THE SIMLA CONVENTION 1914: A CHINESE PUZZLE

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I

Among the important events of 1914 is the Simla Convention dated the 3rd July 1914. Three parties participated in a conference in Simla which ended in a tripartite agreement in draft form in March-April 1914. The three parties were India, China and Tibet.

After the draft agreement was ready, disputes between China and Tibet cropped up on two points : (1) the borders between China and Tibet and (2) the degree and nature of Chinese suzerainty over the Dalai Lama's government. These disputes were not solved in protracted consultations through the summer months of 1914. The British and the Tibetan delegates even then wanted to sign and ratify the draft agreed previously. The Chinese delegate, Ivan Chen, refused to sign and wanted further authorization from Peking for signature. Ivan Chen walked out of the conference on 3rd July 1914 and proceeded to Calcutta en route to China. The British and Tibetan delegates signed the agreement and by further affirmative documents ratified the Convention as binding between the British Government in India and the Dalai Lama's Government in Tibet. Though the original draft for the agreement describing the three parties and detailing the rights and privileges of the three parties was retained, a declaration was added that China would not be entitled to any rights and privileges as a suzerain power in Tibet if she failed to sign or ratify the tripartite agreement.

The war of 1914 followed the Simla Convention in a matter of weeks and since Great Britain and China were on the same side as allies, neither Great Britain nor China made any positive declarations about China's rights and privileges outside the Simla Convention. China, however, informally questioned the validity of the Simla Convention, but never pressed the point for clarification. The same position was continued later by KMT China. During the Second World War, China would more often refer to the provisions of the Simla Convention and put pressure on the Allies, particularly, Britain and America, for recognition of China's suzerainty over Tibet. The question of borders between India and Tibet was not pressed so much. The British Prime Minister, Winston Churchill, was even persuaded to make a statement at the Pacific Council in Washington (May 1943) that "no one contests the Chinese suzerainty in Tibet". The British Foreign Office did not find this statement of the British P.M. to be wrong. But their subordinates in the Government of India, namely, the British officials in the Indian Civil Service, pointed out in secret communications to Anthony Eden, the British Foreign Minister, that China had no rights in Tibet unless China signed or otherwise accepted the provisions about Sino-Tibetan relations in the Simla Convention. In short, according to the British Officers in India, China could not have

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unqualified control over Tibet without any proper treaty or agreement between Tibet and China. This point of view could not be altogether rejected by the British Foreign Office and shortly afterwards (July 1943) Anthony Eden made a statement in answer to Chinese request for clarification, that the Chinese suzerainty in Tibet was conditional and in no case unlimited. At the end of the war, KMT China again raised this question and was given hearing in the Press outside China simply because China had been admitted into the club of the Four Great Powers which destroyed the three Axis Powers (Germany, Italy and Japan). In 1947 March, an Asian Relations Conference was held in New Delhi. There were delegations from different Asian countries which included the Moslem republics of USSR and Tibet. In the conference hall was a big map of Asia which depicted Tibet as quite separate from China. The delegates from China protested against the presence of Tibetan delegates as a distinct group and the map of Asia as on the wall of the conference room. The map had to be removed though the Tibetan delegates continued. Ever since that event, the Chinese point of view about Tibet and about the Simla Convention has been circulating wider and wider and; when the People's Republic of China took over from the corrupt KMT regime, the former also took over all the antique claims of China about neighbouring countries. An important claim was based on the Chinese objection to the Simla Convention.

The Government of India did not care to assess the implications of Chinese claims, and, on the other hand, were too friendly towards China as a country which was the victim of Western imperialism as much as India. Thus in 1954 when India made a fresh treaty about trade and pilgrimage in Tibet, the Government of India, deliberately or carelessly, ignored the Simla Convention as "a relic of British imperialism". The Simla Convention and the documents attached to this agreement not only provided for trade and pilgrimage but also laid down the frontiers between India and Tibet in the east. This frontier is the so-called McMahon Line named after Sir Arthur Henry McMahon who was the chief delegate of the British government and was also the Chairman of the Tripartite Conference. Years later, when China disputed India's northern borders both in the east and in the west and when the Government of India referred to the eastern border as finally settled in the Simla Conference, China simply refused to acknowledge the validity or legality of the Simla Convention. China indirectly demanded to know why India had not referred to the Simla Convention or the McMahon Line in the Sino-Indian Agreement of 1954.

II

The Simla Convention has been criticised on several grounds : (1) a tripartite agreement signed by two parties is invalid ab initio; (2) the Simla Convention was not signed by the Tibetan delegate; (3) the Simla Convention was merely initialled by the British and Tibetan delegates; and (4) Tibet had no right to sign the agreement when China had walked out.

