

# ***Legal Practice and Challenges in Border Disputes: Analysis of the Simla Treaty Surrounding the Sino-Indian Border Issue***

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**Abstract:** The purpose is to comprehensively and deeply discuss the legal practice of the Sino-Indian boundary dispute and the many challenges it faces, and to reveal the applicability and limitations of international law in resolving such cross-border territorial disputes through a detailed analysis of the practical application of the principles, rules and cases of international law in the Sino-Indian boundary dispute. This essay will provide practical reference and enlightenment for the further development and improvement of the international law system. Through the historical background and territorial claims of the Sino-Indian boundary dispute, this paper examines in detail the legal principles and rules of the international law concerning territorial disputes and their practice in the Sino-Indian boundary dispute.

## **1. The Legality of the Treaty**

### **1.1 The Signing Process of the Simla Treaty**

The boundary dispute between China and India is one of the persistent territorial disputes in Asia, which not only has a profound impact on the political, economic and cultural exchanges between China and India, but also affects the overall development trend of bilateral relations. Moreover, its complexity and sensitivity make it a potential threat to peace, stability and security in South and Southeast Asia as a whole. The dispute between China and India centers on a stretch of the roughly 2,000-kilometer border between the two countries. The line has never been formally demarcated. China and India have, to some extent, tacitly accepted a traditional border line, based on long-standing customs on administrative boundaries. The boundary is roughly divided into three sections: the eastern section runs at the southern foot of the Himalayas, the middle follows them, and the western section runs along the direction of the Karakoram Range. The McMahon Line, then known as the McMahon Line, has intensified the border issue between the two countries.

The Simla Treaty was a series of agreements secretly signed between British representatives and the government of China's border area at a tripartite conference between China, Britain and China's border area held in Simla, India, in 1913-14. The main contents of the Simla Treaty included: Britain and China recognized China's suzerainty over its border area and recognized the autonomy of its

border area; China undertook not to convert its border area into an administrative province, and Britain undertook not to annex China's border area or any part thereof; China undertook not to station troops in its border area, install civilian and military officials in its border area, or conduct colonial affairs; internal affairs of China's border area should be managed by the Lhasa government, and neither the Chinese nor the British governments should interfere. During the meeting, they privately discussed the direction of the eastern China-India boundary between China's border area and Bhutan and Myanmar, and drew the "McMahon Line" on a map. In July 1914, the representatives of the Chinese government refused to sign the Treaty of Simla and issued a statement that they did not recognize any such treaty or document. The question of its legality was at the heart of China's staunch resistance and opposition. China and India have long had serious differences on the boundary question, and the most important point of disagreement between the two sides is the legality and illegality of the "McMahon Line", and the confirmation of this issue will be the key point to resolve the dispute between the two sides<sup>[1]</sup>.

## 1.2 No Intention to Sign the Agreement

According to international law, for a treaty to have legal effect, certain conditions must be met, including the ability and willingness of the contracting parties to make a treaty. The capacity to make a treaty refers to the ability of a subject of international law to conclude a treaty with another subject of international law in accordance with the law. All parties involved in the conclusion of a treaty must possess corresponding legal qualifications and capabilities and be able to negotiate and sign treaties in an independent and lawful capacity in international affairs. As for some regions or entities that do not possess independent sovereignty, they do not have independent capacity to make treaties without the authorization of the sovereign state to which they belong. The intention to make a treaty refers to the acceptance of the contents of the treaty and the expression of the intention to sign a treaty with it. Such will to conclude a treaty shall be generated on a voluntary, equal and consensual basis, free from any undue factors such as coercion, fraud or misdirection. Wu Defeng said that a boundary treaty is an agreement between two countries, and it must be unanimously agreed upon by the contracting parties. On the text of the treaty, it must be formally signed by the plenipotentiary representatives of each State party. Treaties concerning territorial boundaries have to be formally ratified by the central government of the signatory State<sup>[2]</sup>. The Simla Treaty was signed privately by representatives of the British and local governments of China's border area without the authorization of the Chinese central government, and without the consent of China. China's border area has been an inalienable part of the Chinese territory since ancient times, and the local government of China's border area is only a local administrative organ under the leadership of the Central Government of China, with no independent capacity to sign the Treaty. As a sovereign state and a contracting party to the Treaty, China has no knowledge of signing of its border area. On major issues concerning national territorial sovereignty and other major issues, any foreign signing by a local government must be strictly authorized and approved by the central government, which is very important for safeguarding national sovereignty, unity and territorial integrity. And upon learning about it, China immediately declared that it did not recognize the signing of the treaty. China firmly upholds its territorial sovereignty and national unity, and firmly negates any unauthorized treaty that infringes on its national interests. This shows that China has no intention to sign the treaty.

