

TOPIC: BORDER DISPUTE BETWEEN CHINA AND BHUTAN

BOTTOM LINE

- The People’s Republic of China (PRC) claims approximately 581 square miles of Bhutanese territory.
- Despite formally agreeing to recognize Bhutanese sovereignty and territorial integrity, the PRC is continuing to build infrastructure in Bhutan while denying Bhutanese civilians and security forces access to disputed areas.
- The PRC principally covets the Doklam Plateau in western Bhutan, a strategically valuable high ground that is militarily advantageous to both the PRC and India.
- The PRC’s new territorial claims to Bhutan’s Sakteng Wildlife Sanctuary and Chinese settlements in Bhutan’s Beyul Khenpajong region provide trade space for the PRC to pressure Bhutan into ceding the Doklam Plateau.
- The PRC has publicized a variety of legal arguments to justify its claims to Bhutanese territory, but none are recognized as a matter of international law.
- The United States has not expressly taken a position on the PRC’s claims in Bhutan, but prioritizes “reinforcing support for Bhutanese sovereignty” and Bhutan’s “active role in supporting the rules-based international order.”

WHY THIS MATTERS

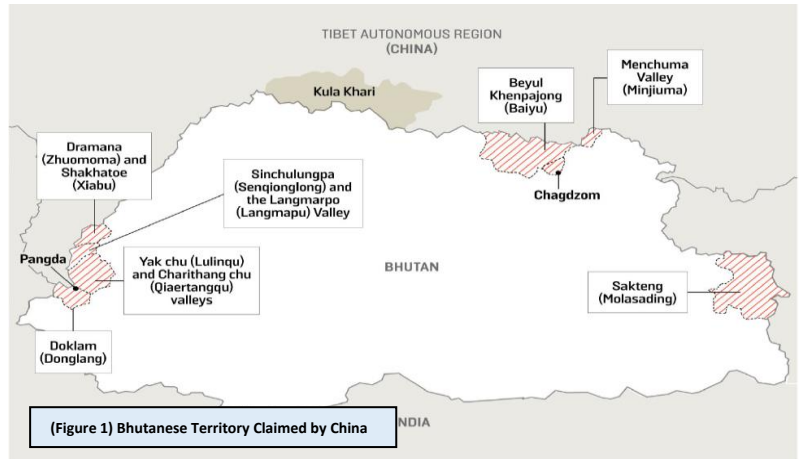
- **Exposing and opposing** efforts to acquire disputed land territory through force or coercion is essential to **preserving peace and upholding international law**.
- The PRC seems to be **incrementally and systematically advancing territorial claims** along the border to gain favorable access routes through the Himalayas in a potential conflict with India.
- Bhutan relies on India for arms, military training, and air defense. Border encroachments into Bhutan are not only a threat to Bhutan’s sovereignty and territorial integrity, but they also risk implicating India’s defense commitments and **could spark a broader conflict**. Deadly border clashes between the PRC and India in recent years exemplify the risk of tensions boiling over into violence that could **threaten regional peace and security**.
- The PRC’s encroachments into Bhutan undermine the rule of law and typify a **multi-domain “gray zone” approach** to advancing territorial ambitions at the expense of other nations’ sovereignty – if left unchecked, **the PRC could be emboldened** to take further coercive against other vulnerable nations.

DETAILED DISCUSSION

1. Executive Overview

- The Himalayan nation of Bhutan is located between the PRC’s southeast border and India’s northeastern border.ⁱ
- India and Bhutan have historically had a close relationship. For decades, India guided Bhutan’s foreign policy in accordance with a 1949 treaty. However, in 2007, India and Bhutan renegotiated their treaty, removing the foreign policy clause such that Bhutan now conducts its foreign policy.ⁱⁱ India continues to train and equip the Bhutanese military and provide Bhutan with air defense.ⁱⁱⁱ
- The PRC and Bhutan are involved in a **long-standing border dispute, with China claiming approximately 581 square miles of Bhutanese territory**.^{iv} (Figure 1).
- As a result of the 2007 treaty renegotiation, India has lost influence over Bhutanese and PRC border negotiations.^v
- Portions of the disputed Bhutanese territory are militarily advantageous to both India and the PRC.

