

THE LEGAL POSITION OF TIBET

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Tibet for most people remains a land of mystery. Books continue to be published which deal with its strange cults and religious practices. It is also a land of romance and adventure. But very little has been written on its political history and still less on its legal status. That is why Professor Charles Henry Alexandrowicz-Alexander's article in the April, 1954, issue of this JOURNAL must be regarded as a welcome contribution.¹

It has been well said that "statehood, legal independence and international juridical capacity are verifiable facts."² It is these facts about Tibet which call for careful study and examination.

The first and most important fact to bear in mind is that China has never considered herself as being a "suzerain" over Tibet. That term was introduced by Britain and Russia for their own convenience when they became interested in that part of China and decided to make it an international issue. As far as China is concerned, it has been her practice, through the centuries, to regard Tibet merely as another part of her domain, much like her other parts, and to allow it a large measure of autonomy. But in 1907 when Great Britain and Tsarist Russia signed a convention, they singled out Tibet as a special area with which they engaged not to enter into negotiations "except through the intermediary of the Chinese Government."³ It was then that China was regarded by those two Powers as having "suzerain" rights over Tibet. But it is necessary to recall that China was neither a party to the convention nor was she consulted in a matter affecting her territorial integrity.

The Chinese stand as regards Tibet was made clear during the negotiations of 1905 held to legitimize the Lhasa Convention of 1904,⁴ which, as a British writer aptly described it, had "no more binding effect than if the Archbishop of Canterbury and the Chairman of the London County Council were to sign a new treaty with France."⁵ That convention resulted from a British military expedition led by Colonel (later Sir Francis) Younghusband who forced his way to the Tibetan capital. Professor Vincent A. Smith, the authority on Indian history, regarded that ex-

¹ See Charles Henry Alexandrowicz-Alexander, "The Legal Position of Tibet," 48 A.J.I.L. 265 (1954), in which the author concludes that "China has no right and has violated the independence of Tibet."

² Herbert W. Briggs, *The Law of Nations* 66 (1952).

³ Convention of Aug. 31, 1907; 1 A.J.I.L. Supp. 398 (1907).

⁴ *Ibid.* 80.

⁵ A. MacCallum Scott, *The Truth About Tibet* 59 (1905).

petition as being "unnecessary and all but fruitless."⁶ During the negotiations of 1905 a deadlock soon developed over the question of Chinese sovereignty or suzerainty over Tibet. The Chinese delegate, Tong Shao-yi, citing as evidence the investiture of the Dalai and Panch'en Lamas, the appointment of *bka'-blons* (or cabinet ministers) and of the local Tibetan officials and officers by the Chinese Court, and the supervision of the Tibetan troops by the Imperial Resident (or *Amban*), maintained that Chinese sovereignty in Tibet was an established fact. But the British Government could agree only to the recognition of Chinese "suzerainty" in Tibet.⁷ Later a compromise was worked out whereby China's exclusive rights in Tibet were recognized without naming them sovereign or suzerain. Agreeing with the Chinese sources, the *British Blue Book* has this to record: In connection with the Chinese, instead of the Tibetan, payment of the indemnity imposed by the Lhasa Convention, the British Government saw in the Chinese stand "firm determination that Chinese sovereignty over Tibet, to be exclusive of all local autonomy, shall be indicated."⁸ After the so-called "Adhesion Agreement" was signed, Chang Ying-tang, who had negotiated at Calcutta after Tong Shao-yi's departure and who was then in Lhasa to make a general investigation and introduce local reforms, took the view

that virtual recognition of Chinese Sovereignty over Tibet was involved in the signature and that "Chinese authorities in Tibet" should consequently be the interpretation placed on the phrase "Tibetan Government" wherever the latter occurs in the Lhasa Convention.⁹

In fact, China then made strenuous efforts to reassert her full sovereignty in Tibet even though it met with repeated British opposition.¹⁰ Nothing is therefore farther from the truth than to say that "Chinese suzerainty which had been reduced to a nominal right in 1904 tended to be revived with the support of Great Britain."¹¹

⁶ The Oxford History of India 771 (rev. ed., 1928).

