

Forum: International Court of Justice

Issue: Sovereignty over Aksai Chin (India v. China)

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Introduction

"With hope and faith, this House affirms the firm resolve of the Indian people to drive out the aggressor from the sacred soil of India, however long and hard the struggle may be"

– Indian Parliament, upon passing resolution on China, 1962

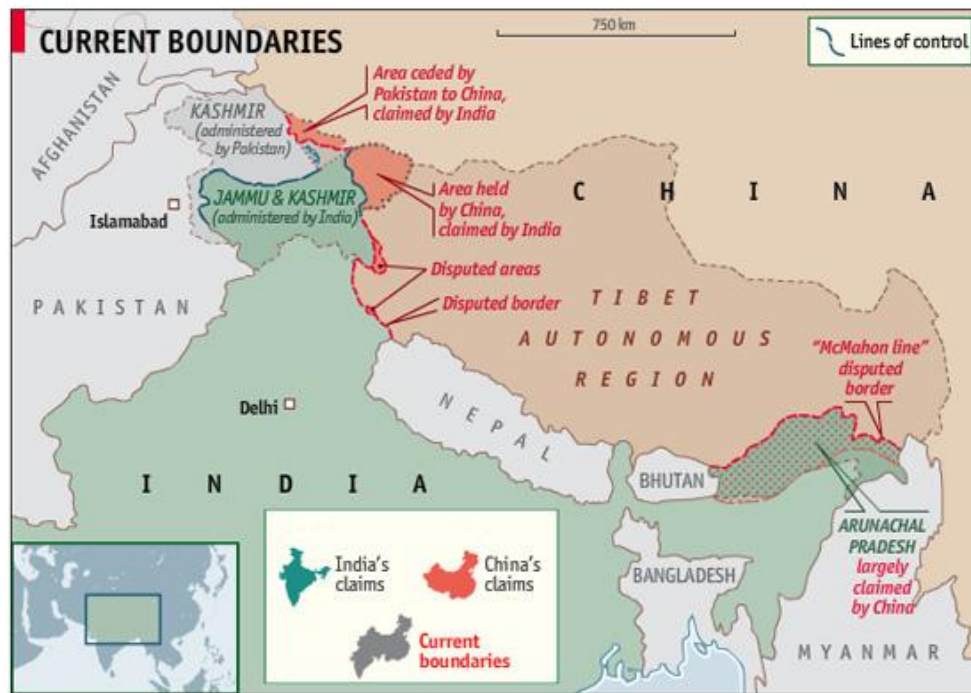
China had "never waged a war of aggression to occupy and inch of land of other countries... We always reiterate that we take real actions to commit through the peaceful development path"

– Chinese Foreign Ministry spokesperson Hua Chunying, 2014

The territorial dispute over Aksai Chin can be traced back to the failure of the British Empire to clearly demarcate a legal border between its Indian colony and China, as two borders between India and China were proposed during the time of the British Raj – the Johnson's Line and the McDonald Line. The Johnson's line shows Aksai Chin to be under Indian control whereas the McDonald Line places it under Chinese control. However neither of these boundaries was considered legally binding bilaterally as there was no treaty between India and China over the sovereignty of the Aksai Chin region: India considers the Johnson Line as the correct, rightful national border with China, while on the other hand, China considers the McDonald Line as the correct border with India. In the Sino-Indian War waged across the disputed border in 1962, India was defeated and the McDonald Line (which places Aksai Chin under Chinese control) has been considered by both sides as the de facto border between India and China since then.

Aksai Chin has been a continued source of international tensions and dispute; in 2008 the Chinese renovated Highway 219 and in mid-April 2013, a troop of around 30 Chinese troops crossed the Line of Actual Control into Rakhi Nullah and Takdip areas in Ladakh (Indian territory). In 2013 around 50 PLA troops had a face-off with Indian troops at a

distance of just 300 meters from each other at Daulat Beg Oldie, almost 20km inside Indian territory. India has formed a tank deployment and 40000-strong mountain-strike corps in Ladakh. Both countries have strong claims to the disputed region of Aksai Chin, and rising build-up of troops and military force on either sides of the border is only leading to escalating international tension between India and China. Bilateral talks have proved quite unsuccessful in finding common ground between the two parties as neither has significantly compromised on their stance or claim on Aksai Chin.



