

# LEGAL BRIEFS

## LEGAL ANALYSIS OF THE BALAKOT STRIKE & PAKISTAN'S RESPONSE

NOTE-1/2019

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## LEGAL ANALYSIS OF THE BALAKOT STRIKE AND PAKISTAN'S RESPONSE

### Abstract

*The Indian airstrike on Balakot on 26 February 2019 and Pakistan's subsequent response have resulted in a tense standoff between India and Pakistan, which has brought the nuclear neighbors to the brink of war. This paper analyses the developments of the last two weeks from a legal perspective. It identifies the key arguments under international law that the State of Pakistan can rely upon to augment its diplomatic stance. Part A of this paper analyses the legal aspects of the Indian attack on Balakot by identifying the relevant provisions of international law potentially violated by this action and evaluating the official Indian position justifying the airstrike. Part B then analyses the legal aspects of Pakistan's response by exploring the applicability of self-defence under international law to Pakistan's retaliatory strikes, including the shooting down of Indian jets, and their compliance with the law of armed conflict. The treatment of the captured Indian pilot under international humanitarian law has also been evaluated. The paper concludes by identifying key steps Pakistan should consider to provide its actions with legal cover under international law. We also highlight measures for developing the legal capacity of domestic institutions to respond to such incidents in the future.*

**Keywords:** Legal Analysis, Balakot, Strike, Line of Control.

## LEGAL ASPECTS OF INDIAN ATTACK ON BALAKOT

### Facts

**O**n 26 February 2019, eight fighter jets belonging to the Indian Air Force (IAF) crossed over the Line of Control (LOC) and conducted an airstrike in the vicinity of Balakot, a town in Khyber Pakhtunkhwa province of mainland Pakistan.<sup>1</sup>

This marked the first time since 1971 that an IAF aircraft had crossed the LOC. According to Indian accounts, the jets targeted a Jaish-e-Muhammad (JeM) operated militant camp, resulting in the killing of an unquantified number of militants. However, according to Pakistani authorities, independent media outlets and locals in the area, the payloads appeared to have been dropped on an uninhabited hillside, resulting in no casualties or significant damage.<sup>2</sup>

### **1. IAF 's action on Pakistani territory is a violation of the law on the use of inter-state force and constitutes a breach of Pakistan's sovereignty under international law**

The law applicable to the use of inter-state force is set out in the UN Charter, in rules of customary international law, and in general principles (collectively the “jus ad bellum”). Article 2(4) of the UN Charter is the core provision aiming to uphold the territorial sovereignty of States and strictly prohibits the ‘threat or use of force against the territorial integrity and political independence of any state’.

The development of Article 2(4) represents a seminal moment in human history, since its presence in the UN Charter effectively makes the declaration of war illegal under international law. There are only two exceptions to this prohibition on the use of force. The UN Security Council can authorize the use of force to maintain or restore international peace and security. In addition, States retain the right to use force in ‘self-defence’ against an ‘armed attack’ under Article 51 of the UN Charter.

An analysis of conflicts in the UN Charter era reveals that States have generally relied on these two exceptions when justifying the use of force in international relations as opposed to outrightly ‘declaring war’ which is illegal under international law.

Under international law, ‘aggression’ is the most serious and dangerous form of the illegal use of force.<sup>3</sup> Article 39 of the UN Charter provides the Security Council the mandate to determine the existence of an ‘act of aggression’ when considering measures to restore international peace and security. The UN Charter does not define what constitutes an ‘act of aggression’ but this definition is found in Article 1 of UNGA Res. 3314 (XXIX)<sup>4</sup> as the use of armed force by a State against the sovereignty of another. Article 2 adds that the first use of armed force is prima facie evidence of aggression which is subject to the UNSC holding otherwise. Article 3(d) provides that aggression includes ‘bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State’.

There is no doubt, therefore, that the IAF’s actions on 26 February 2019 constitute a clear violation of Article 2(4) of the UN Charter, easily meeting the minimum threshold required to trigger its application. They also constitute an act of aggression under international law, although the final determination in this regard is to be made by the UN Security Council.

The State of Pakistan was therefore entitled to assert that an act of aggression had taken place on its soil. The terminology used in the press release issued by the PM’s office on 26 February 2019 in which the National Security Committee concluded that India has committed uncalled for ‘aggression’ was therefore consistent with international law.<sup>5</sup>

It is also important to note that the labelling of the Indian action as an act of aggression and a violation of Article 2(4) of the UN Charter under international law has no bearing on how the situation is classified domestically.

