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The Place of International Law in Chinese Strategy and Tactics: The Case of the Sino-Indian Boundary Dispute

ARTHUR A. STAHNKE

MOST studies of the Sino-Indian boundary dispute have presented a chronological account from the initial incursions in the mid-1950's to the outbreak of war in 1962,¹ or have examined the relevant legal arguments found in the official correspondence to ascertain the validity of either party's case in international law.² The analysis below will differ substantially, though not totally, from the approaches implied above. Here, the objective will be to determine the nature and extent of Peking's willingness to present her case against India within the framework of international law, or conversely, her propensity to offer nonlegal or extra-legal justifications in support of her position on the boundary question.³

This article is a revision of a paper delivered at a conference on Communist China and International Law, sponsored by the Northeastern Region of the American Association of International Law and the New School for Social Research, and held at the New School on February 7 and 8, 1969. The author wishes to thank Professor George Ginsburgs of the New School for his comments and criticisms of the earlier draft.

¹ See: Harold C. Hinton, *Communist China in World Politics* (Boston: Houghton Mifflin Company, 1966), chapters 11, 12, and 16.

² For example, Alfred P. Rubin, "The Sino-Indian Border Disputes," *The International and Comparative Law Quarterly*, Vol. 9 (Jan. 1960) pp. 96-125. Also, L. C. Green, "Legal Aspects of the Sino-Indian Border Dispute," *The China Quarterly*, No. 3 (July-Sept., 1960) pp. 42-58.

³ The most important sources used in this paper are official publications of the two governments. Chinese documents are far less comprehensive than those published by the Indian Ministry of External Affairs and include no relevant items not found in the Indian position papers. As a result, only Indian sources are cited; the interested reader may wish to examine the following Peking items:

Documents on the Sino-Indian Boundary Question, Peking, 1960.

The Sino-Indian Boundary Question, Peking, 1962.

The Peking Review, Nos. 47 and 48, November, 1962.

For a complete record of correspondence exchanged, see the following volumes published by the Indian Ministry of External Affairs:

Notes, Memoranda and Letters exchanged and Agreements signed between the Governments of India and China, 1954-1959. (White Paper I, 1959).

Notes, Memoranda and Letters exchanged between the Governments of India and China, September-November 1959, and a Note on the Historical Background of the Himalayan Frontier of India. (White Paper II, 1959).

Notes, Memoranda and Letters exchanged between the Governments of India and China, November 1959-March 1960. (White Paper III, 1960).

Notes, Memoranda and Letters exchanged between the Governments of India and China, March 1960-November 1960. (White Paper IV, 1960).

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Notes, Memoranda and Letters exchanged between the Governments of India and China, October 1962-January 1963. (White Paper VIII, 1963).

Notes, Memoranda and Letters exchanged between the Governments of India and China, January 1963-July 1963. (White Paper IX, 1963).

Hereafter, the citation will be: *White Paper I*, etc.

x. Forcing the Confrontation, 1954-1958

While the 1951 Sino-Indian "Agreement of Measures for the Peaceful Liberation of Tibet" and other less dramatic events gave evidence of increased attention by both the Chinese and Indian Governments to their mutual frontier, the boundary dispute surfaced—and then in stages—only after the signing of the 1954 "Trade Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India."⁴ In New Delhi's view, this accord removed all serious differences between themselves and Peking, including the boundary disagreements, since the preamble stipulated that the accord was based on "Mutual respect for each other's territorial integrity and sovereignty," as well as "Mutual non-aggression," "Mutual non-interference in each other's internal affairs," "Equality and mutual benefit," and "Peaceful coexistence."⁵

Subsequently, India argued that the first principle presupposed the existence of a mutually acceptable boundary, while the others also, though more indirectly, implied that the two powers agreed on all major questions. As Prime Minister Nehru later recalled,

No border questions were raised (during the negotiations) and we were under the impression that there were no border disputes between our respective countries. In fact, we thought that the Sino-Indian Agreement, which was happily concluded in 1954, had settled all outstanding problems between our two countries.⁶

Premier Chou En-lai returned a rather different version of the negotiations in 1954. The border question had not been raised only because "conditions were not yet ripe for its settlement and the Chinese side, in its part, had not had time to study the question."⁷

In any case, the ink was hardly dry on the treaty when the first charge of a border violation was made. On July 17, 1954, the Chinese counsellor in India protested an intrusion on June 29 of the Wu-je territory of the Tibet region of China by "over 30 (armed) Indian troops."⁸ The brief statement merely noted that the alleged Indian action was not in accordance with the "principles of Nonaggression and Friendly Co-existence between China and India" and asked for information as to the steps India intended to take in the matter. With the Indian note of August 27, the issue was joined in what was to become the standard form of these official disputations: The Chinese charges were categorically denied; counter-charges of Chinese incursions into the Hoti Plain (Indian name for Wu-je) were made; and the principles of non-aggression and friendly co-existence were alleged to have been violated, this time, of course, by the Chinese.⁹

As these border incidents transpired, several maps were published in China which showed the Sino-Indian boundary running through territory claimed by India. When, in late 1954, Nehru visited China, he asked Premier Chou En-lai about these "inaccurate" maps, and apparently was satisfied with Chou's response.¹⁰ However, the two

⁴ Text in *White Paper I*, pp. 98-101.

⁵ *Ibid.*, p. 98.

⁶ "Letter from the Prime Minister of India to the Prime Minister of China, 14 December 1958," *White Paper I*, p. 48.

⁷ "Letter from the Prime Minister of China to the Prime Minister of India, 23 January 1959,"

White Paper I, p. 53.

⁸ "Note given by the Counsellor of China in India to the Ministry of External Affairs, 17 July 1954," *White Paper I*, p. 1.

⁹ "Note given to the Chinese Counsellor in India, 27 August 1954," *White Paper I*, p. 3.

¹⁰ "Letter from the Prime Minister of India to

heads of state later disagreed substantially on the Chinese Premier's answer, just as they had on the Peking's position at the 1954 treaty negotiations. Here, in Nehru's view "(Chou En-lai) was good enough to reply . . . that these maps were really reproductions of old pre-liberation maps and they . . . had had no time to revise them."¹¹ The Chinese leader, however, claimed to have made it clear that while the boundary line as drawn on these maps perhaps was not in all particulars based on "sufficient grounds," China would not have imposed changes "without having made surveys and without having consulted the countries concerned."¹²

Thus, by late 1954 there were strong indications that China and India were moving toward a confrontation over the existence and location of their mutual boundary line. First, each side was prepared to exercise administrative jurisdiction over territory claimed by the other, so that charges of border incursions were certain to recur. Second, the two powers were moving to increasingly explicit and divergent claims as to the nature and existence of a boundary dispute. The Indian Government asserted that the line had been clearly and irrevocably established, so that negotiations over it were not necessary or even proper. Peking, by its actions if not by formal statement, was moving with intentional vagueness to the position that no valid delimitation had yet been made.

Throughout 1955, official correspondence between the two governments made no mention of a boundary dispute. No doubt the Indians remained silent in part because they were ignorant of Chinese intentions, and in part, because their position denied the legitimacy of differences of opinion here. Peking, on the other hand, was apparently still piecing its case together and was also busily engaged in consolidating its position in some parts of the contested territory. Yet, border incidents continued, and in fact became more serious. Indian troops were alleged to have built fortifications close to Chinese garrisons in Chinese territory,¹³ while Chinese officials were said to have collected taxes in Indian territory.¹⁴

Through the winter of 1955-1956, both governments apparently weighed carefully the possible implications of continued border incidents. India, however, could do little more than warn of possible "serious clashes" in the future,¹⁵ raise the question, rhetorically, whether the Chinese violations were mere accident,¹⁶ and finally inform Peking that Indian border guards had been instructed to use force if necessary to stop further violations of her territory.¹⁷

Simultaneously, the Chinese Foreign Office was preparing a note, delivered June 8, 1956,¹⁸ in which new aspects of Peking's strategy were made clear. After soberly predicting the recurrence of confrontations unless remedial action were taken, the Peking Government accepted an informal Indian suggestion to establish a joint investigation of the 1955 "Wu-je incident" and called for an agreement to halt the send-

the Prime Minister of China, 14 December 1958," *White Paper I*, p. 49.

¹¹ *Ibid.*

¹² "Letter from the Prime Minister of China to the Prime Minister of India, 23 January 1959," *White Paper I*, p. 53.

¹³ "Note given by the Chinese Counsellor in India to the Ministry of External Affairs, New Delhi, 11 July 1955," *White Paper I*, p. 5.

¹⁴ "Note given to the Chinese Counsellor in India, 18 August 1955," *White Paper I*, p. 7.