Source: The Economist

Division of territory at present day¹

Definition of Key Terms

Sovereignty²

The ultimate power, authority and/or jurisdiction held by a person or an institution over a people and a territory, against which there is no appeal

¹ [http://www.google.co.in/imgres?imgurl=http://stratrisk.com/wp-content/themes/editorialrecent/functions/thumb.php%3Fsrc%3Dhttp://stratrisk.com/wp-content/uploads/2012/01/China-India-Border-Disputes.jpg%26w%3D300%26h%3D200%26zc%3D1%26q%3D90&imgrefurl=http://stratrisk.com/geostrat/category/military-](http://www.google.co.in/imgres?imgurl=http://stratrisk.com/wp-content/themes/editorialrecent/functions/thumb.php%3Fsrc%3Dhttp://stratrisk.com/wp-content/uploads/2012/01/China-India-Border-Disputes.jpg%26w%3D300%26h%3D200%26zc%3D1%26q%3D90&imgrefurl=http://stratrisk.com/geostrat/category/military-operations/page/12&h=200&w=300&tbnid=koBTtav2YvcJNM&zoom=1&tbnh=160&tbnw=240&usg=__0VVDFar-Hux8176VpNtfr7uxwLs=)

<http://www.hawaii-nation.org/sovereignty.html>

² <http://www.hawaii-nation.org/sovereignty.html>

De Facto³

Existing in fact, although not necessarily legally accepted or intended

Line of Actual Control (LAC)⁴

The informal cease-fire line created between India and China following the Sino-Indian War, which was officially accepted as the Line of Actual Control by both sides in 1993 (showing Aksai Chin as under Chinese control)

McCartney-McDonald Line⁵

The boundary places the larger portion of Aksai Chin in China and was accepted by China as the unofficial border until 1959

McMahon Line⁶

The border bilaterally agreed to by Britain and Tibet as part of the Simla Accord treaty of 1914. The Chinese government has rejected this border as it places the larger portion of Aksai Chin as part of Indian territory

Johnson's Map of 1865 (Kuen Lun Line/Johnson's Line)⁷

The line proposed by W.H. Johnson, used by India after its independence as basis for India's official border, which placed Aksai Chin as under Indian control

PLA (People's Liberation Army)⁸

The army of the PRC (People's Republic of China)

Background Information

³ <http://www.thefreedictionary.com/de+facto>

⁴ <http://asianhistory.about.com/od/warsinasia/fl/The-Sino-Indian-War-1962.htm>

⁵ <http://chaurahha.wordpress.com/2013/02/19/the-sino-indian-border-dispute/>

⁶ <http://chaurahha.wordpress.com/2013/02/19/the-sino-indian-border-dispute/>

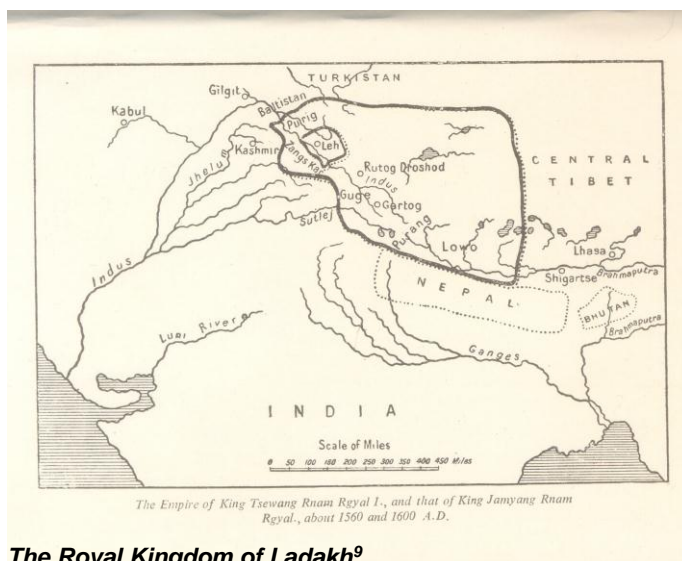
⁷ <http://chaurahha.wordpress.com/2013/02/19/the-sino-indian-border-dispute/>

