

International Law Analysis of India's Challenge to the Infrastructure Development Provisions of the National Land Boundary Law

Pu Peng¹

¹ Wuhan University China Institute of Boundary and Ocean Studies, Wuhan University, Wuhan, China

Correspondence: Pu Peng, Wuhan University China Institute of Boundary and Ocean Studies, Wuhan University, Wuhan, China.

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Abstract

Infrastructure development is a necessary path for development in every region, and the disputed sensitive areas between China and India also cannot avoid the topic of infrastructure development. China adheres to the path of peaceful development and thoroughly studies the international law and jurisprudence that promote peaceful conflict resolution, so as to provide international law basis for resolving the dispute between the two sides as soon as possible and for the smooth progress of infrastructure development. Both sides should steadily promote the settlement of the issue in accordance with international law, legally carry out infrastructure construction, and safeguard the livelihood and security of the disputed areas. Clarifying the relevant legal issues is also an important prerequisite for eliminating international biased opinion and better cooperation and negotiation.

Keywords: The National Land Boundary Law, infrastructure development, India-China border

1. Introduction

With the promulgation of China's National Land Boundary Law of the People's Republic of China (hereinafter referred to as the "Land Boundary Law"), international public opinion is once again in an uproar, especially for India, which still has a boundary demarcation dispute with China under the influence of geopolitics. The Indian official and private media are particularly concerned about the potential impact of the Land Boundary Law on the disputed areas between India and China.

Indian public opinion reports that it is mainly

concerned that China will interfere with India's infrastructure development in the disputed areas in accordance with the provisions of the Land Boundary Law. For example, the Land Boundary Law prohibits the construction of permanent infrastructure near the border without China's permission. In particular, when India and China confront each other in the border area and the relations between the two countries are strained as a result, Indian domestic public opinion tends to exaggerate the "Chinese threat", exaggerate or even deliberately distort the normal construction of the Chinese side in the border area, encourage

or incite anti-Chinese sentiment among the Indian public, and create a pretext for the Indian government to take offensive actions in the border area and other areas of relations between the two countries. The Indian government's offensive actions in the border area and other areas of relations between the two countries are justified.¹ In addition to condemning China, India has unilaterally allowed its border troops to build infrastructure along the western section of the Sino-Indian border, and to a greater extent, has crossed the border into Chinese territory to set up barriers and obstruct normal patrols by Chinese border troops, in an attempt to unilaterally change the status quo of border control.

Accordingly, this paper focuses on whether the construction of infrastructure in the disputed area between India and China is regulated by the Land Boundary Law. Is the development and construction of the disputed area restricted by the relevant international treaties. The analysis focuses on the relevant legal provisions of this issue.

2. India's Concern over Chinese Infrastructure Development in Disputed Areas Source

China and India are in territorial dispute over a total area of more than 120,000 square kilometers in the region. The eastern section of southern Tibet is now under the de facto control of India, while the western section of Aksai Chin is under the de facto control of China. Regarding the disputed area between China and India, successive Chinese governments have taken the attitude that no formal demarcation agreement has ever been signed between China and India, identifying the Sino-Indian border as an undefined national boundary. A Times of India editorial described the new law as a tough signal from China, arguing that the enactment of the Land Boundary Law means that their current border impasse "has little chance of being resolved satisfactorily" and that China will not budge on its border claims because it wants to make them legal by establishing permanent infrastructure and control systems in these areas. control systems in these areas to legitimately formalize them.

2.1 History of War Heightens India's Sensitivity to Chinese Activities

On October 20, 1963, Chinese border troops launched a full-scale self-defense counterattack against the issuance of the Chinese army, which

fought with great momentum and reached the traditional Sino-Indian customary line in a month's time. India's experience in this war was a disastrous one, making the overall situation along the Sino-Indian border more tense. With China's reform and opening up, both economic, political and military have been comprehensively upgraded and developed, and the overall strength gap between China and India has widened, making India wary and suspicious of all Chinese actions with the border area, and even infrastructure construction.² Coupled with the biased guidance of U.S. policy toward India during this period, the U.S. became more active in assisting India after China announced its initiative to cease fire and withdraw its troops on November 21, 1962.³ The U.S.-India relationship appeared to be a "true love in distress", while Sino-Indian relations fell to a freezing point with the covert support of Europe and the United States. India requested a massive increase in Western aid after its defeat in the border war, but still "stood firm" and tried to maintain its independence and dignity. India, for its part, fought Chinese forces in such a state of wavering foreign relations. Thus, even after China declared a ceasefire and withdrawal of its troops following its overall victory in the war against India in the last century and its sincere intention to take the initiative to negotiate a cessation of the border conflict and a peaceful resolution of the border issue, the Indian side continued to be frustrated by the choice of the Chinese army to send troops, and its distrust and intention to cooperate was felt in the subsequent negotiations between the two countries.

