

■ A BHUTANESE IN GYANTSE: THE TREATY OF PUNAKHA AND THE PROTECTION OF BHUTANESE SUBJECTS

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This paper focuses on the case of a Bhutanese subject who was assaulted by a Chinese soldier in Tibet, within the premises of the Trade Mart of Gyantse, in 1912. When the British Trade Agent asked the Political Officer in Sikkim, Charles A. Bell, about possible action, the latter stated that he believed Bhutanese subjects should be considered British subjects. This idea was vehemently opposed by the Foreign Secretary of the Government of India, Henry McMahon, based on the interpretation of the Treaty made by the Viscount of Morley in April 1910. This article analyses the different positions in this case and aims to contribute to a better understanding of the status of the Kingdom of Bhutan following the Treaty of Punakha of 1910.

INTRODUCTION

The Treaty of Punakha of 1910 still raises many questions for historians and jurists who have studied Bhutanese history at various levels.¹ Scholars have variously presented Bhutan's status as a British semi-protectorate (de Riencourt 1951: 102), protectorate (White 2000: 386; Misra 1989: 72; Guyot-Réchard 2017: 65; Van Praagh 2003: 343; Bajpai 1964: 17; Alexandrowicz 2017: 207), or even princely native state (Sinha 2001: 103).² The Treaty was signed on 8 January 1910. Just over two years earlier, on 17 December 1907, Sir Ugyen Wangchuck (O rgyan dbang phyug, r. 1907–1926) had ascended the throne as the first king of Bhutan ('Brug rgyal po).³ Ugyen Wangchuck had been a mediator between the Tibetans and the British during the Younghusband

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2 On this issue, see also Álvarez Ortega 2025. Thanks to Prof Miguel Álvarez Ortega, who sent me a draft of his work.

3 The agreement (*gan rgya*) that established the Kingdom of Bhutan under the Wangchuck dynasty in 1907 is found in Dam chos lhun grub 2008: 176–178, 180. On the birth of the monarchy, see Aris 2005. On the pre-monarchical period, see Imaeda 2011. For a general history of Bhutan, see Aris 1979; Phuntsho 2013.

Expedition of 1903–1904⁴ and had been awarded the Order of the Indian Empire in 1905 (White 1909: 140–144). In 1910, the Treaty of Punakha stated, “The British Government undertakes to exercise no interference in the internal administration of Bhutan”, while “the Bhutanese Government agrees to be guided by the advice of the British Government in regard to its external relations”.⁵ The Political Officer in Sikkim Charles, Alfred Bell (1870–1945), had signed the Treaty on the British side.⁶ Thus, the Bhutanese accepted British guidance in foreign policy without a full and clear renunciation of their own foreign policy. The formula remains ambiguous,⁷ and one way to better define the framework of how this relationship developed is to analyse different cases within the broader legal spaces of international law. One element that could contribute, for example, to a better understanding of the status of Bhutan following the Treaty is the treatment of Bhutanese subjects abroad. Did British authorities protect them, as is expected in the framework of a protectorate relationship? Hersch Lauterpacht wrote, for example, in 1947:

A number of States, including Great Britain, grant diplomatic protection abroad to natives of territories over which they exercise the functions of protection in various forms. Thus there are at least four classes of persons – often referred to as British protected persons – who, though not British subjects, receive British passports and enjoy British consular and diplomatic protection. These persons are the inhabitants of British protectorates, of British protected States, of Indian native States, and of various other territories such as Bahrein and the Anglo-Egyptian Sudan, and, finally, the inhabitants of the mandated territories and, in due course, of the territories under the system of trusteeship. (Lauterpacht 1947: 339)

This paper, therefore, analyses the case of a Bhutanese subject, Loan Tashi (Blo bzang bkra shis?), who was attacked by a Chinese soldier in Tibet, within the premises of the Trade Mart of Gyantse, in 1912, two years after the signing of the Treaty of Punakha.⁸

4 This role was formally recognized only by the Tibetan side. The National Archives, London, Kew (hereafter TNA), FO 535/4, Inclosure 2 in No. 22, Mr. Walsh to Colonel Younghusband, 12 June 1904; (A.) Letter from the Dalai Lama to the Tongsa Penlop, sent by Lama Se-kong Tulku, dated 28 April 1904, pp. 45–46 [English translation]; TNA, FO 535/4, Inclosure 2 in No. 22, Mr. Walsh to Colonel Younghusband, 12 June 1904; (B.) Letter from the Thibetan Council (“Ka-sha”), to the Tongsa Penlop, dated 19 January 1904, pp. 46–47 [English translation]; TNA, FO 535/4, Inclosure 1 in No. 14, Mr. Walsh to Colonel Younghusband, 3 June 1904, p. 24; TNA, FO 535/3, Inclosure 9 in No. 94, Government of India to Mr. Walsh, 26 May 1904, p. 142.