We now reply to these arguments one by one.

(1) A tripartite agreement signed by two parties is not necessarily invalid ab initio. If there is nothing repugnant or contradictory in the text of a tripartite agreement, such agreement is fully enforceable between two signatory parties so far as the liabilities and rights of the two parties are

concerned. In the text of the Simla Convention the rights and liabilities of the two parties are very clearly stated : and the fact of third party having left the conference table could not and did not affect the position of the other two parties.

(2) The Simla Convention was signed by the Tibetan delegate even though the Chinese delegate advised the Tibetan delegate not to proceed further. The contention of the Tibetan delegate was that Tibet was represented at the Simla Conference on Tibet's own rights as a treaty-making state. Tibet did not come to the conference as a subordinate and subsidiary authority under the new Republic of China. Therefore Tibet had the right to sign or refuse to sign an agreement on Tibet's own jurisdiction. The full signature of Lonchen Shatra, the Tibetan delegate, is on the Simla Agreement for anybody's inspection even in 1974.

(3) It is true that the British plenipotentiary, Sir Arthur Henry McMahon, put his initials—A.H.M.—and desired that the Tibetan plenipotentiary should also put his initials in Tibetan. But since initalling is not only difficult but also impolite in Tibetan usage, the Tibetan plenipotentiary Lonchen Shatra put his full signature describing his lineage even. After the signature, the British delegate put a note : initial and added at the bottom "owing to it not being possible to write initials in Tibetan, the mark of the Lonchen at this place is his signature". This was to ensure that the two signatories should follow one uniform practice. Why the British wanted initials in place of signature is a quite different matter which is discussed later. Here it is only noted that uniformity in the procedure of signature is very much obligatory in treaties and agreements between two or more countries.

Initials can very much be good substitute for signature if followed by the seal of the country concerned. And, in fact, in a rule regarding interpretation of conventions much later, the League of Nations had given its considered judgement that initials could be as much valid as full signatures in documents and treaties. [Geneva Convention on the Law of Treaties, Art. 12(2)]

The British delegate was asking for the initials for the simple reason that the Chinese delegate was also asked to put his initials and to report to Peking for ratification. The Chinese delegate, Ivan Chen, was perhaps in the earlier stage inclined to adopt this procedure, but later with the opening of the month of July, he could smell sulphur in the atmosphere and he very much anticipated that the British would be involved in a war with Germany before the month was out and, therefore, the British who happened to be patrons of the Chinese Republic, would not much bother about this. However, it became an obsession later on with the Chinese authorities during the KMT period when they could not re-establish their suzerainty over Tibet. After World War II, pro-Chinese scholars in Britain took over this obsession with initials. A brilliant young scholar, Alstair Lamb, straightway rejected the authority of initials and conveniently ignoring the Geneva Convention on the Law of Treaties wrote a number of research papers on the Simla Convention and later on produced the famous book called *The McMahon Line* (1966). In this book as well as in his earlier papers, he consistently spelt "initialed" for "initialled". His first publications were from England and the spelling with single 'I' was undoubtedly most un-English. Lamb insisted on spelling like this to condemn the whole affair of initialling. When his famous *MaMahon Line* in two volumes came out from North America there was justification

for this American spelling. Meanwhile, much mischief has been caused to the claims of both India and Tibet by this argument about initials. The argument, unfortunately, was followed by many scholars in Indian universities.

(4) Thus we come to the only positive argument against the Simla Convention that Tibet had no right to sign independent of China or in the absence of China. In fact, this is the only argument which has been officially advanced by the People's Republic of China. It is a mark of Chinese diplomacy that in their non-official publications as also in the writings of sponsored scholars, the legality of the signature is not much discussed. There is a heavy and noisy propaganda in the non-official and demi-official writings that the treaty was not signed at all and that initials were not good enough to make these as strong as signatures. Some scholars, later on, had even made researches to prove that the Simla Convention being not properly signed and ratified between India and Tibet, was later on put into cold storage in the British Foreign Office and that a considerable section of opinion in the British Foreign Office considered the Simla Convention as dead and defunct. Interesting sidelights on this point can be found in Neville Maxwell's *India's China War* (1970).

In Chinese official statements, they admit that the Simla Convention was signed by the Tibetan delegate. But they reject the right of the Tibetan delegate to sign or ratify such an agreement without authority from Peking. The most important document is found in the Indian White Paper containing the *Report of the Officials of the Governments of India and the People's Republic of China on the Boundary Question* (New Delhi, 1961) and in the Chinese Red Paper containing *Report of the Officials of the Government of the People's Republic of China and the Government of India on the Boundary Question,* (Peking n.d.—1962).