¹⁵ "Note given to the Chinese Counsellor in India, 5 November 1955," *White Paper I*, p. 9.

¹⁶ "Note given to the Chinese Counsellor in India, 2 May 1956," *White Paper I*, p. 11.

¹⁷ "Note given by the Ministry of External Affairs, New Delhi to the Chinese Charge d'Affaires in India, 7 June 1956," *White Paper I*, p. 12.

¹⁸ "Note given by the Chinese Foreign Office to the Counsellor of India, 8 June 1956," *White Paper I*, p. 13.

ing of all troops into that area pending a settlement of that dispute. The note also asserted that, on the basis of a study made of all available and relevant data "the Wu-je area has always been under the jurisdiction of Daba Dzong of the Tibet Region of China."

It would seem a fair inference that Peking wanted to force New Delhi to recognize that the two governments did not agree on the location of the boundary, and that the difference, far from being academic, had serious practical implications. That is, India could not afford to assume that its claims were not negotiable unless it was prepared to accept increasingly serious incidents at Wu-je and elsewhere. But, while India was shown to be vulnerable, Peking denied any intention of taking advantage of that vulnerability and instead, held out the hope of a rapid settlement through "investigation and study" of the points at issue, so long as the two governments kept "a friendly and fair attitude."

Of equal significance is the fact that the note initiated a dialogue over substantive questions, for the basis of Peking's claim to the disputed area and her view of the basic questions to be answered there were laid out. While the Indian Government contended that the joint team of officials could determine only the relationship of Wu-je to the fixed boundary, i.e., was it north or south, the Chinese note asserted that the exercise of administrative jurisdiction over the disputed territory was the primary problem for clarification, and it implied, as a result, that the boundary should be established on the basis of the answer to this previous question.

Overall, the note presented, in germ form, most of the essentials of Peking's strategy in seeking a settlement of the boundary dispute. It emphasized the need for Indian recognition of political and military considerations; it proposed "friendly and general" negotiations to reconcile the "differences of views" of the two governments; and, though still not explicitly, it denied the existence of a formally established boundary and contended, by implication, that delimitation could take place only after the contested territory had been properly allocated to one or the other on the basis of "historical records."

There is more than a touch of irony in the Chinese emphasis on the need to relate border claims to existing political and military realities, for while the 1956 exchanges were taking place, Peking was busily engaged in altering them with the construction of the now famous motor road across the disputed area in Aksai Chin. Ironic, too, is the fact that only in October 1958 did the Indian Government protest the construction of the road on territory claimed by India.¹⁹

The implications of this development are surely apparent. The Chinese had greatly improved their ability to supply Tibet and to control disputed territory. At the same time, Peking made Indian claims to the area less secure, for she demonstrated that New Delhi's administrative control or even knowledge of developments there were almost nonexistent and had been for some time. Indeed, the Indian note showed elements of acute official embarrassment over the time lag between actual construction of the road and the date of the protest. Thus, the Indian complaint was said to be merely over "a petty frontier dispute" about which the Indian Government would "be glad for an early reply."

¹⁹ "Informal Note given by the Foreign Secretary to the Chinese Ambassador, 18 October 1958," *White Paper I*, p. 26.

Until the Indian Government made public this complaint about the Chinese motor road, alleged border violations, for the most part, constituted the principal subject of Sino-Indian diplomatic correspondence. The Wu-je incident was defused to the extent that both sides agreed to refrain from sending their troops into the area. To this outstanding issue, another was added, this time in the Shipki-La Pass region. In its protest of this alleged Chinese intrusion, the Indian Government made no attempt to excuse the Chinese as poor map readers.²⁰ Rather, it was assumed that Chinese troops had acted out high level directives, "the natural and direct result (of which) would be a clash of arms." The note also included evidence supporting New Delhi's claim to the disputed territory, thereby showing again that China was having some success in forcing discussions of a question India had considered closed.

In late 1956, Premier Chou En-lai visited India for still another round of conferences with Prime Minister Nehru. And, once again, the Chinese premier's statements on the boundary question were later the subject of some dispute. Unlike the recollections of the 1954 talks, where Chou seems to have been sufficiently ambiguous to allow for several interpretations of his remarks, in this case, Nehru's reconstructions directly contradicted Chou's. According to the Indian leader:

You told me that you had accepted the McMahon Line border with Burma and, whatever might have happened long ago, in view of the friendly relations which existed between China and India, you proposed to recognize this border with India also.²¹

Chou, however, could not agree.

As you are aware, the McMahon Line was a product of the British policy of aggression against the Tibet Region of China. . . . Juridically, too, it cannot be considered legal. I have told you that it has never been recognized by the Chinese Central Government. . . . On the other hand, one cannot, of course, fail to take cognizance of the great and encouraging changes: India and Burma . . . have become states friendly with China. In view of the various complex factors mentioned above, the Chinese Government on the one hand finds it necessary to take a more or less realistic attitude towards the McMahon Line, and on the other hand, cannot but act with prudence . . . to deal with this matter.²²

Reports on the 1956 meetings of the two heads of state are notable not only as evidence of substantive differences, but also for the moderate tone taken by each of the leaders. Each side, it seems, was willing to scale down the tensions generated by the previous incidents so that the summer of 1957 came and passed without further major incident. Yet, by mid-1958, Chinese difficulties in Tibet, together with Indian sympathies (official and popular) with Tibetan aspirations for autonomy seemed to more than neutralize the small fund of good will earned the year before.

In this now changed atmosphere, border incidents rapidly developed in 1958 and following. In early July of that year, New Delhi protested the alleged Chinese violations of its Ladakhi territory near the Khurnak Fort.²³ The following month,

²⁰ "Aide memoire given to the Chinese Charge d'Affaires in India, 24 September 1956," *White Paper I*, p. 18.

²¹ "Letter from the Prime Minister of India to the Prime Minister of China, 14 December 1958," *White Paper I*, p. 48.

²² "Letter from the Prime Minister of China to the Prime Minister of India, 23 January 1959," *White Paper I*, p. 53.

²³ "Note Verbale handed by the Ministry of External Affairs to the Chinese Counsellor in India, 2 July 1958, *White Paper I*, p. 22.

China accused its southern neighbor of altering the status quo in the Wu-je area.²⁴ It was at this time, too, that India finally announced its discovery of the road on "its own" territory, and for the first time, she reviewed the treaty and customary basis for her claims to that area.

It was apparently because of these new tensions that Prime Minister Nehru was prompted to write to Premier Chou En-lai in mid-December.²⁵ The Indian leader reviewed his previous discussions with Premier Chou and referred only in passing to the "minor border problems which were pending settlement." Rather, his purpose was to elicit a general exposition of the Chinese view of the boundary question, since it clearly did not match that of his own government. From Peking's vantage point, the stage had at last been set for formal and open discussions of all matters related to the delimitation of the Sino-Indian boundary.

From the beginning, then, New Delhi showed no predisposition to admit the boundary question into the arena of open discussion. Rather, she expressed surprise and regret at each successive Chinese effort to begin a dialogue, and while at times these professions of incredulity were no doubt affectations, in other instances Indian behavior suggested genuine ignorance or naiveté regarding Peking's intentions. In the meetings of the prime ministers, for instance, Nehru seems to have been too easily satisfied with vague and informal assurance and explanations.

The Chinese Government, for its part, wanted ultimately to bring New Delhi into negotiations on the delimitation of the boundary. Yet, of course, it had to move slowly. Its officials were apparently not yet prepared to lay out the basis for its claims. Also, countering Indian views was necessarily an integral part of the Chinese argument, and New Delhi had not yet submitted its brief. Finally, Peking was still in the process of consolidating its position, politically and militarily, so that she could negotiate from a position of strength.

For all these reasons, then, Peking moved slowly and with deliberate vagueness, as she applied selective and increasing pressure against the Indian Government. Up to this point, Chinese strategy appeared to be paying off. Her ability to bring pressure to bear at the frontier was increasing rapidly; even with no settlement, her de facto control of contested territory was on the rise. And, with the selective use of border incidents, India had been forced into open discussions of the boundary question.

Yet, the Chinese leaders must also have seen ominous signs for the future. New Delhi, while she reluctantly began to talk, showed no willingness to make the concessions necessary even for initiating serious negotiations, and in fact, Indian interpretations of events, past and present were all sharply at variance with Peking's.

In all of this, of course, the question of remaining within the framework of international law was still largely academic. Peking desired action of a political not a legal sort: negotiations rather than adjudication. Yet, in the brief instance in which her basis of claim to contested territory was laid out, she had relied on an argument—administrative jurisdiction—often used in the adjudication of territorial disputes. Also, Peking's notes protesting alleged Indian border incursions typically were couched in terms of violations of her sovereign rights. Thus, it can be inferred that

²⁴ "Note handed by the Chinese Counsellor in India to the Ministry of External Affairs, New Delhi, 2 August 1958," *White Paper I*, p. 23.