5 The full text of the Treaty of Punakha is in British Library, London (hereafter BL), IOR/L/PS/20/259, Cd. (Command Paper) 5240, East India (Tibet). Further papers relating to Tibet [in continuation of Cd. 2370], London 1910, No. 346, Treaty with Bhutan, signed 8 January 1910, p. 214.

6 On the Bhutanese side, the Treaty bears the seals of the Chief Abbot (the *rje mkhan po*, known as the Dharma Raja by the British), the King of Bhutan, and other local lamas, lords, and the chamberlain.

7 On the reasons behind the ambiguity of the Treaty of Punakha, see Miele 2024.

8 In addition to the Trade Mart of Yatung (Gro mo), which had already been provided for by the Trade Regulations of 1893 supplementing the 1890 Convention between Great Britain and China relating to Sikkim and Tibet (the full text is in C. (Command Paper) 7312, Convention between Great Britain and China relating to Sikkim and Tibet. Signed at Calcutta, 17 March 1890. With Regulations appended thereto, signed at Darjeeling, 5 December 1893, London 1894, Regulations regarding Trade, Communication, and Pasturage, to be appended to the Sikkim-Tibet Convention of 1890, pp. 3–5. The Chinese text is in China. Inspectorate General of Customs 1917: 516–519). A trade mart was also to be opened in Gyantse (Rgyal rtse) and Gartok (Sgar thog) based on the Convention between Great Britain and Tibet of 7 September 1904, signed after the arrival of the Younghusband Mission in the Tibetan capital (full text: BL, IOR/L/PS/20/259, Cd. (Command Paper) 5240, East India (Tibet). Further papers relating to Tibet [in continuation of Cd. 2370], London 1910, No. 1, Convention between Great Britain and Tibet, signed at Lhasa on 7 September 1904, pp. 1–3 (Annexure 1 and Annexure 2, p. 4). On the British Trade Agencies in Tibet, see McKay 1992.

JOHN MORLEY'S INTERPRETATION

In April 1910, a few months after the signing of the Treaty of Punakha, the then-State Secretary for India, John Morley (1898–1923), wrote to the Governor-General of India. After requesting Lord Minto “that you will convey to Mr. Bell an expression of the satisfaction of His Majesty’s Government with his prompt and successful management of the negotiations”, Morley addressed the question of the fundamental relations and status of Bhutanese subjects after signing the agreement:

The Treaty now concluded will, I trust, adequately achieve the purpose for which it was intended, *viz.*, the security of that part of the Indian frontier from external aggression and intrigue. Some of the language used by Mr. Bell in reporting his proceedings might be taken to imply a change in the fundamental relations of the British Government with Bhutan and in the status of the Maharaja’s subjects. No such change is intended by the present Treaty. That Treaty marks no departure from the settled policy of His Majesty’s Government upon all the frontiers of India, which is to undertake no extension, direct or indirect, of the administrative responsibilities of the Government of India, and to derogate in no respect, beyond the letter of our treaty rights, from that measure of internal independence which we have engaged to respect in the States concerned. I have no doubt that Your Excellency’s Government keep this view of the question steadily present in your own minds and in those of your officers.⁹

It appears to be a clear and definitive letter. However, over the years, the Treaty has left scholars in doubt, as they have used different formulas to define the Anglo-Bhutanese relationship from 1910 to Indian independence. Diplomats also addressed the issue after Indian independence and then when the kingdom applied for membership in the United Nations.¹⁰ Indeed, Morley’s letter itself leaves room for a deeper analysis of the perception that the Treaty’s text had had, particularly on Bell himself, who, as already specified, had been the signatory of that Treaty on the British side.

