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China's National Land Boundary Law: A Threat to India

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ABSTRACT

This blog is an insight into China and India's border land dispute on the north eastern front from an international law perspective. The author has linked the past attitudes of the respective countries towards international law with the current scenario and has made recommendations that can help India thwart any impediments.

I. INTRODUCTION

When it comes to international law, China and India's approach have been starkly contrasting. Where the former has completely denounced treaties with any colonial colour since 1920, the latter has, since its independence in 1947, mostly adhered to the position set by British colonialists.

Owing to the political needs and conservative efforts of defending and asserting its sovereignty over presumed territories, China's position has often fluctuated with the post-colonial treaties, viz, Vienna Convention on the Law of Treaties ('VCLT') or the United Nations Convention on the Law of the Sea ('UNCLOS'). This is evidenced by the land border law brought in October 2021 that we'll be analysing in the coming sections. Conversely, Indian legislature has not only adhered to the colonial treaties but has emboldened it in its legal framework.

In this blog, after shedding an insight into the past attitude of these countries towards international law, the author will analyse China's novel border law and answer whether it is a cause of concern for India.

II. THE LAC CONUNDRUM

China and India do not have a clearly demarcated Line of Actual Control ('LAC'), majorly causing problems along the McMahon Line². This problem has its root in two fundamental causes:

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²Maren Goldberg, *McMahon Line*, BRITANNICA (Mar. 03, 2009), <https://www.britannica.com/event/McMahon-Line>.

- a. the stance towards British made treaties, and
- b. the assertion of sovereignty.

China has pigeonholed its territorial claims through historic and civilizational links while denouncing any British made treaties under the doctrine of *rebus sic stantibus*, rendering treaties invalid in case of fundamental changes. While India has embraced the colonial treaties (*Portuguese Goa being an exception*) by following *uti possidetis juris* which preserves the territorial boundaries of any emerging State. Both the aforementioned doctrines are recognized under Customary International law. Further, 1947-1971 was tumultuous for China, as the Republic of China (Original member of United Nations ('UN')) got swapped by the People's Republic of China due to the civil war.³ This replacement however was opposed by the UN, until 1971. India here was fostering respect to international law, by making it a directive principle under Article 51 of its Constitution⁴. This Article specifies the duty of the Indian State to not only promote international peace and security, but maintain just relations between nations with specific sections on emulating respect towards international law and treaties and encouragement to dispute resolution by way of arbitration. Furthermore, in the post-colonial era, China has been more reluctant to use the international courts and tribunals to solve territorial disputes than India. This is substantiated by China's rejection⁵ of the decision of Permanent Court of Arbitration in the South China Sea case, while India has regularly accepted decisions viz. the 2013 Indus Water Treaty case⁶ with Pakistan, or maritime arbitration case with Bangladesh⁷.

This is indicative of the approach these countries have adopted. China's role has been skewed more on defending and asserting its sovereignty rather than creating a balance between domestic and international law. The same is evinced by the new land border law of China, which asserts how China's sovereignty coupled with territorial integrity is "sacred and inviolable" and the military needs to counter any invasion or infiltration from neighbouring countries.⁸ On the contrary, India has skewed towards respecting the bilateral agreements and maintaining the status quo in relation to territorial borders.

³Michael Ray, *United Nations Security Council*, BRITANNICA (Dec. 11, 2017), <https://www.britannica.com/topic/United-Nations-Security-Council>.

⁴INDIA CONST. art 51.

⁵Phillippines v China, PCA Case No 2013-19.

⁶Pakistan v India, PCA Case No 2011-01.

⁷Bangladesh v India, PCA Case No 2010-16.

⁸*China Passes New Land Border Law Making Its Territorial Integrity 'Inviolable'*, SOUTH ASIA MONITOR (Oct. 25 2021) <https://www.southasiamonitor.org/china-watch/china-passes-new-land-border-law-making-its-territorial-integrity-inviolable>.

III. THE NATIONAL LAND BOUNDARY LAW

The National People's Congress on October 23, 2021, adopted a dedicated law for governing and guarding its 14000-mile (22,000 kms) land border with 14 countries called as the National Land Boundary Law (NLBL).⁹ The NLBL will be enforced from January 1, 2022. Although the Chinese government suggests that this law is just a "normal domestic legislation" which conforms with international practice, however it is a matter of concern for India. A holistic view of the current situation has to be taken into account before reading this legislation.

The NLBL will have an advertent impact on certain key issues that are going around China. First, the link between political and religious persecution of Muslim Uyghurs in the Xinjiang region of China and the political upheaval in Afghanistan.¹⁰ After the Taliban takeover of Afghanistan, there is an influx of refugees desperately moving around the region for shelter. This influx, if not checked, can result in strengthening of China's Uyghur population, thus being a definite concern for China. Second, the southern region of China, namely Yunnan and Guangxi provinces saw a surge in the COVID19 cases this year. A contributing factor to this was the illegal border crossings from Southeast Asia especially Vietnam and Myanmar. Third, the new stand offs and skirmishes between Indian and Chinese military forces around the undefined LAC that have been going around since May 2020. The last key issue is of utmost importance.

