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The National Land Boundary Law of the People's Republic of China as Part of Domestic Politics in China China-Taiwan Study Group, Commentary No. 1

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Xi Jinping's absence from the G20 summit in New Delhi in September 2023¹ underlines the cold China-India relations since the Galwan Valley clash of May 2020.² China claims that India has been stalling not only the development of bilateral relations with China but also stalling cooperation at the global level as India focuses heavily on national and border issues.³ From India's perspective, however, China has infringed on the 1993 Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control in the India-China Border Areas⁴ and the 1996 Agreement between India and China on Confidence-Building Measures in the Military Field⁵ along the Line of Actual Control (LAC).⁶ In the context of heightened India-China tension in the border areas, Indian specialists describe the National Land Boundary Law of the People's Republic of China⁷ (hereafter, the NLB law), which was promulgated in October 2021, as another example of China's legal warfare whereby the regime develops domestic laws to justify its aggressive foreign and military policies.⁸ They argue that China is using this law to legitimize its actions and criticize India. However, did China really promulgate the NLB in 2021 to adopt a belligerent stance in border disputes with India? This commentary aims to shed light on the NLB in 2021 by exploring Chinese domestic politics under the Xi Jinping regime.

Promulgation of China's National Land Boundary Law in 2021

In order to understand China's NLB law promulgated in 2021, geographic definitions in China should be discussed. "Ludi guojie" (陆地国界) refers to the boundaries that demarcate China's territory and its neighboring countries on land (Article 3) and is thus equivalent to the border. On the other hand, the law designates the area within a certain range inside the land border adjacent to China's territory as the border area (bianjing, 边境) (Article 3). In sum, guojie (国界) means line, and bianjie (边界) indicates the certain range of territory of the People's Republic of China inside the guojie border. This Commentary uses the term "national land boundary" to follow the official translation of "guojie" by the Ministry of Foreign Affairs of China. Further, the Ministry of Foreign Affairs of China translates "bianjing" as the term "border areas" based on the meaning stipulated in Article 3 of the NLB law. 10

Through the enactment of this law, Beijing appears to be signaling determination to defend and control its border and a certain range of territory inside it, although the law stipulates that China and its land neighbors negotiate and conclude a treaty delimiting land borders (Article 16). The law

delegates the People's Liberation Army (PLA) and People's Armed Police (PAP) under the leadership of the Central Military Commission (CMC) to defend and control the border and the border areas (Article 7). Another notable aspect of the NLB law is that it prescribes China's national defense and control over the border and the border areas by providing socio-economic activities such as strengthening the border by providing public services and infrastructure construction (Article 10), as well as the construction of border towns (Article 43).

A Chinese researcher who specializes in South Asia explains that the NLB law is effective only on the Chinese side of the border, and therefore it doesn't focus on resolving border disputes through domestic laws. However, given the lack of mutual understanding between China and India over the location of the LAC which functions as the de facto border that demarcates the two countries, it is unlikely that India shares with China the understanding of the location of "the Chinese side of the border." Thus, the NLB law of the PRC, which justifies defense and administration of the border areas through socio-economic activities, is bound to provoke India, which faces off with the Chinese military in the border areas and remains concerned about China's unsanctioned settlement constructions in Bhutan. 12

On the other hand, rather than having been promulgated to respond to a particular territorial dispute, including any involving India, China's NLB law covers general issues in securing the Chinese land boundary. Zhang Yesui, who was then-director of the National People's Congress (NPC) foreign affairs office, explained in his April 26, 2021briefing on the draft of the NLB law that China needed the law to govern its land boundary of approximately 22,000 kilometers adjoining 14 countries, based on the top-level design plan (顷层设计). However, Zhou Weiguo, who is the former vice screening member of the Foreign Affairs Committee of the National People's Congress (NPC) for drafting laws, explained that China has failed four attempts since 1979 to pass legislation to govern the defense of national land boundaries and border areas, border control, administration over waters such as rivers included in China's territory, and residence, brief visit, and transit in the border areas. This means that the geography of China's international borders shared with 14 neighboring countries and lack of legislation to govern national land boundaries have existed for some time and were not significant independent factors for China in promulgating the NLB law in 2021. Why, then, was the NLB law successfully promulgated under the Xi Jinping regime?