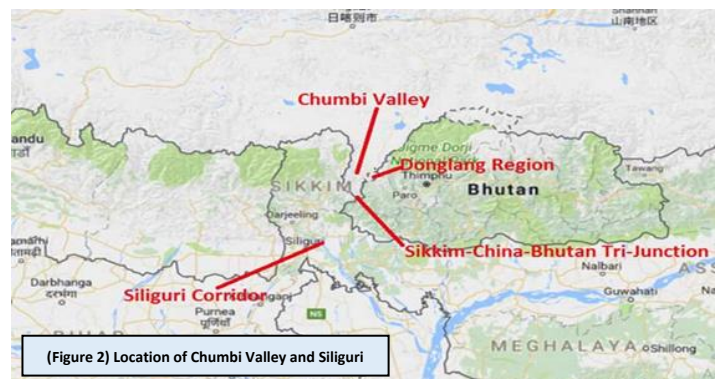
- In particular, **the Doklam Plateau in western Bhutan is a strategically valuable high ground** that allows India to protect access to its northeastern states through the Siliguri corridor, a narrow strip of Indian territory that connects these states with central India. (Figures 2 and 3).
- **Control of the Doklam Plateau would put the PRC in a position to cut off India's access** through the Siliguri corridor in the event of a military conflict.^{vi}
- In 2020, **the PRC claimed sovereignty over Bhutan's Sakteng Wildlife Sanctuary**, a territory the PRC had not previously disputed.^{vii}
- In addition, recent satellite imagery revealed **new Chinese outposts in Bhutan's remote but culturally significant northern Beyul Khenpajong region**.^{viii} (Figure 1)
- The PRC is likely **using the settlements and new territorial claims to gain leverage** during border dispute negotiations to pressure Bhutan into yielding territory in the Doklam Plateau.^{ix}
- The United States has not expressly taken a position on the PRC's claims, but prioritizes "reinforcing support for Bhutanese sovereignty" and Bhutan's "active role in supporting the rules-based international order."^x In addition, the United States Congress has focused its interest on human rights and the PRC's territorial claims in Bhutan.^{xi}



(Figure 1) Bhutanese Territory Claimed by China

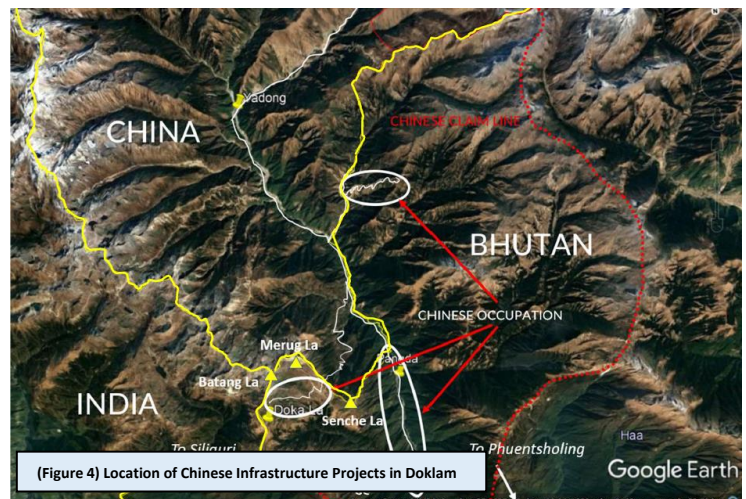
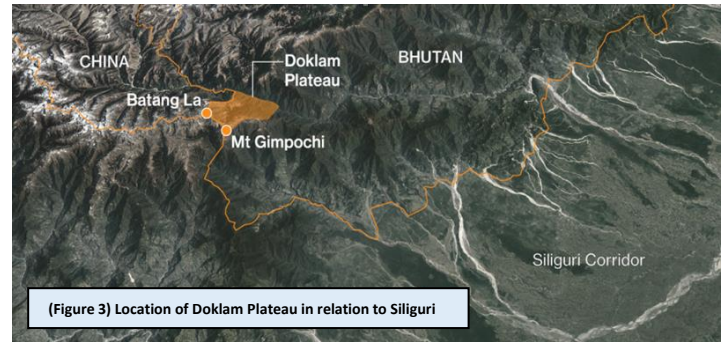
2. Detailed Background on the PRC's Claims to Bhutanese Territory