⁸ <http://www.britannica.com/EBchecked/topic/450626/Peoples-Liberation-Army>

Aksai Chin is located between the Xinjiang Province of North-West China, North-East Pakistan and the Indian State of Jammu and Kashmir. Aksai Chin is 42, 685 sq. km. of cold, barren desert that receives very scanty rainfall. It is almost completely uninhabited and has only military and a few trading outposts. The only population here is nomadic (mostly Tibetan, Buddhist and Muslim) and there are no permanent settlements. Aksai Chin has no GDP (gross domestic product) or natural resources.

1600 to 1800

The first treaty regarding what is today the disputed Indo-China border was the Treaty of Tingmosgang, signed in 1683 between the King of Ladakh and the Government of Tibet: this treaty placed what is today the area of Western Tibet neighbouring Ladakh as part of Tibet. In the 19th century, the Kingdom of Ladakh (which included Aksai Chin) became part of the Kingdom of Kashmir. The Maharaja of Kashmir was responsible for maintaining the ancient caravan trade routes - used by both Kashmiri traders from India, Chinese traders from Xinjiang (in north-west China), and later by Western Tibetans for Pashmina trade - that passed through Aksai Chin, Khotan and Kasgarh and led to Shahidullah in Ladakh.



The Royal Kingdom of Ladakh⁹

1800 to 1900 (Pre-Independence of India)

Johnson's Line

In 1865, W.H. Johnson proposed what is known as the Kuen Lun Line or the Johnson's Line as the north-east border of the British Raj in India, which placed

⁹ <http://balkhandshambhala.blogspot.in/2014/05/zhangzhung-outer-inner-and-middle.html>

Aksai Chin as part of Kashmir (i.e. under Indian control). At this time, China was undergoing the Dungan revolt in Xinjiang (region in North-East China that borders Aksai Chin) and were not in full control of Xinjiang, thus the Johnson's Line was never presented to them – which is why they never accepted it as the official border between India and China.

It is to be noted that the British first deemed the Johnson's Map inaccurate due to cartographical errors. Sir Jon Ardagh, Director of Military Intelligence, supported the improved version of Johnson's Map, an improved version of the Johnson's Line, and it was thereafter termed the Johnson's-Ardagh Proposal.