²⁵ "Letter from the Prime Minister of India to the Prime Minister of China, 14 December 1958," *White Paper I*, pp. 48-51.

Peking was willing to utilize legal or quasi-legal bases for argument as a supplementary device. But, in her view, the dispute itself was political rather than legal in nature. While it showed no desire to be confined by legal technicalities, the Chinese Government did not demean international law as a regulator of interstate behavior or attack it on ideological grounds.

2. The Dialogue, 1959-1960

The Chinese response to Nehru's letter of December 1958, a reply from Premier Chou En-lai,²⁶ was singularly vague. The Chinese leader carefully refrained from setting forth detailed claims and instead, he concentrated on the inevitable consequences of Peking's fundamental point—the boundary had never been formally delimited. Though neither side wished it to happen he argued, border incidents were bound to occur, as indeed they had in the recent past, and it was only reasonable to search for solutions to this impasse. In his view, the first step was to agree to preserve the status quo, i.e., "each side (should) keep for the time being to the border areas . . . under its jurisdiction." Secondly, the general question of delimiting and establishing the boundary should be negotiated "through mutual consultations and surveys."

In three instances, Chou examined specific aspects of the boundary question. First, he set forth the Chinese position regarding the McMahon Line. Though India, of course, claimed that that line had properly been established by a valid treaty drawn up at Simla in 1914, Peking was bound to refuse concurrence on two grounds: it was "a product of British policy of aggression against the Tibet Region of China" and also, "Juridically, it (could) . . . not be considered legal" since no Chinese Central Government had ever ratified the Simla Convention.

Special mention was also made of the Sinkiang-Tibet highway, as well as the joint investigations of the Wu-je incident. Beyond that, the letter answered fewer questions than it raised, and it is patently obvious that a more detailed exposition of Indian views was wanted.

Two months later, the Indian prime minister replied:²⁷

On the basis of your letter I have again examined the basis of the determination of the frontier between India and the Tibet Region of China. It is true that this frontier has not been demarcated on the ground in all sectors, but I am somewhat surprised to know that this frontier was not accepted at any time by the Government of China. The traditional frontier, as you may be aware, follows the geographical principle of watershed on the crest of the high Himalayan range, but apart from this, in most points, it has the sanction of specific international agreements between the then Governments of India and the Central Government of China.²⁸

Throughout the remaining paragraphs of the note, the Indian prime minister reviewed the treaty basis for the Indian claims in some detail.

For the Chinese Government, this Nehru letter was of particular importance. Since the Chinese argument was negative to a considerable degree—there was no

²⁶ "Letter from the Prime Minister of China to the Prime Minister of India, 23 January 1959," *White Paper I*, pp. 52-54.

the Prime Minister of China, 22 March 1959," *White Paper I*, pp. 55-57.

²⁸ *Ibid.*, p. 55.

²⁷ "Letter from the Prime Minister of India to

delimited boundary—Peking was able to counter with its own views only now. Of fundamental significance too is the fact that New Delhi, realizing that the discussions were becoming increasingly explicit, retreated from her previous position that the boundary was clearly and formally delimited to the view that it was *mostly* delimited by treaty and other international agreement and *somewhat* determined by custom and geographic principles.

By any objective standard, tradition and custom are a much cruder and more uncertain species of supporting evidence than formal treaties. As a result, when the Indian prime minister introduced this line of reasoning, in important ways he played into Chinese hands, for a) he implied a weakness in his first line of verbal defense—that treaties had established the boundary; b) he gave credence, indirectly, to the Chinese view that the boundary was in dispute because of the complexity and vagueness of the massive amounts of available materials relevant to the settlement of the matter.

All of this suggests that the March letter from Nehru induced greater and more clearly directed activity from the Chinese Foreign Office, at least on Sino-Indian boundary matters. It was now possible to construct a comprehensive criticism of the Indian claim and to build a counter-claim based on the same kinds of evidence.

Simultaneously, tensions between the two countries heightened as the Tibetan revolt developed and Indian sympathies remained obviously with the Tibetans. The summer of 1959 also saw an increase in the tensions at border points. In June, Peking claimed that Indian violations had occurred at Migyitun, including the shelling of Chinese territory and construction by Indian personnel of military works there. In addition, the Chinese note recorded two other allegations of border violations and further escalated tensions with a liberal use of such provocative phrases as "brazen intrusions," "unscrupulous collusion" and "flagrant interference."²⁹ A short time later, the Indian Ministry of External Affairs dispatched its own protest of alleged Chinese incursions, this time at Western Pangon Lake, and inquired about the possible detention of an Indian patrol of six persons by the Chinese force "illegally" located there. Soon, other incursions were charged on both sides and allegations included such ominous matters as the exchange of fire and even "deliberate aggression."³⁰

It was at the Kongka Pass, however, that the most serious border clash took place. While China protested the incident first, it was India which apparently suffered the most serious consequences, for in the exchange of fire, nine Indian soldiers were killed and nine others captured. On the other hand, Chinese losses apparently were light—and never reported. Shortly thereafter, the alleged mistreatment of the Indian prisoners in Chinese hands became as heated a subject of discussions over the next several months as the battle itself.³¹

With this latest incident, the Indian Government dropped all pretense of considering border incursions and the developing general discussions over boundary claims separately, and instead, examined the Kongka Pass hostilities in the broader context. In its note of November 4, 1959,³² the Ministry of External Affairs reviewed

²⁹ "Note given by the Foreign Office of China to the Indian Counsellor in Peking, 23 June 1959," *White Paper I*, p. 34.

³⁰ See correspondence in *White Paper I*, pp. 34-

46 and *White Paper II*, pp. 1-11.

³¹ See: *White Paper II*, pp. 13-26, and *White Paper III*, pp. 1-44.

³² "Note given by the Ministry of External Af-

the previous correspondence between the two prime ministers and noted that the Chinese leader had not yet answered Nehru's latest letter. The note also reviewed at some length India's basis for claiming the contested territory as her own. Thus, it was with a new sense of urgency that India, and not China, was pressing for a further dialogue on the boundary question; Chinese strategy appeared to be showing some successes still, though New Delhi gave no indication of making any fundamental concessions.

The dialogue had been reopened in the previous September with Chou's reply to the March statement from the Indian prime minister.⁸³ In this latest Chinese formulation, the previous tactic of giving the "imperialism" argument no especial priority was reversed; now, it was said, British territorial ambitions were the first cause of the entire dispute:

The Sino-Indian boundary question is a complicated question left over by history. In tackling this question, one cannot but, first of all, take into account the historical background of British aggression on China when India was under British rule. From the early days, Britain harboured aggressive ambitions towards China's Tibet region. It continuously instigated Tibet to separate from China, in an attempt to put under its control a nominally independent Tibet. When this design failed, it applied all sorts of pressures on China, intending to make Tibet a British sphere of influence while allowing China to maintain so-called suzerainty over Tibet. In the meantime, using India as its base, Britain conducted extensive territorial expansion into China's Tibet region, and even the Sinkiang region. All this constitutes the fundamental reason for the long term disputes over the non-settlement of the Sino-Indian boundary question.⁸⁴

The Chinese premier, certainly well aware of Nehru's sensitivity to the charge, next accused the Indian Government of seeking to benefit by British sins of the past:

China and India are both countries which were long subjected to imperialist aggression. This common experience should have naturally caused China and India to hold an identical view of the above-said historical background and to adopt an attitude of mutual sympathy, mutual understanding and fairness and reasonableness in dealing with the boundary question. The Chinese Government originally thought the Indian Government would take such an attitude. Unexpectedly, to the Chinese Government, however, the Indian Government demanded that the Chinese Government give the British policy of aggression against China's Tibet region as the foundation for the settlement of the Sino-Indian boundary question.⁸⁵

In searching for the reasons Chou made this assessment of the causes of the dispute as well as his broad charge against India, it should be noted first that he was giving a fair statement of official Chinese attitudes. More important, however, is the fact that he was building an "escape clause" into his case. In the light of later events, Peking appears to have given notice that while she could and did make a strong argument for her claims on more technical grounds, there was also a basis for those

fairs, New Delhi, to the Embassy of China in India, 4 November 1959," *White Paper II*, pp. 19-27.

⁸³ "Letter from the Prime Minister of China to

the Prime Minister of India, 8 September 1959," *White Paper II*, pp. 27-34.

⁸⁴ *Ibid.*, p. 27.