- Bhutan shares a 296-mile border with Tibetan China to the north and west and a 409-mile border with India's eastern states to the east and south.^{xii}
- In 1910, due to China's invasion of Tibet, Bhutan and Britain signed the Treaty of Punakha. The Treaty guaranteed Bhutan's defense against China and, in exchange, allowed the British Government to guide Bhutan's foreign relations. Britain's association with Bhutan ended in 1947 when British rule over India ended.
- However, in 1949, **Bhutan and India** signed the Treaty of Friendship, which allowed India to guide Bhutan's foreign affairs.^{xiii} In 2007, Bhutan and India renegotiated the Treaty of Friendship, removing the foreign affairs provision. However, **both countries agreed to cooperate closely** on "issues relating to their national interests."^{xiv}
- **Bhutan joined the United Nations in 1971**. However, it does not have formal diplomatic relations with any permanent Security Council member.^{xv}
- The Royal Bhutan Army and the National Militia comprise approximately 8,000 active-duty personnel.^{xvi} **Bhutan continues to rely on India** for military training, arms supplies, and air defense.^{xvii}
- **The PRC claims approximately 581 square miles of Bhutanese territory** including ~191 square miles in the Jakurlung and Pasamlung Valleys, ~104 square miles in western Bhutan, and ~251 square miles of the Sakteng Wildlife Sanctuary in Bhutan's east.^{xviii} (Figure 1).
- **The most strategically significant disputed territory is the Doklam Plateau**, which is in Bhutan's west and shares borders with Tibetan China and India. (Figure 1).



(Figure 2) Location of Chumbi Valley and Siliguri

- The Plateau is just north of India's strategically vital Siliguri corridor. PRC control of the Siliguri corridor would isolate 45 million Indians in eastern India in an area the size of the United Kingdom.^{xxix} (Figures 2 and 3).
- **The PRC claims the Doklam Plateau is part of Tibet.** The Doklam Plateau, which rises 1,400 meters above China's Chumbi Valley,^{xx} "provides a commanding view" of the valley and gives India, via their close relationship with Bhutan, a "major terrain advantage" in protecting the Siliguri corridor.^{xxi} (Figure 2).
- The PRC also views the Chumbi Valley as a weakness in its defense of Tibet. India currently controls both sides of the valley (from Bhutanese and Indian territory). In the event of a military conflict, India could conduct a pincer movement, destroying the Chinese positions in the valley and allowing India access to Tibet. As a result, **the PRC seeks control of the Doklam Plateau to give it both an offensive and defensive advantage.**^{xxii}
- Highlighting Doklam's strategic importance, in 2017, Chinese and Indian troops clashed during a 73-day standoff after the PRC began constructing a road leading from the Chumbi Valley onto the Doklam Plateau.^{xxiii} (Figure 4).
- To lay claim to the Doklam Plateau, the PRC has relied on conflicting language in the 1890 Convention of Calcutta.
- The Convention, signed by Britain and China regarding the territorial boundary between Sikkim and Tibet, identifies the border between modern-day Tibet and Bhutan.^{xxiv}
- However, the Convention's border description "contains a contradiction that allows each side to claim [the Convention] supports its own position."^{xxv}
- Adding to the confusion, sometime between 1907 and 1913, Britain published a map of the area showing Bhutan's border in a location further north (into Tibet) than was described in the Convention.^{xxvi}
- In 1930, Mao Zedong claimed that the entirety of Bhutan and other Himalayan kingdoms fell within "the correct borders of China."^{xxvii} Mao based his assertion on the premise that during the 18th century, Tibet held vassalage over Bhutan.^{xxviii} Because China claimed Tibet as Chinese territory, Mao also asserted Bhutan was part of China.
- However, **no historical evidence supports the vassalage claim, which Bhutanese scholars have rejected** and labeled as Chinese "misinformation."^{xxix}
- Since annexing Tibet in 1951, the PRC has pursued similar expansive territorial claims **by advancing narratives and publishing maps showing parts of Bhutanese territory as belonging to China.**^{xxx}
- For example, the PRC bases its claim over Bhutan's Beyul Khenpajong region on an 18th-century Chinese Emperor's ruling, granting herding rights in the Beyul to Tibetan herders.
- While PRC officials report they "discovered" this ruling, they have never produced it publicly.^{xxxi}
- Some observers speculate that the PRC's claims over the Beyul Khenpajong region, including the Jakurlung and Pasamlung Valleys and the Sakteng Wildlife Sanctuary in Bhutan's east, are **designed to pressure Bhutan into yielding territory** around the Doklam Plateau.
- Additional territorial claims provide the PRC with leverage during border dispute negotiations.^{xxxii}
- As an example of this tactic, in 1996, the PRC offered to resolve the long-standing border dispute by proposing to recognize Bhutanese sovereignty over the Pasamlung and Jakarung valleys in exchange for Bhutan's recognition of PRC sovereignty over the Doklam Plateau and other areas in Bhutan's west.^{xxxiii}