## 1.3 Declares the Treaty Null and Void

From the perspective of fundamental national sovereignty and territorial integrity, China's border area has been an inalienable and important part of China's territory since ancient times. The local government within a country derives its power from the central government, and must obtain the

explicit authorization of the central government to conduct major affairs concerning foreign relations and the signing of treaties with the effect of international law. However, the local government of China's border area did not obtain any authorization or consent from the central Government of China during the signing of the Simla Treaty. The local government of China's border area does not have the legal qualification to independently sign treaties with other countries. This lack of qualification is based on the principle of the uniqueness and integrity of state sovereignty. According to Article 8 of Part II, Section 1, of the Vienna Convention on the Law of Treaties, "An act concerning the conclusion of a treaty under Article 7 cannot be regarded as being carried out by a person authorized to represent a State in the matter, and shall have no legal effect unless subsequently confirmed by that State." The government of China's border area does not fall into the category of persons who can be regarded as representatives of the State under Section 1, Article 7 of Part II of the Vienna Convention on the Law of Treaties, and therefore needs to be confirmed *ex post facto* by China after signing treaties independently. The Simla Treaty was signed without the consent and signature of the Central Government of China, and therefore did not meet the conditions for its conclusion and entry into force under international law. From the standpoint of the Chinese government, it has never recognized the legal effect of the Simla Treaty.

In fact, as soon as the Chinese government learned of the signing of the Treaty, it did not hesitate to declare it null and void. This act is of vital significance in the field of international law. The Simla Conference failed to produce a tripartite treaty, and Britain knew that the McMahon Line was illegal. The secret exchange also lacked legitimacy, and it could not be legally enforced unless China's border area became independent<sup>[3]</sup>. According to the basic norms of international law, if the local government of any sovereign country acts without the authorization of its central government, especially when it involves serious international affairs such as signing treaties with foreign countries, its actions cannot be regarded as having legal effect under international law in the strict sense of international law. This is not only to defend the principle of state sovereignty, but also to maintain the stability and justice of the international legal order. Only by strictly adhering to this principle can we ensure that the equal status and legitimate rights and interests of all countries in international affairs are not infringed upon, so as to safeguard the peace and stable development of the international community.

## 2 Issues of Territorial Sovereignty

### 2.1 Principle of Sovereign Equality of States

One of the basic principles of international law is the principle of sovereign equality of States, which requires all states to enjoy equal rights and shoulder equal obligations under international law. China firmly maintains that its border area is an inalienable and important part of its territory. China's border area and the Central Plains are closely connected and integrated in many aspects, including politics, economy and culture. Together, they have shaped the pluralistic unity of the Chinese nation. During the British rule in India, the British had aggressive ambitions in China's border area and attempted to gain actual control of China's border area by weakening the relationship between the Chinese central government and China's border area. By signing treaties, Britain created historical and jurisprudential "grounds" to pave the way for later border disputes. In modern times, Britain tried to plunder China's border area through the Treaty of Simla, making China a semi-independent country under its actual control. Britain moved the traditional boundary between China and India from the southern foot of the Himalayas to a ridge, 100 kilometers north and south of the traditional customary line, which seriously violated China's territorial sovereignty. After India gained independence in 1947, it did not abandon the McMahon Line and took over some border areas occupied by the British in China's border area, inherits the boundary policy of the British colonial period, which has led to the continuation and exacerbation of the boundary issue. Article 2 of the 1906 Sino-British Treaty

stipulates that "the British state shall not occupy China's border area and shall not interfere in all the politics of China's border area, and the Chinese State shall not allow any foreign interference in China's border area and in all its internal affairs"<sup>[4]</sup>. Proceeding from the principle of sovereign equality of states, Britain has no right to interfere in China's internal affairs, nor should it sign the Simla Treaty with the Government of China's border area.