The constitution of many countries, including the United States, allows for a declaration of war under domestic law, regardless of what position they maintain on the matter internationally. Article 245 of the Pakistani Constitution also empowers the Federal Government to direct the Armed Forces to defend Pakistan ‘against external aggression or threat of war’. Article 232 also empowers the President to issue a proclamation of emergency if the security of Pakistan is ‘threatened by war or external aggression’.

However, these remain classifications under the domestic law of Pakistan and should not affect our international position, which should maintain that India’s actions were an act of aggression, taking the form of an armed attack, and triggered Pakistan’s right to self-defence within the purview of Article 51 of the UN Charter

## **2. India’s Justification for the Balakot Attack**

According to the official statement released by the Indian Ministry of External Affairs (MEA) following the airstrikes in Balakot, India had received ‘credible intelligence’ that JeM was attempting another suicide terror attack in various parts of the country with ‘fidayeen jihadis’ being trained for this purpose in Pakistan. In the ‘face of imminent danger’, a ‘preemptive strike became absolutely necessary’.<sup>6</sup> The statement further emphasized that India was ‘firmly and resolutely committed’ to ‘fight the menace of terrorism’ and therefore this ‘non-military preemptive action’ was specifically targeted at the JeM camp away from civilian presence.<sup>7</sup>

Following the violation of its airspace by Pakistani jets on 27 February 2019, the Indian MEA used the words ‘Counter Terrorism Action’ as the basis for the IAF action in Pakistan a day earlier.<sup>8</sup>

### **2.1. Pre-emptive self-defence does not fall within ambit of Article 51**

The right of self-defence enshrined in Article 51 of the UN Charter is a clear exception to the prohibition on the use of force contained in Article 2(4).

At the same time, its correct application and precise scope is one of the most contested issues in all of international law. The statement by the Indian MEA does not explicitly rely on the application of Article 51 nor does it use the words self-defence. However, it appears to have relied on the concept of pre-emptive self-defence which has been used mostly by the United States after 9/11 to legally justify its global war on terror.

Reliance on pre-emptive self-defence however, is unlikely to pass legal muster for India. The doctrine has been widely slated by scholars as having no basis in international law.<sup>9</sup> In addition, there is overwhelming lack of support amongst states, which fear that unilateral pre-emptive action poses too great a threat to global order.<sup>10</sup> The UNGA debates on *In Larger Freedom* were reflective of the fact that most States do not accept pre-emptive self-defence.

Moreover, the 118-member Non-Aligned Movement has repeatedly rejected the doctrine of pre-emptive self-defence. The invocation of a right to pre-emptive self-defence under Article 51 also does not accord with the rules of treaty interpretation which require that provisions should be read in accordance with their ordinary meaning.<sup>11</sup> The text clearly states that the right can be used ‘if an armed attack occurs’ (emphasis added).

Indeed, state practice has also indicated that a wide preventing approach to self-defence, such as the Israeli strike against an Iraqi nuclear reactor in 1981, has been broadly denounced by the international community. UNSC and UNGA Resolutions also condemned the attack as an act of aggression.<sup>12</sup> Moreover, the reliance on pre-emptive self-defence in the war on Iraq in 2003 by the United States was the subject of widespread rephension internationally.

*Whilst the Caroline*<sup>13</sup> case arguably demonstrated that the right to self-defence may be invoked to respond to imminent attacks, a wide reading of the right to anticipatory self-defence as including ‘possible’ attacks is definitely not in accordance with the requirement of imminence.

## **2.2.No information shared or evidence provided of the ‘imminent danger’ of attack**

In the Oil Platforms Case, the ICJ held that recourse to self-defence is strict and objective leaving no room for any ‘measure of discretion’.<sup>14</sup> Till date, no evidence has been shared by India in regards to the ‘imminent danger’ it faced to satisfy the objective test either with Pakistan or the International Community.