- Boundary negotiations between Bhutan and the PRC began in 1984, with the two sides engaging in 24 rounds of talks. In 1998, the two countries signed an Agreement on the Maintenance of Peace, Tranquility and Status Quo in the Bhutan-China Border Areas. This agreement was supposed to freeze borders during negotiations.^{xxxiv}
- In 2021, China and Bhutan signed a new “Three-Step Roadmap,” which endeavored to reinvigorate negotiations and end the border dispute, but **despite the 1998 and 2021 agreements, the PRC has continued to build infrastructure in Bhutan’s territory and denied Bhutanese civilians and security forces access to those areas.**^{xxxv}
- In addition, **in June 2020, the PRC made a new claim to the Sakteng Wildlife Sanctuary** in Bhutan’s east, which the PRC had not disputed in the past.^{xxxvi}

3. Analyzing the PRC’s Claims under International Law

- By incrementally claiming pieces of Bhutanese territory and executing unilateral construction projects in claimed territory, the PRC seems to be **systematically consolidating its sovereignty claims** along the border to gain favorable access routes through the Himalayas in a potential conflict with India.^{xxxvii}
- The PRC has used a **similar strategy in the South China Sea and its border dispute with India.**^{xxxviii}
- Gaining control over the Doklam Plateau would provide the PRC with a **strategic advantage over India** in the event of a military conflict.
- Consistent with its 1996 border proposal, the PRC is likely pursuing expansive territorial claims over Bhutanese territory to give it territory to ‘trade’ in return for Bhutan’s cession of control over the Doklam Plateau.
- The PRC’s recent infrastructure projects in the Beyul Khenpajong region, an area of ancestral and cultural significance for the Bhutanese, and its new claim over the Sakteng Wildlife Sanctuary provide the PRC with **additional leverage** during border negotiations.^{xxxix}
- Under international law, a state’s **establishment of sovereignty over territory is a complex topic.**^{xl}
 - The International Court of Justice (ICJ) has considered territorial sovereignty claims based on treaties, geography, economy, cultural homogeneity, effective control (*i.e.*, adverse possession), history, *uti possidentis* (colonial boundaries becoming international boundaries), elitism, and ideology.^{xli}
 - However, **the ICJ has relied on only three bases** (in order of precedence): treaties, *uti possidentis*, and effective control.^{xlii}
 - For claims based on effective control, a state asserts it has “uncontested administration of the land and its resident population,” and there is “abandonment of the land by the last governing entity.”^{xliii}
 - Territorial sovereignty “involves the exclusive right to display activities of a state”^{xliv} and therefore, ownership claims must establish a state’s “continuous and peaceful display of authority.”^{xlv}
 - Essentially, the more authority and governance a state exerts over territory and the longer the control lasts, the stronger the state’s sovereignty claim will be.
 - Effective control is still necessary for claims based on history because a “reasonable manifestation of state authority in the modern period is sufficient to ensure a continuing claim to sovereignty, especially in light of similar historical activity.”^{xlvi}
- **The PRC is taking multiple legal approaches to its territorial disputes with Bhutan.**
 - **For its claim over the Doklam Plateau, the PRC relies on the conflicting language in the 1890 Convention of Calcutta**, which does not clearly demarcate portions of the border between Tibet and Bhutan. Under the Convention, both Bhutan and the PRC have supportable positions.^{xlvii}
 - **The PRC has not asserted a legal or factual basis for its claims over the Sakteng Wildlife Sanctuary or the Menchuma Valley**, a disputed area adjacent to the Beyul Khenpajong region.^{xlviii}
 - In fact, up until July 2020, the PRC had not disputed the Sakteng Wildlife Sanctuary, and Chinese maps showed it to be within Bhutanese territory.^{xlix}
 - For the Beyul Khenpajong region, the PRC seems to rely on history and effective control including **an 18th-century Emperor’s ruling on herding rights, which the PRC has yet to make public.** Additionally, **the PRC has not shown a “continuous and peaceful display of [its] authority”**^l from the 18th century ruling until the present, and has **not produced evidence of Bhutanese abandonment of the territory.**
 - In contrast, **the Bhutanese have long ancestral connections with the Beyul Khenpajong region**, dating back to the 15th century. In fact, the current Bhutanese ruling dynasty traces its royal lineage to the