## **2.2 No Right to Independently Sign Treaties on Territorial Sovereignty**

According to Chapter I, Article 2, paragraph 1, of the Charter of the United Nations: "The Organization is based on the principle of the sovereign equality of its Members." It can be seen that territorial sovereignty has the supreme status in international law. It is an important part of state sovereignty and bears the core interests of a state in political, economic, cultural and other aspects. In the theory and practice system of international law, the core premise of any territorial change is that the explicit consent of the relevant sovereign state must be obtained, which is the basis for the legitimacy and legitimacy of territorial change. According to the two Vienna Treaties of 1969 and 1986 and international practice, a treaty is an agreement signed between the subjects of international law with the capacity to make a treaty. The subjects of international law include states, international organizations and national liberation organizations<sup>[5]</sup>. However, the demarcation of the McMahon Line obviously lacks the key link of consent of China, a sovereign state, so that the McMahon Line does not have any legal validity and legitimacy basis from the beginning of its birth. Such secret signing of the treaty not only undermines China's territorial integrity, but also poses a serious challenge to the stability and authority of the international legal order. China has always clearly and firmly stressed that the local government of China's border area fundamentally has no power to sign treaties with foreign countries on national territorial issues. This position has solid and clear theoretical and practical support in the framework system of international law. According to the basic norms and principles of international law, no local government has any right to sign treaties concerning national territorial sovereignty with foreign countries without the legitimate authorization of the central government. This is the key to safeguarding state sovereignty, independence and territorial integrity in international relations and one of the cornerstones of the stable operation of the international order. China's border area, as an inherent part of China's territory, has the right to handle its relevant affairs fully under the central government, which represents the overall interests of the state. Any illegal act that bypasses the central government has no legal effect, nor can it be recognized and supported by the forces of justice of the international community.

## **3. The Actual Effectiveness**

### **3.1 Propositions of the Two Countries**

As for the boundary demarcation claims based on the "McMahon Line", China argues that the treaty is invalid because the region of China's border area is not subject to international law and the government of China's border area has not obtained authorization from the central government. As major countries in Asia, China and India enjoy extensive exchanges and cooperation in political, economic, cultural and other fields. The development of bilateral relations is of great significance to regional peace and stability. China hopes to resolve the boundary issue through peaceful, equal and consultation, so as not to let the boundary issue become an obstacle to bilateral diplomatic relations.

India maintains that the McMahon Line demarcated by the Simla Treaty is the basis for the boundary between the two countries, that the disputed territory is lawfully occupied under the statute of limitations, that the McMahon Line was signed under the auspices of a third party, and that it is a tangible expression of the true will of both sides and should be strictly observed. After the conflict in

2020, India demanded that China withdraw all troops that had "crossed the Line of Actual Control" and restore the status quo before April 2020, cutting off a series of normal exchanges between the two countries, including economic and cultural diplomacy. Other diplomatic issues can only be discussed if China withdraws first and returns the right to patrol to India.

