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**Understanding the ‘Xi Jinping’ thought on Rule of Law: Future
Substance of Lawfare and Challenges in the Indo-Pacific**

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Abstract

Lawfare aims at using the law and legal systems to hurt or discredit opponents or stop them from reaching their political goals. It is seen that the rule of law has been used to shape the future course of the war as an alternative to traditional military means. Regimes worldwide have started using the law to constrain behaviour, contest circumstances, confuse legal precedents, and gain an advantage. In this paper, the author looks at how China uses "lawfare" in its own country, worldwide and lessons for India.

Understanding the ‘Xi Jinping’ thought on Rule of Law: Future Substance of Lawfare and Challenges in the Indo-Pacific.

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Introduction

While the world focused on the conflict between Ukraine and Russia, China and Solomon Island signed an inter-governmental security pact¹ which has been raising concerns regarding the rule-based order² in the Indo-Pacific region. China, as a rising power, is undoubtedly becoming a significant adversary to various countries bordering it, including India; its growth aims at unipolar Asia, which is causing enormous uncertainty in the region.

Due to which it becomes important to understand the multipolar distribution of power in the region since Indo-Pacific is becoming a site for political contestation and the rise of 'lawfare'. It is seen that in order to contest for leadership, China has been active on the front to demonstrate, influence, and ideate with different nations. It is actively setting rules and terms of compliance for it through a set of carefully crafted strategies of 'lawfare'.

This paper seeks to examine the theoretical underpinnings of lawfare, its internal dimension that influences China's domestic policy, and its external dimension that has a bearing on China's strategic and international standing, and finally how China uses lawfare to intimidate other nations and what the world can learn from it.

Theoretical underpinning of ‘Chinese characteristics’ of Lawfare

Chinese Military strategist Sun tzu famously wrote that ‘*Supreme excellence consists in breaking the enemy's resistance without fighting*’. Sun Tzu's philosophy continues to be very relevant in Chinese Military Doctrines. Notably, it was PRC President Jiang Zemin who told a group of Chinese international law experts in 1996, "*we must be adept at using international law as a weapon.*"³ This article explores the emergence, usage and trend of law by the PRC, in the two decades since it has adopted lawfare as a strategy and systematically used it against its potential adversaries. Now, when we see a trend of usage of law by China, it

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¹ Krishnan, A., 2022. *China, Solomon Islands sign landmark security pact*. [online] Available at: <<https://www.thehindu.com/news/international/china-solomon-islands-sign-landmark-security-pact/article65335863.ece>> [Accessed 4 July 2022].

² Caitlin, B., 2020. *Securing the 'Rules-Based Order' in the Indo-Pacific on JSTOR*. [online] Jstor.org. Available at: <<https://www.jstor.org/stable/26924333?seq=1>> [Accessed 4 July 2022].

³ William, R., 2020. *International Law with Chinese Characteristics*. [online] Available at: <https://www.brookings.edu/wp-content/uploads/2020/10/FP_20201012_international_law_china_williams.pdf> [Accessed 4 July 2022].

is essential to understand the causes and effects of the increasing legalization of international affairs as the geopolitics of the region demands.

Since President Jiang Zemin's decision⁴, multiple PRC military texts have been devoted solely to the notion of '*falū zhan*' (legal warfare), which has long been debated. It is important for us to understand why lawfare tactics are being employed against adversaries across the globe, and particularly in the Indo-Pacific region.

The Chinese Lawfare has been the most advanced and actively seen in the Indo-Pacific region. For instance, China's creation of artificial islands and then furthering the idea of 'nine-dash line'⁵ that covers most of South China Sea⁶. It has both, internal as well as external dimension to it⁷. On the one hand, by engaging in lawfare, a state may claim that an act it has conducted is legal, while a particular act of another state is illegal. In other words, lawfare may function to acquire legality. On the other hand, lawfare may be initiated to persuade others of the legitimacy of a specific act. A state may pursue both legality and legitimacy through lawfare, while it may only seek one of the two. It should be stressed that in light of three primary characteristics of international law, which include (1) international law exists in a horizontal, state sovereignty-based world; (2) international law is heavily affected by the international political system; and (3) international law is relatively poor in the formal rationality, the function of the legitimacy of lawfare is as significant— if not more significant— than the function of legality. Therefore, lawfare has become increasingly important in regulating international relations regarding legality and legitimacy. It has emerged as a meaningful "weapon" with legal arguments presented, defended and enforced.