⁸⁵ *Ibid.*

claims in a kind of abstract "higher justice" even though this latter foundation was not supported in the principles of international law.

On the other hand, there are limits to the utility of the "imperialism" charge. To level such an attack against the government of Nehru might have cut the Indian prime minister to the quick. But, it could also have the effect of increasing his tendency to intransigence rather than to flexibility. Chou obviously faced the possibility of overplaying his hand.

Of more immediate consequence, however, is the fact that this blanket indictment did nothing to establish machinery for the settling of disputes nor did it provide positive support for territorial claims. As a result, the Chinese premier moved to more technical and legal (or at least less accusatory) matters for the rest of his communication. The basic solution, he reiterated, was to be found through "friendly negotiations, conducted in a well-prepared way," pending which, preliminary agreements to preserve the status quo should obtain. Peking was again emphasizing that political rather than legal means should be used to settle the dispute. Yet, if the settlement was to be achieved through a political process, the arguments used in negotiations were not thereby necessarily nonlegal, for "historical background and existing actualities at the frontier" were to be taken into account.

The September letter is also noteworthy in that Chou, for the first time, attempted to refute in some detail the specific Indian claims that valid treaties had established the Sino-Indian boundary line. Here, he did not rely exclusively in any case on the "imperialism" argument. In the west, where India claimed an 1842 treaty between Tibet and Kashmir had settled the frontier, Chou countered that: a) the central government of China had not concurred, and that Tibet had had no treaty-making powers; b) the treaty did not delimit the boundary in any case, but rather provided only that each side would abide by its borders; and, c) Britain in 1899 still had sought to have the boundary delimited, thus demonstrating that even the British had not considered the boundary established by the treaty cited. Taken together, these claims urged that the treaty was not valid, or if valid, it was not relevant as even the British indirectly admitted.

After passing over the central sector of the boundary—the Indian claim here was still unclear—Chou next examined the treaty basis for the McMahon Line. While the charge of British aggression against Tibet was stressed again, the fact that no Chinese Government ever ratified the Simla Convention was also given equal billing: "The so-called McMahon Line was a product of the British policy of aggression against the Tibet Region of China and has never been recognized by any Chinese Central Government and is therefore decidedly illegal."³⁶

The letter also broke new ground, though only in brief, with an argument *for* the Chinese claimed boundary. The Chinese here asserted the existence of a traditional line, the location of which could properly be determined from maps published both in China and Britain. According to Chou,

at first, British and Indian maps also drew the Sino-Indian boundary roughly in the same way as the Chinese maps . . . It was not Chinese maps but British and Indian maps that later unilaterally altered the way the Sino-Indian boundary was drawn.³⁷

³⁶ *Ibid.*, pp. 30–31.

³⁷ *Ibid.*, p. 30.

It was only several months later that additional evidence supporting the validity of the Chinese maps were provided and this aspect of the Chinese position was developed in full.

The Indian prime minister replied later that same month to this latest letter.³⁸ Much of the document contains detailed refutations of the Chinese allegations. Needless to say, Nehru also denied any imperialistic intentions toward China and gave a correspondingly different interpretation of the border incidents of the previous years. Summarizing the Indian position, he attached "great importance" to preserving friendly relations with China, and regretted "that China should have put forth claims to large areas of Indian territory." He also categorically rejected the possibility of general discussions about "the future of such large areas which are an integral part of . . . (India)." Rather, India could agree only that parts of the boundary were still undemarcated—i.e., actually surveyed and established on the ground—and that this had contributed to the incidents of the previous years. Rather bleakly, Nehru concluded:

When our two countries signed the 1954 Agreement in regard to the Tibet Region, I hoped that the main problems which history had bequeathed to us in the relations between India and China had been peacefully and finally settled. Five years later, you have now brought forward, with all insistence, a problem which dwarfs in importance all that we have discussed in recent years, and, I thought settled. I appreciate your statement that China looks upon her southwestern border as a border of peace and friendship. This hope and this promise could be fulfilled only if China would not bring within the scope of which should essentially be a border dispute, claims to thousands of square miles of territory which have been and are integral parts of the territory of India.³⁹

Clearly, the two powers were still no closer on substantive matters, even though their respective positions were becoming increasingly clear.

The correspondence between the heads of state continued with a short letter from the Chinese premier on November 7.⁴⁰ In it he ignored the substantive claims of either party on the boundary question and instead dwelt largely on the serious possible consequences of further border clashes and laid out possible ground-rules for their future prevention. The most significant aspect of the note, however, was his call for highest level general discussions of the dispute: "The Chinese Government proposes that in order to discuss further the boundary question . . . the Prime Ministers of the two countries hold talks in the immediate future."⁴¹

The Indian Leader's response, nine days later,⁴² was general and indefinite, particularly on the question of face-to-face discussions. Regarding the offer to hold summit talks, he "welcomed" the suggestion, since he was "always ready to meet [with Premier Chou En-lai] . . . to explore avenues of friendly settlement," though he saw possible dangers in such high level diplomacy:

The nature of the discussions at our meeting should . . . be such that we do not

³⁸ "Letter from the Prime Minister of India to the Prime Minister of China, 26 September 1959," *White Paper II*, pp. 34-53.

³⁹ *Ibid.*, pp. 45-6.

⁴⁰ "Letter from the Prime Minister of China to

the Prime Minister of India, 7 November 1959," *White Paper III*, pp. 44-45.

⁴¹ *Ibid.*

⁴² "Letter from the Prime Minister of India to the Prime Minister of China, 16 November 1959," *White Paper III*, pp. 46-50.

lose ourselves in a forest of data . . . It is necessary, therefore, that some preliminary steps are taken and the foundation for our discussions laid.⁴³

If New Delhi intended to make some "preliminary steps" the sine qua non of high-level discussions, the note of December 17 from the Chinese premier⁴⁴ must have been received with mixed feelings. On the one hand, Peking showed unambiguous intentions of relaxing tensions on the frontier, for the Chinese leader now expressed his government's willingness to reach a preliminary interim agreement on the lines Nehru had previously suggested. Also, the tone of the entire document was restrained and reasonable, and, in fact, the "imperialism" argument was scarcely mentioned.

Yet, the Chinese premier did not offer any indication that the tensions on the frontier could permanently be reduced until the basic boundary question had been eliminated and, on this latter matter, he remained on dead center: ". . . according to objective history, the entire boundary had indeed never been delimited, and it is impossible to deny this."⁴⁵

It was on the subject of direct negotiations that Chou showed his greatest enthusiasm.

Your Excellency expressed welcome to my November 7 proposal for the holding of talks between the Prime Ministers of the two countries. Here indeed lies the hope for a turn for the better in the relations between the two countries. Although there are differences of opinion between our two countries on the boundary question. [sic] I believe that this in no way hinders the holding of talks between the two Prime Ministers; on the contrary, it precisely requires its early realization so as to reach first some agreements of principles as a guidance to concrete discussions and settlement of the boundary question by the two sides.⁴⁶

Whether the Chinese Head of State was privately as convinced of the efficacy of his proposal as his letter implied, of course, is not clear. His Indian counterpart, perhaps recalling the meager results of his previous discussions with Chou, as well as the steady deterioration of Sino-Indian relations over the previous several years, was more direct—and chilling.

Your Excellency has suggested that you and I should meet on December 26 so as to reach an agreement on the principles which are presumably to guide the officials on both sides in the discussion of details. . . . How can we, Mr. Prime Minister, reach an agreement on principles when there is such complete disagreement about the facts?⁴⁷

Yet, scarcely two months later, Nehru agreed to meet with Chou, even though he noted that the Chinese position was still "wholly incorrect" and "too much at variance with the truth" to allow for negotiations.⁴⁸

Perhaps a major consideration in Nehru's change of position on face-to-face talks was the transmittal on December 26 of a Chinese note which provided

⁴³ *Ibid.*, p. 49.

⁴⁴ "Letter from the Prime Minister of China to the Prime Minister of India, 17 December 1959," *White Paper III*, pp. 51-55.

⁴⁵ *Ibid.*, p. 53.

⁴⁶ *Ibid.*, p. 55.

⁴⁷ "Letter from the Prime Minister of India to the Prime Minister of China, 21 December 1959," *White Paper III*, p. 56.

⁴⁸ "Letter from the Prime Minister of India to the Prime Minister of China, 5 February 1960," *White Paper III*, pp. 80-81.

the most comprehensive presentation of the Chinese position of the boundary question up to that time.⁴⁹ In it, Peking not only reviewed its previous refusal to acknowledge the existence of a formally established boundary line and its proposals on the procedures suitable to the establishment of that boundary, but also, and for the first time, the Chinese view on the location of the traditional line of demarcation was presented in some detail. As a result, New Delhi now had a rather clear exposition of the Chinese case, and Nehru may well have been satisfied that this was a preliminary step of the sort he had mentioned in his previous correspondence.