“BHUTANESE SHOULD, I THINK, BE CONSIDERED AS BRITISH SUBJECTS”

On 22 March 1912, Charles Alfred Bell sent a telegram to the Secretary to the Government of India in the Foreign Department regarding the attack on a Bhutanese subject by a Chinese soldier in the Trade Mart of Gyantse a few days earlier:

Trade Agent Gyantse¹¹ reports that a Bhutanese named Loan Tashi complained to him that he had been assaulted by Chinese soldiers at Gyantse on the 17th within limit of Trade Mart. Complainant now lying in hospital in precarious condition. Trade Agent Gyantse enquires whether he should take

9 National Archives of India, New Delhi (hereafter NAI), Government of India, Foreign Department, Secret E, Proceedings, June 1910, Nos. 128–130 (Calcutta Records), From the State Secretary for India to the Governor-General of India in Council, 15 April 1910, p. 1 (p. 4).

10 TNA, FO/371/84250, J.G. Taylor (Office of the High Commissioner for the United Kingdom, New Delhi) to Miss E.J. Emery (Commonwealth Relations Office), 14 January 1950; TNA, FCO/37/751, The India Office Library and Records (Minutes by M.I. Moir, India Office Records) to Mr. Birch (Foreign Office), 2 November 1971, fol. 44.

11 According to the lists of British agents prepared by Alex McKay, in the weeks in question, David MacDonald, the trade agent in Yatung between 1909 and 1924, also held the position of trade agent in Gyantse (McKay 1997: 231–232).

action. I think he should take action under Trade Regulations of 1908¹² since Bhutanese should, I think, be considered as British subjects under these regulations.¹³

However, an internal note of the Foreign Department drawn up by G.M.C.¹⁴ on 23 March 1912, and countersigned by Secretary Henry McMahon, disputed this view, recalling Morley's letter to Minto of 15 April 1910:

Though under the new Treaty of 1910 we are committed to protect the rights and interests of Bhutan in Tibet, and have control of her foreign relations, it has been laid down by the Secretary of State that this new treaty involves no change in the fundamental relations of the British Government with Bhutan and in the status of its subjects. British protection cannot therefore be extended to Bhutanese subjects in Tibet.

2. In the present case we are not told why the Chinese soldiers assaulted the Bhutanese, in fact we are given no details at all! The Trade Agent at Gyantse wants to take some action, we are not told what it is. The Political Officer in Sikkim suggests that action should be taken under the Trade Regulations of 1908, since Bhutanese should, he thinks, be considered as British subjects under these regulations. It is, however, not at all clear what is wanted, and before taking any action we may call for a detailed report of the case.¹⁵

12 The Trade Regulations of 1908 were signed in Calcutta on 20 April 1908, a few weeks after the British withdrawal from the Chumbi (Chu 'bi) Valley on 8 February 1908 (TNA, FO 535/11, Inclosure in No. 42, Government of India to Mr. Morley, 12 February 1908, p. 27), and amended the Trade Regulations of 5 December 1893 signed between the Chinese and the British. The new text was signed not only by the British and the Chinese but also by the Tibetans, and it was drafted in their three respective languages. According to the new Trade Regulations: "In the event of disputes arising at the marts between British subjects and persons of Chinese and Tibetan nationalities, they shall be enquired into and settled in personal conference between the British Trade Agent at the nearest mart and the Chinese and Tibetan Authorities of the Judicial Court at the mart, the object of personal conference being to ascertain facts and to do justice. Where there is a divergence of view the law of the country to which the defendant belongs shall guide. In any of such mixed cases, the Officer, or Officers of the defendant's nationality shall preside at the trial; the Officer, or Officers of the plaintiff's country merely attending to watch the course of the trial. All questions in regard to rights, whether of property or person, arising between British subjects, shall be subject to the jurisdiction of the British Authorities. British subjects, who may commit any crime at the marts or on the routes to the marts, shall be handed over by the local authorities to the British Trade Agent at the mart nearest to the scene of offence, to be tried and punished according to the laws of India, but such British subjects shall not be subjected by the local authorities to any ill-usage in excess of necessary restraint. Chinese and Tibetan subjects, who may be guilty of any criminal act towards British subjects at the marts or on the routes thereto, shall be arrested and punished by the Chinese and Tibetan Authorities according to law. Justice shall be equitably and impartially administered on both sides. Should it happen that Chinese or Tibetan subjects bring a criminal complaint against [sic] a British subject before the British Trade Agent, the Chinese or Tibetan Authorities shall have the right to send a representative, or representatives, to watch the course of trial in the British Trade Agent's Court. Similarly, in cases in which a British subject has reason to complain of a Chinese or Tibetan subject in the Judicial Court at the mart, the British Trade Agent shall have the right to send a representative to the Judicial Court to watch the course of trial". The full text is in Cd. (Command Paper) 4450, *Regulations respecting Trade in Tibet* (amending those of 5 December 1893) concluded between the United Kingdom, China, and Tibet. Signed at Calcutta, 20 April 1908, London 1908. The Chinese text is in China. Inspectorate General of Customs 1917: 661–668.