The concept of lawfare was first defined by Major General (Prof) C Dunlap⁸ in the year 2001, when he debated the concept of '*law being used as method of warfare which is used as a means of realizing a military objective*'. Terrorist groups such as the Al-Qaeda and the Taliban had resorted to using civilians as human shields against attacks by the American forces, which led to civilians becoming collateral damage. Effectively, this amounted to using civilians to deter governments from applying military force as governments would shy away from causing civilian deaths and casualties. It gave rise to the concept of 'lawfare' in academic circles in the West. Dunlap defined lawfare as "the use of law as a means of accomplishing what might otherwise require the application of traditional military force", particularly by "those unable to challenge America's high-tech military capabilities".

⁴ Wang, D., 2008. *China's Unequal Treaties: Narrating National History*. New York: Rowman and Littlefield Publishers, p.128.

⁵ Tsirbas, M., 2016. *What Does the Nine-Dash Line Actually Mean?*. [online] Available at: <<https://thediplomat.com/2016/06/what-does-the-nine-dash-line-actually-mean/>> [Accessed 4 July 2022].

⁶ William, R., 2016. *Tribunal Issues Landmark Ruling in South China Sea Arbitration*. [online] Available at: <<https://www.lawfareblog.com/tribunal-issues-landmark-ruling-south-china-sea-arbitration>> [Accessed 4 July 2022].

⁷ Rudolf, M., 2021. *Xi Jinping Thought on the Rule of Law*. [online] Available at: <<https://www.swp-berlin.org/10.18449/2021C28/>> [Accessed 4 July 2022].

⁸ Dunlap, M., 2008. *Lawfare Today: A Perspective*. [online] Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5892&context=faculty_scholarship> [Accessed 4 July 2022].

China's military scholars began to examine the concept of lawfare as early as 1999. Adopting a revolutionary approach in their treatise titled, '*Unrestricted Warfare*,' the authors who were two PLA colonels, Qiao Liang and Wang Xiangsui, provided the context for the PRC's use of lawful warfare⁹. It intended future Army leaders to use a legal instrument in institutions to achieve strategic goals. These are the foundations on which China's modern-day lawfare has evolved, allowing future PRC officers to catalyse the use of legal instruments in institutions and politics to achieve strategic goals through a hybrid warfare approach.

Moreover, through various judicial books such as "*Analysis of 100 Cases of Legal Warfare*"¹⁰, which was co-authored by prominent Chinese jurist Cong Wensheng, it was described how lawfare case studies can be used against several countries, including the United States and its adversaries. Furthermore, it substantiates by terming that the users can discover much room for manipulation in terms of the substance, timing, and scope of non-application of the rules of war and that armies should use the art of lawfare in peacetime and in future armed conflicts. The PLA published "*Legal Warfare in Modern War*"¹¹ in 2005, written by Xa Hengdong, an attorney and high-ranking military official. He adds that since the exigencies of war do not allow such restraint, every country participating in armed conflict conforms fully with the law of armed conflict. He believes that the law of armed conflict should not be viewed as an inviolable set of boundaries but rather a tool for achieving goals such as manipulating perceptions during peacetime. Finally, according to their Military Science Academy text, "War is not just a military fight, but also a comprehensive contest on fronts of politics, economy, diplomacy, and law," as mentioned in "*The Science of Military Strategy*"¹².

Lawfare and the Emergence of Chinese Characteristics of 'Rule of Law': A Deception?

At the 4th plenary session of the 13th National People's Congress (NPC)¹³, a term which emerged in the Annual work report by the standing committee was '*Xi Jinping thought on Rule of Law*' highlights that party leadership will further anchor in law, and a theory about the rule of law with Chinese characteristics is set to be developed.

International crises may necessitate the mobilization of large resources and the development of an advanced strategy to protect the legal argument and the overall national interest of a given state. A state's approach to international law can be better understood by studying how it

⁹ Liang, Q. and Xiangsui, W., 1999. *Unrestricted Warfare*. [online] Available at: <<https://www.cryptome.org/cuw.htm>> [Accessed 4 July 2022]. This book was written by two PLA senior colonels of younger generation of Chinese Military officers. In this, he quotes, "*the first rule of unrestricted warfare is that there are no rules, with nothing forbidden.*" Further elaborating on the idea that *strong countries make the rules while rising ones break them and exploit loopholes*; comes the core understanding of 'rule of law' with Chinese characteristics.

¹⁰ Cong Wenshen, *Legal Warfare: Discussion of 100 Examples and Solutions* (Beijing, PRC: PLA Publishing House, 2004), pp. 184–186, [Accessed 4 July 2022].

¹¹ Cheng, D., 2012. *Winning Without Fighting: Chinese Legal Warfare*. [online] The Heritage Foundation. Available at: <<https://www.heritage.org/asia/report/winning-without-fighting-chinese-legal-warfare>> [Accessed 4 July 2022].

¹² Odom, Jonathan G., A China in the Bull Shop? Comparing the Rhetoric of a Rising China with the Reality of the International Law of the Sea (July 1, 2012). *Ocean and Coastal Law Journal*, Volume 17, Issue 2, 2012, Available at SSRN: <https://ssrn.com/abstract=2124043>, [Accessed 4 July 2022].

