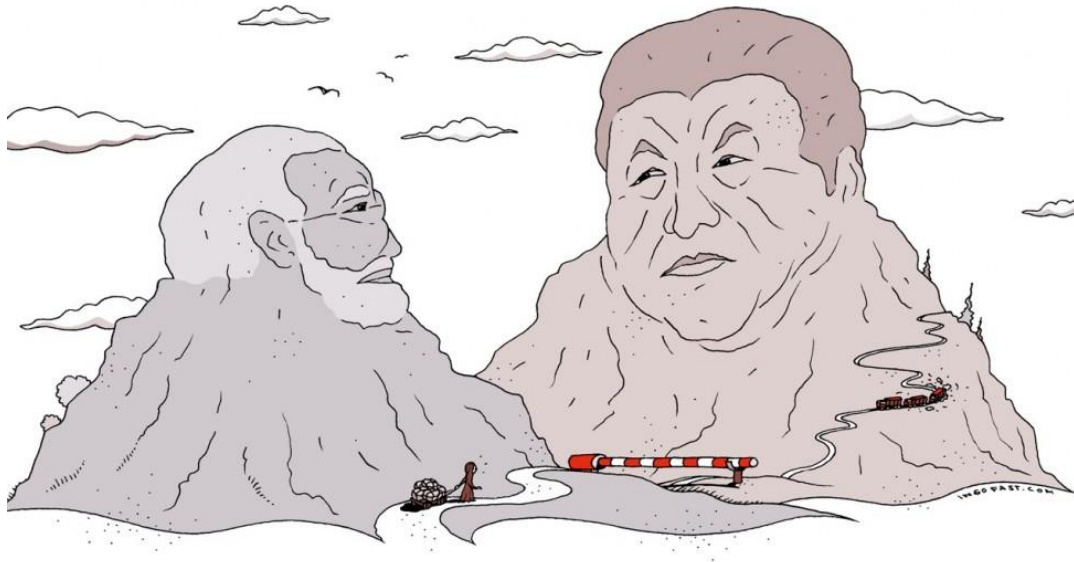


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How India border stand-off gives China a chance to burnish its global image

By [Jerome A. Cohen](#) and [Peter A. Dutton](#)

Jerome A. Cohen and Peter A. Dutton call on Beijing and New Delhi to seek impartial arbitration to resolve their problem. After its heavy-handedness in the South China Sea, the latest row offers China a fresh chance to show respect for international law



For the past month, there has been a tense stand-off between China and India in the tri-border Himalayan region that includes Bhutan. Troubles began when China resumed building a road on the Doklam Plateau, which is disputed between Bhutan and China. India, because of its own security interests and as Bhutan's security guarantor, stepped in to defend the position of the kingdom. China now claims India has invaded "its" territory. Tensions are high, and more than a few commentators have suggested this may be the most serious Sino-Indian border crisis since their 1962 war.

Many possibilities have been advanced for -Beijing's motive to stir up trouble. Some suggest -Beijing seeks to peel Bhutan from India's orbit. -Others believe China seeks to take tactically useful high ground from which to threaten a narrow pass connecting to

India's eastern territories. Others focus on domestic Chinese political-military motivations ahead of the 19th Communist Party Congress. Another possibility is that China may be using the tension to create leverage in advance of border-dispute negotiations. But why provoke India now?

It is important to remember that President Xi Jinping (习近平) undoubtedly wants to demonstrate to the upcoming party congress that he has a plan to make his bold foreign policy undertaking, the "Belt and Road Initiative", a success. The long-term problem Xi faces is that both the maritime "Road" and the overland "Belt" are vulnerable to Indian interference. Thus, the future of the initiative relies heavily on Indian cooperation, or at least non-interference.

What does China have to offer India in return for its important acquiescence? Perhaps Xi created serious border tensions in order to bring India to the negotiating table, where China could offer a settled land border on terms favourable – but not too favourable – to Indian security. There is precedence in China's negotiating approach with Vietnam ahead of finalising their land border in 2009. Indeed, unlike its thousands of miles of disputed maritime borders with eight other states, Beijing has in fact successfully negotiated nearly all its land border disputes, sometimes explicitly invoking relevant international law. Stark exceptions are China's still-disputed borders with India and Bhutan.

Yet, almost seven decades of experience suggests that prospects for successful Sino-Indian border negotiations are not bright, and the current military confrontation might lead to actual armed conflict between two nuclear powers.

To avoid such a dangerous development, both Beijing and New Delhi should consider the time ripe for impartial arbitration or adjudication to resolve the problem. This would be a much less dangerous way than military provocations to achieve the "peaceful dispute resolution" that Beijing so vociferously endorses. Moreover, resorting to an independent international tribunal would go a long way towards repairing the damage to Beijing's reputation caused by its refusal to accept the outcome of the UN Convention on the Law of the Sea arbitration brought against it by the Philippines over disputes in the South China Sea.

As of now, Beijing is vulnerable to criticism that its heavy-handedness in the Himalayas is another example of Xi's "peaceful" policies. On the one hand, he professes to favour peaceful settlement through negotiations; on the other, he says, "China will never compromise on matters of sovereignty" over what are, in fact, controversial territorial claims. Beijing's bullying in the South China Sea has also led others to conclude it believes only in power-based approaches to international dispute resolution.

When Prime Minister Narendra Modi visited the Council on Foreign Relations in New York in September 2015, he was asked whether India and China might settle their land border disagreements through arbitration. Modi dismissed the possibility without stating any reasons. But since India recently settled its disputes with Bangladesh in the Bay of

Bengal through the UN convention arbitration, we are left to infer that the problem is China, not India. Apparently, Modi understandably has no hope that China would agree to such an approach.

Indeed, it is a fair question to ask, especially in view of Beijing's recent flat-out rejection of the decision in the South China Sea case, why should India seek arbitration with Beijing? Even knowing Beijing will reject the arbitration proposal, India may want to strengthen the global esteem it already enjoys from its gracious acceptance of the adverse Bay of Bengal arbitration award. Seeking arbitration would also reflect India's confidence in its legal position and its rejection of China's current preference for bullying.

Appearances to the contrary notwithstanding, the Philippines gained much through its arbitration against China. It may take years or even decades for the fruit of its efforts to ripen, but even now it is apparent that quiet bilateral negotiations stimulated by the arbitration have gradually begun to emerge. And it is important to note that through arbitration, even "losers" can be winners.

When India was awarded the lesser portion of maritime rights in the Bay of Bengal, Modi's enlightened acceptance emphasised that now the two sides could cooperate in regional resource development that had been previously stymied.

Beijing has a lot of work to do to repair its international image. What do other members of the UN sea convention think about China's blatant rejection of its commitment to the agreement's mandatory dispute resolution provisions? What do the British think about Beijing's recent unilateral declaration that the 1984 Joint Declaration supposedly guaranteeing Hong Kong's future until 2047 no longer has realistic meaning? What do other states that have ratified the UN Convention against Torture think about China's continuing nationwide abuses? What do Australians think about the way Rio Tinto's Stern Hu was tried despite the bilateral consular convention? What do Taiwanese think about Beijing's refusal to apply the cross-strait judicial assistance agreement to Taiwan human rights activist Lee Ming-che's detention? What do forcibly repatriated North Koreans think of Beijing's violations of the Refugee Convention?

The present dispute with India offers Beijing a splendid chance to demonstrate respect for the institutions and processes of international law.

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