13 NAI, Government of India, Foreign Department, Secret E, Proceedings, April 1912, Nos. 475–477 (Calcutta Records), Telegram from the Political Officer in Sikkim, Rhenock, to the Secretary to the Government of India in the Foreign Department, 22 March 1912, p. 1 (p. 5).

14 Despite consulting the India Office Lists of the time, it was not possible to trace the author's identity. As is specified immediately below, however, the text was countersigned by Henry McMahon.

15 NAI, Government of India, Foreign Department, Secret E, Proceedings, April 1912, Nos. 475–477 (Calcutta Records), From the Political Officer in Sikkim, Rhenock, to the Secretary to the Government of India in the Foreign Department, 22 March 1912, p. 1 (p. 5).

Therefore, on 25 March, the Foreign Department responded to Bell, asking him to send a “detailed report of case and state clearly what action is required”.¹⁶ However, the case was closed the following month, with Loan Tashi’s health improving and the withdrawal of “his complaint against the Chinese” soldier, as the Trade Agent in Gyantse clarified to Bell: “Trade Gyantse telegraphs. *Begins*. The Bhutanese got well and withdraws his complaint against the Chinese. Have allowed this as Chinese are leaving Gyantse very shortly. *Ends*.¹⁷”

CONCLUDING REMARKS

The Loan Tashi case was concluded too quickly to provide a fully decisive understanding of the British authorities’ treatment of Bhutanese subjects abroad. However, this does not prevent us from highlighting some interesting points from the brief discussion. Indeed, the initial level of the issue was addressed by the Trade Agent and the Political Officer in Sikkim, Charles Alfred Bell. The Trade Agent asked about the possibility of taking “action”, and Bell agreed by interpreting the Bhutanese in Tibet as British subjects. For McMahon, on the other hand, the Bhutanese could not be regarded as British subjects, but at the same time, he considered the foreign relations of the Bhutanese to be under British control. He acknowledged that, as seen, “under the new Treaty of 1910 we are committed to protect the rights and interests of Bhutan in Tibet, and have control of her foreign relations”, but “British protection cannot therefore be extended to Bhutanese subjects in Tibet”. The statement certainly appears challenging to understand, highlighting multiple tiers on which to deploy British protection. At the level that concerns this paper, the protection of Bhutanese subjects, the positions of the Political Officer in Sikkim – who, as noted above, was a signatory to the Treaty of Punakha – and those of the Government of India appear mutually exclusive. As can be seen from Morley’s letter to Minto, these two contrasting positions had already emerged in the weeks following the Treaty, and they reappeared some two years later in the Loan Tashi case. Further research, which may also include Bhutanese and Tibetan documentation in the future, could provide a deeper understanding of this fundamental aspect and add further considerations regarding the complex question of the status of the remote Himalayan kingdom.

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16 NAI, Government of India, Foreign Department, Secret E, Proceedings, April 1912, Nos. 475–477 (Calcutta Records), From the Foreign Department, Calcutta, to the Political Officer in Sikkim, Gangtok, 25 March 1912, p. 1 (p. 5).

17 NAI, Government of India, Foreign Department, Secret E, Proceedings, April 1912, Nos. 475–477 (Calcutta Records), Note of G.M.C., 23 March 1912, countersigned by A.H. McMahon, 25 March 1912, n.p. (p. 4).

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