¹³ Lianguai J, 'The Fourth Session Of The Thirteenth National People's Congress' (*Npc.gov.cn*, 2021) <<http://www.npc.gov.cn/englishnpc/t4s/13jqgrmdbh4chy.shtml>>. The agenda for the conference can be accessed through this link: (http://www.xinhuanet.com/english/2021-03/04/c_139783826.htm), accessed 4 July 2022.

responds to an international crisis¹⁴. Lawfare specifically deals with usage of law to bolster legitimacy and strategy and that is what ‘*Xi Jinping thought on Rule of Law*’ or Rule of law ‘*with Chinese Characteristics*’ aims to do.

It would include China's interpretation in shaping maritime, cyber-security, and space arenas among other¹⁵. It would mean that the internal dimensions of policy-making shall affect their advocacy efforts in international legal forums, interpretations, and scholarly articles designed to shape opinions according to the preferred advantage and reflect the PRC's preferred interpretation of International Law.

Through this thought, the objective was to find balance. The ‘*need to lie low and the aspiration to rise*’ and to seek a balance between internal and external forces depends on the circumstances. So, the document contains the following guideline principles that they shall realize by 2025 and 2035; it is two-fold in nature: first, the internal factor would be to use the law to regulate China's institutional framework. The crackdowns on Chinese technology firms, businesses, regulating banking, digital economy, internet finance, usage of Artificial Intelligence, big data, the "social credit system", and other emerging technologies are part of the efforts to follow the guiding principles. The aim of the crackdowns is a mere solid governance system with the party playing a central role, more defined by law and judiciary¹⁶. Thus, the document states that promoting law as an integral part of the Chinese society and state is essential, adhering to it by combining the rule of law and rule of virtue¹⁷.

Secondly, the external international and strategic dimension comes through five points discussed during the meeting¹⁸, which focused on development of the Rule of Law with ‘*Chinese Characteristics*’ for strategic use. It discusses about the implementation of law and its enforcement, and it makes special consideration to the bilateral legal ties between Hong Kong, Macau and Taiwan – as the primary goal of this institutional framework will be to regulate the control and goal setting between the Chinese Communist Party (CCP) and People's Liberation Army (PLA) through the promotion of the rule of law with ‘*Chinese characteristics*’.

This meeting in January 2021 showcases an ambition that underlines that Beijing shall be using the understanding of law as a political instrument while setting goals of establishing a socialist

¹⁴Ranjan P, 'It'S Time To Engage In 'Lawfare'' (2022) <<https://www.thehindu.com/opinion/op-ed/its-time-to-engage-in-lawfare/article37387458.ece>>. "The Rule of Law and Maritime Security: Understanding Lawfare in the South China Sea". *SSRN Electronic Journal*. Elsevier BV. doi:10.2139/ssrn.3378904, accessed 4 July 2022

¹⁵ Goldenziel J, 'Law As A Battlefield: The U.S., China, And Global Escalation Of Lawfare' (*SSRN*, 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3525442> accessed 4 July 2022

¹⁶ 'Decrypting China'S Big Tech Crackdown – Part 1' (2021) <https://www.orfonline.org/expert-speak/decrypting-chinas-big-tech-crackdown/>. Subsequently, Part 2 (<https://www.orfonline.org/e\xpert-speak/decrypting-chinas-big-tech-crackdown-part-2/>) focused on Big Technology, accessed 4 July 2022.

¹⁷ Hu T, and Wei C, 'Communist Party Releases New Set Of NPC-Related Reform Goals in First Five-Year Plan on Building Rule of Law In China' (*NPC Observer*, 2021) <<https://npcobserver.com/2021/01/10/communist-party-releases-new-set-of-npc-related-reform-goals-in-first-five-year-plan-on-building-rule-of-law-in-china/>> accessed 4 July 2022.

¹⁸ Meeting Report on the Standing Committee of the National People's Congress, delivered at the Fourth Session of the 13th National People's Congress on March 8, 2021 (<http://www.xinhuanet.com/english/download/2021-3-14/314fulltext.pdf>), accessed 4 July 2022.

legal system with Chinese characteristics¹⁹. It would mean harnessing the usage of law as a political instrument. The leadership in Beijing does not recognize the "rule of law", as they call it an extension of 'Western thought' and that it is lost in translation; therefore, it is interested in propagating the 'Chinese understanding of the rule by law'. Therefore, the lawfare practised under the Xi Jinping thought on Rule of Law is critical to understand as its basic objective is to undermine the rule of law in the Indo-Pacific.