### **3.2 Undermining Other Countries' Territorial Sovereignty by Improper Means**

According to Chapter I, Article 2, paragraph 4, of the Charter of the United Nations, "Member States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any Member State or State or in any other manner inconsistent with the purposes of the United Nations." In handling international affairs, all kinds of problems must be solved by proper means. The process of demarcation of the "McMahon Line" was carried out without the participation of the central Government of China, and the "demarcation" carried out secretly by the British colonial forces and some representatives of the local government of China's border area seriously contradicted the requirements of the Charter and violated the spirit of international law. It is an infringement on China's territorial integrity and political independence by improper means. In addition, due to the nature of the Simla Treaty, which undermines China's territorial sovereignty, and its lack of legitimacy, the Simla Treaty is an invalid treaty, so the McMahon Line has no effect under international law. For example, in the international Iraq War, the United States unilaterally launched a large-scale military attack on Iraq without the authorization of the United Nations Security Council on the pretext that there were weapons of mass destruction in Iraq. In the international community, many acts that undermine the sovereignty of other countries by improper means should not undermine the territorial sovereignty of other countries by improper means in international relations, be they big or small countries. Instead, they should abide by the UN Charter and other norms of international law and respect the territorial integrity, sovereignty and independence of other countries.

### **3.3 Analysis of Lack of Practical Validity**

The Simla Treaty seriously violates the provisions of the Charter of the United Nations on the protection of territorial sovereignty. The Charter of the United Nations, as a basic norm universally followed by the international community, clearly emphasizes the principle of inviolability of the territorial integrity and political independence of member states. On the other hand, the Simla Treaty initiated by the UK through improper means has, to a certain extent, infringed upon China's territorial sovereignty and political independence and seriously undermined international law and international order. As a part of China, border area has no right to sign territorial treaties with other countries without China's authorization, and it has no capacity to do so. Therefore, the signing of treaties between China's border area and the United Kingdom requires the subsequent confirmation of China before they can take effect. China had no knowledge of the signing of the treaty. Upon learning of this situation, the Chinese government immediately and resolutely denied the treaty and its related provisions. This clear attitude fully reflects that China has no intention to conclude the treaty with the United Kingdom, and fundamentally negates the legitimacy and validity of the Treaty.

In addition, Britain and India have violated the basic principles of international law, plundering China's border area by non-peaceful means, failing to fulfill their due international obligations in good faith, and failing to respect China's territorial sovereignty and political independence. Such actions have seriously undermined the foundation of trust and cooperation of the international community. The Simla Treaty is invalid from the perspective of the international law generally followed by the international community, as well as the historical, cultural, political and other factors of China, Britain and India. It has no legitimacy or legitimacy and successive Chinese governments



have resolutely refused to recognize it. The international community should respect historical facts and norms of international law and make clear the invalidity of the Simla Treaty.

## **4. Other Principles of International Law**

### **4.1 Five Principles of Peaceful Coexistence**

In its diplomatic philosophy and practice, China firmly maintains that the boundary question should be properly resolved in accordance with the basic principles of international law, in particular the Five Principles of Peaceful Coexistence. The Five Principles of Peaceful Coexistence, namely, mutual respect for sovereignty and territorial integrity, non-aggression, non-interference in each other's internal affairs, equality and mutual benefit and peaceful coexistence, have become one of the most important basic norms in modern international relations and are widely recognized and followed around the world since their inception, as they serve the fundamental interests of people all over the world. They have become the basic norms governing state-to-state relations. In the two areas of "non-aggression" and "non-interference in each other's internal affairs", India violated China's territory and interfered in China's internal affairs under the leading push of Britain in an attempt to plunder China's border area. According to the Simla Treaty, it can be seen that the British colonialists seriously violated China's sovereignty and territorial integrity, and India's territorial claims based on this have no legal basis at all.

China actively advocates and practices the Five Principles of Peaceful Coexistence as a guide, and has carefully built a just and reasonable framework for the settlement of international disputes. The establishment and application of this framework have not only strongly safeguarded regional peace and stability, but also provided a valuable reference example and successful practical experience for the entire international community when facing similar complex and sensitive boundary disputes and other international issues, demonstrating China's responsibility and wisdom as a responsible major country in international affairs. It has positive significance for promoting global peace, stability and development that cannot be ignored.