## **2.3.The IAF’s actions were not necessary and proportionate under the Jus ad Bellum**

As part of the basic core of self-defence, all states agree that self-defence must be necessary and proportionate. These requirements are not express in the UN Charter, but are part of customary international law.<sup>15</sup> Together, these twin requirements constitute a limitation on the use of all forms of self-defence, individual and collective, preventing it from spiraling out of control and being used for punitive purposes.<sup>16</sup>

India’s actions on 26 February were not necessary or proportionate since the Prime Minister of Pakistan on 19 February had ‘guaranteed’ that steps would be taken against the masterminds of the Pulwama attack if India shared ‘actionable intelligence’ that the attack had been planned by a Pakistani.<sup>17</sup>

The Pakistani PM’s offer went beyond prosecuting those on its territory but extended to taking action against any ‘Pakistani’ that may have been involved. Prime Minister Imran Khan urged India to resolve this issue through dialogue, including on the issue of terrorism, which was a threat to both countries.<sup>18</sup>

By disregarding Pakistan’s sincere offers to investigate and taking unilateral action without sharing any evidence of Pakistani involvement in Pulwama, India has displayed reckless aggression which has periled the lives of over a billion people and resulted in a grave threat to international peace and security.

## **2.4. Indian official statements are misleading and contradictory in nature**

The Indian MEA convoluted statements do not appear to follow a logical legal thread. The use of the words ‘imminent danger’ indicates that use of self-defence was anticipatory in nature, but this is almost immediately followed by the words ‘preemptive strike’ which denotes a different legal meaning in international law and is much weaker in its validity as a legal principle. The statement on 26 February 2019 uses the words ‘non-military preemptive strike’ to indicate that action was only intended to be taken against terrorist groups but this terminology appears to be discarded in favour of ‘Counter Terrorism Action’ which was used twice in the statement on 27 February.

It therefore appears that official Indian statements seem to deliberately obfuscate the legal basis for the IAF airstrikes or at best, betray a lack of understanding of international law. In any case, the right of self-defence under Article 51 does not allow India to take unilateral and pre-emptive action in any form against a non-state actor on Pakistani soil. The appropriate and only available venue for India remains the UNSC where it is entitled to make efforts to proscribe any organization engaged in terrorism under UNSC counter-terrorism framework, including UNSCR 1267<sup>19</sup> and 1373.<sup>20</sup>

## **LEGAL ASPECTS OF PAKISTAN’S RESPONSE ON 27 FEBRUARY**

### **Facts**

Following the IAF airstrikes, Pakistan’s Ministry of Foreign Affairs (MFA) had issued a statement which strongly protested Indian aggression, violation of its airspace and promised a ‘befitting response’. The next morning, the Pakistan Air Force (PAF) undertook strikes across the LOC ‘from within Pakistani airspace’ at a ‘non-military target’. In response to the PAF strikes, IAF jets crossed the LOC.

According to Pakistan, two Indian aircraft were shot down inside Pakistani airspace, with one falling inside Indian Occupied Kashmir and the other in Azad Jammu & Kashmir (AJ&K). The pilot of the downed Indian jet in AJ&K, Wing Commander Abhinandan, was subsequently arrested by Pakistani troops on the ground.

### **1. Pakistan has acted in lawful Self-Defence in response to an armed attack under Article 51 framework**

As has been established above, India's use of force against Pakistan on Tuesday 26th February 2019 was a violation of Article 2(4) of the United Nations Charter which prohibits the use of force against the territorial integrity and political independence of a state. This act of aggression gives rise to Pakistan's inherent right to individual self-defence under Article 51 of the UN Charter against an armed attack by the aggressor state. This was confirmed by the ICJ in the Wall Advisory Opinion in which it stated that 'Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State.'<sup>21</sup> The IAF incursion into Pakistani territory beyond the LOC and striking with missiles amounts to an armed attack of considerable scale and effects which is beyond a mere frontier incident. As the victim of an armed attack, Pakistan was entitled to exercise her right to self-defence.

However, the lawfulness of Pakistan's response in self-defence depends on whether it fulfils the criteria of necessity and proportionality. Pakistan's use of force on vacant lots of land near a military base constitutes a legal response. This is due to a number of factors. Firstly, the targets chosen and struck by Pakistani fighter jets were vacant lots of land near Indian military targets. This attack did not result in any loss of life or destruction of property, either military or civilian. Secondly, Pakistani jets did not cross into Indian airspace and, therefore, ensured that the response was not escalatory and remained proportional with the aim of deterring any further attacks from India. It is clear from the action taken that the only aim was to exercise the inherent right of self-defence enshrined in the UN Charter.

The response was not a reprisal against the aggressor state. After these acts, the Pakistani Ministry of Foreign Affairs released the following statement:

“Today, Pakistan Air Force undertook strikes across Line of Control from within Pakistani airspace. This was not a retaliation to continued Indian belligerence. Pakistan has therefore, taken strikes at non-military target, avoiding human loss and collateral damage. Sole purpose being to demonstrate our right, will and capability for self defence. We have no intention of escalation, but are fully prepared to do so if forced into that paradigm. That is why we undertook the action with clear warning and in broad daylight.