Internal Dimension of Rule of Law with ‘Chinese characteristics’

The internal dimension of the '*Xi Jinping thought on the rule of law*' focuses on helping the states/municipalities gain prosperity with the rule of virtue²⁰ and the combination of the rule of law. Since the ideological approach to China's rise has been to focus on two core elements: 1) a focus on economic growth over political democracy and social justice 2) an authoritarian regime with an executive branch which can pursue public policies leading to the growth of the nation even if it conflicts the rule of law or legitimacy²¹. These efforts lead to more solid governance with a clearer administrative responsibility defined. With the help of the judicial system aiding the executive, progress can be made in the formation of '*the rule of law*' with Chinese characteristics.

In the past, the usage of law in historical and contemporary Chinese culture²² has been a tool of authority, not a constraint upon it. The Marxist Leninist legal concepts have always remained fundamental to domestic Chinese law; it is seen that the usage of laws is now shaping the future course of China's domestic, foreign policy and international affairs. The last time China made such significant structural changes in its legal system was during the Opium War of the 1840s and post-1978, which later became the pillars for China's economic growth²³.

The concept of the rule of law has its roots in ancient Greece and was propounded later by liberal political theorists. The current extensions of 'Rule of Law' extend in the realm of international developments, economic, strategic and even military international orders. It has its root in Greece, wherein Aristotle, a Greek Scholar, propounded this concept.

Since the change of party leadership in 2012, Xi Jinping has furthered a new substance of strategic thinking that promotes the most concrete version of how the law should be applied internally and internationally. In its first "Plan on Building the Rule of Law in China (2020-2025)"²⁴, Beijing aims to establish its own set of rules for the international order with 'Chinese

¹⁹ Cohen J, "*Rule Of Law*" *With Chinese Characteristics: Evolution And Manipulation* (International Journal of Constitutional Law, Volume 19, Issue 5 2021), accessed 4 July 2022.

²⁰ Originates from Zhou Dynasty; meaning one can be moral in thought; thus, the leader's moral cannot be questioned as his conduct is always moral.

²¹ Cai C, 'International Law in Chinese Courts During the Rise of China' (2016) 110 American Journal of International Law, accessed 4 July 2022.

²² Ch'o-Hsüan J, and H. Ts'ao I, 'The Introduction of Marxism-Leninism into China' (1970) 10 Studies in Soviet thought <<https://www.jstor.org/stable/20098410>> accessed 4 July 2022

²³ Pai S, and Na L, 'Chinese Legal System (1979-2019), Historical Development and Overview – EBC, 2021, <https://www.ebcwebstore.com/product_info.php?products_id=99097629> accessed 4 July 2022.

²⁴ Excerpts from Press Release of The State Council of The People's Republic of China, "China issues plan on building rule of law", January 10 (2021); 'China Issues Plan On Building Their Own Rule Of Law' (*English.gov.cn*, 2022) <http://english.www.gov.cn/policies/latestreleases/202101/10/content_WS5ffaf67ec6d0f72576943960.html> accessed 5 July 2022

characteristics'²⁵ showcases that the laws framed by the Xi administration will be an extension of Chinese Communist Party (CCP)²⁶, thus, giving them the legitimacy to interpret according to their will and using it as an instrument to enforce compliance in the nation.

This version of Xi Jinping's thought on 'Rule of Law'²⁷ provides more for judicial reforms that consolidate the power to the party. The Chinese leadership defines that promoting the rule of law is necessary for the resurgence of the People's Republic of China (PRC) in the long term and realizing the dream of becoming a world power. Just like how China's improvised on the concept of Socialism and Communism, which was the foundation of the USSR, similarly, the Western concept of 'Rule of Law' is being improvised to be Rule of Law with Chinese characteristics²⁸. For instance, the formulation of the concept of 'Human rights with Chinese characteristics'.

Since 2012, there have been several instances wherein several legislations were being passed, especially on regulating national security, digital economy, internet finance, and election administration in Hong Kong or Taiwan. In 2021, land border law²⁹ bordering India as these legislations shall affect domestic and international levels. The efforts have been to promote '*digitalization, networkisation and intelligentisation*' of the concept of the rule of law in China' as the usage of law has been to harmonize laws and enact a unified Chinese Administrative Procedural Law. For the first time, Beijing plans to enact national laws and internal party regulations to preserve national security, sovereignty, enhance transparency, security and developmental interests through law in domestic matters. Therefore, working on the footsteps of Xi's predecessor Hu Jintao, who created various anti-corruption campaigns and promoted judicial reforms to strengthen the local judiciary of the municipalities and enhance governance.