Streamlining command and control of national security under Xi Jinping

Successful promulgation of the NLB law in 2021 can be attributed to the efforts of building a command and control system under the Xi regime. Xi Jinping, in his speech at the first meeting after the establishment of National Security Commission (NSC) of the Communist Party of China in April 15, 2014,¹⁶ proposed a concept of the "holistic view of national security" (总体安全观) to cope with eleven areas of security threats for China, including politics, national land (国土), military, economy, culture, society, science and technology, cyber, ecology, natural resources, and nuclear. ¹⁷ In his speech in 2013, Xi placed regime security which involves ruling by the Communist Party of China

(CPC) and socialist system as the first priority, ¹⁸ and strengthened security governance by legislating several related issues. ¹⁹ The resolution of the 100th anniversary of the CPC in 2022 also reiterated the establishment of the NSC as an important accomplishment of the CPC to build "the centralized, unified, and highly effective as well as authoritative" leadership system for national security. ²⁰

China's land border law is also a part of the Xi Jinping regime's national security-related legalization. According to the abovementioned Zhou Weiguo, who is the former vice screening member of the Foreign Affairs Committee of the National People's Congress (NPC) for drafting laws, by issuing the national security legislation planning (2014-2020), the NSC delegated the National People's Congress (NPC) foreign affairs office to draft land the border law. In June 2015, the CPC prioritized promulgation of the NLB law in the legislation planning of the NPC Standing Committee.²¹

It is notable that Xi Jinping strengthened the Party's leadership over foreign affairs based on his belief that foreign relations is an issue of regime security. In 2014 at the early stage of his tenure, Xi clearly stated that priority of China's foreign relations is to cement sustainable stability of the regime by steady implementation of a "holistic view on national security." In the 2018 Foreign Affairs Work Conference of the CPC, Xi emphasized the full authority of the Party Central Committee and its leadership in foreign-related work, and demanded organizations involved in foreign-related work to assure the steady implementation of the Party's foreign policy and the Central Committee's overall strategic arrangements. In response, the PRC State Councilor and Foreign Minister Wang Yi, who assumed the additional position of the Director of the CPC Central Foreign Affairs Office in January 2023, consistently emphasizes his loyal practice of President Xi's diplomatic ideology and implementation of Xi's foreign policy thoughts. Thus, at least in the domestic discourse, China's foreign relations under the Xi Jinping regime is about implementation of foreign policy initiatives of the Party Central leadership in China, not about building relations with counterparts.

China's way of thinking of extending domestic governance to foreign relations is reflected in the efforts of national security legislation. In the briefing of the draft of the land border law of April 2021, Zhang Yesui, who was then-director of the National People's Congress (NPC) foreign affairs office, cited Xi's speech at the central conference on work related to overall law-based governance held in December 10, 2020,²⁵ which underlines ensuring national sovereignty, security, and development by taking a coordinated approach to promoting the rule of law at home and in matters involving foreign parties.²⁶ The Law on Foreign Relations of the PRC which came into effect since July 1, 2023, is one of the latest examples of this trend.²⁷

The way of thinking of "constructing favorable foreign relations through domestic legislation," which was presented in Xi's speech in November 2020, seems to underline the conventional understanding on China's application of "lawfare," or rule of law in external relations, which is to develop domestic laws to legitimate aggressive diplomacy as well as military policy. However, when it comes back to the basics that the fundamental goal of the Xi Jinping regime is regime security, aggressive diplomacy and military policy can be understood as tactics of the Xi regime. In other

words, potential independent variables that lead the Xi Jinping regime's efforts to build leadership for national security are not really based on the strategic calculations on foreign relations but rather are based on domestic politics of regime security. In this context, promulgation of the land border law should be understood from the perspective of Chinese domestic politics, especially from Xi's attempts of consolidating power in China.²⁸