2.2 Infrastructure Development Is Not Equivalent to Military Development

On the military front, starting in 2019, India continues to build roads, railroads, bridges, and other military facilities along the border to offset China's logistical supply advantage. According to reports, both China and India have invested significant amounts of money and manpower to build roads, rail networks, and airfields along the Line of Actual Control, and to modernize military equipment deployed in the region. In terms of non-military infrastructure development, China's policy of building well-off villages in the border areas under its poverty alleviation policy has raised concerns in India, while India has also invested heavily in construction in its area of control. However, in

terms of public opinion, the Indian side has deliberately confused the interpretation of the concept of infrastructure construction in China's Land Boundary Law. In the text of the Land Boundary Law, the focus is on the management of border affairs, while for the management of military facilities it is only mentioned in Article 57 that if there is any damage to boundary markers and border defense infrastructure, the public security authorities shall, in accordance with the Law of the People's Republic of China on Public Security Administration Punishment and the Law of the People's Republic of China on the Protection of Military Facilities The relevant provisions of the Law of the People's Republic of China on the Protection of Military Facilities shall be punished. It is not appropriate for India to exaggerate the protection of military facilities under the Land Boundary Law and to be wary of China's legitimate infrastructure construction.

3. Analysis of Laws Related to Infrastructure Construction in Disputed Areas Between India and China

This part examines the sources of legality of infrastructure construction in the disputed areas between China and India, and the principles and guidelines that both sides should follow in resolving disputes over infrastructure construction, in the light of international conventions and treaties, Chinese domestic law and Indian domestic law.

3.1 Analysis from the Perspective of Relevant International Conventions, Treaties and Agreements

Infrastructure development is a matter of employment for all, as well as economic and social progress. The United Nations Charter places special emphasis on regional development around the world, and infrastructure development should not be stalled by ambiguity over sovereignty despite disputes over disputed areas. In accordance with the purposes and principles of the UN Charter, disputes between two countries should be resolved peacefully, using peaceful methods such as negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, and regional organs. As the UN Charter is the authoritative international law convention, China and India are obliged to resolve the Sino-Indian border dispute peacefully. China and India have the right to freely choose and agree among the methods of dispute settlement

recognized by international law to choose the specific method that is appropriate to the nature and circumstances of the Sino-Indian border dispute and that can resolve the dispute early, promptly, fairly and completely. Infrastructure construction in the disputed area between India and China should follow the basic principles of the UN Charter, maintain the political position of peaceful settlement of disputes, and advance the settlement of sovereignty disputes through friendly consultations between the two sides. Respect the infrastructure affairs of other countries, and infrastructure construction should not go beyond what is necessary to maintain international peace and security. Infrastructure construction is necessary for the survival and development of local residents, and the two sides should maintain goodwill and timely communication to resolve disputes over infrastructure construction, rather than resorting to the threat of force.

In the disputed eastern and western sectors between India and China, there is already a high-level political consensus between the two countries to "maintain peace and tranquility along the Sino-Indian border until the border dispute is resolved. On this issue, the two sides also concluded the Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control along the Sino-Indian Border as early as 1993⁴, forming a treaty obligation that border demarcation should be carried out in a peaceful manner, but India's actual border violations in recent years are completely at odds with the high-level consensus. The BBC News commented that India's "almost crazy infrastructure actions" in recent years, as well as frequent provocative acts on the border, have prevented China and India from steadily advancing their negotiation activities and failed to fulfill in good faith the consensus reached between the two sides to maintain peace and tranquility in the disputed areas before the dispute is resolved, and India's unrestricted military infrastructure is contrary to the principle of good faith fulfillment in international law.

3.2 Analysis from the Perspective of the Land Boundary Law

The promulgation of the Land Boundary Law has made it possible to have a legal basis for rational planning and infrastructure construction in China's border areas. Since 2007, China has started a program to build up the

border areas, but the problems of hollowing out of the border and population loss still appear. The Law on Land Borders was introduced, in which the infrastructure construction is mentioned in Article 9 and Article 10 of the Law. Article 9 provides for the main units responsible for the promotion of border infrastructure construction, through the expression “coordinating agencies” and “joint efforts” to clarify the obligations of relevant units to cooperate and prevent the shifting of responsibilities in infrastructure construction. Article 10 for the new period of border functions from purely military functions of defense construction, to promote the opening of economic functions to provide. The objectives and responsibilities of the state to build border areas and promote the all-round development of local economy and politics are clearly defined. It can be seen that the Law on Land Borders was introduced to achieve the purpose of regulating the defense, management and construction of land borders and frontiers, in addition to the core importance of maintaining national sovereignty, security and territorial integrity. Regulating the management affairs of border areas is an important part of implementing friendly and peaceful relations and cooperation between China and its neighbors.