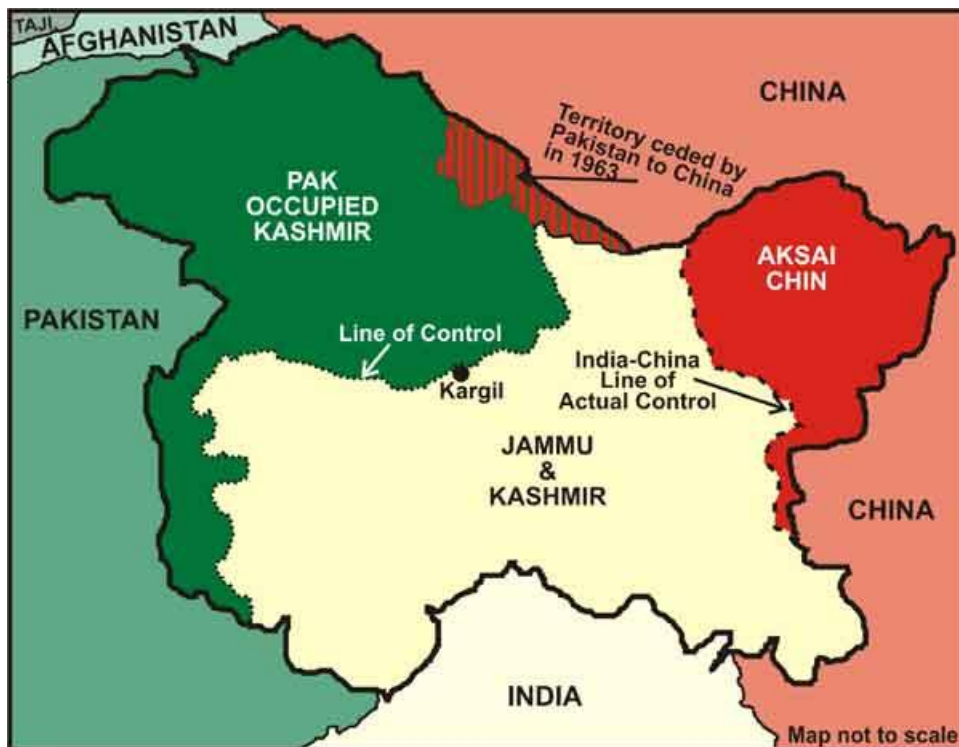
McCartney-McDonald Line

In 1893, a Chinese official at Kashgar handed over the map of the boundary proposed by China to the British consul-General, George McCartney: a border of division along the Laksang Range that placed the majority of Aksai Chin in Chinese territory. The British supported this Line, known as the McCartney-McDonald Line, and Sir Claude McDonald sent it back by note to the Qing government in China i.e. the British formally proposed the McCartney-McDonald Line to the Chinese in 1899. The Chinese did not reply and the British took this as the Chinese agreeing to the McCartney-McDonald Line, therefore abandoning the Johnson's Line in favour of the new Line.

The McCartney-McDonald Line was used by the British until 1908. However, following the Xinhai Revolution in China in 1911, the British used the original Johnson's Line until the end of World War 1. However, it is also to be noted that this was all on paper and the British never actually consolidated the border on ground or set up outposts along either of the proposed borders.

Post Indian Independence (1947)

There was no clear demarcation of the border at the time of India's independence that was accepted by both China and India and neither of these boundaries was considered legally binding bilaterally. After its independence in 1947, the Indian Government adopted the Johnson's Line as its official border with China while the Chinese continued using the McCartney-McDonald Line.



Line of Actual Control (LAC) and disputed territories¹⁰

Sino-India War of 1962

The expansionist policy of China in the 1950s led to the PLA (People's Liberation Army) annexing Xinjiang and Tibet, following which a road, Highway 219, was ordered to be built between these two regions. This road ran through Aksai Chin, and thus Beijing started taking effective control of this area. After India detected the building of this road in 1957, Jawaharlal Nehru rejected the proposal by Zhou Enlai to bilaterally solve the question of effective control in Arunachal Pradesh and Aksai Chin.

It is notable that in his 1954 visit to China, the prime minister of India Jawaharlal Nehru displayed the new political map of India to Zhou Enlai, the first Premier of the People's Republic of China. The new political map of India was the first to depict the Johnson's Line and the McMahon Line as the firm, concrete borders of India. Zhou Enlai did not confirm or deny these demarcations as the official Indo-China borders. Tensions between the two countries only rose when India offered asylum to the Dalai Lama in 1959 and lit the powder-keg, ultimately resulting in the Sino-Indian War of 1962. India was defeated in the border war and the McDonald Line (which places Aksai Chin under Chinese control) has been internationally