⁷ See Lu Hsing-chi's manuscript on *Hsi-tsang chiao shê chi yao* (Important Diplomatic Dealings concerning Tibet). Lu was an expert on Indian and Tibetan affairs on the staff of Tong Shao-yi and Chang Ying-tang between 1905 and 1908, was appointed acting High Commissioner in 1913, but was prevented from proceeding to Lhasa to take up his post. His manuscript was mimeographed by the Commission for Mongolian and Tibetan Affairs for official reference, Ch. VI, pp. 25a-27a; Ho Tsao-hsiang, *Tsang yü* (the author was a secretary to the Chinese Delegation), pp. 18a-24b; *Ch'ing chi wai chiao shih kao* (Sources of Diplomatic History towards the End of the Ch'ing Dynasty), ed. by Wang Liang and Wang Yen-wei, Vol. 195, pp. 8b-9b; *Ch'ing-shih kao* (Draft History of Ch'ing Dynasty), compiled by Chao Erh-sun and others, 525, fan 8, p. 22b.

⁸ Accounts and Papers (1910, Vol. LXVIII), printed by order of the House of Commons, Cd. 5240, No. 218, p. 140. ⁹ *Ibid.*, No. 141, p. 86.

¹⁰ For representations made by the British to the Chinese Government in this connection, see *ibid.*, Nos. 287, 288, pp. 180-181; Nos. 298-301 and 303, pp. 188-190; No. 315, p. 195; No. 336, pp. 205-206; No. 347, p. 215; No. 350, p. 216. For Chinese replies see No. 319, p. 196; No. 325, p. 199; No. 329, p. 201; No. 334, pp. 203-204; No. 340, pp. 207-210.

¹¹ Charles Henry Alexandrowicz-Alexander, *loc. cit.* 270.

Professor Alexandrowicz-Alexander, in the article referred to, deviated from his suzerainty theme to admit that the Chinese *Amban* exercised all rights of external sovereignty over Tibet. But what the *Amban* actually exercised was far more than external sovereignty. After rescuing Tibet from the Gurkhas in 1792, the Chinese Emperor had reformed its whole administration. The *Ambans*, one at Lhasa and another at Shigatse, were given the same rank as the Dalai Lama and the Panch'en Lama. The *bka'-blons* were deprived of most of their power, and the Tibetan officials, both lay and ecclesiastical, were ordered to submit to the *Ambans'* decisions in all questions of importance.¹² According to Rockhill the Dalai and Panch'en Lamas were not even given the right to memorialize the throne, but were authorized only to "report to the *Ambans* and ask their orders."¹³ From that time on the *Amban* at Lhasa, as Sir John Davis, first British Minister to China, remarked, ". . . in fact rules Tibet on the part of the Chinese Emperor."¹⁴

It was against this background that the Government of British India later found it necessary to collaborate with the Chinese *Amban* even when its armed mission was already in the heart of Tibet. In a letter to the Secretary of State for India, dated June 30, 1904, it expressed the "hope to be able, with the help or assent of the Chinese authorities, to establish a new government with whom we could negotiate, and to secure the co-operation of the Chinese *Amban* in the appointment of a regent."¹⁵ Contrary to the accounts of some British writers testifying to "the almost total disappearance of the influence of the Chinese *Ambans* on Tibetan affairs,"¹⁶ Sir Francis Younghusband told us explicitly in his book *India and Tibet* that he worked throughout with the Chinese *Amban*, and never directly with the Tibetans to the exclusion of the Chinese.¹⁷ It is significant that the *Amban* posted a notice in Lhasa while the British armed mission was still in the city (dated September 10, 1904, three days after the signing of the so-called Lhasa Convention), in which the *Amban* started out by saying that "for more than 200 years Tibet has been a feudatory of China," and ended with these words:

