

TIBET'S STATUS DURING THE WORLD WAR

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I

While the scholars of Tibetan history and culture generally uphold Tibetan sovereignty in the past the scholars of Chinese history and culture generally reject this. For instance, a well-known scholar of Chinese civilization finds the Chinese claim "quite unchallengeable" for the simple reason that "No Chinese government, least of all that of the Kuomintang, has ever renounced China's rights over Tibet". (Fitzgerald: *The Birth of Communist China*, Pelican 1964, p. 245) "To the Chinese all territory which had once acknowledged the Empire as lord, all territory which had been part of China, was forever Chinese" (ibid, p. 198)

In Vol. I, No. 1 of this *Bulletin* a brief survey of Tibet's status in historical times was made. Now it is proposed to notice certain facts from the history of the Second World War; these facts throw light on Tibet's status a few years before the Sino-Tibetan Agreement for Liberation of Tibet (23 May 1951).

II

From the middle of the nineteenth century many Western countries were in enjoyment of extra-territorial rights in China. While similar rights in other Eastern countries came to be abrogated with the rise of such countries (Japan 1899, Turkey 1923, Siam 1927 and Persia 1928) and while Belgium, Italy, Poland, Spain and Denmark relinquished their extra-territorial rights in China in pursuance of the recommendations of the Washington Conference (1921), Great Britain and U.S.A, continued their extra-territoriality in China till the Second World War. This was notwithstanding a Chinese Government Mandate of 1929 (December) that on and after New Year's (1 January 1930) "all foreign nationals in the territory of China who are enjoying extra-territorial privileges shall abide by the laws, ordinances and regulations" of the Chinese Government. The promulgation was more in keeping with the tradition and mystique of Chinese state-craft than with the realities of the prospects. There was no question of the Red Barbarians answering the call when even the Yellow Barbarians in Tibet and Mongolia had long ceased to kowtow to the mandates from Peking.

But the exigencies of war in which China was uplifted to the level of the Four Allies demanded the abrogation of British and American extra-territoriality in China. Besides being an infringement of

her sovereignty and a symbol of her inferiority, such extra-territoriality was considered to be the *fons et origo* of all the evils of China (Chiang Kai-shek : *China's Destiny*, first published in March 1943.) When on 11 January 1943 U.S.A. and Great Britain relinquished such rights and privileges China became full sovereign on her own territory. What was the precise extent of this territory ?

While U.S.A. had extra-territorial rights in China, Great Britain had such rights in Tibet as well. A notice of the treaty between Great Britain and China of 11 January 1943 (*v. British Parly. Papers 1943, Cmd. 6456*) is therefore relevant for the study of Tibet's status. Yet this document has so far escaped the attention of the diplomat, the lawyer or the historian enquiring into the subject.

Article I of the Treaty described, for the High Contracting Parties. For China the expression was "all the territories of the Republic of China". Now if Tibet was one of these territories Tibet came under the purview of the Treaty leading to the abrogation of British extra-territoriality in Tibet. The Truth was however otherwise. There was absolutely no mention of Tibet or British rights in Tibet anywhere in the Treaty or in the Notes exchanged.

On the other hand the British rights in Tibet continued unabated till 1947 when such rights passed on to the succeeding state of independent India. So neither by specific mention nor by any implication, Tibet could be considered on 11 January 1943 as a territory of China. It is clear from the context that "all the territories of the Republic of China" was not just a Mandarin phraseology,

[Hong Kong, for instance, was not discussed at the conference table (Reuter Telegram, London, even date ; Hong Kong being a part of British sovereignty from August 1842 not a territory of China under international law; from 25 December 1941 till 30 August 1945 it was under Japanese occupation; on 30 August 1945 Hong Kong reverted to British sovereignty,]

There were indeed grave considerations, legal or moral, which ruled out discussion of Tibet at the Chungking conference. Precise nature of these considerations is not known. What is known is that all through the war Great Britain and U. S. A. were pro-China and yet Tibet, as much as Mongolia, could not be called a territory of China. It is noteworthy that *China's Destiny*, which was under print when the negotiations about extra-territoriality were taken in hand, contained the

Chinese claims to Mongolia and Tibet and the Chinese edition (March 1943) had even a map showing Mongolia and Tibet as Chinese territory.