The land state boundary law should be positioned at the jurisprudential level as China’s domestic law⁵ and does not seek to interfere with the normal production and construction activities of other countries. Article 40 on India’s concerns: No organization or individual may construct permanent structures near the land state border without the approval of the relevant competent authorities. It should be interpreted that China has the sovereign right to defend its territorial sovereignty on the inner side of its border range, and prohibits other countries from illegally crossing the border and constructing permanent buildings on the Chinese side of the border. This will undermine China’s sovereign rights and endanger national territorial security. The expression “in the vicinity of the land border” in the legal text should refer to the vicinity of the already established national boundary, and there is no intention for China to intervene and control the disputed areas between China and India, especially the areas under the actual control of the Indian side. There is no need for the Indian side to engage in unfounded speculation and public opinion to

blame China for the promulgation of its domestic law. Since the promulgation of the Land Boundary Law, the text has served more as a declaration of the basic principles and purposes of China’s border management, control and development. It is not intended to catalyze the conflict between the two sides in the disputed areas of the eastern part of Tibet and the western part of Aksai Chin, as alleged by the Indian media to provoke the relevant disputes.

Declaration of sovereignty is an important means of defending national sovereignty and stopping acts of aggression in border and territorial disputes. The premise that a declaration of sovereignty can be legally validated and recognized in international law is to ensure that the area belongs to the territory of the country. In the international arena, there are many acts of unlawful occupation of other countries’ territories and declarations of sovereignty are invalid because they violate international law. The existing disputed areas between China and India are under the actual control of the two countries, and the sovereignty of the disputed areas as a whole is still unclear, and no unanimous territorial arrangement has been reached. Therefore, China’s domestic law is not sufficient to constitute a declaration of sovereignty over the disputed areas between the two countries, and the Indian side’s analysis of the intent of the Land Boundary Law’s promulgation, that it serves as a declaration of sovereignty over the disputed areas, is not accurate. The Chinese side has a clear attitude that it hopes to reach agreement on the unresolved border areas between China and India through negotiations and peaceful consultations to establish the sovereignty of the disputed areas.

3.3 Analysis from the Perspective of Relevant Management Measures in India

India shares borders with seven different countries namely Bangladesh, China, Pakistan, Nepal, Myanmar, Bhutan and Afghanistan. In response to the India-China border challenge, the Indian Armed Forces are on constant vigilance along the Indochina border based on the experience of previous border conflicts; in response to the India-Myanmar border challenge, the Indian government has chosen to take measures to ensure better border management and a strong fence; in response to the India-Bhutan border challenge, both countries have decided to cooperate to contain

border insecurities; and in response to the India-Bangladesh border challenge, the Indian government has taken initiatives such as building and repairing. In response to the Indo-Bangladesh border challenge, the Indian government has taken initiatives such as building and repairing the border fence. While the Indian government's border construction challenges are enormous, the Indian government has also invested heavily in the construction of related facilities. According to the PwC report, the Indian government's approach to the border challenge is to innovate and build infrastructure, collaborate on border management, and build organization and capacity. India has taken bilateral measures with Bhutan and Bangladesh to jointly manage the border area and has received good feedback, and India has never stopped building infrastructure for its border area.

4. Conclusion

Peace is an important prerequisite for development, and at a time when the international situation is becoming increasingly complex, both sides need a peaceful international political environment. In recent years, China has been resolving border issues with its neighbors one after another, but the process of border demarcation with India has been slow. After the above discussion of the specific provisions of the land boundary law and the relevant principles of international law, it can be concluded that, firstly, the construction of infrastructure in the disputed area is recognized and protected by international conventions on the premise that it does not impede peaceful development, and India's challenge to the Chinese side lacks the relevant international law basis. Secondly, the construction of infrastructure in the disputed area is not bound by the domestic laws promulgated by China, both in terms of the content and the nature of the legal text. Both sides have the right to decide on their own the construction of infrastructure in the disputed area within the realm of their control. Third, the two sides should follow the principle of good faith in the construction of infrastructure in the disputed areas and fulfill the consensus reached between the two sides to "maintain peace and tranquility in the Sino-Indian border areas until the border dispute is resolved", instead of radical deployment of military forces in the disputed areas in total disregard of the

principles of international law. We should steadily promote negotiations and consultations between the two sides and accelerate cooperation in resolving the border demarcation issue.

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