In the first of its several sections, the Chinese position paper examined the question: "Has the Sino-Indian Boundary been formally delimited?" And, while Peking's answer was obviously in the negative, the note, curiously, made no initial reference to the "imperialism" charge which, just previously, had held first place in Premier Chou's list of verbal thrusts. Rather, the dispute now was said to be a result of "a divergence of views between the two countries regarding the boundary," and nothing more.⁵⁰

The main body of this section, as the phrasing of the question suggests, was intended to deny the New Delhi claim that valid treaties had been concluded, which together, delimited the Sino-Indian boundary. Not surprisingly, the correspondence here covered much the same ground as had Premier Chou in his letter of September 8. Only the central sector of the boundary was considered for the first time. Here, the Indian Government had recently asserted that the 1954 Sino-Indian Agreement of Trade between India and Tibet had confirmed Indian claims by listing six border passes. Since the treaty was indisputably valid, Peking relied on the contention that no mention of boundary matters appeared in either the treaty itself or in the negotiations preparatory to its final drafting, so that there could be no reasonable support there for the Indian claim. In sum, only the quantity of evidence, not the substance of the argument provided a variation here from earlier Chinese position papers. Peking's line of reasoning once more, was largely technical, factual, and inferential.

The December 26 note next raised the question: "Where is the traditional customary Sino-Indian Boundary line?" Preliminarily, its answer was that "the line is formed by the extent of jurisdiction exercised historically by each side."⁵¹ The Chinese case here, then, was based upon the well-known principle that the exercise of effective jurisdiction over long periods of time established the state with such power as sovereign. Yet, of course, the principle in this case was not susceptible of automatic application, for there were conflicting claims from New Delhi and the effectiveness of control was clearly not absolute nor even unbroken over the previous decades. As a result, Peking's argument, as to its specifics, was necessarily rather complex, even if the general principle it applied seems simple and straightforward.

Concerning the western sector, the Chinese claim that the disputed territory "had always belonged to China" was based on "Chinese official documents and records." These purportedly showed that the Uighur and Kirghis people had "all along" used the land there for pasturage. Moreover, geographic and linguistic evi-

⁴⁹ "Note given by the Ministry of Foreign Affairs of China to the Embassy of India in China, 26 December 1959," *White Paper III*, pp. 58-79.

⁵⁰ *Ibid.*, p. 59.

⁵¹ *Ibid.*, p. 64.

dence also was said to support the Chinese claim, for the area was the only traffic artery between Sinkiang and western Tibet and many places there had always had Uighur names.

By contrast, Indian evidence purportedly showing her control of the area was said to fail in offering "concrete facts" in support of New Delhi's claim. As to Indian assertions that she had sent patrols into the area regularly, Peking countered that Indian troops had "intruded" there only three times in recent years and in each case they were detained and then sent back to India. Moreover, Indian ignorance concerning the construction of the motor highway there showed conclusively the extent of New Delhi's effective control over that territory.

The Indian case had also relied on numerous published maps. Peking here countered by noting that while Chinese maps had been consistent for over 200 years, British and Indian maps had varied as British aggressive interests grew. Also, many British and Western maps verified Chinese rather than Indian claims. Finally, the Indian case was said to rest on the utility of following a natural geographic feature—the watershed. Here, Peking noted that the watershed principle in international usage was not the sole or even main determinant for delimiting boundaries and added: "The traditional customary line as shown on Chinese maps truly reflects the geographical features of the area."⁵²

For the middle sector of the boundary, similar arguments were offered: Official records and documents validated Chinese claims; the people living there were of Tibetan nationality; the watershed principle ran counter to actual lines of jurisdiction; and maps supported Chinese not Indian claims.

Regarding the eastern part of the Sino-Indian traditional boundary, the same kinds of documents, though in much more impressive numbers than in the west or central sectors, again allegedly showed Chinese effective control over contested territory. Tax records, records of judicial decisions and evidence of local governmental actions all supported the Chinese claim. Even after the McMahon Line had been drawn, Tibet had "continued to exercise extensively and for a long period of time its jurisdiction over the area."⁵³ The Chinese case here was also strengthened by inferences drawn from citations of letters and memoirs of British agents who "illegally" surveyed or explored the area or who managed to obtain agreements with the local peoples. And, as before, maps showing the constancy of Peking's claims were relied upon to prove Chinese assertions, while Indian maps were again shown to be variable.

In its summary of this section of the document, Peking noted that its case was based on "objective facts and confirmed by a mass of factual data" while the Indian case was internally inconsistent and vague throughout. And, while previously in each specific case the Chinese argument was made on technical, logical, or historical grounds, the aggregate of these thrusts pointed to one overwhelming conclusion: The Indian case rested upon the validation of the British policy of imperialism against Tibet. That being so, and given the evils inherent in imperialism, the Chinese Ministry of Foreign Affairs allowed itself the pleasure of departing from the quasi-academic and legalistic tone of the preceding argument to take up anew a passionate appeal for India to return to her collective senses:

⁵² *Ibid.*, p. 66.

⁵³ *Ibid.*, pp. 68–69.

It should not have been necessary to discuss the British policy of aggression and expansion in modern history, as the history of India itself, the history of India's adjacent countries which had once been a part of British India or its dependency, the history of China and, in particular the history of China's Tibet Region bordering adjoining India, all bear witness to this policy. Of course, the great Indian people who treasure peace, can in no way be held responsible for all the acts of aggression committed by Britain with India as its base. It is, however, surprising that the Indian Government should claim the boundary line which Britain unlawfully created through aggression against Tibet and which even includes areas to which British authority had not extended as the traditional customary boundary line, while perversely describing the true traditional boundary line pointed out by the Chinese Government on the basis of objective facts as laying claim to large tracts of Indian territory. How would the Indian Government feel, if it were in the position of the Chinese Government?⁵⁴

Taking an overview, the note provides striking evidence of Peking's ability to present a cogent, well-integrated case for its official position. At first glance, the argument therein is reasonable and impressive. Restating it briefly, the evidence showing the existence of a formally delimited boundary is demonstrably spurious. As a result, the two parties concerned should establish the line through negotiations in a spirit of friendship. In this complicated process, commonly accepted international principles applicable to territorial questions should be considered, as should the actual conditions along the frontier. And finally, for her part, China's claims concerning the location of the traditional line were consistent with these principles as the evidence offered shows.

Secondly, the document shows a skillful blending of legal and extralegal arguments, and a reliance on kinds of propositions most difficult for India to ignore or declare irrelevant, or even to refute conclusively. In particular, technical and historical evidence refuting the validity or applicability of the treaties said by India to delimit the boundary is neatly used, not only to counter Indian claims but also to support the "imperialism" argument. By itself, the latter charge would bring from New Delhi highly defensive, blanket denials and calls for firmer evidence, as indeed it did even in this case. Yet, as used here, Peking had each substantive point covered on other grounds, while she emphasized an argument of doubtless importance in her own interpretations of events there as well as one plausible to all governments not unfriendly to Peking's aims and accomplishments, and one about which India, again, was understandably sensitive.

Peking's note presented a position that was pointedly vulnerable only if its factual basis was inadequate, and in her response of February 12, 1960,⁵⁵ New Delhi zeroed in on that vulnerability with its own impressive array of historical data. Noting that it was "the earnest hope of the Government of India that a proper appreciation of the facts and historical data presented by them in support of their stand regarding the boundary would pave the way for an amicable settlement . . .," the Ministry of External Affairs recorded that instead, "the Government of China . . . not only do not accept incontrovertible facts but disregard major frontier agreements by untenable interpretations of their terms or by questioning their validity."⁵⁶ That being the case,

⁵⁴ *Ibid.*, pp. 70-71.

⁵⁵ "Note of the Government of India to the

Chinese Government, 12 February 1960," *White Paper III*, pp. 82-95.

⁵⁶ *Ibid.*, p. 82.

New Delhi reviewed still again the historical basis for its own claims, citing maps, government documents, memoirs, Chinese documents and drawing inferences favorable to its own position and contrary to Peking's. And, most important to the settlement of the dispute, India made no important concessions. Negotiations preparatory to delimiting the entire frontier would "ignore past history, custom, tradition and international agreements and were therefore entirely unacceptable to the Government of India."⁵⁷

Thus, the dispute had evolved into a curious impasse. On the one hand, neither party had moved in the slightest toward the position of the other on fundamental interpretations of the conflict, its nature and/or its possible resolution, and the arguments of the two governments on these matters were seldom directly confronted by the other's. Yet, on the details upon which these basic positions were taken, open, direct, and parallel cases were being presented and attacked.