In future, Tibet being a feudatory of China, the Dalai Lama will be responsible for the Yellow-cap faith and monks and will only be concerned slightly in official matters, while the *Amban* will conduct all Tibetan affairs with the Tibetan officials and important matters will be referred to the Emperor.¹⁸

¹² *Ch'ing shih-lu* (Imperial Records of the Ch'ing Dynasty), *Kao-tsung shih-lu*, Ch. 1411, pp. 15a, 24b; Ch. 1417, p. 3b; *Li-fan-pu tsê li* (Regulations Enforced and Precedents Established by the Ministry of Dependencies), Ch. 61; *Wei-tsang-t'ung chih* (Records in Connection with Tibet and Its Administration), Ch. 9, p. 179; Ch. 12, p. 201.

¹³ W. W. Rockhill, *The Dalai Lamas of Lhasa and Their Relations with the Manchu Emperor of China 1644-1908*, p. 53 (1910).

¹⁴ Sir J. F. Davis, *China During the War and Since the Peace*, Vol. I, p. 149 (1852).

¹⁵ *Accounts and Papers* (1905, Vol. LVIII), Cd. 2370, No. 97, p. 39.

¹⁶ Alexandrowicz-Alexander, *loc. cit.* 269.

¹⁷ Sir Francis E. Younghusband, *India and Tibet* 421-422 (1910).

¹⁸ *Accounts and Papers*, Cd. 2370, annex to encl. No. 362, pp. 274-275. The translation here used is the version sent by Younghusband to his government.

This Chinese position was consistently maintained down to the end of the Ch'ing dynasty. The Government of China never waived any sovereign rights in Tibet. Indeed, even on the eve of the revolution of 1911, it still argued with the British Government over the rights it had exercised and claimed still to exercise, not only in Tibet, but also in Nepal and Bhutan.¹⁹ When China was proclaimed a republic, efforts were soon made to regularize her control of Tibet. Seats were allotted to Tibet in the National Assembly, and the new five-colored national flag had black to stand for that part of the country. On April 12, 1912, the Chinese President issued a proclamation declaring that Tibet, Mongolia and Sinkiang were henceforth to be regarded as being on an equal footing with the provinces of China and as integral parts of the Republic.²⁰

But these efforts to establish control of the area were often rendered futile, as British influence became firmly established in Tibet, especially after the downfall of Tzarist Russia, whose restraining force and counter-moves had hitherto helped to make Tibet a kind of buffer state. But China's legal capacity over Tibet should in no way be affected by a situation "dictated by physical compulsion," as long as no other state possessed any title to claim sovereignty over this portion of her territory, and no acquisition of statehood was established by Tibet. Nowadays, even the absence of one or more of the criteria of statehood like people or territory (*e.g.*, government-in-exile) over relatively long periods has not been regarded by other states as depriving such states of legal capacity under international law.²¹

The Chinese, in fact, were never entirely shut off from Tibet. Apart from religious missions, sporadic contacts were maintained between the Dalai Lama and the Peking Government. Sir Charles Bell always spoke of the Dalai Lama as "pro-British and pro-Russian, but anti-Chinese."²² Yet this British authority on Tibetan affairs had to admit that "by 1925 the Dalai Lama was turning strongly away from Britain towards China."²³ Sino-Tibetan relations entered a new phase with this change of attitude on the part of the Dalai Lama. Also helping to bring about this new phase were the Panch'en Lama's flight to China proper as a result of his feud with the Dalai Lama and the establishment of the National Government at Nanking after the downfall of the warlords.

But let us recount here a few facts which, I think, have some bearing on the legal position of Tibet. First, the present Dalai Lama and Panch'en Lama were respectively installed in office on February 21, 1940, at Lhasa and on August 10, 1949, at Sining. Both of these ceremonies were officiated over by the Chairman of the Commission for Mongolian and Tibetan Affairs of the Chinese National Government. Secondly, Tibetan delegates participated in the National Assembly of 1946 to draft

¹⁹ *Ibid.*, Cd. 5240, No. 345, p. 213; No. 350, p. 216. *Ch'ing chi wai chiao shih liao*, *op. cit.* (Hsüan-t'ung period), Vol. 17, pp. 41a-b; Vol. 20, p. 31.

