

Territorial Integrity of India and Border Dispute: A Critical Analysis on the Border Peace and Tranquility Agreement between India and China

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Abstract: *India has attempted to find a legal as well as political solution to resolve the problem that is the border dispute and territorial integrity which has been present from the time of independence. The principle of territorial integrity under international law prohibits states from the use of forces against the “political independence or territorial integrity” of another state. Basically, the states or the political units claims a definite border for itself and it has power over the region it covers until the border and any other state which intrudes these borders will result in a war. When this situation prevails for a longer period of time it results in a border dispute. India is a peace - loving country and it has not invaded any country in the last 100000 years of history and also it has not used its forces to create a conflict in other neighbouring countries borders. This doesn't mean that there was no conflict in the Indian borders. India has been facing quite a few disputes in its borders which is shared with its neighbouring countries and this is happening from the time of independence. This paper tries to analyse and understand the treaties that are in effect between India and china and the author has expressed his take on the treaties and has given suggestion to resolve the border tension that exist between the two countries.*

Keywords: Vienna Convention on the Law of Treaties (VCLT), Line of actual control, Treaties Agreements, Territorial integrity, Border dispute.

1. Introduction

The Vienna Convention on the Law of Treaties (VCLT) of 1969 is the foundational document that governs all treaties between governments and their problems. It codifies many historical methodologies, state practices, and widely recognized state behaviour in order to resolve crises caused by a collision of interests between two nations. However, the VCLT has frequently failed to resolve conflicts or has allowed egregious misunderstanding of existing rules, which harms international and bilateral ties. Disputes over territorial claims frequently play a significant role in debates about treaty law critique. There has been frequent disputes and face - offs between India and china in this regard. There has been several agreements and treaties between India and china to resolve and look over the border disputes but still the problem prevails.

Since 1993, the two have engaged into a succession of bilateral agreements that have eventually proven fruitless, prompting international relations specialists to doubt the usefulness of treaties in dealing with complex circumstances. The 1993 agreement says unequivocally that if personnel from any side breach the Line of Actual Control, they must “immediately draw back to their side of the Line of Actual Control upon being advised by the other side.” Following this there have been many preceding agreements that have been signed by both sides regarding the border disputes.¹ These have been signed in the respective years such as 1993, 1996, 2005, 2012 and 2013. Even though these have been signed and initiated the effectiveness of these agreements are still a question and there are still a few things that are to be administered

regarding the territorial integrity and border dispute among India and china. Even after all the agreements that are signed to maintain border peace china has been violating the treaties and because of which the conflict still prevails and there has been no proper explanation from the Chinese side for violating the agreements that are signed. India and china are in a border dispute at present along the line of actual control in the areas such as Pangong Tso and Galwan Valley areas of Eastern Ladakh.

Treaties Currently in Force and its Effectiveness

The border dispute between India and china is a long prevailing one and it is a very older one because it dates back to the nineteenth century because that is when both the nations independent armies came together to sign tier first treaty and this treaty came into existence or force only in the year 1842.² Several attempts have been made since then to demarcate the border between the two countries. The McMahon Line was established as the border between the two nations by the Simla Accord of 1914.³ Another significant agreement between the two parties was the Panchsheel Treaty, reached in 1954.⁴ However, both accords failed to address the boundary question, and the Indo - China war broke out in 1962 as a result. During this period, China's People's Liberation Army conquered sections of India's Ladakh region. Sustained efforts to

²“Ladakhi Letter of Agreement (1842)” (Tibet Justice Centre)< <https://www.tibetjustice.org/materials/treaties/treaties3.html>> accessed August 11, 2021

³Gupta K, “The McMahon Line 1911–45: The British Legacy” (1971) 47 The China Quarterly 521

⁴“The Five Principles” (Ministry of foreign Affairs of the People's Republic of China, 14 June 2014) <https://www.fmprc.gov.cn/mfa_eng/topics_665678/seminaronfive_principles_665898/t140589.shtml accessed 12 August 2021

¹Surya P Sharma, ‘The India-China Border Dispute: An Indian Perspective’ (1965) 59 Am J Int'l L 16

promote border peace and tranquillity culminated in many further accords in 1993, 1996, 2003, 2005, 2012, and 2013.