Reorganizing border defense posture (辺防体制)

Since the founding of the People's Republic of China (PRC), military and public security department under the State Council have shared responsibility to secure the borders of China, while they were repeatedly reorganized to change the division of labor. ²⁹ In the 1960s, the military had the responsibility for border defense in the border areas of Tibet, Hainan, Xin Jiang, as well as those of the Sino-Soviet Union and the Sino-Mongolia, while public security units defended the Sino-North Korea and the Sino-Viet Nam border areas. There was a period during the Cultural Revolution of 1966 when the military took all responsibilities in border defense and control; then the military again shared responsibilities with a public security unit after the 1980s. Since then, for the past 40 years, the designated units of military had responsibility for border defense, while the public security units have taken up the roles of policing and border control. The border defense units of public security were reorganized into the Public Security Border Defense Force³⁰(人民公安部边防武装警察部队) to take responsibility for policing operations in the border area, such as counter-intelligence, antirebellion, counter-psychological warfare, and anti-defection.³¹ This unit, on one hand as a part of the active PAP, as well as the unit organized by the Ministry of Public Security (MPS) on the other hand, had been placed under the dual leadership of the CMC and the State Council.³²

In March 2018, Xi Jinping implemented institutional restructuring in the Party, the government, and the military and people's organizations, including the border defense force. In a decision on the deepening reform of Party and state institutions, the CPC Central Committee abolished the military status of the border defense force unit of the PAP and reorganized it into the MPS, based on the principle of drawing a clear line between the military, the government, and people's organizations.³³ This decision ended the previous dual leadership system in which the military and State Council shared responsibility,³⁴ and the PAP was placed under the leadership of the CMC only.³⁵ The Chinese state media described this institutional restructuring as necessary "for strengthening the centralized and unified leadership of the CPC as well as achieving the coordinated and effective functions of these institutions" and included a "better arrangement of Party and government organs to avoid decentralizing or overlapping responsibilities." ³⁶ Thus, those reforms streamlined the structure of command and control over the armed forces in China in a way that Xi Jinping as the CMC chairman was granted sole authority over all the armed forces in China while the authority of the State Council over the PAP including that of border security unit was abolished.

The command and control defined by the NLB law also reflects the change in border defense posture made in 2018. First, the land border law stipulates the CMC's sole leadership over all the

armed forces in the border defense (Article 7), and thereby it maintained consistency with the abolishment of dual leadership of the State Council and CMC made in 2018. Second, the PLA and the PAP take responsibility for border defense in collaboration with relevant local authorities (Article 7); thus, the former border defense force of the PAP, which was to be absorbed by the MPS and reorganized into the People's Police,³⁷ is not involved in border defense duty. Although the public security department of the State Council is not engaged in border defense, it supervises related public security works such as combating illegal crime activities in the border areas (Article 6).

On the other hand, the NLB law stipulates the leadership system of the national land boundaries in an ambiguous description that "the state implements unified leadership on the national land boundary affairs" (Article 5). Zhou Weiguo, who is the former vice screening member of the Foreign Affairs Committee of the National People's Congress (NPC) for drafting laws, explains that defining the leadership system of the national land boundaries in Article 5 was a drawback as well as a priority in promulgating the NLB law. Zhou explained that there had been long lasting disputes over the objectives of the law and its leadership system in the Chinese bureaucracy. According to Zhou, "a certain government organization still hoped to participate in the leadership system" of the NLB law, even after a decision had been made on the constitutional status of the NLB law to regulate several policy fields such as delineation and demarcation of national land boundaries, defense and management of national land boundaries and border areas, and international cooperation in national land boundary affairs.³⁸ Zhou didn't specify the government organization that hoped to participate in the leadership system of the NLB law. However, considering that the CMC and the State Council shared the responsibilities in the border defense posture for the previous 40 years, it is possible that the State Council resisted being excluded from the leadership system of the national land boundary, because its command and control over the border defense had already been abolished in 2018. Zhou suggested that Article 5 of the NLB law guarantees the ultimate authority of Xi Jinping over the issue of national land boundary and management of border areas.³⁹

