border on 14th of March 2019. Although Pakistan is pushing for the corridor as a form of advocacy for peace, such dialogue or rebuilding efforts might not suit the Modi campaign in the current political climate at home.³⁹ Interestingly, the Kartarpur corridor is also becoming an electoral issue in India. Given the murky environment, it may take a few weeks before an agreement is actually concluded between the two countries.⁴⁰ It is important for Pakistan to utilize this issue not just for diplomatic gains but also perhaps to engage in rebuilding ties with India, moving towards some form of normalcy.

Recommendations:

Some common sense steps are critical in order to ensure that Pakistan does not continue to lose ground through its disregard of the opportunities and risks of lawfare. To highlight these, we conclude with some recommendations:

1. Create and prioritize a current list of security, economic, and diplomatic objectives for legal attention. These should include Kashmir, CPEC, the Indian Cold Start doctrine and preemptive war theory, maritime security, and a review of treaties with all neighbors.
2. Conduct a risk assessment of possible hostile moves on the military and diplomatic fronts by adversaries and prepare legal arguments to deploy immediately when needed.
3. Ensure that all security and economic engagements are vetted by dedicated legal teams beforehand to avoid missteps.
4. Recruit and maintain a large cadre of legal academics and lawyers to attain the objectives above.
5. Train operational personnel and decision-makers in the field in the legal areas relevant to their work to minimize any claims of non-compliance.
6. Create an offensive strategy to mount legal challenges to adversaries as soon as possible on any vulnerable fronts.
7. Integrate lawfare into the training of the diplomatic core and defense personnel as a critical component of international relations.

Too often we close the stable doors when the horses have already bolted. Pakistan's small diplomatic victories in the recent past have been accidental, or a result of Indian hubris. However, India's successes have been outcomes of planned, consistent, and multi-pronged lawfare. India is able to use weak legal arguments— such as preemptive strikes— and weak evidence— such as unverifiable claims of Pakistani involvement in various attacks— to repeatedly put Pakistan on the defensive and harm our international standing. This does not happen because India's arguments are more valid, but rather because they are prepared and timed more carefully. India generally maintains the initiative on the legal plane. This is an area where, with even modest planning and prioritizing, Pakistan can compete pound for pound. We have excellent legal talent that is only used in the interest of the state on a defensive or reactive basis. This lethargy must change. We fear that Pakistan will continue to waver between passivity and delayed reaction unless it recognizes and invests in a cadre of international law experts that are devoted fulltime to making proactive arguments, cases, and legally airtight narratives to match the Indian lawfare machine.

References

¹ '14 offloaded from passenger bus, shot dead on Makran Coastal Highway' DAWN (18 Apr 2019), online: <https://www.dawn.com/news/1476893>.

² 'India planning 'military action' against Pakistan this month, says foreign minister', DAWN (07 Apr 2019), online: <https://www.dawn.com/news/1474540>.

³ "The Jadhav case — only the facts', *The News International* (18 Feb 2019), online: <https://www.thenews.com.pk/print/433383-the-jadhav-case-only-the-facts>. 'Transcript of RAW agent Kulbhushan's confessional statement', DAWN (30 Mar 2016), online: <https://www.dawn.com/news/1248786>.

⁴ United Nations, *Vienna Convention on Consular Relations*, 24 April 1963, available at: <https://www.refworld.org/docid/3ae6b3648.html> [accessed 10 April 2019]. ("Article 36 Communication

and contact with nationals of the sending State 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State; (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.”).

⁵ 'Day 2 of the Oral Hearings in The Jadhav Case' RSIL Updates, Research Society of International Law, online: <https://rsilpak.org/2019/02/day-2-of-the-oral-hearings-in-the-jadhav-case/> (“State Practice pre-VCCR/VCCR crystallized existing customary IL. The Rapporteur of the International Law Commission acknowledged that states do have recourse to emergency regulations in relation to performing consular obligations. Another author was cited to assert the point that national security may be a valid reason to deny consular access. Moreover, the preamble of VCCR kept pre VCCR customary international law intact. Finally, he cited authors writing after VCCR as well which used State Practice to emphasize this exception to the rule of consular access. In his opinion, what matters is the position in 1963 and not after.”).

⁶ 'ICJ to resume Kulbhushan Jadhav case as Pakistan checkmated Indian stance' *Dunya News* (20 Feb 2019), online: <https://dunyanews.tv/en/Pakistan/479297-ICJ-to-resume-Kulbhushan-Jadhav-case-as-Pakistan-checkmated-Indian-stance>.

'Pakistan makes strong statement in Indian spy Kulbhushan case at ICJ' *The News International* (19 Feb 2019), online: <https://www.thenews.com.pk/latest/434076-kulbhushan-jadhav-case-pakistan-presenting-arguments-in-icj> (“On alternative, he said, even if the Court were to hold that Vienna Convention’s Article 36 was engaged and a right to consular access was denied, the appropriate remedy would be filing a review before Pakistan’s High Court, any time by Jadhav and his family. Earlier, Attorney General for Pakistan Anwar Mansoor Khan as Agent said Pakistan remained committed to peaceful resolution to all outstanding disputes and mentioned that the country suffered more than 74,000 casualties due to interference by neighbouring India. In this context, he said, Commander Jadhav working for Indian spy agency Research and Analysis Wing (RAW) entered Pakistan with predetermined plan of sabotage and confessed to his crime before the judicial magistrate.”).