International Dimension of Rule of Law with 'Chinese characteristics'

In September 2010, a Chinese fishing boat collided with two Japanese coast guard ships since the fisherman was trying to fish in the region controlled by Japan but claims were made by the PRC. Japanese authorities detained the boat captain and refused to release them, telling them that this would be under the court's jurisdiction in Japan. The PRC government advised blocking the exports of rare earth elements, which play a crucial role in Japan's manufacturing sector³⁰. Publicly, there was not any blockade since a public announcement of an export ban would have resulted in a complaint being filed in the World Trade Organisation for the

²⁵ Guo X, 'Repackaging Confucius: PRC Public Diplomacy And The Rise Of Soft Power', pp: 37-45, (2008) <<https://isdpu.eu/publication/repackaging-confucius-prc-public-diplomacy-rise-soft-power/>> accessed 5 July 2022

²⁶ Under the leadership of Jiang Zemin, the Party has always represented the development trend of China's advanced productive forces, the orientation of China's advanced culture, and the fundamental interests of the overwhelming majority of the Chinese people, which arguably defined the ideological principles of the CCP, essentially sought to rally all forces (and resources) to deepen China's economic reforms.

²⁷ Rudolf, M., 2021. *Xi Jinping Thought on the Rule of Law*. [online] Available at: <<https://www.swp-berlin.org/10.18449/2021C28/>> [Accessed 4 July 2022].

²⁸ W. Chan P, *Human Rights And Democracy With Chinese Characteristics?* (13th edn, Human Rights Law Review, Oxford University Press 2013).

²⁹ Land Border Law of the People's Republic of China, adopted at the 31st Meeting of the Standing Committee on October 23, 2021. (<http://www.npc.gov.cn/npc/c30834/202110/5a3d27747cc542f8bcde9030a83218e2.shtml>)

³⁰ Bradsher K, 'Amid Tension, China Blocks Vital Exports To Japan' (2010) <<https://www.nytimes.com/2010/09/23/business/global/23rare.html>> accessed 5 July 2022

violation of free trade laws. Later, it was seen that United States, Japan and European Union filed a case against China as it mines 70-90 percent of the world's rare minerals³¹ and continues to leverage it for foreign policy purposes as these are some of the examples of how instrumental usages of lawfare can be. Recently, more instances have been seen in SCS Arbitration, China-US Trade War and the Lithuania-China Row on custom clearances³².

When it comes to dimensions of international law, Chinese leaders often stress the prominence of Chinese cultural tradition in Chinese foreign affairs; it seems sound to believe that the litigation- unfriendly culture is a major reason for China's reluctance to submit itself to international adjudication. However, the so-called litigation- unfriendly culture has no significant influence on how Chinese trade legal officials handle WTO disputes and DBT consultations in the WTO³³. Notably, the SCS arbitration³⁴ made China take offence on lawfare in the region. It has begun to significantly increase the resources invested in enhancing its capability building in the field of international law. For instance, the PLA Academy of Military Science established the Martial Law Institute³⁵

When looked closely, various legislations and policies such as enforcement mechanism in BRI (Border Road Initiative); the Coast Guard Law of 2021; Data Security Law of 2021; its approaches in the maritime domain in the South China Sea³⁶, and its Arctic Policy are some of the critical foundations to China establishing a socialist legal system with Chinese characteristics. Today, one of the primary motives of usage of Lawfare by China modifying international law is to push the countries and their ships and aircraft away from China's coastline, giving them breathing room in the future³⁷. As a result, regulating sea passages, overflight spaces, and constructing islands so that the Exclusive Economic Zone (EEZ) that extends two hundred miles from its existing coastal baseline can be extended, furthering the anti-access strategy in the region. Moreover, the existence of People's Armed Forces Maritime Militia (PLA-MM)³⁸ which is notoriously known for projecting Chinese influence in the South

³¹ Nyabiage J, 'China'S Dominance Of Rare Earths Supply Is A Concern In The West' (2021) <<https://www.scmp.com/news/china/diplomacy/article/3130990/chinas-dominance-rare-earths-supply-growing-concern-west>> accessed 5 July 2022

³² Blockmans S, 'Lithuania, China And EU Lawfare To Counter Economic Coercion' (*CEPS*, 2022) <<https://www.ceps.eu/ceps-publications/lithuania-china-and-eu-lawfare-to-counter-economic-coercion/>> accessed 5 July 2022

³³ Teslik A, 'Is The WTO The Worst Of Both Worlds For U.S.-China Tech Competition?' (2022) <<https://www.lawfareblog.com/wto-worst-both-worlds-us-china-tech-competition>> accessed 5 July 2022

³⁴ *The South China Sea Arbitration (The Republic of Philippines v The People's Republic of China)* [2019] The Permanent Court of Arbitration (The Permanent Court of Arbitration)

³⁵ 'In Their Own Words: Foreign Military Thought' (*Airuniversity.af.edu*, 2022) <<https://www.airuniversity.af.edu/Portals/10/CASI/documents/Translations/2021-02-08%20Chinese%20Military%20Thoughts-%20In%20their%20own%20words%20Science%20of%20Military%20Strategy%202013.pdf>> accessed 5 July 2022

