Use International Law, Call out China's Violations

What is the issue?

During the recent meeting of the Foreign Ministers of the Quad, India said that the situation at the India-China Line of Actual Control (LAC) has arisen due to the disregard by China of written agreements.

How is the India-China LAC engagement guided?

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

What breach of law has been made by China?

- **Galwan clash**- The military scuffle between India and China in Galwan in 2020 that led to the deaths of 20 Indian soldiers was a clear case of China using military force against India.
- **Multiple transgressions at LAC**- Since then, a muscular and assertive China and its aggression towards India continued through multiple transgressions at the LAC.
- **New border law**- 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.
- **Military buildup**- There are reports of a huge military build-up by China with heavy weaponry including missiles in the Eastern Ladakh Sector which breaches both the 1993 and the 1996 agreements.
- China has not complied with the legal requirements, instigating India to build up its military deployment.

What about the case of China's weaponisation of global law?

- China's socialist rule of law with Chinese characteristics views law as an instrument in the service of the state or the Chinese Communist Party.
- This is opposed to the rule of law theory in liberal democracies where law's function is to constrain unbridled state power.
- **UNCLOS case**- China denounced a 2016 ruling in favour of 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.
- **WTO case**- China has exploited the WTO 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.
- **Nuclear Non-proliferation treaty**- China was accused of having a long history of entering into legally binding nuclear non-proliferation obligations but it secretly violates these obligations by providing nuclear technology to its allies, often through proxies.
- **Legal warfare**- In the case of India, China uses the sovereignty argument to cover up its illegalities.
- The Chinese unethical legal warfare or lawfare is aimed at crippling the opponents without actually fighting a war.

What must be India's lawfare?

- New Delhi should develop its strategy of ethical lawfare by mainstreaming international law dictionary into its diplomatic toolkit to respond to Beijing's challenge.
- India should make a strong legal case by assembling all the international treaties, including the UN Charter and customary international law, at every forum to call out China's illegal actions.
- A 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 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.

Reference

1. https://www.thehindu.com/todays-paper/tp-opinion/use-international-law-call-out-chinas-violations/article65072377.ece

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