The British extra-territoriality in Tibet was not much less extraordinary than that in China proper. The British rights in Tibet were based on treaties concluded between Great Britain and Tibet : (1) Lhasa convention of 7 September, 1904 and (2) Simla Convention of 3 July, 1914 (along with the Trade Regulations of even date). It is not necessary to extract here all the relevant clauses from these Conventions which are found in the British official publication, Aitchison ; *Treaties, Engagements etc.* Vol XIV [Calcutta 1929] and are also reproduced in Richardson : *Tibet and Its History* (Oxford 1929). These extra-territorial rights may be described thus : (i) Trade Marts at Yatung, Gyantse and Gartok to facilitate trade between British and Tibetan subjects; (ii) Armed escorts (military personnel) for British Trade Agents; (iii) Special procedure for trial of disputes between British and Tibetan subjects; (iv) British jurisdiction for disputes between British subjects ; (v) British Posts and Telegraphs from Indian frontier to the Trade Marts; and (vi) No Tibetan forts and fortifications on the highways connecting the Indian frontier with Gyantse and Lhasa.

The Chungking Treaty of 11 January 1943 did not cover the above rights nor did these rights lapse to any degree. Armed escorts were maintained notwithstanding the advice of Indian Army Hq. against keeping them away from their units particularly during the War. Special jurisdictional procedures were meticulously followed and disputes involving British subjects were tried by British Trade Agents; one such BTA, a Sikkimese in British foreign service, recalls several cases affecting person and property till 1947. British Posts and Telegraphs had to cope with larger demands on their resources. Increased British control over trade was necessitated to open new outlets for Tibetan wool. Even though anachronistic the British extra-territorial rights in Tibet were operating in 1947. Independent India succeeded to these rights and exercised these as and when necessary for nearly six years.

The Agreement between India and China of 29 April 1954 (along with the Notes exchanged), which terminated these extra-territorial rights devolving upon India, referred to the then existing military escorts and postal, telegraph and public telephone services but curiously enough did not mention the legal basis of the capitulations. For India the Treaty of 29 April 1954 was a spiritual transaction in which all hereditaments of British imperialism including the documentary vestiges were relinquished;

for China it was a diplomatic victory so much so that Tibet's title to negotiate treaties could be later challenged in China's boundary disputes with India. The point for consideration here is that as cooked documents do not establish new facts so lacunae in documents cannot black out established facts and their legal significance.

The Chungking Treaty of 11 January, 1943 between Great Britain and China bears testimony to the status of Tibet during the Second World War. The Peking Treaty of 29 April, 1954 between India and China bears testimony to the status of Tibet after Liberation. The change in status was effected by the Sino-Tibetan Agreement of 23 May, 1951 for Liberation. (Richardson : op. cit. given these two documents in extenso)

There are other facts which bear testimony to the status of Tibet during the Second World War.

III

While in the First World War Great Britain and her Allies received a positive and generous support from Tibet, in the Second the Allies had Tibetan prayers for restoration of peace. Tibet did not participate in this War and in spite of all promises and threats from Great Britain, USA and China she remained neutral throughout. Tibet vis-a-vis China was thus more like Ireland (Irish Free State) and less like India (British India and Indian States) vis-a-vis Great Britain.

Now it is a commonplace of international law that in war all the territories of a belligerent become "region of war"; if any territory is outside this region that territory is not within the sovereignty of the belligerent concerned. This is true of all territories, colonies, protectorates, trusts and mandates; even a state under suzerainty falls within this region. (Oppenheim: *International Law*, Vol 2, Sect 71) If Tibet was neutral, that is outside China's region of war, then she had ceased to be under China's suzerainty even. Tibet is sometimes called China's marginal territory (Lattimore); the War found that Tibet was beyond the margin of Chinese suzerainty.

I intend to write separately on Tibet between 1942 and 1945 with details from certain series of unpublished papers. All that I need say here is that Tibet professed and practised neutrality during this war. The mounting overtures and pressures of 1942-44 were politely and firmly handled by the Office of Foreign Affairs at Lhasa; this office was set up in 1942 as an answer to the Chinese innovation of designating their Lhasa agency as a branch of the Commission for Mongolian and Tibetan Affairs. All Anglo-American proposals for supply routes and overland transport of war materials through Tibet were turned down. Large cash offerings to temples and monasteries were of no avail. American officials could not even obtain visas for Tibet on Chinese recommendation and British recommendation had to certify that such American officials were not connected with the prosecution of the war. Tibet's monk officials and feudal bureaucrats indeed ensured that Tibet was not involved in any unneutral service;