²⁰ British Foreign Office, Peace Handbook, No. 70, "Tibet," pp. 40-41.

²¹ Briggs, *op. cit.* 66, 73 *et seq.*, and 240.

²² Sir Charles Bell, Portrait of the Dalai Lama 127.

²³ *Ibid.* 366.

the new constitution, and also in the National Assembly of 1948 convened in accordance with that constitution. Thirdly, there were Tibetan members in the Legislative Yüan and the Control Yüan even on the eve of the evacuation of the National Government from Nanking in 1948.²⁴ Fourthly, quite contrary to what Professor Alexandrowicz-Alexander stated, Tibet during the second World War (as also during the first World War) never declared itself neutral: the Regent of the Lhasa government dispatched a special delegate to the wartime capital of Chungking pledging Tibet's sincere co-operation with the central government in the struggle for national existence.²⁵ According to Theodore Bernard, a large delegation of Tibetans brought with them 10,000 sheepskins and 500,000 dollars to be given to the soldiers.²⁶ Throughout these war years the representative of the central National Government of China remained in Lhasa. He and the staffs of the radio station, hospital and schools did not leave Tibet until July of 1949, when large areas had been lost to the Chinese Communist Army and the seat of the National Government had been moved to Canton.²⁷

So much then for the Chinese position on the Tibetan issue. Let us now see how Tibet was regarded by the British authorities.

Mention has previously been made of the rescue of Tibet from the invading Gurkhas by the Chinese Imperial forces in 1792. When the Rajah of the Gurkhas (or of Nepal) had sustained numerous defeats in Tibet and the Chinese forces were at the heels of his fleeing army, he appealed repeatedly to Lord Cornwallis, then Governor of Bengal, for help. In a reply dated September 15, 1792, the Governor pointed out that it was "especially necessary to adhere to the policy of non-interference, because the Company had interests in China, and could not afford to send aid against a dependency of hers."²⁸ Is there better documentary evidence to show that the British recognized Tibet as a dependency of China as early as 1792?

In January, 1903, Lord Curzon, then Viceroy of India, formulated his "altered policy," otherwise known as the "forward policy," and reporting to the Secretary for India he spoke of "Chinese suzerainty over Tibet as [being] a constitutional fiction—a political affectation which has only been maintained because of its convenience to both parties." Lord Hamilton, then Secretary of State for India, in reply, had these words of

²⁴ For details see *Mong-Tsang yüeh-pao*, the official publication of the Commission for Mongolian and Tibetan Affairs, Vol. 19, No. 6.

²⁵ C. Y. W. Meng, "Tibetans Are Praying for China's Victory," *China Weekly Review*, Vol. 88, p. 205 (April 15, 1939).

²⁶ "The Peril of Tibet," *Asia*, Vol. 39, p. 505 (Sept. 1939).

²⁷ For details see Lo Chia-lun (first and last Chinese National Government's Ambassador to India), "Raising the Curtain on the Tibetan Issue in Sino-Indian Relations," *Tzū yu chung kuo*, Vol. 3, No. 7, p. 235 (October, 1950), and also "Documentary Evidence on the Tibetan Issue in Sino-Indian Relations," *ibid.*, Vol. 4, No. 2, pp. 56-58 (January, 1951).

²⁸ For the text of the letter see William Kirkpatrick, *Account of the Kingdom of Nepaul* (being the substance of the observations made during a mission to that country in the year 1793), pp. 349-350.

instruction which should shed some light on Britain's official attitude toward Tibet:

His Majesty's Government cannot regard the question as one concerning India and Tibet alone. The position of China in its relations to the Powers of Europe, has been so modified in recent years that it is necessary to take into account those altered conditions in deciding on action affecting what must still be regarded as a *province of China*.²⁹ (Italics added.)