region.^{li} In addition, the **Bhutanese have historically stationed border guards throughout the Beyul region** during the summer months, primarily to protect the civilian Bhutanese herders who use the land.

- However, over the past few decades, the Bhutanese herders and border guards have been **slowly pushed out of the region** by the PRC's infrastructure projects and aggressive Tibetan herders.^{lii}

4. PRC Settlements & International Law on Occupation

- The PRC's establishment of settlements in disputed Bhutanese territory, including the Gyalaphug village in Bhutan's Beyul Khenpajong region, one of three new Chinese settlements,^{liii} raises **distinct legal questions concerning occupation and international law**.
- Reportedly, Gyalaphug includes Chinese "settlers, security personnel, and military infrastructure," which are now "within territory internationally and historically understood to be Bhutanese."^{liv}
- Under international law, **if an occupation exists**, then sovereignty over that territory cannot be transferred – i.e., **the PRC cannot lawfully use occupation as a means to usurp territorial sovereignty**.
- While **the existence of an occupation is not clear-cut as a matter of international law, the rules that apply to occupation nonetheless merit consideration** based on the PRC's actions.
 - Article 2, common to the four Geneva Conventions, which is reflective of customary international law,^{lv} states, "the present Convention shall apply **to all cases of partial or total occupation** of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."^{lvi}
 - A belligerent/occupying power's "effective control" of foreign territory is the legal standard for "determining the existence of a state of occupation."^{lvii} This standard reflects customary international law and is derived from common Article 2 and Article 42 of 1907 Hague Regulations (Hague IV).^{lviii}
 - Article 42 states, "Territory is considered occupied when it is actually placed under the authority of the hostile army."^{lix} The "effective control" standard "substantiates and specifies [Article 42's] notion of 'authority'" and describes the degree of control a hostile force must have "over all or parts of a foreign territory in lieu of the territorial sovereign."^{lx}
 - Occupation "does not require the presence of military forces in every populated area."^{lxi} Rather, occupation pertains to "the suspension of the territorial state's authority and the substitution of the Occupying Power's authority."^{lxii}
 - Importantly, if an occupation exists, then states cannot transfer the sovereignty of that territory. Occupation "is only a temporary situation," and the occupying power "does not acquire sovereignty over the territory."^{lxiii} A transfer of sovereignty may only occur when peace is restored.^{lxiv}
- The PRC reportedly established the village of Gyalaphug in Bhutan's northern territory, moved in Tibetan settlers under the administration and control of the PRC, and deployed security and military forces to the area.^{lxv}
- Bhutanese military forces and civilian herders are restricted from this area, and the PRC reportedly controls "all of the Menchuma Valley and most of the Beyul."^{lxvi}
- By design, the PRC appears to have established Gyalaphug village in a manner that did not trigger an apparent international armed conflict and associated legal obligations – i.e., **the PRC skirted the rule of law by operating in the so-called "gray zone,"** much as it does across a span of activities in other domains and geographic areas.
- **Rather than accept "gray zone" coercion as a tactic without legal recourse, the international community may look to long-established international laws, rules, and norms** – such as those pertaining to occupation – to inform understandings of normative behavior and hold bad actors accountable as appropriate.