There have been five agreements signed between India and China to maintain border peace and tranquillity between them. They are,

- Agreement on Maintenance of Peace and Tranquillity along the Line of Actual Control in the India - China Border Areas – (1993)
- Agreement on Confidence Building Measures in the Military Field along the LAC – (1996)
- Protocol on Modalities for the Implementation of the Confidence Building Measures in the Military Field along the LAC – (2005)
- Agreement on the Establishment of a Working Mechanism for Consultation and Coordination on India - China Border Affairs – (2012)
- Border Defence Cooperation Agreement – (2013)

The prime minister at that time, and the second head of government to visit China after diplomatic ties were established was P. V. Narasimha Rao in the year 1993, following Rajiv Gandhi, and it was expected that his tour would be even more successful than Gandhi's. J. N. Dixit who was the foreign secretary conferred with China - hand, who recommended that India and China sign a peace treaty by recognising the existing government troops on the disputed boundary without regard for each other's declared views. The line, which marks current military installations, has been termed that "line of peace" or "line of tranquillity."⁵The plan piqued the Chinese's interest. They insisted, though, on naming the cease - fire line the Line of Active Control. "It appeared very crucial to China that Indian negotiators adopt the term 'Line of Active Control' at the start of the negotiation," The term was eventually modified to Line of Actual Control, which was the word used by Zhou in his November 1959 formal letter to Nehru. Despite the fact that the word LAC has a strong military connotation, the Indian side accepted the Chinese offer because they believe the Chinese value traditional terminology. In any event, Indian officials thought that the line's name didn't matter all that much since "India had added a clause in the text of the agreement that both parties will mutually agree on and define the LAC wherever necessary." The 1993 agreement established an expert committee of diplomats and military professionals to provide advice on resolving disagreements between the two parties over the actual control line alignment. According to the 1993 agreement, if personnel from either side breach the Line of Actual Control, they must "immediately draw back to their side of the Line of Actual Control upon being advised by the other side." It clearly states that, "Neither side's efforts should cross the line of actual control. When personnel from one side cross the Line of Actual Control, they must promptly return to their own side of the Line of Actual Control after being admonished by the opposing side. When required, the two parties must jointly verify and decide the portions of the Line of Actual Control where they disagree on its alignment."⁶Both countries went into further detail after three years,

stating that in the event of a confrontation, both sides' forces must "show self - restraint" and begin "immediate discussions" through diplomatic channels. From the beginning of the standoff, the Chinese side has demonstrated no self - control. Those who received information from officials thought that the aggressiveness was high, with Chinese forces attacking Indian troops with sharp edged batons and rods. The kind of injuries received by Indian soldiers throughout all of the physical jostling, according to reports.⁷

The 1996 agreement between the two countries regarding the border issue states that "If the two sides' border troops meet face to face owing to disagreements over the alignment of the real control line or for any other reason, they must display self - control and take all necessary efforts to prevent the situation from escalating. Both parties must also engage in urgent talks via diplomatic or other appropriate channels to assess the situation and avoid any further escalation of tensions." For the very first period in India - China rules of engagement, the agreement specifies that "neither side shall commence fire or conduct explosion operations inside 2 kilometres of the Line of Actual Control." This is what gave rise to a practise in which troops of both the countries on their respective sides, never flashed firearms at each other and instead engaged in a physical combat. India and China agreed in 1996 to reach a "shared understanding on the alignment of the Line of Actual Control in the India - China border areas," which was signed in New Delhi on November 29, 1996. The two parties also agreed to expedite the process of clarifying and confirming the LAC. According to Mr. Singh, a fundamental component of both the 1993 and 1996 accords is that both the countries would keep their soldiers in the regions along the LAC to a low or minimum level. The agreements, however, do not specify what constitutes the minimal level. The 1996 agreement restricts the establishment of key types of weaponry close to the LAC, namely tanks, infantry combat vehicles, 75 - mm or larger calibre guns, 120 - mm or larger mortars, and numerous missiles. Combat aircraft are likewise prohibited from flying within 10 kilometres of the LAC. It states that both India and China cannot "open fire, create bio - degradation, use dangerous chemicals, conduct explosion operations, or hunt with firearms or explosives within two kilometres" of the LAC. The intention of the 1996 Agreement was to prevent bloodshed amid face - offs, and as common knowledge implies, military - led conflict is primarily characterised by the employment of weaponry. As a result, the Agreement's writers used the word "military capability" to make it very clear that any equipment employed by armed forces should be prohibited during a clash.

the Line of Actual Control in the India-China Border Areas https://peacemaker.un.org/sites/peacemaker.un.org/files/CN%20IN_930907_Agreement%20on%20India-China%20Border%20Areas.pdf, accessed 12 August 2021

⁷"Galwan Valley: Image appears to show nail-studded rods used in India-China brawl", <https://www.bbc.com/news/world-asia-india-53089037> BBC, August 13, 2021.