Lord Reay, Governor of Bombay (1885-1900), made a similar observation on Lord Curzon's "forward policy." In a speech before the House of Lords he said: "Far from looking upon the suzerainty as a constitutional fiction, the home government looked upon Tibet as a *province of China*."³⁰ (Italics added.) Likewise on June 14, 1904, the British Foreign Minister, in an official dispatch to the British Ambassador to Russia, wrote:

. . . Count Lamsdorff had added that it had given him great satisfaction to note that the British government, for their part, recognized, in terms of the memorandum which I had recently handed to Count Benckendorff, the utility and necessity of maintaining the political status quo in that *province of the Chinese Empire*.³¹ (Italics added.)

Apparently the nominal or fictional suzerainty was a new interpretation on Sino-Tibetan relationship which the aggressive viceroy found convenient and was eager to advance, but it was one which the London authorities, to their credit, refused to accept. This new interpretation, however, requires some comment. Mr. Joseph H. Choate, United States Ambassador to Great Britain, was instructed in June of 1904 to acquaint the British Foreign Office with the State Department's views on the British expedition. His instructions took strong exception to the official references of the Indian Government to Chinese sovereignty over Tibet as a "constitutional fiction" and a "political affectation," and pointed out that Great Britain had three times (in the Chefoo Convention of September 13, 1876; in the Peking Convention of July 24, 1886; and in the Calcutta Convention of March 17, 1890) recognized Chinese sovereignty by negotiation with the Chinese Government on questions relating to Tibet, and that since then the Chinese had waived none of their sovereign rights.³²

It was during the Chinese Revolution of 1911 that Britain went through a radical change in its attitude toward Tibet. It was then that she began to support the once rejected new interpretation. In a message of advice and farewell to the 13th Dalai Lama, about which the British Government kept the Russian Government informed,³³ they expressed the desire "to see the internal autonomy of Tibet under Chinese suzerainty maintained without Chinese interference." But they themselves intervened in Tibetan

²⁹ Accounts and Papers, Cd. 1920, No. 78, p. 185.

³⁰ Parliamentary Debates, 4th Ser., Vol. 130 (1904), pp. 1116-1117.

³¹ Accounts and Papers, Cd. 2370, No. 55, p. 18.

³² Department of State Archives, Great Britain Instructions, Vol. 34, pp. 636-639, No. 1455 Hay to Choate, June 3, 1904.

³³ Documents des archives des gouvernements impérial et provisoire (made public by the Soviet Government), Series II, Vol. 20, Pt. 1, No. 228, pp. 220-221.

affairs in spite of the treaty obligations, which, as the Secretary of State for India once admitted and the Dalai Lama in exile was so told,³⁴ precluded them from interfering with Chinese action in Tibet.

The British, however, never went so far as to declare Tibet an independent state or a dependency of their own during all those years when they enjoyed an unique position of exercising dominant influence in Tibet. The most recent occasion for the British to declare their stand is when the El Salvador Delegation to the United Nations made a request to have the Tibetan appeal (based on a cablegram dispatched from India's Kalimpong charging the Chinese Communist Army's entry into Tibet as "a clear case of aggression" and asking the world organization to "intercede on their behalf") placed on the agenda of the Fifth Session of the General Assembly. The British delegate in proposing to defer action on this request told the General Committee that no one knew exactly what was happening in Tibet, nor was the legal position very clear.³⁵

Professor Alexandrowicz-Alexander also raised the question of international conferences as a source of evidence, and made copious reference to the Simla Conference of 1913-14. That conference could have clarified the legal position of Tibet, had Great Britain and China been able to come to terms. Though the draft agreement was initialed by the Chinese delegate, China did not sign it. The so-called Anglo-Tibetan Treaty of Simla and the pertinent Trade Regulations have no validity as international documents. As it was said before, seven years previously in 1907, when the Anglo-Russian Convention was signed, the British Government solemnly engaged not to enter into negotiations with Tibet "except through the intermediary of the Chinese Government." The Simla Agreements have no validity not only because the Chinese Government did not perform the functions of an "intermediary," but especially because it officially notified the British Minister at Peking and telegraphed London that it would not and could not recognize the Simla Agreement, even if it were signed by the British and Tibetan delegates.³⁶