For the last few years, India has been trying to establish what they call "a new normal" a thinly veiled term for doing acts of aggression at whatever pretext they wish on a given day. If India is striking at so called terrorist backers without a shred of evidence, we also retain reciprocal rights to retaliate against elements that enjoy Indian patronage while carrying out acts of terror in Pakistan. We do not wish to go to that route and wish that India gives peace a chance and to resolve issues like a mature democratic nation.”

This statement contains two primary messages. The first half employs language indicating that Pakistan was exercising its right to self-defence by demonstrating its ‘will and capability’. While Article 51 of the UN Charter was not explicitly invoked, the statement was clearer than the Indian one after the Balakot attack. It also indicates that Pakistan adhered to the requirements of IHL by ‘avoiding human loss and collateral damage’. However, even here the language employed could have been more explicit and in line with IHL terminology to more effectively convey the message. The overall tenor of this message is to downplay the potential of escalation after the strikes while at the same time indicating that Pakistan would respond when provoked.

The second half of the statement examines the wider implications of Indian attempts to establish ‘a new normal’. This is a reference to the more muscular approach Indian Prime Minister Modi and his National Security Advisor Ajit Doval seem to be employing against Pakistan, manifested first in the alleged 2016 ‘surgical strikes’ India claims it undertook against supposed terrorist launchpads on the Pakistani side of the LoC. The MFA statement then goes on to expand on this new Indian approach and rightly terms it a guise for undertaking ‘acts of aggression’ against Pakistan. The MFA then alludes to the dangers of such an approach by noting that if India engages in unilateral action without ‘a shred of evidence’, then Pakistan retains a ‘reciprocal’ right to retaliate against terrorist elements enjoying Indian patronage. It is unclear what is meant by such language from a legal standpoint and whether ‘reciprocity’ is the correct notion to use in this regard. It would have been significantly more prudent to ground any such statement in the inherent right of self-defence that would accrue to Pakistan if India undertook an armed attack against it as per Article 51 of the UN Charter.

## **2. Pakistan’s shooting down of two Indian Air Force Jets was in accordance with IHL**

Following Pakistan’s response, Indian jets crossed the Line of Control into Pakistani territory. Pakistani forces acted against these jets and they were shot down. Since it has been established that the situation is an armed conflict and IHL is attracted, the downing of Indian jets requires examination from this perspective.

IHL obliges states, under the principle of distinction, to distinguish at all times between civilians and combatants and civilian objects and military objectives.<sup>22</sup> Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.<sup>23</sup> Military jets fit squarely into this category and therefore can be targeted during an armed conflict.

Pakistan's shooting down of the jets also complied with the proportionality principle in the law which defines an indiscriminate attack as an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>24</sup> Given there were no civilian casualties or damage to civilian objects, the targeting of the jets was lawful as it was discriminate and proportionate. The shooting down of these fighter jets was also militarily necessary due to the obvious threat they posed to the returning Pakistani fighters as well as to troops and civilians on the ground.

Due to the reasons noted above, Pakistan's actions in relation to the downing of the Indian aircraft were in line with international law, specifically the provisions of IHL.

### **3. Wing Commander Abhinandan's Capture by Pakistani Forces**

The capture and subsequent release of Indian Wing Commander Abhinandan by Pakistani forces raises several legal issues.

The status of Wing Commander Abhinandan while in the custody of the Pakistan Army is determined by the applicable law. Since recent events have met the requisite threshold of hostilities an armed conflict exists between Pakistan and India. This attracts the application of IHL and Wing Commander Abhinandan would be considered a Prisoner of War (PoW) and entitled to all the privileges and protections associated with that status. The Third Geneva Convention of 1949 deals specifically with PoWs and defines them in Article 4 to include:

*“4.1.1 Members of the armed forces of a Party to the conflict and members of militias of such armed forces”*

The Third Geneva Convention places a number of obligations on the detaining power with regard to the treatment afforded to a PoW. Certain relevant provisions are discussed below:

**3.1.** Articles 13 to 16 state that PoWs must be treated humanely without any adverse discrimination and that their medical needs must be met. Furthermore, any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in custody is strongly prohibited.<sup>25</sup> Thus, Pakistan was obliged under International Law to provide medical treatment, free of cost<sup>26</sup> to the Indian Pilot who has sustained injuries and appears to have discharged this duty correctly.