### **4.2 Fulfilling International Obligations in Good Faith**

One of the basic principles of international treaty law is the principle of good faith performance of international obligations, which requires States to act in good faith and fulfill their international obligations in good faith in international exchanges. According to Chapter I, Article 2, paragraph 2, of the Charter of the United Nations, "All Members shall, in good faith, fulfil the obligations they assume under the present Charter in order to ensure the rights and interests of all Members arising from their accession to the Organization." In concluding and implementing a treaty, the Contracting Parties shall perform their obligations in good faith to ensure the realization of the spirit and purpose of the Treaty. Before signing a treaty, all parties should conduct full and frank consultation and communication to ensure that the contents of the treaty are in line with the common interests of all parties and the universal values of the international community, and there is no fraud, coercion or improper intention. During the implementation phase of the treaty, all the more important, the parties should earnestly fulfill their obligations in strict accordance with the provisions and spirit of the treaty, and refrain from misinterpretation or evasion of responsibilities at will, so as to ensure that the purpose of the treaty can be successfully realized. During the signing of the Treaty of Simla, Britain's original intention was to invade China's border area and attempt to advance its unfair claim of the China-India boundary line by secretly signing the treaty. It did not abide by the principle of good faith, but was concluded through secret and improper means, so the treaty is not in accordance with the principles of international law and lacks legitimacy.

### 4.3 Estoppel

Estoppel is an important principle in international law. It refers to the principle that if a state has made a clear expression or commitment on a certain issue, it can no longer take a position that contradicts its previous expression or commitment. Article 45 (b) of the Vienna Convention on the Law of Treaties is essentially estoppel to prevent a State party to a treaty from renege on its commitments: When the performance of a treaty is in its favor, it considers the treaty to be valid, and when the performance of a treaty is in its favor, it changes its original position and involves various reasons to argue that the treaty is invalid or terminated, or to demand withdrawal or suspension of operation, so as to avoid it from performing its obligations under the treaty<sup>[6]</sup>. Britain has recognized China's sovereignty over China's border area many times in history. For example, in the 1906 Sino-British Treaty on the Renewal of China's border area and India, Britain explicitly recognized China's border area as part of China's territory and promised not to occupy China's border area and not to interfere in all politics of China's border area. This act of the UK is in essence a blatant denial of China's territorial sovereignty over China's border area and a serious breach of its previous explicit statements and commitments. It seriously undermines international trust and order and violates the principles of good faith and justice advocated in international law.

## 5. Suggestions

### 5.1 Enhance the Enforcement and Rationality of Judgments

The United Nations should actively formulate sound legal provisions and enhance the enforcement of the judgments of the International Court of Justice through clear and effective legal provisions, so as to ensure that the States concerned can be forced to implement the relevant judgments of the International Court of Justice, and no State should be allowed to evade its responsibilities under various unreasonable excuses. At the same time, it should actively seek the belief and recognition of States in the judgments of the International Court of Justice. In its judgments, the Court should uphold the fundamental principles of peace and justice, and strive to be impartial, fair and impartial in handling all types of cases, so that all members of the international community can feel that international judicial decisions are made on the basis of the principles of justice and equality.

Taking into account the principle of effective control and various other relevant factors, such as international relations, historical background and cultural differences, the competing rights of the parties should be comprehensively and fully considered. By taking all aspects into consideration, the ICJ's judgments will be more reasonable and more predictable, so that international judicial decisions will be more in line with the overall interests of the international community and the needs of long-term development. This will help to strengthen the international recognition of the Court as an international judicial institution in an all-round way, thus ensuring that its professionalism and authority can be widely and deeply recognized by the international community.

### 5.2 Measures to Prevent and Settle Disputes

Emphasizing the importance of the Charter of the United Nations, it is necessary to promptly remind the States concerned to respect their obligations under the Charter. The Charter of the United Nations, as the basic normative framework for international relations, clearly sets out the relationship between the rights and obligations of all member states in international affairs. Compliance with these obligations, such as respect for the sovereignty and territorial integrity of other states and non-interference in other states' internal affairs, is an important cornerstone for avoiding international disputes. Therefore, it must be emphasized that all countries should strictly abide by these Charter

obligations and refrain from taking actions that may cause disputes over territory, resources, etc. At the same time, States should refrain from actions that directly lead to disputes or aggravate existing situations, such as military provocations and unjustified economic sanctions.