³⁶ The Maritime Police Law of the People's Republic of China, adopted at the 25th Meeting Standing Committee of the 13th National People's Congress on January 22, 2021 (http://www.moj.gov.cn/Department/content/2021-01/25/592_3265256.html) accessed 5 July 2022

³⁷ Chakravarty A, 'The Dual Rule Of Law For Ocean Governance: Recent Chinese Practices In The South China Sea' (*The Pulse*, 2021) <<https://the-pulse.in/the-dual-rule-of-law-for-ocean-governance-recent-chinese-practices-in-the-south-china-sea>> accessed 8 July 2022

³⁸ Grossman D, and Ma L, 'A Short History Of China's Fishing Militia And What It May Tell Us' (2020) <<https://www.rand.org/blog/2020/04/a-short-history-of-chinas-fishing-militia-and-what.html>> accessed 5 July 2022

China Sea is part of their strategy since it augments the operations of Chinese Coast Guard (CCG) and PLA Navy in the region.

In March 2021, the QUAD Leaders issued a joint statement popularly named the 'The Spirit of the Quad'³⁹, which reaffirmed the commitment in the Indo-Pacific region between The United States, India, Japan, and Australia. The key feature of this joint statement as 'open rule-based order' was to defend the key feature of the rule of law, freedom of navigation and overflight, peaceful resolution of disputes, and territorial integrity⁴⁰. This understanding of the 'rule of law' is not acceptable to the Chinese administration as it threatens its continued rise to the changing world order.

At this point, a total of 140 countries^{41*} spread across continents have accepted/signed to be part of the ambitious BRI⁴². Keeping that in mind, China now aims to develop international commercial courts and arbitration tribunals⁴³. Each would propagate the 'Chinese understanding of Rule of Law', which is in tandem with the region's strategic goals, thus legitimizing and expanding on the concept. The rule of law falls as a responsibility of the courts and the agencies to implement and determine the statutes' legality, which would be consistent with the Chinese understanding of the law in coming times.

China has often tried to legitimize its understanding of law, it would essentially be the tool through which it would enforce the rule of law⁴⁴ as debts are often riddled with confidentiality clauses⁴⁵, a consistent approach has been seen in the case of Sri Lanka (Hambantota Port) and Uganda (Entebbe International Airport). Since both the countries could not pay the outstanding amount, the authorities had to give up their respective assets. It was observed by the Sri Lankan Supreme Court⁴⁶ that several clauses of the Colombo Port City Economic Commission Bill, which was passed by two-third majority by the Sri Lankan parliament, were threatening the nation's sovereignty as this happens to be the extra-territorial dimension to the Chinese

³⁹"Quad Leaders' Joint Statement: "The Spirit of the Quad"", Ministry of External Affairs, India; (<https://mea.gov.in/bilateral-documents.htm?dtl/33620/quad+leaders+joint+statement+the+spirit+of+the+quad>) 2021. accessed 5 July 2022

⁴⁰ Kelly, Terrence K., James Dobbins, David A. Shlapak, David C. Gompert, Eric Heginbotham, Peter Chalk, and Lloyd Thrall. "Chinese Interests and Strategy." In *The U.S. Army in Asia, 2030–2040*, 11–46. RAND Corporation, 2014. <http://www.jstor.org/stable/10.7249/j.ctt1287mkz.10>. accessed 5 July 2022

⁴¹ Refer the five point guideline, "中共中央印发《法治中国建设规划（2020—2025年）》_新华网 | | (The Central Committee of the Communist Party of China issued the "Plan for the Construction of Rule of Law in China (2020-2025)"), *Xinhuanet.com.*, (http://www.xinhuanet.com/politics/zywj/2021-01/10/c_1126966552.htm.) accessed 5 July 2022.

⁴² Sacks, David & Hillman, Jennifer: "Countries in China's Belt and Road Initiative: Who's In And Who's Out". (<https://www.cfr.org/blog/countries-chinas-belt-and-road-initiative-whos-and-whos-out>), 2021.