PROPOSED COUNTER-LAWFARE APPROACH

This section offers suggested language for incorporation into communication strategies

- The United States prioritizes **reinforcing support for Bhutanese sovereignty** and values **Bhutan's active role in supporting the rules-based international order**.
- The **PRC's claims** to sovereignty over Bhutanese territory are **not recognized** under international law.
- **Exposing and opposing** efforts to skirt international law and acquire disputed land territory through force or coercion is essential to **preserving peace and stability**.
- **Upholding international law and the rules-based international order** along disputed land borders is an enduring interest for the international community and one that is vital to peace and security throughout the region.
- Border encroachments by the PRC into Bhutan pose a threat to Bhutan's sovereignty and territorial integrity and risk **sparking a broader conflict** that could **threaten regional peace and security**.
- The PRC's encroachments into Bhutan undermine the rule of law and typify a **multi-domain "gray zone" approach** to advancing territorial ambitions at the expense of other nations' sovereignty.
- **USINDOPACOM seeks to preserve peace and stability** in accordance with international law and opposes any attempt to use coercion or force to settle disputes.
- **USINDOPACOM shares these deep and abiding interests with allies and partners** who champion a free and open Indo-Pacific supported by the rules-based international order.

ⁱ *Bhutan Country Profile*, BBC News (March 21, 2023), <https://www.bbc.com/news/world-south-asia-12480707>.

ⁱⁱ JOSEPH O. YINUSA & MARIA A. BLACKWOOD, CONG. RESEARCH SERV., *THE KINGDOM OF BHUTAN 2* (Sep. 6, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF10660>.

ⁱⁱⁱ U.S. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: BHUTAN*, <https://www.cia.gov/the-world-factbook/countries/bhutan/#military-and-security> (last visited Feb. 14, 2024) [hereinafter *THE WORLD FACTBOOK*].

^{iv} Sudha Ramachandran, *China's Bhutan Gambit*, *THE DIPLOMAT* (July 23, 2020), <https://thediplomat.com/2020/07/chinas-bhutan-gambit/>.

^v See generally *China and Bhutan aim to resolve a long-running border dispute*, *THE ECONOMIST* (Nov. 2, 2023), <https://www.economist.com/china/2023/11/02/china-and-bhutan-aim-to-resolve-a-long-running-border-dispute>.

^{vi} YINUSA, *supra* note 2, at 2; Ramachandran, *supra* note 4.

^{vii} YINUSA, *supra* note 2, at 2.

^{viii} John Pollock & Damien Symon, *China takes more land in Bhutan before expected border deal*, CHATHAM HOUSE (December 1, 2023), <https://www.chathamhouse.org/publications/the-world-today/2023-12/china-takes-more-land-bhutan-expected-border-deal>.

^{ix} YINUSA, *supra* note 2, at 2.

^x *Id.* at 1. The United States does not have diplomatic relations with Bhutan. This TACAID's references to the PRC's claims to Bhutanese territory do not reflect an official position by the U.S. government regarding sovereignty.

^{xi} *Id.*

^{xii} *THE WORLD FACTBOOK*, *supra* note 3; FEDERAL RESEARCH DIVISION, LIBRARY OF CONG., *NEPAL AND BHUTAN COUNTRY STUDIES* 266 (Andrea Matles Savada ed., 3rd ed. 1993), <https://www.loc.gov/item/93012226/> [hereinafter *BHUTAN COUNTRY STUDY*].

^{xiii} Treaty of Perpetual Peace and Friendship Between the Government of India and the Government of Bhutan, Bhutan-India, Art. II, Aug. 8, 1949, 15 B.F.S.P. 214, <https://www.mea.gov.in/bilateral-documents.htm?dtl/5242/treaty-or-perpetual-p>.