⁵Menon, Shivashankar. Choices: Inside the Making of India's Foreign Policy. Brookings Institution Press, 2016.

⁶Agreement on the Maintenance of Peace and Tranquillity along

Furthermore, in 2005 the Protocol⁸ stated unequivocally that "neither party shall use or threaten to use force" and "refrain from any provocative actions." Widespread discussions of border issues have frequently been limited to the 1996 Agreement, with the 2005 Protocol generally ignored. The 1996 Agreement establishes the broad principles of border security and confidence - building measures, with the 2005 Protocol expanding on those principles to offer a procedural protection. However, both instruments are characterised by a lack of objective criteria for preserving calm, as well as ample room for misunderstanding that may be abused by any party. India and China agreed in 2012 to create a Working Mechanism for Consultation and Coordination to "explore methods and means to conduct and expand exchanges and cooperation between military personnel and establishments in the border areas." Several measures to eliminate misconceptions and enhance communication are included in the Border Defence Cooperation Agreement of 2013⁹. Article VI of the agreement forbids one side from tailing the other's patrols "in regions where the line of real control is not clearly defined." "The two sides agree that they will not follow or trail patrols from the other side in places where the Line of Actual Control in the India - China border areas is not well understood." In recent years, China's track record on implementing agreed - upon CBMs and procedures on the LAC has been dismal. After agreeing to create a hotline between both the two - military headquarters in 2013, the Chinese side cancelled the plan, claiming that the Indian side should first notify its embassy in Delhi if it wished to make a contact. Then there were disagreements about encryption codes and translation plans. As a result, despite good comments from the administration, a hotline has yet to be operationalized.

Reason for ineffectiveness and suggestion for making the treaties wholly binding on both the parties

Generally, when the countries commit a wrongful act or something which is restricted by the treaties that both the countries has agreed upon is covered up by the misinterpretation of the treaty laws. International precedent shows that "treaty interpretation" has always been done in two ways: by the state party to the treaty and by the dispute - resolution forum, such as the ICJ or the PCA. Indeed, claims are usually backed up by interpretations by treaty parties, which are mostly accomplished via diplomats who aren't particularly lawyers. International tribunals and judicial bodies, on the other hand, are solely concerned with the law, evaluating claims within the confines of codified laws and fundamental principles. Because of the disparity in their approaches, two directly contradictory pictures of the same issue can emerge. Evidence suggests that states use judicial intervention only as a last resort, preferring to resolve disputes through diplomatic means. As a result, treaty misinterpretation becomes a major issue in international relations in the absence of adequate judicial guidance. According to Article 31 of the Vienna Convention on the

⁸Agreement between the Government of the Republic of India and the Government of the People's Republic of China on the Political Parameters and Guiding Principles for the Settlement of the India-China Boundary Question,

⁹Agreement between the Government of the Republic of India and the Government of the People's Republic of China on Border Defence Cooperation

Law of Treaties, a treaty must be read in "good faith," with "ordinary interpretation" given to the treaty's contents "in their context and in light of its goal and purpose." The International Court of Justice has declared Article 31 to be International Customary Law. The rule is founded on the maxim *pacta sunt servanda* (agreements must be maintained), which binds the participants to a treaty. Furthermore, because it is a norm - creating concept that has existed since nations began engaging into legal responsibilities in their international interactions, "good faith" is a universal fundamental in international law. This old idea was merely formalised by the VCLT.¹⁰ For the past 65 years the border dispute between India and china is going on and still now there is no significant progress has been made in defining the border. Even with the most basic task of sharing maps to comprehend the two countries' differing perspectives on the LAC has not been completed.