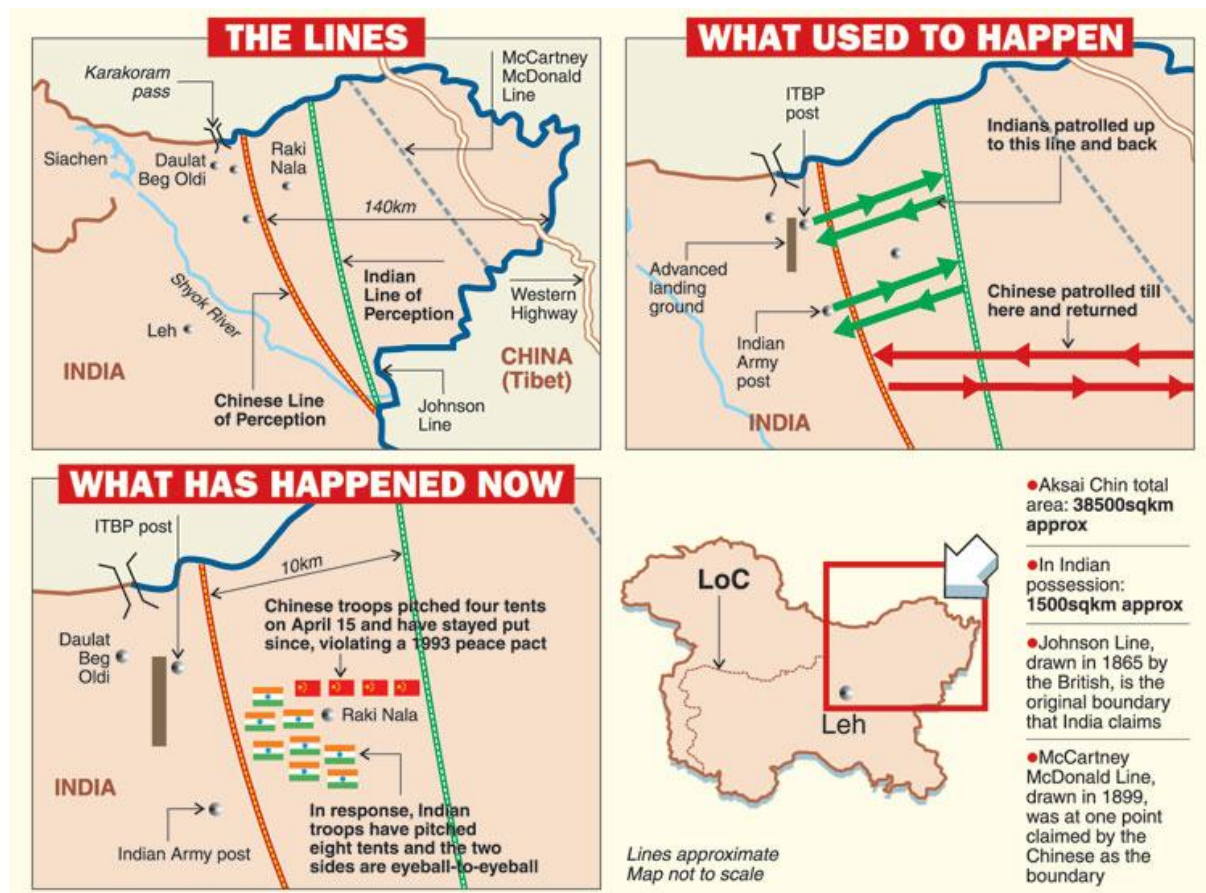
¹⁰ <http://www.differencebetween.info/difference-between-loc-and-lac>

considered as the de facto border between India and China since then i.e. Aksai Chin has effectively been under Chinese administration since 1962.

Present Day Situation

The existence of the informal cease-fire line created between India and China following the Sino-Indian War was officially accepted as the Line of Actual Control by both sides in 1993. India and China also signed a border pact along this line in October 2013 to ensure combating smuggling and reducing tensions between Indian and Chinese troops on both sides of the LAC. The LAC places the Aksai Chin region in Chinese territory; however, it is to be noted that though India has acknowledged the existing Line of Actual Control, India still considers the Johnson's Line as its rightful north-eastern boundary with China and has not given up its claim.