**3.2.** A PoW is also protected from being subjected to physical mutilation or to medical or scientific experiments and must be protected against acts of violence, insults and public curiosity.<sup>27</sup> At this point, it is important to note that the detaining power, in this case Pakistan is obliged to respect the dignity of the detainees and avoid their exposure to public curiosity. The duty to protect against outrages upon personal dignity, in particular humiliating and degrading treatment, is also incumbent on Pakistan under Common Article 3 of the Geneva Conventions, 1949. In this regard several videos have surfaced of Wing Commander Abhinandan.

The first video images which surfaced were made by members of the public and show his rescue by the Pakistan Army from locals in the area who were committing acts of violence against him. Subsequent videos show the pilot blindfolded being taken away in an Army vehicle presumably away from the locals who attacked him. Other videos show a blindfolded and restrained Abhinandan, answering questions asked by a Pakistani Army officer.

While he answers questions regarding his name, service number, and rank, he refuses to answer others and on video is not pressurized by the questioning officer. Another video shows first aid being rendered to him by the Pakistan Army. Perhaps the most famous video is of the Pilot being asked questions in a calm atmosphere while he sips a cup of tea. In this video the pilot expresses appreciation for the way the Pakistan army is treating him and their professionalism.

Moments before his release to Indian authorities, a final video recording was released in Pakistan which shows the Wing Commander in uniform discussing how he was shot down, praising the treatment he received from the Pakistan Army, and criticizing the Indian media for its bellicosity and warmongering.

- 3.3.** It is clear that video footage of detainees for the purposes of their humiliation or degradation should not be made in any case. The International Committee of the Red Cross (ICRC) strongly criticized Iraqi authorities for releasing television footage showing American prisoners of war in Iraq as that violated the Geneva Convention and the detainees right to be protected from public curiosity.<sup>28</sup> While it is clear that the Pakistan Army personnel at the time of his capture acted responsibly in protecting him from the locals, even having to resort to aerial firing to disperse the crowd, the recording of videos is questionable.

While the earlier videos could be seen to be acts of junior officers or soldiers, unaware of the implications of making videos in a digital age, there is little excuse for the final video made before Wing Commander Abhinandan's release. The detaining power, in this case Pakistan, must take steps to ensure that its personnel are aware of the provisions of IHL and how they apply in practical terms in the modern world. It should be noted that while serious violations of the laws and customs of war are considered war crimes, the issue of videos in this particular case does not meet that threshold and remain largely innocent lacking intent to humiliate or degrade the PoW.

- 3.4.** While PoWs are in captivity, they may be interrogated but they are not legally obliged to give more than their surnames, their first names, ranks, date of births and service numbers. However, the Detaining Authorities ought to ensure that they don't use interrogation methods that involve any sort of mental or physical torture or coercion.

The Geneva Conventions also stipulates that detainees must be protected against acts of violence or intimidation, and they empower the ICRC to visit PoWs to monitor their treatment.

- 3.5.** The Geneva Conventions place an obligation on State Parties to release and repatriate without delay PoWs after the cessation of active hostilities.<sup>29</sup> Under international law therefore, Pakistan was under no legal compulsion to return Wing Commander Abhinandan at this point since active hostilities have not ceased between India and Pakistan, as evidenced by heavy shelling on the LOC and the continued state of high alert by armed forces on both sides. However, Pakistan's 'gesture of peace' in releasing Wing Commander Abhinandan before the cessation of hostilities is also in line with international law, which places no prohibition on releasing a PoW before cessation of hostilities as long as the PoW agrees to the repatriation and is physically fit to do so.

*Overall*, the actions of the Pakistan Army in rescuing, medically treating, ensuring food and drink, and providing other facilities to the PoW are laudable and in line with International Law. However, the issue of videos surfacing of the PoW require self-reflection and further awareness of IHL in Pakistan.

## **WAY FORWARD**

1. India's actions on 26 February 2019 are clearly an act of aggression which took the form of an armed attack and was sufficient to trigger Pakistan's right to self-defence within the purview of Article 51 of the UN Charter. This legal argument should underpin our diplomatic stance on this issue.
2. Article 51 of the UN Charter requires member states to 'immediately report' any measures taken in exercise of the right to self-defence to the UNSC. Accordingly, Pakistan should discharge this duty to inform the UNSC if it has not done so already. It should also urge the Security Council to make a formal determination that India's actions on 26 February 2019 constituted an act of aggression.