There are certain things that can be done to reduce the effect of the dispute and increase tranquillity between the two countries. There has been a number of steps taken in these past 50 years but there has been no advancement regarding the dispute. There have been several reasons that have been cited for the disputes and skirmishes. The main reason that is being cited is that it is the technique used by the Chinese to extend or grab the territory from their enemy land it is also known as the 'salami slicing' which generally involves trespassing or intruding into the enemy area or the nearby area with slower pace and attaining smaller areas over a longer period of time. But from the Indian side there has been no actions taken to stop or condemn this act of china because the officials are not taking this issue into serious consideration and when questioned about this, they generally deny the allegations. There have been several sightings and incursions of the Chinese soldiers in the Ladakhi region and north east India as well. Even in the time of pandemic china continued its skirmishes along the border particularly along the road that is being built by India¹¹. But experts from the Chinese Stimson centre such as Yun sun the infrastructural changes such as the darbuk - shyok - DBO road which is done by India is a threat to "territorial integrity" of china and it is also said the for maintaining goodwill with India it will not be sacrificed. It is also said that the current tension and pressure in the border between India and china is for overruling or abrogating the article 370 because India changed the status of Jammu and Kashmir in the year 2019 and also the speech that was given by Amit shah could also have triggered this because china was not happy with the statements that were said by Amit shah such as claiming the disputed region aksai chin which is in the governance of china as a region that is in control of India.¹² According to some source it is said that the decision regarding the status of Jammu and Kashmir from the Indian

¹⁰I C MacGibbon, "The Scope of Acquiescence in International Law" (1954) 31 Brit YB Int'l L 143

¹¹Singh, Sushant (26 May 2020). "Indian border infrastructure or Chinese assertiveness? Experts dissect what triggered China border moves".<https://indianexpress.com/article/explained/china-india-line-of-actual-control-ladakh-6427647/>The Indian Express.

¹²Sawhney, Pravin (10 June 2020). "Here's Why All's Not Well for India on the Ladakh Front". The Wire (India).<https://thewire.in/diplomacy/heres-why-alls-not-well-for-india-on-the-ladakh-front>Retrieved 18 August 2021

side has triggered china. Other analysts pinpoint that the relationship between India and America has been a reason which irked china because china believes that the American plans and steps that targets china is been supported by India and to condemn this there have been skirmishes in the border.

The steps that can be taken in the future even though there have been several treaties and other major things that are done to reduce or bring an end to the border disputes are such as,

- Since both the countries are having a dispute and there is no tranquillity between them even though there are many treaties signed between them. The use of dispute mechanism with the involvement of a third party which is in a higher state than these two countries can be used. In this type it involves a party who is not involved in the dispute to assist the disputants in reaching an agreement which will help the countries to attain a solution or a settlement.¹³ According to the articles which is when read in a combined manner of UN Charter Articles 33 (1) and 33 (2), the UN Security Council has the authority to request that parties involved settle their issues using the methods outlined in Article 33 (1). This is generally using a third party to settle their issues. There are many preceding successful outcomes when this is done, the Peru and Ecuador disputes, Argentina - Chile Beagle Channel Dispute and the Iran hostage's crisis.
- The responses for the allegations that are put on India by china are instant but there is a lack in explanation and substantiation. The arguments that are made by India is not backed up by an evidence or any resources that would have made the point clearer and stronger. But on the other hand, china cites many sources and link its statements to the historical evidences which is hard to neglect and deny. In India, there is a scarcity of international law professionals who can dispute Chinese views. Reporters, former military commanders, and geopolitical specialists have interpreted the different agreements in the Indo - China dispute, but they have poorer knowledge in this subject matter to give authoritative interpretations of legal documents. Instead than applying the law with a knowledge of principles and practises, these interpretations are based on real conditions such as geography and ground - level military positions. The lack of officials who are properly know ledged officials and experts are the main reason. If India gathers such types of personnel who are able to interpret both the situation and the international in a right way, we can see a drastic difference. Basically, a proper think tank from the Indian side would benefit us in many ways because it can provide us with alternative narratives and explanation which will help us to claim and counterclaim.

2. Conclusion

The unpredictability regarding the border issue has harmed bilateral relations between India and China. The border standoff between India and China has devolved into a

dangerous trade war that threatens both countries' economy. Even though there are many treaties signed to govern these issue there have been movements by the Chinese government that are being reported by our government and many officials and leaders who are in power condemn this and explain that doing such a thing will result in breaking the bilateral treaties that are signed there have been no response from the Chinese side. This results in a way that only party who signed the treaty is obeying it while the other does not even care about the consequences that will happen because of its action. Till now there has been no clearer explanation from china for its actions but there have been various possibilities given by experts that is it can be a Chinese effort to gradually nibble its way into India and take additional territory and to make India with a fait accompli. This raises a bigger unsureness about the treaties and its effectives in both the countries perspective. If these two countries resolve their border dispute it will yield a greater benefit for both the country's economy and many other things. Even though it is more complex process because of the Chinese approach and the things that they do regarding the border dispute. But if both these countries find a way to settle their dispute, it will give a better result and tranquillity between them.

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