Whatever the struggle between Party and state was, through the NLB law, Xi Jinping succeeded in ending dual leadership of the CMC and the State Council. Xi's reform of the defense and management system of the national land boundary and the border areas absorbed the State Council's command and control over the armed forces as well as authority over national land boundary management, as various changes under Xi often at the expense of the state.⁴⁰ China's promulgation of the NLB law in 2021 is part of a restructuring of the national security laws by Xi, who is averse to a dual leadership system sharing command and control over the armed forces as well as the authority of decision-making in diplomacy and military with the State Council. The NLB law in China reflects domestic politics of promoting unified central control over national security under Xi, rather than strategic calculations of foreign relations. Thus, a perspective that considers India to be potentially swayed by Chinese domestic politics rather than being confronted by China's calculated assertive foreign policy may be closer to reality.

Notes

¹ G20 Summit, New Delhi. https://www.g20.in/en/g20-india-2023/new-delhi-summit/new-delhi-summit.html, viewed December 18,2023.

- ² Since the Galway Valle clash of May 2020, the Line of Actual Control (LAC) has not completely descalated, and even the new skirmish in the Arunachal Pradesh have been occurring. See Panda, Jagannath. 2023. "China's Decision-making and the Border Dispute with India," Roy D. Kamphausen ed. *China's Military Decision-making in Times of Crisis and Conflict*, The National Bureau of Asian Research, https://www.nbr.org/publication/chinas-military-decision-making-in-times-of-crisis-and-conflict/, viewed December 18, 2023.
- ³ Shisheng, Hu. 2023. "Ruhe kandai Zhongguo, jianyan Yindu daguo xintai [How India sees China, inspecting her major power mentality]," *Huanqiu shibao*, Feburary 9, https://m.huanqiu.com/article/4B cokBSEDdP, viewed November 22, 2023.
- ⁴ United Nations Peacemaker, "Agreement on the Maintenance of Peace and Tranquility along the Line of Actual Control in the India-China Border Areas." https://peacemaker.un.org/chinaindia-borderagreement93, viewed December 18, 2023.
- ⁵ United Nations Peacemaker, "Agreement between India and China on Confidence-Building Measures in the Military field Along the Line of Actual Control in the India-China Border Areas." https://peacemaker.un.org/chinaindiaconfidenceagreement96, viewed December 18, 2023.
- ⁶ Ministry of External Affairs of India. 2022. "Transcript of Special Briefing by External Affairs Mi nister on Meeting with Foreign Minister of China." March 25, https://www.mea.gov.in/media-briefings.htm?dtl/35076/transcript+of+special+briefing+by+external+affairs+minister+on+meeting+with+foreign+minister+of+china+march+25+2022, viewed November 22, 2023.
- ⁷ This commentary follows the official translation of "The National Land Boundary Law of the Peo ple's Republic of China" by the Ministry of Foreign Affairs of China. Office of the Spokesperson of the Ministry of Foreign Affairs. 2021. "Regular Press Conference (2021-10-28)," October 29, https://www.thepaper.cn/newsDetail forward 15129747, viewed December, 2023.
- ⁸ Bana, Sarosh. 2022. "Unrestrained China." *Indo-Pacific Defense Forum*, July 22, https://ipdefenseforum.com/2022/07/unrestrained-china/, viewed December 18, 2023.
- ⁹ "Regular Press Conference (2021-10-28)," https://www.thepaper.cn/newsDetail_forward_15129747, viewed December 18, 2023.
- 10 Ministry of Foreign Affairs of the PRC translates "Bianjing" (边境) into the term of "borders." However, this official translation is vague in demonstrating "the certain range of territory inside national land boundaries of the PRC," which is defined by the Article 3 of the NLB law. Thus, this commentary uses the term of "border areas" in order to reflect more clearly the meaning "Bianjing" in the Article 3 of the NLB law. https://advocatetanmoy.com/2021/10/31/land-border-law-of-the-peoples-republic-of-china/, viewed December 18, 2023.
- ¹¹ Jiadong, Zhang. 2021. "Bie ba Zhongguo ludi guojiefa lijie waile [Don't distort the meaning of t he National Land Boundary Law of China," *Zhongguo Nanhai Yanjiuyuan*, November 5, http://www.nanhai.org.cn/info-detail/26/11615.html, viewed December 18, 2023.
- ¹² Pollock, John. 2023. "China's land-grab deal," *The World Today*, December 2023 & January 2024, pp.32-35. Barnett, Robert. 2021. "China Is Building Entire Villages in Another Country's Territory," *Foreign Policy*, https://foreignpolicy.com/2021/05/07/china-bhutan-border-villages-security-forces/, viewed November 22, 2023.
- ¹³ Luo, Shuxian. 2021. "China's land border law: A preliminary assessment," the Brookings Institutio n, November 4. https://www.brookings.edu/articles/chinas-land-border-law-a-preliminary-assessment/, viewed November 22, 2023.
- ¹⁴ The National People's Congress of the People's Republic of China. 2021. "Guanyu "Zhonghua re nmingongheguo ludi guojiefa" de shuoming [Briefing on the draft of the National Land Boundary Law of the People's Republic of China]," October 25, http://www.npc.gov.cn/npc/c2/c30834/202110/t20211025_314318.html, viewed November 22, 2023.
- ¹⁵ The former vice screening member of the NPC foreign affairs office for drafting laws describes that there