⁷ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> [accessed 21 April 2019], Art. 2(4). See also 'The Problem of Morally Justifying the United States Strike in Syria' *LAWFARE* (11 Apr 2017), online: <https://www.lawfareblog.com/problem-morally-justifying-united-states-strike-syria>. (“The drafters of the United Nations Charter decided the best way to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind” was by preventing unilateral state action. To do this, they included Article 2(4) which states that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” This rule only has two exceptions—if the United Nations Security Council collectively authorizes military action or if a state invokes their inherent right of individual or collective self-defense. Outside of this framework, any use of force is unlawful.”).

⁸ 'Kashmir 'mass rape' survivors fight for justice', BBC <https://www.bbc.com/news/world-asia-41268906>. 'Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan' *Office of the United Nations High Commissioner for Human Rights* (14 Jun 2018), online: <https://www.ohchr.org/Documents/Countries/PK/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

⁹See Jena, Smrutisnat, 'Everything We Know So Far About Adil Ahmad Dar, The Suicide Bomber Behind The Pulwama Terror Attack' *Scoopwhoop* (15 Feb 2019), online: <https://www.scoopwhoop.com/everything-we-know-about-suicide-bomber-pulwama/#.7fuu7myrv>.

¹⁰See 'Amnesty: Stop using pellet guns on Kashmiri protesters' *Al Jazeera* (5 Aug 2016), online: <https://www.aljazeera.com/news/2016/08/pellet-guns-kashmiri-protesters-160804132240440.html>

¹¹See 'Kashmir's award-winning tormentor' *Al Jazeera* (5 Jun 2018), online: <https://www.aljazeera.com/indepth/opinion/kashmir-award-winning-tormentor-180603111749152.html> ;See also 'Human shield row: Amnesty condemns J-K's refusal to compensate victim' *Hindustan Times* (16 Nov 2017), online: <https://www.hindustantimes.com/india-news/human-shield-row-amnesty-condemns-j-k-s-refusal-to-compensate-victim/story-69EVG2xbBn05xfC0gGueNJ.html>.

¹²See 'Amnesty International accused of sedition in India' *Al Jazeera* (18 Aug 2016) online: <https://www.aljazeera.com/news/2016/08/amnesty-international-accused-sedition-india-160818081440628.html>.

¹³ 'Security Council Press Statement on Suicide Bombing in Jammu and Kashmir', (21 Feb' 2019) <https://www.un.org/press/en/2019/sc13712.doc.htm>. ("The members of the Security Council condemned in the strongest terms the heinous and cowardly suicide bombing in Jammu and Kashmir, which resulted in over 40 Indian paramilitary forces dead and dozens wounded on 14 February 2019, for which Jaish-e-Mohammed has claimed responsibility.... The members of the Security Council reaffirmed that terrorism in all its forms and manifestations constitutes one of the most serious threats to international peace and security. The members of the Security Council underlined the need to hold perpetrators, organizers, financiers and sponsors of these reprehensible acts of terrorism accountable and bring them to justice, and urged all States, in accordance with their obligations under international law and relevant Security Council resolutions, to cooperate actively with the Government of India and all other relevant authorities in this regard.").

¹⁴ 'NSC orders acceleration of anti-terrorism ops; reinstates ban on JuD, charity arm FIF' *DAWN* (21 Feb 2019) online: <https://www.dawn.com/news/1465212>.

¹⁵ Waxman, Matthew C., *The Caroline Affair in the Evolving International Law of Self-Defense* (August 28, 2018). Matthew Waxman, *The Caroline Affair in Evolving International Law of Self-Defense*, (Aug. 28, 2018), *The LawFare Book Review*; Columbia Public Law Research Paper No. 14-600. Available at SSRN: <https://ssrn.com/abstract=3240618>.

¹⁶ 'No Pakistani soldier, citizen killed in air strike: Sushma' *DAWN* (19 Apr 2019), online: <https://www.dawn.com/news/1477068>.

¹⁷ 'Balakot air strike: Pakistan shows off disputed site on eve of India election' *BBC* (10 Apr 2019), online: <https://www.bbc.com/news/world-asia-47882354>

¹⁸ 'Balakot: Indian air strikes target militants in Pakistan' *BBC News* (26 Feb 2019) online: <https://www.bbc.com/news/world-asia-47366718>.

¹⁹ *Ibid.*

²⁰ 'The Balakot Strikes: Analysing India's "Non-Military Preemptive Action' *Opinio Juris* (6 Mar 2019), online: opiniojuris.org/2019/03/06/the-balakot-strikes-analysing-indias-non-military-preemptive-action/; ("India's official statement mentions that the "preemptive" strikes were undertaken "in the face of imminent danger", which was based on credible intelligence that the JeM was planning another terror attack against the country. It is argued that the usage of the phrase "preemptive strikes" hovers between two variations of the right of self-defence – anticipatory and preventive. Such phraseology seems to conflate the right of 'anticipatory self-defence' with the arguably unrecognised 'preventive right of self-defence,' and begets ambiguity regarding India's official legal stance on the Balakot strikes. Furthermore, solely relying on the phrase "imminent danger", in the absence of any concrete evidence of the imminent threat, not only leaves the lawfulness/legality of the air strikes in doubt, but also fails to clear the confusion highlighted in the previous paragraph.").

²¹ 'Pakistan says it shot down two Indian jets as Kashmir border crisis deepens' *CNN* (28 Feb' 2019) online: <https://edition.cnn.com/2019/02/27/india/india-pakistan-strikes-escalation-intl/index.html>.

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