From Sir Charles Bell's account it may be assumed that the Dalai Lama did not ratify the Simla documents. Sir Charles explained that the Lama was dissatisfied with his delegate's conduct of the negotiations, nor was he happy with the Simla Treaty.³⁷ It is significant that neither the so-called Simla Treaty nor the new Trade Regulations is included in the comprehensive collection entitled *Treaties, Engagements and Sanads Relating to India and Neighboring Countries*, compiled by C. U. Aitchison, and revised and continued to 1929 by the authority of the Foreign and Political Department of the Indian Government.

There is another diplomatic episode to show that the Simla Agreement

³⁴ Accounts and Papers, Cd. 5240, No. 143, p. 87; No. 302, p. 190; No. 354, p. 218.

³⁵ U.N. Doc., Summary Records of Meetings 21 September-5 December 1950 of the General Committee, pp. 19-20.

³⁶ Hsieh Pin, *Hai-tsang chiao shê lüeh shih* (A Short Diplomatic History Concerning Tibet), p. 52.

³⁷ Bell, *Portrait of the Dalai Lama* 205.

has no binding force. On October 9, 1948, the Chinese Ministry of Foreign Affairs sent identical notes to the British, Indian and Pakistan governments proposing revision of the Trade Regulations of 1908 in regard to Tibet, Article III of which provides for revision at the end of each successive ten years. The British replies dated October 29, 1948, and May 24, 1949, respectively, in referring the matter to the two Dominions, did not deny the continued validity of the Trade Regulations of 1908.³⁸ The denial would have been given, had there been in existence a valid instrument like the alleged Anglo-Tibetan Treaty and its related Trade Regulations which were supposed to have superseded the previous trade regulations.

Of course, the Simla Treaty and Trade Regulations, even if they were duly signed by the British and Tibetan delegates and approved by the Dalai Lama, would have no value as international documents because of Tibet's incapacity arising from its dependent status.³⁹ Professor Alexandrowicz-Alexander cited a passage from Sir Charles Bell's book *Tibet: Past and Present*, stating that

the Simla Agreement which was initialed by the three contracting parties . . . remained a bilateral arrangement between Great Britain and Tibet only.

In this connection Sir Charles' account should be compared with that of Sir Eric Teichman, another authority on Tibetan affairs, who says that "the [Simla] Conference finally broke up in the summer of 1914 without an agreement having been reached."⁴⁰

Another instrument cited by the professor—the so-called Mongolian-Tibetan Treaty of 1913—is even more questionable. No documentary evidence whatsoever can be found to show the existence of such a treaty which was only reported in the press traceable to British sources. Even the Dalai Lama and the Tibetan Government themselves denied that the alleged negotiator Dorjjeff's credentials justified anything in the nature of a treaty.⁴¹

During the meeting of the General Committee of the United Nations already referred to, the delegate of the U.S.S.R. seconded the British proposal of deferment and stated that Chinese sovereignty over Tibet had been recognized for a long time by the United Kingdom, the United States, and the U.S.S.R. He also pointed out that the El Salvador delegate could only cite newspaper articles and encyclopedias, but no international instrument, in support of his argument.⁴² No one at the meeting challenged the Soviet delegate's statement, as indeed no one could, for the simple reason that there is no international instrument to prove the acquisition of statehood by Tibet or of anything resembling the exercise of *summa potestas* by Tibet as an independent state.

³⁸ Lo Chia-lun, "Raising the Curtain of the Tibetan Issue in Sino-Indian Relations," *loc. cit.*, pp. 229-231.

³⁹ Sir Arnold D. McNair, *Law of Treaties* 135.

⁴⁰ Sir Eric Teichman, *Travels of a Consular Officer in Eastern Tibet* 46.

⁴¹ Bell, *Portrait of the Dalai Lama* 345; *Tibet: Past and Present* 151-152.

⁴² *Supra*, note 35.