With the passage of time, the chances of bringing these two tracks in the dispute closer together were being reduced, partly because of the publicity being given to the claims and counter-claims to frontier territory and also because of the continuing problem of Tibet and the residue of ill-will from the previous border incidents. Unfortunately, the options open to the prime ministers when they finally met in April 1960, were not many.

Little publicity attended these high-level talks. Judging by the constancy of positions held by each government before and after the confrontation, as well as by admissions of a lack of progress from both parties,⁵⁸ the talks in no way reduced the sharp differences between them. Yet, in their final joint communique, issued after seven days of discussions, the two heads of state did indicate one point of convergence, for they agreed

. . . that officials of the two Governments should meet and examine, check and study all historical documents, records, accounts, maps and other material relevant to the boundary question, on which each side relied in support of its stand, and draw up a report for submission to the two Governments. This report would list the points on which there was agreement and the points on which there was disagreement or which should be examined more fully and clarified.⁵⁹

The meetings were held, and amid substantial wrangling over translations and more substantive matters, each team issued its own report, rather than the single document called for in the communique cited above. Each, of course, is a lengthy statement in which the most comprehensive presentation and interpretation of evidence is made, all of which can easily have the effect of confusing any but the most thoroughly informed obscurantist specializing in Himalayan culture and history. Since our purpose is not to determine the validity of Chinese claims, but rather to judge their character and to infer from them Chinese strategy, no detailed review of the report is necessary. Also, of course, the claims made by Peking here were often re-

⁵⁷ *Ibid.*, p. 83.

⁵⁸ See, for example, "Note given by the Ministry of Foreign Affairs, Peking, to the Embassy of India in China, 1 March 1962," *White Paper VI*, p. 16: "Although the talks with Prime Minister Nehru in April . . . failed to produce desired results . . ."

⁵⁹ India, Ministry of External Affairs, *Report of the Officials of the Government of India and the People's Republic of China on the Boundary Question*. New Delhi, 1961, p. 1 of the Indian statement.

iterations of arguments made previously. Where new verbal ground is broken, the Chinese view will be outlined in greater detail.

The Chinese case remained consistent with previous statements by first denying that treaties had delimited the Sino-Indian boundary. Where possible the Chinese team denied the *authenticity* of accords where their pedigree was at all in doubt,⁶⁰ or, more often the *relevance* of otherwise authentic agreements.⁶¹ In each of these latter cases, Peking disputed the Indian description of the context in which the accord was reached, the inferences drawn from the treaties, or both.

The denial of treaty applicability either because of nonauthenticity or irrelevance was not always satisfactory. In such cases, Peking questioned the *validity* of the accord. Here again, the Simla Conference with its McMahon Line are the outstanding cases in point. The conference was convened only because Britain had applied undue pressure in the first place. While the negotiations were designed to draw the boundary between Tibet and the rest of China, and were therefore not relevant to the Sino-Indian dispute, the crucial point was that the convention could not be considered valid since no Chinese Central Government had ever ratified the agreement.⁶²

Of new importance to the Indian argument was the 1954 agreement between the People's Republic of China and India on trade between the latter country and Tibet. New Delhi claimed that this agreement provided or "mutual respect" of each other's territory and clearly implied the acceptance of the location of the boundary as drawn by New Delhi, with the result that Peking was now "estopped" from raising the boundary question. As against that, the Chinese team reiterated its version of the content of the 1953-1954 negotiations which had preceded the ratification of the treaty, offered again its substantially different interpretation of the treaty itself and countered the Indian use of international law with a legal interpretation of its own:

The Indian side also contended that according to international law, if one side does not raise an issue when it has an opportunity to do so, it has no longer the right to set forth its views on the issue . . . The contention that silence means acquiescence reflects not at all the accepted principles of international law. Can it be said that a sovereign state has no right to reserve its proposition concerning questions of its own sovereignty and to raise it on suitable occasions?⁶³

To this, the argument was added that if the principle of "acquiescence" was applied,

then it is India rather than China which is to be considered to have acquiesced, because the delineation of the Sino-Indian boundary in the maps published by China has always been consistent, and the Indian Government had never raised any objection to it until 1954, while the questions of the boundary in the western sector was raised for the first time as late as 1958.⁶⁴

It can be seen that Peking's aim here was to nullify the Indian application of a legal principle, even if it required making a novel, hypothetical counter-claim. But, it is significant that while the Chinese were willing to go that far, they were not prepared to step outside the framework of international law. Rather, they seemed content to "muddy up the waters" a bit.

⁶⁰ *Ibid.*, p. 12 of the Chinese statement.

⁶¹ *Ibid.*, pp. 14, 15, and 18.

⁶² *Ibid.*, p. 25.

⁶³ *Ibid.*, p. 31.

⁶⁴ *Ibid.*, p. 32.

Under the terms of the agreed-upon agenda, the Chinese officials were next to supply their evidence supporting their claims in tradition and custom. On the surface, one might expect Peking here to develop a long, detailed argument, for its positive contentions required a basis for the proposition that the boundary line had been established long ago by customary practice. Yet, it must be remembered that Chinese activities in this entire geographic area were typically intermittent and coercive, and the peoples here were not Chinese by cultural or ethnic standards. It is for these reasons, perhaps, that the Chinese position is tenuous and weak, except when it overlaps into the next item of the agenda—evidence of effective Chinese jurisdiction.

Aside from claims of jurisdiction, which admittedly is a part of custom and tradition, the Chinese case was based upon nationality grounds and a kind of self-determination argument. On several occasions, the people in Chinese-claimed territory were said to be Chinese of Uighur and Khirghis nationality,⁶⁵ who, even when confronted with British coercion, “continued to think of themselves as Chinese.”⁶⁶ To strengthen these meager evidences of Chinese cultural ties, Peking repeatedly cited maps, official documents, etc., to show indications of effective Chinese jurisdiction.

The Chinese team was faced with the added difficulty of denying the contentions of the Indian officials based on custom and tradition. Here, they made a spirited argument that India relied upon “unofficial” and “indirect” evidence which could be treated only as “supplementary . . . and of an auxiliary nature.” Also, the validity of New Delhi’s claims was placed in doubt due to the allegedly subjective and Western bias of her evidence. Then, as each item in the Indian case was considered, it was challenged on one or more of these several grounds. At times, the accuracy of the Indian translation was attacked, or alternatively, contrary inferences were drawn from the typically obscure materials. Altogether, the Chinese rested their case on technical grounds where they could, or moved when necessary to charges of imperialism.

In considering the Chinese uses of international law, or their assuming a quasi-legal basis for their position, it should be noted that at many points Peking’s hand was determined by conditions it had not created. For example, what if the Chinese Central Government *had* ratified Simla, even under duress? It seems at least probable that the Peking regime would still have denied India’s claims in the eastern sector of their boundary, though to have done so under these hypothetical circumstances would have necessitated a greater reliance on nonlegal arguments. In a real sense, then, People’s China found legal principles a convenient basis for her claims.

With regard to the evidences of administrative jurisdiction, the next agreed-upon subject for examination in the report, we see again a convergence of circumstances allowing for Chinese reliance on legalistic arguments. If, instead of almost none there had been a wealth of evidence on custom and tradition, and rather than a considerable amount of data showing Chinese administrative jurisdiction, there had been very little, Peking officials would have been forced to make moralistic pronouncements about the natural rights of self-determination of all oppressed peoples.

⁶⁵ *Ibid.*, pp. 33, 35, 45, and 46.

⁶⁶ *Ibid.*, pp. 40 and 48.

Instead, their fundamental thesis was consistent with international law, for they could show evidence of the exercise of sovereign powers in the disputed areas.