"Premier Chou En-lai and Chinese officials do not deny the fact that the then Tibet local representative signed the Simla Convention, but that they have always clearly pointed out at the same time that this is illegal and that Tibet has no right to conclude treaties separately." [*Indian White Pape* page CR 26; *Chinese Red Paper,* page 30.]

III

In the 1930s when the Government of India was revising and bringing up to date the official publication known as *Aitchison's Treaties and Engagements,* during the first stage of compilation the Simla Convention was dropped. This was because the British Government in India, under informal instructions of the Home Government, i.e., the British Foreign Office, was out to pamper China and fondly expected China to come to the conference table and sign the Simla Convention. The Republic of China was facing systematic invasions from Japan and it was in the interests of British Power in Asia to prop up the weak and corrupt Republic. The British were even willing to let China come back to Tibet as the suzerain Power and this could be possible only if China signed the Simla Convention.

While waiting for China's ratification or signature was no doubt good diplomacy, the fact of the Simla Convention between India and Tibet could not be ignored without serious consequences. The two signatory parties, India and Tibet, were carrying on trade and pilgrimage under the terms of the Simla Convention; and if the agreement was defunct, all transactions between India and Tibet would be illegal. Besides, one solid gain out of the

Simla conference, that is, the affirmation of the customary boundary between India dnd Tibet in the east, would be lost. Therefore, British officials in India, particularly, Olaf Caroe and Hugh Richardson, advised strongly for the inclusion of the Simla Convention in the forthcoming edition of *Aitchison's Treaties*. The relevant volume had, however, been printed off. The print was called back and a fresh print made in which the Simla Convention and the connected documents were included. There was nothing secret in this matter. Besides British officials, Indian and Tibetan officials on either side knew about it.

In the 1960's the pro-Chinese scholars of Britain and India made much out of the fact of the cancelled print of *Aitchison's Treaties :* relevant volume. In 1969-70, Neville Maxwell raised a hue and cry over this affair which, in the words of Maxwell and his Indian friends, came to be described variously as "mysterious", "conspiratorial", "afterthought", "fraudulent", "fake", and even "spurious". Now the whole matter boils down to a tempest in a teapot when we remember that the People's Republic of China and that Prime Minister Chou En-lai, have officially, on several occasions, admitted not only the existence of the Simla Convention as a signed document but also that Tibet had signed the agreement. It is therefore, not necessary to argue further whether the Simla Convention was a 'fraud", "fake" or "spurious".

When the new generation of British scholars, like Alastair Lamb and Neville Maxwell, speak about the imperialistic designs of British officials in Asia and name Olaf Caroe and Hugh Richardson as imperialists there is a touch of the British sense of justice in the researches of the new generation. The Indian scholars are easily misled to accept the researches and conclusions of Lamb or Maxwell as innocent protests. The Indian scholars are yet to realize that Lamb and Maxwell are also Britons and they may also have their interests in creating further discord and disagreement between India and China.

The truth of the matter lies in the uncomfortable fact of Tibet's claims to independence. If Tibet could sign an agreement in July 1914, Tibet was no doubt an independent country on that day. The scholars as well as diplomats of the People's Republic of China very much want the agreement to be accepted as a document of history but a document with "illegal signature". It serves the cause of China as the suzerain Power if China's contention is admitted by India that Tibet signed the document without any authority or jurisdiction. Thus even if Sir Olaf Caroe from his retirement or the late Sir Arthur Henry McMahon from his grave would come to New Delhi or Peking and say that the Simla Convention was not a fact, the People's Republic of China will call it a fact of history. In short, if the Simla Convention is legal, it serves the cause of Tibet; if the Simla Convention is illegal, it serves the cause of China.

From this one can easily notice the great diplomatic blunder on the part of the Government of India, when in 1954 India surrendered all special rights and privileges in the Tibet Region of China without referring to the document under which the Republic of India was enjoying these special rights and privileges as the successor to the British empire in India. Indian scholars toeing the line of Lamb and Maxwell condone the crime by denying the historic fact of the Simla Convention. And our eastern Himalayan frontiers called the McMahon Line are disputed by the new generation of British scholars professing to atone for the sins of their forbears; a profession which no doubt deeply influences the fellow travellers all over the former British Empire in the East.

ADDENDA

This article (supra pp.5-9); written in 1974, was within prescribed space limits. Some facts about the Simla Convention 1914 as a lawful instrument of international relations may be added now for ready reference of the general reader.

The Convention along with the Trade Regulations, both signed on 3 July 1914 at Simla, entitled British Government of India to extra-territorial rights in Tibet. These rights may be summed as three: (i) armed escorts (of British or British Indian troops) for the British Trade Agents in Tibet; (ii) the telegraph lines from Indian frontier to the Trade Agencies/Marts as also the carriage and transport of posts to and from the Indian frontier owned and operated by the Government of India; and (iii) all cases regarding property or person between British subjects within jurisdiction of British Trade Agents as also some cases involving British subjects as defendants.