3. Article 99 of the UN Charter empowers the UN Secretary General to bring any matter to the attention of the UNSC which ‘in his opinion may threaten the maintenance of international peace and security’.

Pakistan should concurrently approach UN Secretary General to bring this matter to the attention of the UNSC, including resolution of the Kashmir issue, which remains the root cause of the conflict.

4. Pakistan should also take this opportunity to once again approach the UNSC under Article 35 of the UN Charter to resolve the Kashmir dispute, the continuance of which remains a grave threat to the maintenance of international peace and security.
5. India’s claim that JeM elements were present in the Balakot area, triggering its right to conduct airstrikes in the area needs to be refuted by factually establishing that no such elements were ever present in the targeted area. In this regard, the United Nations Military Observer Group in India and Pakistan may also be approached to conduct an investigation for further submission to the UN Secretary General.
6. Legitimacy remains the Kashmiri liberation struggle’s most potent tool. It is, therefore, no surprise that India has always aimed to delegitimize the Kashmiri struggle by equating it with terrorism. Pakistan must do all it can to ensure that Kashmiri legitimacy is not lost. In this regard, Pakistan should encourage Kashmiri freedom fighters to unilaterally adopt the principles of IHL and agree to abide by their requirements.
7. Additionally, Pakistan must verifiably ensure that its territory is never used for attacks even against Indian occupation forces. This approach will deflate India’s claims of Pakistan being a terrorist safe-haven and force the international community as well as rational voices within India to examine the genuine demands of the Kashmiri people.
8. Concurrently, Pakistan needs to start reshaping the debate on Kashmir in terms of IHL. As noted above, it is only this legal framework that can delegitimise the Indian military presence in Kashmir.

If an IHL framework is not invoked in Kashmir, the Indian narrative of the conflict being an ‘internal security situation’ remains intact.

9. In this regard, Pakistan must improve its IHL expertise, dissemination, and training to the Armed Forces and other State entities, especially the Ministry of Foreign Affairs and linked institutes.
10. Pakistan must begin to speak to members of the international community in the language they understand – international law. This is the only mechanism to counter the Indian narrative on Kashmir effectively. This will require significant capacity building at various State bodies and a major overhaul of the Legal & Treaties Division at the Ministry of Foreign Affairs and linked institutes.

## References

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- <sup>1</sup> According to DG ISPR, Indian aircrafts intruded 4-5 nautical miles inside Pakistan's territory. In response, PAF timely and effectively challenged the aircrafts which resulted in the aircrafts retreating and due to the angle of the exit, they had no choice but to drop the payload in haste. The payload comprised of four bombs which landed in the area of Jabba, Balakot in the province of Khyber-Pakhtunkhwa. See 'DG ISPR Press Conference - 26 February 2019' (*YouTube*, 2019) <<https://www.youtube.com/watch?v=wppc--qD11.4>>
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- <sup>10</sup> High-level Panel Report, UN doc A/59/565, para 189-92 quoted in Gray, n.45 above, p.212
- <sup>11</sup> United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Article 31(1)
- <sup>12</sup> See for instance UNSC Resolution 487 S/RES/487 19 June 1981
- <sup>13</sup> The Caroline v. United States: 11 U.S. 496 (1813)
- <sup>14</sup> Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America, International Court of Justice (ICJ), 6 November 2003 [73]
- <sup>15</sup> Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986
- <sup>16</sup> Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, ICJ, 8 July 1996

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- <sup>18</sup> Ibid.
- <sup>19</sup> UN Security Council, Security Council resolution 1267 (1999) [Afghanistan], 15 October 1999, S/RES/1267 (1999)
- <sup>20</sup> UN Security Council, Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts], 28 September 2001, S/RES/1373 (2001)
- <sup>21</sup> Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice (ICJ), 9 July 2004, para. 139
- <sup>22</sup> Article 48, Additional Protocol I
- <sup>23</sup> Article 52(2) Additional Protocol I
- <sup>24</sup> Article 51(5)(b) Additional Protocol I
- <sup>25</sup> Article 13 and 15 of the Third Geneva Convention
- <sup>26</sup> Article 15 of the Third Geneva Convention
- <sup>27</sup> Article 13 of the Third Geneva Convention
- <sup>28</sup> <https://www.swissinfo.ch/eng/icrc-says-pow-images-breach-geneva-convention/3231184>
- <sup>29</sup> Article 118 of the Third Geneva Convention

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