The last but certainly not the least important point in our study is how Tibet itself regards its legal position. International law is not especially concerned with names or classification of states or with their internal organization. What it deals with is whether a state is able or willing to assume and fulfill international obligations, which is an essential criterion of statehood.⁴³ Tibet has never declared its wish to be a sovereign state. Nor did the Dalai Lamas and their governments ever express a desire to be independent from China in all their correspondence with the Chinese Government or in their discussions with its numerous missions. Sir Charles Bell, who should know the 13th Dalai Lama better than any other Western observer because of his long and intimate association with him, said explicitly that what the Lama wanted was to have "Tibet . . . manage her own internal affairs."⁴⁴ As Professor Alexandrowicz-Alexander himself remarked, "The Dalai Lamas and their government . . . were not eager to be too deeply involved in the wider game of Asian or world politics. . . . Tibet . . . did not oppose the merger of her foreign policy, in relation to the world at large, with China's policy." Indeed, Tibet's reluctance, if not incapacity, to assume international obligations can be seen from the opinion alleged to have been expressed in regard to the Washington Conference of 1921: "They were unwilling to enter into negotiations unless Sir Charles Bell were present with them."⁴⁵

It was only when the Chinese National Government was preoccupied with the struggle against the Chinese Communists that Tibet tried, with foreign persuasion, to be involved in the wider game of Asian or world politics. According to the account of an eyewitness, after the return of the Tibetan Delegation from the Asiatic Conference in New Delhi in 1947, the Lhasa government received a number of letters from abroad urging it to secure independence and advising it as to the procedure in applying for membership in the United Nations.⁴⁶ But there is no fact to substantiate the statement made by Professor Alexandrowicz-Alexander that "as a fully sovereign nation, Tibet made a tentative approach to the United Nations for admission to membership in the new world organization."

In the spring of 1948 a Tibetan trade mission headed by Shakabpa (not a diplomatic mission as the professor asserted) went from New Delhi to Nanking where they managed, in some mysterious way, to be accorded

⁴³ 1 Hackworth, *Digest of International Law* 58; Briggs, *op. cit.* 115; Montevideo Convention on Rights and Duties of States, Art. I (d); 6 Hudson, *International Legislation* 620; and also the statement of Abba Eban, delegate of Israel, made at the Security Council of the United Nations, U.N. Security Council, *Official Records*, 3rd year, No. 98, pp. 29-30, and that of Professor Philip C. Jessup, representative of the United States, on the conditions of statehood, *ibid.*, 3rd year, No. 128, pp. 9-13.

⁴⁴ Bell, *Portrait of the Dalai Lama* 205; Tibet: Past and Present 152.

⁴⁵ *Ibid.* 202.

⁴⁶ Li Yu-i's article in *Tai chieh fang ti Hsi-tsang* (Tibet Pending Liberation), Shanghai, 1950, p. 36. As the Tibetan Bureau for Foreign Affairs had only one member who could do the translation of these letters from English, Li was often asked privately to lend a hand.

special facilities to visit Great Britain and the United States without passports from the Chinese Government. The Ministry of Foreign Affairs in Nanking at once made representations on this matter to the governments concerned, and the Chinese Ambassador at New Delhi was assured by the Indian Government that in dealing with the Tibetan mission it had no intention of being in any way detrimental to the sovereignty and territorial integrity of China.⁴⁷

However strong outside pressure to secure independence for Tibet may be, the fact remains that the Tibetans are neither willing nor prepared to assume and fulfill international obligations as a new state. Nor do the special facilities accorded to a Tibetan trade mission, or other acts falling short of recognition,⁴⁸ create a new subject of international law or acknowledge the full status of a hitherto indeterminate community. A thorough study of the records of Tibet's dealings with the Chinese and Indian governments and the accounts of unbiased observers who have an intimate knowledge of the Tibetan people and government, reveal a keen desire on the part of the Tibetans to preserve their traditional life and their autonomous position, but a lack of any political consciousness aiming at the formation of an independent and sovereign state. It is for this reason as well as for the absence of a definite legal position that the utmost that scholars can do is to classify Tibet as among the entities of doubtful or unusual legal status.⁴⁹