⁴³ Chaudhury D, 'China'S 'Own Courts' For BRI Rows Raise Eyebrows' (2018) <<https://economictimes.indiatimes.com/news/defence/chinas-own-courts-for-bri-rows-raise-eyebrows/articleshow/62909654.cms?from=mdr>> accessed 5 July 2022

⁴⁴ Tirkey, Aarshi: "Charting China's approach to International Law | ORF", 2018 (<https://www.orfonline.org/expert-speak/charting-chinas-approach-to-international-law/>.) accessed 5 July 2022

⁴⁵ Chaudhury D, 'China's Strategy Of Debt Traps With Confidentiality Clauses' (*The Economic Times*, 2021) <<https://economictimes.indiatimes.com/opinion/et-commentary/chinas-strategy-of-debt-traps-with-confidentiality-clauses/articleshow/86576304.cms?from=mdr>> accessed 7 July 2022

⁴⁶ Abeyagoonasekera, Asanga: "How China won over local agency to shackle Sri Lanka using a port city | ORF, 2021 (<https://www.orfonline.org/expert-speak/how-china-won-over-local-agency-to-shackle-sri-lanka-using-a-port-city/>.) accessed 5 July 2022

understanding of Rule of Law. International law enforcement cooperation has been where Beijing pushes through its robust diplomacy at the highest⁴⁷. The consequences are that nations often neglect national interest and sovereignty due to their economic hardships; thus, promoting Chinese agenda becomes easier.

Therefore, all efforts and laws were coming into play to cement an alternative 'Chinese version of International law'⁴⁸ in the efforts to undermine the standard and accepted understanding of the "Rule of Law". It happens to be the foundation of various formalised and non-formalised groupings in the Indo-Pacific region since they have started becoming a strategic deterrence to Chinese interests in the region.

Recommendations:

The process of discrediting and undermining the the concept of 'the rule of law' has already started⁴⁹ with publication from the Chinese Journal of Global Governance; it proposes that understanding of the Rule of law '*with Chinese Characteristics*' is different from the western understanding of the 'rule of law'. It is evident that China is actively conducting lawfare and through deceptive concepts such as '*with Chinese characteristics*' and '*Xi Jinping thought on rule of law*'.

Therefore, this analytical study makes the following recommendations for countries like India to be better equipped to handle China's use of lawfare as an assertive and aggressive strategy:

- 1) Firstly, one has to understand the evolving concept of lawfare and its increasing usage in the contemporary world. Countries like Israel, Russia, the United States, and China actively pursue lawfare strategies to achieve their political aims. Israel runs a specific department, namely 'Dabla', an elite group of military law units that deals with 'lawfare' in domestic and international issues. This unit works to use its legal capabilities to take advantage of the growing political and economic power to settle disputes between nations through leveraging international law to Israel's advantage. In the Indo-Pacific, China is known to have the capacity to conduct lawfare and counter-lawfare in the region. Therefore, preparedness is the key to handling lawfare.
- 2) One has to understand that international law has grown in scope and intent over time. Even though regulations and politics govern international law, one of the critical roles of lawfare is that it legitimizes disputes. For instance, for the first time, the International Criminal Court (ICC) former Chief Prosecutor Fatou Bensouda decided to open an

⁴⁷ Ford, Lindsey: "*Extending the long arm of the law: China's international law enforcement drive*", Brookings, 2021. (<https://www.brookings.edu/blog/order-from-chaos/2021/01/15/extending-the-long-arm-of-the-law-chinas-international-law-enforcement-drive/>.) accessed 5 July 2022

⁴⁸ Cho, Young Nam. "*Law Dissemination Campaign in China: The Origin of Chinese 'Rule of Law' Policy.*" *Journal of International and Area Studies* 21, no. 2 (2014): 27–44. <http://www.jstor.org/stable/43490504>.

⁴⁹ Ibid.

investigation⁵⁰ against Israel by Palestine in the West Bank, East Jerusalem and Gaza Strip. Thus, in the eyes of international law, it gave legitimacy to Palestine and its narrative in the conflict.

The implementation of international law remains questionable. Case in point, after more than five years of the South China Sea Arbitration Award to the Philippines, China has consistently defied the ruling and continues to shape contrary legal opinions in many essential ways. This establishes why lawfare is needed not only for nations with diplomatic sway but also the smaller countries.

- 3) One cannot help but notice that lawfare plays in between the lines of power, politics, and justice. International law is vulnerable to be defied, misused, or abused when resolving international disputes, raising questions on its effectiveness and legitimacy. This leads us to conclude that to stop the usage of lawfare by nations practising it; it is important to critically assess legal issues and train specialists in this emerging field.

For instance, when China deals with India regarding border conflicts, it takes the help of its interpretation of history and law to assert a claim, and employs academicians, think tanks, lawyers, judges and diplomats who work in tandem with each other to make substantiate these claims. Similarly, whether the context of defending its human rights issues in Tibet or Xinjiang or its disinformation campaign to meddle in the democratic process of elections in Taiwan or using law to deny fair trial to political prisoners in Hong Kong⁵¹, the PRC's has made the expert use of lawfare its core interest.

- 4) Indian political decision-makers must understand and devote adequate resources to understand the concept of "lawfare" and encourage the convergence of an interdisciplinary study of foreign affairs, international law, and the strategic implications of their use and interpretation.