The Security Council should also assume its irreplaceable and important responsibilities in the prevention and resolution of disputes. In addition, to create a stabilizing force on the ground, such as establishing United Nations peacekeeping forces, observer missions, or specific assistance and coordination bodies, to monitor the parties' conduct. This measure can prevent the situation from further deteriorating, and create an enabling environment for the peaceful settlement of disputes. This will also contribute to the timely and effective response to potential and existing disputes in international affairs, so as to maintain international peace and security.

### 5.3 Improve Relevant Treaty Rules

In order to safeguard national sovereignty, safeguard regional peace and stability and promote the harmonious development of international relations, we must actively promote the improvement of relevant treaty rules. It is necessary to further refine the border area control rules in detail and improve the relevant treaty rules. Due to its special geopolitical position, border areas occupy an important position in the pattern of national security and foreign relations, and border security is an extremely important part for every country.

Relevant treaty provisions are the basic norms governing the conduct of parties in border areas, and their perfection has a direct bearing on the stability and development of border areas. This requires a systematic review and revision of the existing treaty provisions, from the macro-principle provisions to the micro-operational rules should be optimized. Disputes over boundary issues should be sorted out and integrated, the most concentrated disputes should be found, and treaties and rules should be formulated accordingly. It is necessary to ensure that the provisions of treaties cover all possible situations in border areas, are logically rigorous and accurate in their formulation, and provide a solid institutional basis for the management and development of border areas.

The elaboration of border area control rules and the improvement of treaty provisions can effectively prevent the risk of border conflicts. The existence of border conflict risk is the result of the interweaving of many complex factors, and the imperfect rules are often the key factors. When rules and treaties in border areas are sufficiently perfected, parties' activities in border areas will be subject to clear constraints, so as to avoid misunderstandings and misjudgments caused by the uncertainty of behavior. At the same time, countries should exercise reasonable control over their own personnel, trade and resources, refrain from encroachment on others' territory and ensure their own inviolability. We should reduce the risk of border conflicts at the source and achieve the goal of reducing border conflicts. Once border conflicts occur, they will not only cause serious damage to people's lives and economic development in border areas, but also have a negative impact on the relations between countries. The improvement of relevant treaty rules can build an effective barrier, regulate the behaviors of all parties, reduce contradictions and disputes caused by loopholes or ambiguities of rules, thus reduce the occurrence of border conflicts and maintain peace and stability in border areas.

## 6. Conclusion

The Simla Treaty was signed by the representatives of the British Government and the local government of China's border area without the authorization of the Central Government of China. The local government of China's border area has no right to sign international treaties concerning territorial sovereignty on behalf of China, so it has no capacity to do so. The Chinese government did not have the will to sign the Treaty, and the Chinese government declared the treaty null and void



immediately afterwards, further confirming its illegality. China has always adhered to the principle of sovereign equality of states and regards China's border area as an inalienable part of Chinese territory. Britain's attempt to illegally draw the McMahon Line through the Simla Treaty infringes on China's territorial sovereignty, and this act has no validity under international law. The Simla Treaty and the McMahon Line it delineated were reached through secret and improper means, violating the basic principles of international law, especially the provisions of the UN Charter on respect for the sovereignty and territorial integrity of states. Such actions not only undermine China's territorial sovereignty, but also pose a challenge to the stability and authority of the international legal order.

Although international law provides a basic framework for resolving territorial disputes, in practice, its applicability is limited by a variety of factors, especially issues left over from history and the influence of geopolitics. International law has its limitations in resolving territorial disputes left over from history. Although international law provides a framework for resolving disputes in theory, in practice, factors such as geopolitics and historical background may weaken its effectiveness. The incident has provided useful practical experience for the international community in handling similar disputes, and provided an important reference for the further development and improvement of the international law system. International organizations should further clarify the procedures and conditions for the conclusion of treaties so as to prevent the recurrence of illegal acts like the Simla Treaty. In this way, the stability and authority of the international legal order should be maintained, international peace and stability should be promoted, and the international community should attach greater importance to the principles of law.

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