are four trials of legislation on the land border issues, but it failed all the time until the NLB law was promulgated in 2021. Weiguo, Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongyao wenti [the China's promulgation and implementation of the NLB law and its major issues]," *Bianjie yu Haiyang yanjiu* Vol6, 6, pp. 18-35.

- ¹⁶ "Xi Jinping ren Zhongyang guojia Anquan weiyuanhui zhuxi [Xi Jinping assumed a post of the NSC of the CPC]," *People's Daily*, January 24, 2024, http://jhsjk.people.cn/article/24221911, viewed December 11, 2023.
- ¹⁷ Zhonggong Zhongyang dangshi he wenxian yanjiuyuan. 2018. *Xi Jinping guanyu zongti guojia* anquanguan lunshu zhaibian [Selected works of Xi Jinping on a holistic view of national security]," Beijing; Zhonyang Wenxian chubanshe, p 5.
- The People's Dailiy. 2014. "Xi Jinping: Jianchi xongti guojia anquanguan zou zhonggguo tese guojia Anquan daolu [Xi Jinping: Adhere to a holistic view of national security, develop national security with Chinese characteristics]," April 15. http://jhsjk.people.cn/article/24899781, viewed December 11, 2023.
- ¹⁹ Matsuda, Yasuhiro. 2021. "Chugoku ni okeru "Seijianzen" to Kokunai anzenhosyou housei [China's political security and domestic national security laws]," May 6. https://www.jiia.or.jp/research-report/post-102.html#sdendnote1anc (Japanese), viewed December 11, 2023.
- ²⁰ The State Council, The People's Republic of China. 2021. "Zhonggong Zhongyang guanyu dangde bainian fendou zhongda chengjiu he lishi jingyande jueyi [the resolution of the 100th anniversary of the CPC]," November 17, https://www.gov.cn/zhengce/2021-11/16/content_5651269.htm, viewed December 11, 2023.
- ²¹ Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongyao wenti," p23.
- ²² People's Daily, "Zhongyang waishi gongzuo huiyi zaijing juxing, Xi Jinping fabiao zhongyao jianghua [the CPC held the Foreign Affairs Work Conference in Beijing, and Xi Jinping made an important speech]," November 30, http://jhsjk.people.cn/article/26119225, viewed December 11, 2023.
- People's Daily. 2018. "Xi Jinping zai Zhongyang waishi gongzuo huiyishang qiangdiao Jianchi yizheng shidai Zhongguo tese shehuizhuyi waijiao sixiang wei zhidao Nuli kaichuang Zhongguo tese daguo waijiao xinjumian [Xi Jinping emphasized to adhere to the diplomatic thought of socialism with Chinese characteristics as well as to making new headway of major-country diplomacy in the new era]," June 24, http://jhsjk.people.cn/article/30079017, viewed December 11, 2023.
- ²⁴ The State Council, The People's Republic of China. 2022. "Wang Yi: Xuesi jianwu Xi Jinping w aijiao sixiang jianshou xinshidai waijiao zhiming dandang [Comprehend the Xi Jinping's diplomatic t hough and fulfill a duty in the new era]," July 25, https://www.gov.cn/guowuyuan/2022-07/25/content-5702696.htm, viewed December 11, 2023.
- ²⁵ Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongyao wenti," p23.
- ²⁶ Xinhua, "Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China", December 10, 2020. http://www.xinhuanet.com/english/2020-12/10/c_139578732.htm, viewed December 11, 2023.
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- https://www.gov.cn/govweb/yaowen/liebiao/202306/content 6888929.htm, viewed December 11, 2023.
- ²⁸ A US-based Chinese researcher pointed out that the NLB law enshrines President Xi Jinping's signature ethnic minority policy line. However, she doesn't make in-depth analysis on the role of domestic politics in the promulgation of the NLB law. uo, 2021. "China's land border law: A preliminary assessment."
- ²⁹ This section is written based on the following resource, except when it notes specific citations. Ma, Dazheng, and Tan Hongan. 2017. "Zhongguo bianfang tizhi liushi nian [the 60 years of China's border defense system]," *Zhongguo Jinyingbao*, January 16.
- ³⁰ This commentary follows the translation of the Public Security Border Defense Force [gon'an Bianfang budui, 公安边防部队] as found in the following source: Joel Wuthnow, "China's Other Army: The People's Armed Police in an Era of Reform", Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, *China Strategic Perspectives*, No. 14, April 2019.