But today the legal position of Tibet has been clearly defined in the Peking Agreement on Measures for the Peaceful Liberation of Tibet signed on May 23, 1951, the first article of which declares that "the Tibetan people shall unite, drive out imperial aggressive forces from Tibet, and return to the big family of the Motherland—the People's Republic of China." The Agreement promises the maintenance of the status quo in the Tibetan regional government structure as well as in the inherent position and authority of the Dalai Lama, but calls on Lhasa actively to assist the People's Liberation Army to enter Tibet and consolidate the national defenses (Articles II and IV), while permitting "autonomy under the unified leadership of the Central Government of the People's Republic of China" (Article III). The Tibetan troops shall be gradually reorganized into the People's Liberation Army and shall become a part of the defense forces of the People's Republic of China (Article VIII). The Agreement further stipulates that all foreign affairs shall be handled only by Peking (Article XIV).⁵⁰

⁴⁷ Lo Chia-lun, "Raising the Curtain on the Tibetan Issue in Sino-Indian Relations," *loc. cit.*, p. 234.

⁴⁸ 1 Moore, *Digest of International Law* 206 *et seq.*

⁴⁹ So classified by William W. Bishop, Jr., *International Law Cases and Materials* 193 (1953), who gave as his reasons the fact of Chinese suzerainty and control and Tibet's limited foreign relations. Professor H. Lauterpacht in L. F. Oppenheim, *International Law* (7th ed.), p. 233, classified Tibet as a half-sovereign state nominally under the protection or suzerainty of China.

⁵⁰ For the full text, see *Kuan yu ho ping chieh fang Hsi-tsang pan fa ti hsieh i* (Jen Min Press, Peking, 1951).

The legal position thus defined has further been affirmed by the Sino-Indian Treaty on Tibet signed on April 29, 1954, which laid down five broad principles in addition to the liquidation of the Indian claims. According to this treaty, the text of which was released in New Delhi by the Ministry of External Affairs, India accepts the principle that Tibet constitutes an integral part of China. She agreed to withdraw completely within six months the contingent that had been stationed for decades at Yatung and Gyantse, and also to hand over all her property in Tibet to the Chinese authorities, leaving questions of detail regarding cost and the manner of payment to be worked out later.⁵¹

In order to ensure the implementation of the provisions regarding autonomy in the aforesaid Peking Agreement as well as in the constitution proclaimed by the Peking regime in September, 1954,⁵² a committee was formed in March, 1955, consisting of fifty-one members, with the Dalai Lama as Chairman, and the Panch'en Lama and Peking's commanding officer in Lhasa, Chang Kuo-hua, as Deputy Chairmen.⁵³ It still remains to be seen how the autonomous status of Tibet will work out in practice.

The legal position of Tibet, which this writer has attempted to describe, may not be accepted by those governments which have not recognized the "Chinese People's Republic." But it should be stated that this question of Tibet's legal position has never been nor will it ever be a partisan issue in Chinese domestic politics. As a Chinese delegate of the National Government once explained to the General Committee of the United Nations:

Tibet has been and still is a part of China; all Chinese whatever their party or religion regard it as such.⁵⁴

⁵¹ New York Times, April 30, 1954; April 2, 1955. Also reported in one of the Chinese newspapers in New York, China Daily News (April 4 and 14, 1955), was that India handed over to Communist China on April 1, 1955, Indian postal, telegraph and telephone facilities in Tibet without charge, but received 316,828 rupees as payment for the twelve resthouses and their equipment.

⁵² Its Arts. 3, 53, 54, and 67-72 made general provisions regarding regional autonomy, while the Constitution of the Chinese National Government proclaimed on New Year's Day of 1947 specifically provides (Art. 120) that the self-government system of Tibet shall be guaranteed.

⁵³ China Daily News in New York (March 23, 1955), p. 1.

⁵⁴ *Supra*, note 35.