"So many of the current problems arise from the line of actual control and both sides have a different understanding which means even after the new agreement is implemented there will still be conflicts and contradictions," - Huang Yinghong, assistant professor of Asian and Pacific Studies, Sun Yat-sen University



Major Countries and Organizations Involved

India

India considers the Johnson's Line as its north-western border with China. The Johnson's Line places Aksai Chin in Indian territory. Aksai Chin is a high-altitude area relatively close to Delhi and would thus strategically be an ideal place for Chinese troops to enter India from in event of a skirmish or invasion. In the event of an Indo-Pak war, China could also use the Aksai Chin region as a route to provide support and weapons to the troops of its close ally, Pakistan. Thus Aksai Chin forms an important mountainous buffer zone in India's north-west border. Foreign ministry documents last year revealed that India is allegedly ready to let China claim complete sovereignty over the Aksai Chin region in exchange for the Chinese recognising the disputed Arunachal Pradesh as part of Indian territory. However, with the new Narendra Modi government at helm taking over from the Manmohan Singh Congress government, India is taking a firmer and hard-line stance in the border dispute and is unlikely to concede to Chinese demands. The Modi government has already placed radar and telecommunications within 100km of the Indo-China border on an automatic approval list. The Indian Defence Ministry has approved fast-track road building and setting up of 50 strategic posts along the disputed border.

"No power on earth can take away even an inch from India. China should give up its expansionist attitude and adopt a development mind-set. I swear by this land that I will not let this nation be destroyed, I will not let this nation be divided, I will not let this nation bow down. " – Narendra Modi, current Prime Minister of India.

China

"China-India cooperation is like a massive buried treasure waiting to be discovered," The potential is massive. ... We regard each other as a priority and each other's development as an opportunity." – Chinese Foreign Minister Wang Yi

China considers the McDonald Line as its international border with India, which places the Aksai Chin region as under Chinese jurisdiction. Chinese minister Zhou Enlai stated that the McDonald Line was the only border proposed to the Chinese by the British

¹¹ <http://military.china.com/news/568/20130506/17815757.html>

administration and therefore China had always assumed Aksai Chin as part of its territory (land that has also been under de facto Chinese administration since their victory in the Sino-Indian border war of 1962), thus it is unlikely it will hand over Aksai Chin - land it has always considered its own - to India. Furthermore, border agreements between China and Pakistan in 1963 also recognized Aksai Chin as part of China.

Though Aksai Chin is largely deserted and has no resources, it is a very strategic area for China as it connects Tibet to Xinjiang in north-west China via Highway 219, the only route through which trade and movement of troops can be facilitated. The loss of Aksai Chin from China would also leave it strategically exposed on the western border. It is to be noted that Communist China follows an expansionist policy and is no stranger to adopting military intimidation, as evident in the stand-off in the South China Sea.

Timeline of Events

Date	Description of event
1683	King of Ladakh and Government of Tibet sign the Treaty of Tingmosgang
1865	W.H. Johnson's proposes the Johnson's Line
1899	McCartney-McDonald Line proposed, and used by the British until 1908
1911-1914	Johnson's Line used by the British
28 th July 1914	World War 1 begins
1914	Simla Accord Treaty of 1914 between Britain and Tibet places more of Aksai Chin in India under the McMahon Line, is rejected by the Chinese
15 th August 1947	India gains independence from the British, Indian government adopts the Johnson's Line on the official map of free India
1 st October 1949	The PLA (People's Liberation Army), led by Mao Zedong, defeat the Nationalist party of China and establish the PRC (People's Republic of China)
1951-1957	Construction of Highway 219 by the Chinese in Aksai Chin
1954	Prime Minister Nehru meets Chinese Premier Zhou Enlai in Beijing, talks prove inconclusive, milestone Panchsheel Agreement signed (on April 24 th , 1954)
1959	Dalai Lama seeks asylum in India, Indo-China tensions simmer
23 rd January 1959	Zhou Enlai first makes the claim to over 40,000 square miles of Indian territory in Ladakh and the North East Frontier Agency (present-day Arunachal Pradesh)
8 th September 1959	Zhou Enlai refuses to recognize the McMahon Line
20 th October 1959	PLA troops kill 9 and capture 10 Indian soldiers during firing in Aksai Chin
1962	India defeated in the Sino-Indian War, Aksai Chin comes under de facto control of China