^{xiv} India-Bhutan Friendship Treaty, Bhutan-India, Art. 2, March 2, 2007, <https://www.mea.gov.in/Images/pdf/india-bhutan-treaty-07.pdf>.

^{xv} U.S. DEPARTMENT OF STATE, *U.S. RELATIONS WITH BHUTAN: BILATERAL RELATIONS FACT SHEET* (July 18, 2022), <https://www.state.gov/u-s-relations-with-bhutan/>.

^{xvi} *THE WORLD FACTBOOK*, *supra* note 3.

^{xvii} *Id.*

^{xviii} Ramachandran, *supra* note 4. Some estimates suggest that the PRC's claims to Bhutanese territory amount to approximately 581 square miles (see e.g., <https://usanasfoundation.com/bhutan-china-border-issues-unravelling-implications-for-india>).

^{xix} YINUSA, *supra* note 2, at 2.

^{xx} M. Taylor Fravel, *Danger at Doklam*, *THE INDIAN EXPRESS* (July 18, 2017), <https://indianexpress.com/article/opinion/columns/danger-at-dolam-plateau-doklam-stand-off-india-china-4755269/>.

^{xxi} Ramachandran, *supra* note 4.

^{xxii} Marcus Andreopoulos, *China's Border Talks with Bhutan are Aimed at India*, *FOREIGN POLICY* (July 18, 2023), <https://foreignpolicy.com/2023/07/18/china-bhutan-border-talks-india-dispute-security/>.

^{xxiii} Sushant Singh, *Out of Control*, *THE CARAVAN* (September 30, 2022), <https://caravanmagazine.in/security/india-china-ladakh>; Ramachandran, *supra* note 4; Steven Lee Myers et al., *How India and China Have Come to the Brink Over a Remote Mountain Pass*, *THE NEW YORK TIMES* (July 26, 2017), [https://www.nytimes.com/2017/07/26/world/asia/dolam-plateau-china-india-bhutan.html#:~:text=On%20a%20remote%20pass%20through,China%2C%20India%20and%20Bhutan%20meet](https://www.nytimes.com/2017/07/26/world/asia/dolam-plateau-china-india-bhutan.html#:~:text=On%20a%20remote%20pass%20through,China%2C%20India%20and%20Bhutan%20meet;); YINUSA, *supra* note 2.