As might be expected, much reliance was placed here upon official Chinese and Tibetan documents and maps. Even a listing of the kinds of sources cited would be rather lengthy, running the gamut from ancient official annals to modern administrative orders, from letters of the 7th Dalai Lama to diplomatic correspondence with Britain in the 1940's, and from ancient maps to modern. Together, it was urged, they showed with complete internal consistency that Chinese control had existed over the contested areas for many decades of years, even after British imperialist designs had begun to materialize, for they demonstrated that China had a) set up administrative organs in the areas, b) collected taxes there, c) exercised judicial power, d) suppressed revolts, and e) provided frontier defense.⁶⁷

In rebutting Indian claims in this category, the Chinese presented three counter-arguments. The first, used to rebut Indian evidence drawn from before the latter half of the 19th century, was a summary denial of the relevance or validity of that evidence:

The pieces of evidence cited by the Indian side . . . had nothing to do with administrative jurisdiction, or was self-contradictory, or did not tally with the actual situation, and, therefore, none of them could be taken as valid proof.⁶⁸

When considering evidence dated roughly from 1850 to 1949, Chinese officials relied on similar theses where they could, though they were useful only as supplementary and occasional parrying devices. Here, rather, a second counter-argument was expanded and documented: British aggression, unsupported by either moral considerations or legal justifications or even valid subsequent legal sanction, established some administrative controls over the area. Yet, even so, it was urged, China had retained "to a certain extent" some administrative controls of her own. While the Chinese case here was basically an elaboration of the "imperialism" argument, it was also clear that every attempt was made to clothe the charge in the sacred robes of law. British action was "unlawful invasion" and, of course, had never been ratified by any valid international agreements.⁶⁹

The final counter-proposition was directed to Indian data covering the post-independence period. Here evidence of Indian claims to jurisdiction were answered on either of two grounds. On the one hand, they were denied, where possible, on factual grounds, as in Aksai Chin:

If Indian control had been maintained there, how did the Chinese People's Liberation Army units which set out from Sinkiang in 1950 reach the Ari district of Tibet? How was it possible to construct in the period from March, 1956 to October, 1957, the Sinkiang Highway that passes through the Aksai Chin area?⁷⁰

Where India had in fact established administrative outposts in the contested areas, the charge was made as it had been against earlier British activities:

After its independence, India not only inherited the areas occupied by Britain, but pushed northward even further; particularly around the time of the peaceful

⁶⁷ *Report of the Officials* . . . pp. 91-103.

⁶⁸ *Ibid.*, p. 111.

⁶⁹ *Ibid.*, pp. 115-119.

⁷⁰ *Ibid.*, p. 127.

liberation of the Tibet Region in 1951, India made an all out advance towards the so-called McMahon Line and eventually controlled all the places south of this line.⁷¹

As can be seen, this most detailed exposition of Chinese claims showed no major departure from previous statements of Peking's position, either in substance or in the manner of presentation. To be sure, the greater attention paid in turn to each aspect of the dispute and to each category of evidence illuminated the gaps in Peking's supporting materials as well as the surest foundations for her claims. Yet, this harsher light of comprehensiveness did not force the Chinese team to change its basic strategy.

Throughout this entire phase of the dispute's evolution, Peking continued to place heavy reliance on maintaining a position of strength at the border while she sought a compromise settlement. In support of this interpretation, it should be noted that the Chinese case was made openly, convincingly and repeatedly, and it would be foolish to contend that the entire effort was merely a cloak for military ambitions.

On the other hand, with the passage of time, as the Chinese case was becoming increasingly explicit, Peking's willingness to surrender any of its own claims in response to concessions from New Delhi became more unlikely. Whether her leaders became more convinced of the merit of their claims as they delved into their archives, or simply more intransigent as New Delhi continued to remain firm—or both—is not easily determined. Yet, it seems clear that as the period drew to a close, Peking's notions of what constituted a reasonable settlement were less consistent with New Delhi's interests than they had been in 1958. In short, while Peking wanted a negotiated settlement, the substance of that accord was ever assuming greater importance.

One additional reason for this trend, of course, was the exacerbation of Sino-Indian relations arising from the events in Tibet. While prior to mid-1958 China seemed genuinely conciliatory and willing to concede that India also had real interests and claims in disputed areas, after that time, and particularly after mid-1959, Peking's mood became more belligerent and defensive. The curious aspects of all this is that Peking remained pat with its previous strategy for settling the boundary dispute even after such a profound change in existing political/military considerations at the frontier. While she consistently showed great perception and understanding of the many interrelationships between border incidents and the more general boundary question, and manipulated the former to start discussions over the latter, after Tibet, 1959, she continued with the same public posture on the boundary question as before; only her intransigence increased somewhat.

The one readily available explanation for this retention of an apparently out-moded strategy is that China had no real alternative course, save the one finally utilized in 1962. Perhaps, militarily and diplomatically, the time was not yet ripe in 1959-1960. In any case, Peking continued to push for a negotiated settlement even as prospects for that grew ever more dim. This is not to say that the strategy of seeking negotiations was entirely unsuccessful. Peking had laid out a case, publicly, which was neither revolutionary in character nor absurd in fact. It could and did provide a reasonable basis for military action when the time seemed appropriate,

⁷¹ *Ibid.*, p. 103.

while fears from other quarters that China's territorial ambitions were unlimited, were somewhat lessened.

3. Retreat from Reasoning, 1961-1962

By the time New Delhi published the results of the Joint Conference of Chinese and Indian Officials in February 1961, the exchange of notes between the Peking and Indian Governments had increased greatly in volume and bombast, as each side chose to rely on political and, more often, military means to create an acceptable position on their mutual frontier. Neither side appeared to place much hope in further discussions, and, as a result, rational discourse frequently was replaced by threats and recriminations.

The Indian Ministry of External Affairs, perhaps, was a bit more open in expressing the feelings of its top officials, and its notes of 1961-1962 are rich in sarcasm, ridicule, and self-justification. A much quoted statement in an Indian note of December 9, 1961, well illustrates New Delhi's mode of argument at that time:

In the face of growing Chinese aggression of Indian territory since 1957-58, and expansion of unlawful Chinese occupation over parts of Ladakh, it ill-behoves the Chinese Government to ask the Government of India to desist from taking measures to safeguard its territorial integrity. As to the profession that the Chinese Government has exercised restraint on its troops along the border, this has to be seen in the background of its record of aggression in recent years. The Sino-Indian border was always a border of peace and friendship until the Chinese Government embarked on a course of aggression. To restore peace and tranquility on this border as well as to create fresh confidence in the Chinese Government's professions, Chinese forces should first of all withdraw from Indian territory into Chinese territory.⁷²

Peking, on the other side, played a more dispassionate, though equally serious tune. While the Chinese Ministry of Foreign Affairs repeatedly urged a peaceful settlement and claimed to have scrupulously preserved the status quo on the boundary, it pointedly warned New Delhi that it was rejecting a peaceful settlement and at one point, it added: "Such an important question as the Sino-Indian boundary question should not be treated so lightly."⁷³ Not surprisingly, clashes on the border grew more frequent and serious. Charges of Indian advances were matched by New Delhi's counter-claims and accusations, and reports of exchange of fire and capture of prisoners became more frequent.⁷⁴

Yet, Peking did not rely exclusively on fortifying her border position as she attempted to conclude a boundary settlement. Rather, the Chinese Government remained active on the diplomatic front and for its pains, it was rewarded with two important successes: both Burma and Pakistan reached agreement with Peking on outstanding boundary matters, and the Indian Government showed more than slight interest in each case.

The Indian Ministry of External Affairs first protested the Sino-Burmese accord,⁷⁵

⁷² "Note given by the Ministry of External Affairs, New Delhi, to the Embassy of China in India, 9 December 1961." *White Paper VI*, p. 9.

⁷³ "Note given by the Ministry of Foreign Af-

fairs, Peking, to the Embassy of India in China, 22 March 1962," *White Paper VI*, p. 24.

⁷⁴ See correspondence in *White Paper VI*, pp. 1-93.

⁷⁵ "Note given by the Embassy of India in China

alleging that the map attached to that document showed the tri-junction between China, India and Burma at an improper location. While it was admitted that no explicit provision for the tri-junction was made in the treaty itself, the map showed that point at Diphu Pass, some ten miles into Indian territory and therefore it could not be accepted by the New Delhi Government.

The Chinese response, almost two months later, noted that the treaty had intentionally left open the question of the location of the tri-junction until China and India had also settled their boundary differences so that there could be "no basis whatsoever for the Indian Government to think that the delineation of any part of the Sino-Burmese boundary in the maps attached . . . (had) an adverse implication on the territorial integrity of India."⁷⁶

New Delhi, however, was not convinced by this assurance, and replied that the map purported to show "the entire boundary between Burma and China" and that the western most point of that line was at Diphu Pass, some ten miles into Indian territory.⁷⁷ And, as the dialogue continued, the substance of the territorial claims of both parties were again advanced in some detail⁷⁸ and the charge was levelled against Peking that she was "exploiting the opportunity offered by the China-Burma Boundary Treaty to support their unwarranted claim for negotiating the question of the Indian-Chinese boundary."⁷⁹ The Indian Government also could not resist pointing out that China had accepted the McMahon Line as the valid boundary between Burma and China and expressed surprise that the same could not be done vis-à-vis India.

