

# The Application of the National Land Boundary Law and International Treaties in Domestic Law

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## Abstract

Article 31 of the National Land Boundary Law of the People's Republic of China stipulates the application of this law and international treaties, which is the technical embodiment of the incorporation of international treaties into domestic law. Through comparison, it is found that, unlike other Chinese laws that directly stipulate that "if this Law has different provisions from international treaties, international treaties shall apply", Article 31 adopts the concept of "otherwise stipulated". In this way, the particularity of land boundary and border management affairs is combined with the interpretation of "other provisions", so as to solve the relationship and application of the Land Boundary Law and international treaties.

**Keywords:** treaty, domestic law, application of law, interpretation of law

## 1. Introduction

### 1.1 Introduce the Problem

The promulgation of the Land Boundary Law of the People's Republic of China (hereinafter referred to as the Land Boundary Law) has provided basic compliance with the legal system for national boundary work. The effective management of land border affairs requires not only the regulation of domestic laws, but also the cooperation and cooperation of neighboring countries. The signing of international treaties or agreements is the main means of demarcation of borders between countries and cooperation in the management of border affairs. At present, China has signed border management system agreements with 10 land neighbors, established effective communication and cooperation

mechanisms on border affairs, and effectively guaranteed law-based border management and control. How to deal with the relationship between international treaty and domestic law is an urgent problem in practice. Since China's Constitution does not clearly stipulate the relationship between international treaties and domestic laws, and the academic community lacks a consistent understanding of this, disputes will inevitably arise in the handling of specific issues. In terms of international cooperation on land border affairs, the Law on Land Border Affairs clearly stipulates in its general provisions that "the People's Republic of China abides by treaties concluded with or jointly acceded to with foreign countries on land border affairs", which reflects the principle of adherence to treaties and also confirms the

validity of international treaties in domestic law. On this basis, Article 31 specifies the application of treaties and domestic law. Unlike other laws in our country, Article 31 adopts the concept of “otherwise provided”. How to understand “otherwise provided” in legal provisions? The answer to this question involves not only the interpretation of legal texts, but also the application of international treaties and domestic laws.

## **2. Domestic Practice in Dealing with the Relationship Between International Treaties and Domestic Law**

Treaty is an important legal source in international law, and the subject of international law should perform the obligations in the treaty in good faith, which is the requirement of the principle of “treaty must be observed”. In practice, if a country wants to fulfill its treaty obligations in good faith, it needs to introduce the content of the treaty into the domestic law system. In terms of legal technology, there are two ways to introduce the treaty content into the domestic law system to make it legally binding on the country and citizens. One is incorporation (or incorporation), also known as direct introduction; The second is conversion, also known as indirect introduction. How a treaty can become part of domestic law is a technical question. This paper focuses on how to achieve the coordination of treaty and domestic law when the treaty is introduced into the domestic law system, especially how to apply the treaty when it conflicts with domestic law. In view of the application of international treaties and domestic laws, some scholars identify it as “the rank of treaties in domestic law”, and some scholars use the term “validity level”, believing that the application of international treaties and domestic laws is essentially a comparison of the effectiveness of treaties and domestic laws, and further argue that according to the differences in the subject of concluding treaties and the ratification procedure, the application of international treaties and domestic laws is more important than the application of treaties. The effect of treaties is equivalent to the effect of laws and regulations at different levels of the domestic legal system. Both views ignore the fact that treaties, as sources of international law, are fundamentally different from domestic law, and ignore the fact that treaties are commitments between subjects of international law and are

bound by the principle of “treaties must be observed”. Therefore, the application of concepts such as “legal rank” and “effectiveness level” to the field of international law, especially international treaties, not only fails to solve the relationship between treaties and domestic law, but will further lead to theoretical confusion and aggravate the complexity of legal practice.

A review of national practice at the international level shows that most States believe that treaties must not contradict the Constitution and should be applied preferentially when compared with general domestic law. In China, the relationship between treaties and domestic laws is not clearly defined in the Constitution, the Law on the Procedure for Concluding Treaties, the Legislation Law and other laws. The representative theoretical viewpoints in the domestic academic circles can be roughly divided into two categories. The first viewpoint is the “theory of comparison of domestic laws” discussed above, that is, to classify the effectiveness levels of treaties according to the different parties to the treaty and the different ratification procedures. The second view is that treaties must not contravene the Constitution, but have precedence over domestic law. Both of these views maintain the authority of the constitution, but the latter is supported by more scholars on the grounds that, according to the provisions of China’s General Principles of Civil Law and Civil Procedure Law and other laws, when the provisions of this law are inconsistent with the contents of international treaties concluded or acceded to by China, international treaties should be applied preferentially. There are many similar provisions in many of our laws and judicial interpretations, which are characterized by giving priority to the application of the treaty in relevant matters where the content of the treaty conflicts with our domestic law. Although the second view is supported by legislation and judicial practice, these laws all regulate civil and commercial legal acts, and ignoring the characteristics of laws in different fields, especially the differences between public law and private law, it is not rigorous to talk about the application of treaties and domestic laws in general. In addition, a distinction should be made between the two different concepts of “application” and “priority application”. As for the relationship and application of international treaties and domestic law, our country’s approach at the

present stage is to adopt the approach of legislating one by one, that is, only when a law clearly provides that a kind of treaties can be directly applicable in our country by the way of incorporation of such treaties can be directly applicable in our country, and only when the law is clearly stipulating that when the treaty is inconsistent with the provisions of domestic law, the treaty is applicable in our country. A treaty has priority.

### 3. Interpretation of Article 31 of the Land Boundary Law

The Land Boundary Law is an important law in the field of homeland security in China, and most of the matters regulated by the international cooperation on land boundary affairs are administrative affairs. Different from China's "General Principles of Civil Law" and "Civil Procedure Law", Article 31 of the Land Boundary Law does not use "different provisions" but "other provisions". The interpretation of the other provisions here is the basis for resolving the application of the Law on Land Frontiers and the international treaties related thereto.

There are two meanings of "otherwise provided" in legal interpretation. One is that there is no provision in a certain legal provision but there is a clear provision in other legal provisions. Second, a legal provision is inconsistent with other legal provisions, that is, the provisions are different. It should be noted that it is not necessary for sovereign states to incorporate or translate into domestic law every international treaty in force for them. The reason why certain treaties are translated into or incorporated into domestic law is to ensure that the rules established by the treaties are applied domestically and that treaty obligations are fulfilled. Since border treaties involve national territorial sovereignty, and treaties related to border management mostly involve administrative matters, taking into account the particularity of land border and border management affairs, from the perspective of good-faith implementation of treaties and safeguarding national sovereignty, the term "otherwise provided" in article 31 should refer to situations not provided for in the Law on Land Frontiers but expressly provided for in the relevant treaties and cannot be interpreted in a broader way.

### 4. Conclusion

The relationship between international law and domestic law, especially the relationship between international treaties and domestic law, is not only a basic theoretical problem, but also a problem to be solved in practice. At present, our country takes the form of legislating one by one, and due to the complexity of the contents of the international treaty, it is foreseeable that the model will not be significantly changed. The enactment of the Land Boundary Law is a practical measure to actively promote legislation in important areas such as national security and foreign-related rule of law, and improve the legal system urgently needed for national governance. However, the introduction of the new law will certainly face many problems, and the theoretical and practical circles should actively respond to it, so as to better promote the interaction and development of China's rule of law and international rule of law.

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