- xxiv Convention Between Great Britain and China Relating to Sikkim and Tibet, Gr.Brit.-China, Art. I, March 17, 1890.
- xxv Fravel, *supra* note 20.
- xxvi *Id.*
- xxvii Ramachandran, *supra* note 4. *See also* BHUTAN COUNTRY STUDY, *supra* note 12, at 262.
- xxviii Ramachandran, *supra* note 4.
- xxix Ramachandran, *supra* note 4. *See also* BHUTAN COUNTRY STUDY, *supra* note 12, at 256-259.
- xxx Ramachandran, *supra* note 4; Robert Barnett, *China Is Building Entire Villages in Another Country's Territory*, FOREIGN POLICY (May 7, 2021), <https://foreignpolicy.com/2021/05/07/china-bhutan-border-villages-security-forces/>.
- xxxi Barnett, *supra* note 30.
- xxxii YINUSA, *supra* note 2, at 2; Andreopoulos, *supra* note 22; Pollock, *supra* note 8.
- xxxiii Ramachandran, *supra* note 4.
- xxxiv ROYAL GOVERNMENT OF BHUTAN MINISTRY OF FOREIGN AFFAIRS AND EXTERNAL TRADE, PRESS RELEASE (Oct. 14, 2021), <https://www.mfa.gov.bt/press-release-519/> (the PRC “recognize[d] Bhutan’s sovereignty and its territorial integrity and agree[d] that ‘no unilateral action will be taken to change the status quo on the border”).
- xxxv ROYAL GOVERNMENT OF BHUTAN MINISTRY OF FOREIGN AFFAIRS AND EXTERNAL TRADE, PRESS RELEASE (June 29, 2017), <https://www.mfa.gov.bt/press-release-272/>; Pollock, *supra* note 8.
- xxxvi YINUSA, *supra* note 2, at 2.
- xxxvii Andreopoulos, *supra* note 22; Barnett, *supra* note 30.
- xxxviii Barnett, *supra* note 30; Lt Gen (Dr) Prakash Menon & Anirudh Kanisetti, *China, India and Doklam in 2020*, TAKSHASHILA INSTITUTION 7, 10 (V1.0, Jan. 4, 2021), https://takshashila.org.in/s/China-India-Doklam-2020_TSA_GPM_AK_v10.pdf.
- xxxix Andreopoulos, *supra* note 22.
- xl *See generally* Brian Taylor Sumner, *Territorial Disputes at the International Court of Justice*, 53 DUKE L. J. 1779 (Apr. 2004); Peter Dutton, *An Analysis of China’s Claim to Historic Right in the South China Sea*, in MAJOR LAW AND POLICY ISSUES IN THE SOUTH CHINA SEA 57 (Yann-Huei Song & Keyuan Zou eds., Farnham, UK: Ashgate, 2014). In his chapter, Professor Dutton analyzes the relevant international case law related to the territorial sovereignty of islands and China’s historical claims.
- xli Sumner, *supra* note 40, at 1779.
- xlvi *Id.* at 1803-1804.
- xlvi *Id.* at 1787.
- xlii Island of Palmas Case (Neth. v. U.S.), Award, II RIAA 829, 839 (Perm. Ct. Arb. 1928), https://legal.un.org/riaa/cases/vol_II/829-871.pdf.
- xliii *Id.* at 846.
- xlii Dutton, *supra* note 44, at 70. *See generally* Legal Status of Eastern Greenland (Den. v. Nor.), Judgement, PCIJ Series A/B No 53, ICGJ 303 (PCIJ 1933), <https://jusmundi.com/en/document/decision/en-legal-status-of-eastern-greenland-judgment-wednesday-5th-april-1933>.
- xlvii Fravel, *supra* note 20.
- xlviii Barnett, *supra* note 30.
- xlvi Anbarasan Ethirajan, *Why Bhutan’s Sakteng Wildlife Sanctuary is Disputed by China*, BBC News (Nov. 24, 2020), <https://www.bbc.com/news/world-asia-55004196>.
- lv Island of Palmas Case, *supra* note 44, at 846.
- li Barnett, *supra* note 30.
- lii *Id.*
- liii *Id.*
- liiv *Id.*
- lv *See* INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE FIRST GENEVA CONVENTION: CONVENTION (I) FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN THE ARMED FORCES IN THE FIELD ¶ 350, (2016) [hereinafter 2016 ICRC COMMENTARY], <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-2/commentary/2016?activeTab=1949GCs-APs-and-commentaries>; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Rep. 226, ¶¶79, 82 (1996), <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.
- lvi *See* Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 2, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (emphasis added).
- lvii 2016 ICRC COMMENTARY, *supra* note 55, ¶ 301.
- lviii *Id.* at ¶¶ 301-303.
- lix Regulations Respecting the Laws and Customs of War on Land, annexed to Convention No. IV Respecting the Laws and Customs of War on Land art. 42, Oct. 18, 1907, 36 Stat. 2227, T.S. No. 539. *See also* David Wallace, *Ukraine Symposium – The Law of Belligerent Occupation*, ARTICLES OF WAR (Mar. 8, 2023), <https://lieber.westpoint.edu/law-belligerent-occupation/>.
- lx 2016 ICRC COMMENTARY, *supra* note 55, ¶ 302.
- lxi OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF DEFENSE, LAW OF WAR MANUAL § 11.2.2.1 (updated ed. July 2023).
- lxii *Id.* at § 1.2.2.2.
- lxiii *Occupation and International Humanitarian Law: Questions and Answers*, INT’L COMM. OF THE RED CROSS (Apr. 8, 2004), <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>.
- lxiv Michael N. Schmitt, *Ukraine Symposium – Territorial Acquisition and Armed Conflict*, ARTICLES OF WAR (Aug. 29, 2023), <https://lieber.westpoint.edu/territorial-acquisition-armed-conflict/>.
- lxv Barnett, *supra* note 30.
- lxvi *Id.*