The Chinese Ministry of Foreign Affairs was not opposed to comparing its settlement with Burma to its problems on the Indian frontier, for Peking could then also measure Burmese actions against New Delhi's intransigence. Whereas India refused to consider the boundary question negotiable, Burma had negotiated, even though the McMahon Line had extended over its own northern frontier. In other words, only India claimed that the Simla Convention had properly established the boundary while the other two affected parties disagreed. Also since China had accepted a formal delineation at least acceptable to Burma, though only after negotiations, New Delhi's claims that China had great territorial ambitions appeared unfounded.

The Chinese settlement with Burma was followed in May 1962, with a communique announcing the conclusion of a provisional agreement between China and Pakistan "To locate and align their common border."⁸⁰ Here, Indian interest was aroused because in the view of its government, Pakistan had no common border with the People's Republic of China; it was only because Pakistan "illegally" oc-

to the Ministry of Foreign Affairs, Peking, 30 December 1960," *White Paper V*, p. 20.

⁷⁶ "Memorandum given by the Ministry of Foreign Affairs, Peking to the Embassy of India in China, 21 February 1961," *White Paper V*, pp. 21-22.

⁷⁷ "Note given by the Ministry of External Affairs, New Delhi, to the Embassy of China in India, 21 February 1961," *White Paper V*, pp. 28-29.

⁷⁸ See: "Note given by the Ministry of Foreign Affairs, Peking, to the Embassy of India in China, 4 May 1961," *White Paper V*, p. 25; also, "Note

given by the Ministry of Foreign Affairs, Peking, to the Embassy of India in China, 20 November 1961," *White Paper VI*, pp. 95-96; and "Note given by the Ministry of External Affairs, New Delhi, to the Embassy of China in India, 31 May 1962," *White Paper VI*, p. 98.

⁷⁹ "Note given by the Ministry of External Affairs, New Delhi, to the Embassy of China in India, 16 June 1961," *White Paper V*, p. 32.

⁸⁰ Cited in: "Note given by the Ministry of External Affairs, New Delhi, to the Embassy of China in India, 10 May 1962," *White Paper VI*, p. 96.

cupied parts of "Indian" Kashmir and Jammu that she even sought a settlement with Peking. As a result, the Indian Government charged that the Chinese had interfered "with the sovereignty of India over the State of Jammu and Kashmir," and that after repeated assurances of complete support for Indian claims against Pakistan.⁸¹

The Chinese response categorically denied that Peking had "accepted without reservation the position that Kashmir is under Indian sovereignty, that there is no common boundary between China and Pakistan, and that therefore China has no right to conduct boundary negotiations with Pakistan."⁸² In the ensuing dialogue, it is apparent that Peking had indeed given vague evidence of support for Indian claims to Kashmir, but that the door had deliberately been left open for a strategic retreat if that eventually ever became desirable. Once more, then, Indian diplomats had accepted Chinese appearances for hard commitments and had lived to rue their mistake.

The Chinese justification for their agreement with Pakistan was a model of reasonable and reasoned discourse. First, there was a *de facto* situation in which several hundred kilometers of boundary separated China from territory controlled by Pakistan. If, in this circumstance there was no agreement on the location of the line of separation there, border incidents were bound to occur, as India should know only too well. Finally, since the Indian-Pakistani territorial dispute remained unsettled, and because China wished to take no action prejudicial to either side, the agreement with Pakistan was intentionally provisional, and to be superseded by a final agreement to be negotiated between China and whoever controlled the other side of the line.

Having made this case, the Chinese Government offered a few concluding, pointed observations:

Anyone in the world with common sense will ask: Since the Burmese . . . Government can settle . . . (its) boundary question with China in a friendly way through negotiations and since the Government of Pakistan has also agreed with the Chinese Government to negotiate a boundary settlement, why is it that the Indian Government cannot negotiate and settle its boundary question with the Chinese Government? Such a commonsense query is indeed rather embarrassing. But it is useless to get furious with China. As in the past, the Chinese Government still stands for a friendly settlement of the Sino-Indian Government's unenviable situation on this matter is of its own making . . .⁸³

The notes between the two governments over this Chinese coup continued, though not much besides polemics was recorded. The well-founded frustrations of the Indian Government were patently obvious, as was the smugness in the Chinese rejoinders.

In these last two affairs, India was in a nearly hopeless and negative position, and unable to apply any kind of effective counter-pressure against her northern neighbor. That, in fact, was almost the case in one other current development, though on the surface New Delhi acted as though she had room to bargain. When in December

⁸¹ *Ibid.*

⁸² "Note given by the Ministry of Foreign Affairs, Peking, to the Embassy of India in China, 31

May, 1962," *White Paper VI*, p. 99.

⁸³ *Ibid.*, p. 101.

1961,⁸⁴ the Chinese Ministry of Foreign Affairs proposed the holding of negotiations preparatory to concluding a new treaty on trade between Tibet and India to replace the original 1954 agreement, due soon to lapse, the Indian Government refused until there was "a reversal of the aggressive policies followed by the government of the People's Republic of China during the last few years and the restoration of a climate which assures the strict observance of the Five Principles both in letter and spirit."⁸⁵ It is unlikely that China cared much one way or the other, and though a considerable correspondence developed,⁸⁶ in which each side charged the other with various forms of aggression, no discussions were agreed to and the 1954 treaty expired on June 3, 1962.

Throughout the summer of 1962, amid dire predictions of full scale war, reports of repeated border violations and allegations of mistreatment of resident aliens residing in the other's jurisdiction, all coming from both near-belligerents, Peking and New Delhi each made some pretense at seeking negotiations. While Peking later went so far as to suggest a date for the beginning of discussions, and the Indian Ministry of External Affairs seemed but a step away from agreeing to participate, the continuous military buildup on each side was ultimately more important than the verbal exchanges, and on October 20, the war began.

From the conclusion of the Conference of specialists in late 1960, until the outbreak of war in 1962, Peking's strategy regarding the boundary question reflected the firm judgement that India could not be budged by the merits of the Chinese case, supported by limited frontier pressures. That being so, the Chinese officials moved where possible to create a de facto situation on the border which mirrored their territorial claims as closely as possible.

The most successful facet of this policy, of course, was the conclusion of boundary agreements with India's neighbors on the east and west, for they each had important adverse implications for New Delhi. At the same time, the Indian Government was powerless to react. Less successful in the sense that India could and did respond was the stepping up of border activities and the increasing of military fortifications.

In all of this, substantive discussion of the merits of the Chinese claim played a very subordinate role. Peking, apparently had decided that its case had been made and only an Indian change of position could break the stalemate. And, since that appeared unlikely, the best alternative available was to pursue a series of actions in which Indian concurrence was unnecessary to obtain an acceptable stabilization of the boundary.

In reviewing the entire sequence of events described above, perhaps the most striking feature of the Chinese part in them was the extent to which her behavior was consistent with the practice of international relations by nonrevolutionary regimes. While one could expect, perhaps, that a government committed to principles sharply at odds with those supported by Western states would behave in a similarly conflicting manner, the record does not bear out such an expectation. Peking's strat-

⁸⁴ "Note given by the Ministry of Foreign Affairs, Peking, to the Embassy of India in China, 3 December 1961," *White Paper VI*, p. 188.

fairs, New Delhi to the Embassy of China in India, 15 December 1961," *White Paper VI*, p. 190.

⁸⁵ "Note given by the Ministry of External Af-

⁸⁶ See: *White Paper VI*, pp. 188-222, and *White Paper VII*, pp. 170-174.

egy and tactics showed a willingness to operate within customary boundaries and her performance showed an ability to do so in an effective manner as well.

More specifically, the Chinese Government demonstrated a keen perception of the utility and limitations of international law as a guide and constraint in international behavior. Peking's leaders skillfully manipulated legal principles and quasi legal arguments as they sought to legitimize their claims. There is no indication in any of the relevant official correspondence that Peking viewed accepted principles of international law with alarm or distrust; repeatedly, she voiced the intention of behaving according to their precepts.

A better case, perhaps, can be made to the effect that the Chinese Communist elite had learned its lessons on international relations too well, and that it had mastered the art of manipulating the law to its own purposes, while it did not allow legal factors such a dominant place in its considerations as to be a strait jacket. Its intention clearly was to move in discourse from legal to political or moral considerations frequently and freely, and its style was to tie these several types of arguments together in one neat package.

It should also be noted that Peking understood the need to correlate argument with action, explaining the latter with frequent references to legal as well as political considerations and supporting legal claims (or threats) with evidence of serious intentions. In spite of the ultimate failure to obtain Indian concurrence with its own view on boundary claims, the evidence above indicates that the Chinese Government must be credited with having a sophisticated understanding of the workings of international politics and the important place international law holds in that larger process.