Since last year many scuffles have taken place in different regions of Ladakh around the LAC resulting in loss of lives on both the sides, especially at the Galwan Valley which is considered as the worst standoff since the 1962 war.¹¹ The skirmishes halted with the aid of diplomatic channels. However, China is still involved in certain border development projects. It has been actively building habitats for troops and constructing civilian settlements called frontier villages along the contested lands of India and Bhutan border.¹² This is important because through NLBL, not only the military defence has been strengthened but citizens and organizations have been directed to support patrolling and controlling activities with army.

Drawing the focus here, active transgressions by China got subsequently followed with constructions of settlements along the borders and now the introduction of NLBL. Thus China, by way of its new law, is trying to legitimise its moves along the border and is building a

⁹Josh Horwitz, *China Passes New Personal Data Privacy Law, To Take Effect Nov. 1*, REUTERS, Aug. 20, 2021.

¹⁰Yew Lun Tian, *China Strengthens Land Border Protection With New Law*, REUTERS, Oct. 24, 2021.

¹¹Yew Lun Tian and Sanjeev Miglani, *China-India Border Clash Stokes Contrasting Domestic Responses*, REUTERS, June 23, 2020.

¹²Anant Krishnan, *China Rejects Concerns Over Border Law*, THE HINDU, Oct. 28, 2019.

stronger case for its territorial claims in future.

IV. INDIA'S REACTION TO NLBL

The Indian Ministry of External Affairs stated that the unilateral action by China through NLBL is a cause of concern as it can have implications on the existing bilateral agreements between the two countries.¹³ Since the war of 1962, both the countries have entered into multiple bilateral agreements for confidence building. All these agreements advocate for limitations of troops near the border, no use of guns or explosives, and peaceful and friendly consultations for boundary resolution. Under the general principles of international law, wherein a State makes a unilateral act or declaration, that affects the rights of other states, such action can be valid if it goes uncontested by the other party or is accepted by it, amongst other conditions. Accordingly, as India has already made its reservations regarding the law, any step by China that hampers the status quo between the countries, will be illegal from an international law perspective. Additionally, the recent actions of China have been in violation of the bilateral agreements which clearly state that until and unless a final resolution regarding border issues is taken with mutual agreement, both the countries will honour the LAC.

V. THE REALITY

While China is taking active and strategic moves to legitimise its claim over the contentious lands, India is indulging in soft politics by limiting the use of Chinese imports. Naturally, these steps have hindered the Indian economy more than that of China. The Indian population is facing hardships to stay competitive in the local as well as international market after these bans. Moreover, on 7th December, 2021, the Indian Ministry of Home Affairs informed the Lok Sabha that there have been no cases of infiltration by China in the last three years.¹⁴ It is hinted that the ruling party is trying to appease the local population because of the coming state elections. However, denial of facts is likely to render India as a weaker power.

VI. CONCLUSION/RECOMMENDATIONS

As a first step India needs to officially acknowledge the problem of infiltration by China. Additionally, India needs better symmetry between its intelligence forces, the Central Government, North-eastern State Governments, and the Indian army which is protecting the

¹³Ministry of External Affairs, *Official Spokesperson's Response To Media Queries On China's Land Boundary Law*, Government of India (Oct. 27 2021), https://www.mea.gov.in/response-to-queries.htm?dtl/34419/Official_Spokespersons_response_to_media_queries_on_Chinas_Land_Boundary_Law.

¹⁴Nikita Bishay, *Zero Infiltration At India's Borders With China & Bhutan In Last 3 Years: MHA In Lok Sabha*, REPUBLIC WORLD, Dec. 7, 2021.

LAC. This needs to be tied with bureaucratic actions and technological advancements. Further, good border management comes where with effective control and regulation there is movement of goods and people too. This will help the government in legitimising any trade and travel, rather than working on prevention of insurgents, smuggling and associated crimes.

But now the question is why is India still facing border issues even after deployment of more man power, bases, check-posts, and installations of Hi-tech equipment. This is because India has not consolidated the local population from its side, something that China has been actively doing and has now formalised through the new law. Thus, India needs effective and efficient social integration of north eastern regions with the rest of the country.

Where China takes the benefit of its location and cultural similarity in the contested region, India can take the path of mass social integration through government policies and investments. The aim should be to integrate with the sense of individuality. Keeping in mind, that while doing so, the past mistakes faced in the region of Jammu and Kashmir, must not be repeated.

When the focus would be more on the development of the north eastern people, the result would be a higher sense of nationalism and awareness amongst them. Something that can help India in strengthening its sovereignty and be better prepared for the future.