1963	Trans-Karakoram Tract of Kashmir is ceded by Pakistan to the PRC
1 st October, 1967	Chola Incident occurs – skirmish between PLA troops crossing the McMahon Line into Sikkim and Indian troops results in ten Chinese and four Indian casualties
1971	China helps Pakistan against India in the Bangladesh Liberation War
1987	Indo-Chinese skirmish at the Sumdorong Chu Valley
1993	Ceasefire line between India and China is accepted as the Line of Actual Control (although India has claimed China has violated the LAC 500 times since 2010), first CSBM Agreement signed, India recognizes Tibet as an autonomous region of China in exchange for China recognizing Sikkim as an Indian province
31 st January 2000	The PLA constructs roads and bunkers 5km within the Indian side of the LAC in Aksai Chin
15 th April 2013	Confrontation between Indian and Chinese troops at Daulat Beg Oldie

Relevant UN Treaties and Legal Agreements

- 1. Panchsheel Agreement, 1954**
- 2. CSBM (Confidence and Security Building Measures)**
1993 CSBM Agreement
Extending CSBMs to Military Field, 1996
- 3. Border Defence Cooperation Agreement, 2013**

Previous Attempts to solve the Issue

The Panchsheel Agreement, probably the most important and definitive Sino-Indian Agreement on the border dispute, was signed between India and China in 1954 and focused on the development of bilateral trading relations between India and China through Tibet. In the Panchsheel, Indian Prime Minister Jawaharlal Nehru officially recognized Chinese control over Tibet and gave up all the rights in telecommunication and postal services that the Indian Government had in Tibet (which they had inherited from the British Raj in the Anglo-Tibetan Agreement of 1904). The Panchsheel is based on Five Principles, which are-

- 1) Mutual respect for each other's territorial integrity and sovereignty
- 2) Mutual non-aggression
- 3) Mutual non-interference in each other's internal affairs
- 4) Equality and co-operation for mutual benefit
- 5) Peaceful co-existence

In 1993, both sides signed the first CSBM (Confidence and Security Building Measures) Agreement. The Agreement focussed on disarmament, military disengagement, maintenance of cross-border peace and respecting the Line of Actual Control. It was followed by another Agreement, extending CSBMs to Military Field, in 1996. This Agreement is known as the no-war pact and added more specificity to the areas of agreement between India China and was a continuation process of the 1993 CSBM. This Agreement has been ratified - and also violated - by both sides. Recently in 2013, China and India signed the BDCA (Border Defense Cooperation Agreement); the BDCA emphasises the need for peaceful cross-border cooperation to jointly combat smuggling of arms, wildlife and other contrabands, exchange of military information, helping each other in the event of a natural disaster or infectious disease in the region and other such issues.

Thus, border negotiations have been on-going since the 1980s. Both China and India have appointed two Special Representatives who have regularly met and discussed the issue of Aksai Chin. Prime Minister Rajiv Gandhi set a trend of regular diplomatic visits by his visit to Beijing in 1998, followed by a visit of Chinese Premier Li Peng to India. A Sino-India Joint Working Group on Boundary Question was set-up in 1988, with the aim of dismantling of military posts on the border and encouraging trade across the disputed border.

Most recently- on April 22nd, 2014 - a Chinese delegation headed by the Deputy Chief of General Staff of the People's Liberation Army Lt. Gen. Qi Jianguo met the Indian Director General Military Operations Lt. Gen. PR Kumar to discuss in depth the regular incursions by the Chinese in Ladakh (Indian territory). However, such talks have not been very successful in curbing incursions and cross-border tensions continue to run high.

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