https://inss.ndu.edu/Portals/82/China%20SP%2014%20Final%20for%20Web.pdf, p 8. Viewed February 5,

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- ³¹ Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongyao wenti," pp.22-23.
- ³² Ibid, pp.22-23. Jin Peng ed. 2003. *Guofang Liliang [Armed Forces]*, Beijing: Junshi kexue chubanshe, p202.
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- ³⁴ "CPC issues decision on deepening reform of Party and State institutions." See also, Joel Wuthnow, "Who command the Gun? Mobilization and Use of China's Armed Police," *The China Quarterly* (2023), 253, p 77. ³⁵ "Law of the People's Republic of China on the People's Armed Police," Article 2.

http://www.npc.gov.cn/npc/c2/c30834/202006/t20200620_306630.html, viewed November 22, 2023.

- ³⁶ Xinhua net, "China Focus: CPC issues decision on deepening reform of Party and state institutions," March 5, 2018. http://www.xinhuanet.com/english/2018-03/05/c_137015953.htm; Public security department of the Tibet Autonomous Region. 2019. "Gongan bianfang buduideng tuichu xianyi hezhong kaoliu? Guofangbu huiying [What's the consideration on the retirement of the border defense unit of the public security department? Ministry of Defense answered]," June 11.
- http://gat.xizang.gov.cn/xwzx_3233/szyw_200/201906/t20190611_166071.html, viewed November 22, 2023.
- ³⁷ Wuthnow, "China's Other Army," p16.
- ³⁸ Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongvao wenti," p31.
- ³⁹ Zhou. 2021. "Woguo "ludi guojiefa" zhiding he shishizhongde jige zhongyao wenti," p32.
- ⁴⁰ Lawrence, Susan. 2018. "China's Communist Party absorbs more of the state." Congressional Research Service Report, 23 Narch, https://crsreports.congress.gov/product/pdf/IF/IF10854 (Accessed December 29, 2023); Wuthnow, China's Other Army," p16-17. Wuthnow, "Who Commands the Gun? pp.74-89.