These British rights in Tibet continued till 1947 when such rights passed to the succeeding state of independent India. Dominion of India and later Republic of India exercised these rights till 1954.

In the Notes exchanged on 29 April 1954 at Peking immediately after the India-China Agreement was signed it was "agreed between the two governments as follows."

"(1) The Government of India will be pleased to withdraw completely within six (6) months from the date of exchange of the present notes the military escorts now stationed at Yatung and Gyantse in Tibet Region of China. The Government of China will render facilities and assistance in such withdrawal."

"(2) The Government of India will be pleased to hand over to the Government of China at a reasonable price the postal, telegraph and public telephone services together with their equipment operated by the Government of India in Tibet Region of China. The concrete measures in this regard will be decided upon through further negotiations between the Indian Embassy in China and the Foreign Ministry of China, which shall start immediately after the exchange of the present notes."

"(3) The Government of India will be pleased to hand over to the Government of China at a reasonable price the twelve (12) rest houses of the Government of India in Tibet Region of China. The concrete measures in this regard will be decided upon through further negotiations between the Indian Embassy in China and the Foreign Ministry of China, which shall start immediately after the exchange of the present notes. The Government of China agrees that they shall continue as rest houses."

"(6) The Trade Agents of both parties may, in accordance with the laws and regulations of the local governments, have access to their nationals involved in civil or criminal cases."

"(15) Disputes between traders of both countries over debts and claims shall be handled in accordance with local laws and regulations."

Paras (1), (2), (3), (6) and (15) of the Notes Exchanged on 29 April 1954 testify that India was in full enjoyment of extra-territorial rights in Tibet on the date. These rights were detailed and guaranteed in the Simla Convention 1914 (and the Trade Regulations dated same, i.e. Simla 3 July 1914).

In the following three decades, China on several occasions questioned the Convention's validity just to revive China's claims to suzerainty over Tibet. Britain was willing to admit Chinese suzerainty over Tibet if China would accept the Simla Convention provision relating to Sino-Tibetan borders as well as Tibetan Government's autonomy within Tibet. China would not agree and the Convention continued as valid between Britain and Tibet.

Though Britain was all out to pamper China as one of the Four Allies in the war against the Axis Powers, Tibet was in no mood to compromise its independence to suit China's war efforts. The advisers around the minor Dalai Lama (born 1935 consecrated 1940) refused to declare Tibet belligerent on the side of Britain and China; Tibet pursued strict neutrality not unlike Ireland. Even overland supply lines, from Anglo-American bases in India to Chinese bases in the mainland, were not permitted because Tibet was not a Chinese territory.

On 11 January 1943 at Chungking, Britain signed away all the extra-territorial rights in "all the territories of the Republic of China". The Chungking Treaty did not abrogate British extra-territorial rights in Tibet because Tibet was not a Chinese territoty. Far from being an oversight, the exclusion of British right in Tibet from the purview of Chungking Treaty was deliberate and calculated. To placate China, Britian could have mentioned Tibet as a region of China and yet excluded British rights in Tibet from the operative clauses of the treaty. This was not done for the simple reason that Tibet's independence was defacto cum dejure.

The Simla Convention, guaranteeing India's extra-territorial rights in Tibet and confirming the frontier between India and Tibet in the east, was thus operative till the end of April 1954. The frontier so confirmed was the traditional frontier along the crest of the Himalayas from the northeast corner of Bhutan to the Isu Razi pass in the north of Burma. It came to be called Mc Mahon Line, because Arthur Henry Mc Mahon, the British Plenipotentiary and Chairman of the Simla Conference, had marked on the map the finally accepted line with his pencil.

Finalization of this Line was made on 24/25 March 1914 by the two concerned parties, British Plenipotentiary (A.H.Mc Mahon) and Tibetan Plenipotentiary (Lonchen Shatra). On being informed later Chinese Plenipotentiary (Ivan Chen) did not express any disagreement. All Chinese disagreements and their eventual withdrawal from the Simla Conference concerned the Sino-Tibetan borders and Tibetan autonomy.

The map depicting Mc Mahon Line with the signatures of all Plenipotentiaries is found in *An Atlas of the Northern Frontier of India* (Government of India 1960). The Chinese concepts of 'suzerainty' or 'tribute' will be found in FAIRBANK(J.K.) and TENG (S.Y.): On the Ching Tributary System in *Harvard Oriental Journal* 1941 and SINHA (N.C.): Asian Law and Usage in European Expression in *Man in India* 1966.