The foundation of lawfare is the field of law and national security. Unfortunately, in India, both these subjects are studied in silos; national security is studied as defence and strategic studies curriculum and law school curriculums include international law but not a single coursework on the interdisciplinary study of both. Therefore, it is vital for the convergence of both to encourage the study of lawfare.

- 5) Language plays a crucial role in understanding the ramifications of any country practising Lawfare, such as understanding the Chinese way of thinking⁵². In the recent

⁵⁰ Sharvit Baruch P, and Beeri O, 'The Changing Of The Guard At The International Criminal Court: Prospects For Israel' (2021) <<https://www.inss.org.il/publication/icc-investigation/>> accessed 8 July 2022

⁵¹ E. Kellogg T, and Yan-ho Lai E, 'Hong Kong'S National Security Law And The Right To A Fair Trial: Mission Impossible?' (*Lawfare*, 2021) <<https://www.lawfareblog.com/hong-kongs-national-security-law-and-right-fair-trial-mission-impossible>> accessed 5 July 2022

⁵² Upadhyay V, 'ITBP Jawans Learning Mandarin To Break Through Language Barrier At China Border' (*The New Indian Express*, 2020) <<https://www.newindianexpress.com/nation/2020/jul/25/itbp-jawans-learning-mandarin-to-break-through-language-barrier-at-china-border-2174757.html>> accessed 5 July 2022

move, National Education Policy 2020 dropped the Chinese language, which can be taught in schools doesn't help with the information gap and further widens our understanding of them⁵³. Cancelling each other isn't an option in geopolitics.

Recently, the United Kingdom brought in the concept of teaching the Mandarin language to more than 6,000 students from 70 secondaries, with a commitment of £25 million, as they wish to reduce the influence of the Confucius Institute⁵⁴ yet not fall back on their capability to understand Mandarin language. Therefore, many nations are resorting to Taiwan to increase their capabilities but aren't cutting down on learning a specific language.

- 6) The potential to conduct lawfare and the capability to conduct lawfare are two different things altogether. Due to this, there is a need to increase the number of diplomats and lawyers who understand international law and geopolitics.

The aim of becoming 'Vishwa Guru' cannot be fulfilled by a small foreign service cadre overburdened with work as the latest sanctioned strength is 850. If we compare this with other world powers — South Korea has over 1,250 diplomats, New Zealand has over 1,300, Brazil has over 2,000, China has over 4,500, and Japan has over 5,700⁵⁵. India's foreign policy apparatus is in dire need of restructuring with the need to address the capacity issue in implementing foreign policy and the institutional depth. Therefore, understanding international disputes is crucial not only to legal factors but also to political, economic, and cultural factors.

- 7) The Judge Advocate General (JAG) department, which is the legal branch of the Indian Armed Forces, should be reformed. At this point, JAG service is a short service commission (10-12 years), the highest office is usually headed by a Major General rank officer. Although, these service officers only assist in matters of military disciplinary cases and litigations, one can explore increasing the scope for these officers.

With the emergence of lawfare, officers from the armed forces can be trained in lawfare as part of capacity-building efforts on three fronts: the borders (Army), naval waters (Navy) and airspace (Airforce). An integrated decision-making task force which only deals with lawfare and liaison can be set up with the Ministry of External Affairs with the emergence of the Indo-Pacific theatre and issues related to borders management.

⁵³Suhasini H, Priscilla J, 'National Education Policy | Mandarin dropped from language list' <

⁵⁴ Hazell W, 'Fears UK Mandarin Teaching Is Too Dependent On China's 'Very Dangerous' Confucius Institutes' (*inews.co.uk*, 2022) <<https://inews.co.uk/news/education/banning-china-confucius-institutes-uk-mandarin-teaching-1703186>> accessed 8 July 2022

⁵⁵ Dhingra S, and Shukla S, 'India Wants To Be Vishwa Guru But IFS Gets Too Few Diplomats To Take Us There' (2022) <<https://theprint.in/india/governance/india-wants-to-be-vishwa-guru-but-ifs-gets-too-few-diplomats-to-take-us-there/481684/>> accessed 5 July 2022.

- 8) Finally, it is imperative to grasp the strategic implications of China's legal policy, better understand the logic of their actions, and respond with a policy prescription to shape the discourse. If India aims to take leadership in the region, it should start with capacity-building measures with like-minded nations or those in the grouping, such as the QUAD. Cooperation against coercion and bullying is the key to winning against China, which doesn't believe in playing by the rules and is an unaccountable actor.

Diplomats should be prepared for Chinese argument patterns and scenarios as just denying and posturing with the army would not suffice, nor would just denying the claims made by China on border issues by the MEA be sufficient or effective. It should start with Joint training efforts on a multilateral level for starters, India and Australia should explore Island Initiative for the countries in the Oceania region which are affected directly by the Chinese to adopt their way of life.



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