Chapter-3

INDIA-BHUTAN TREATY OF 1949

I

Genesis

On 8 August 1949 the Government of India and the Government of Bhutan signed a Treaty of Perpetual Peace and Friendship in Darjeeling (see Appendix 2). This 10-article treaty was in fact an updated document which the Government of British India and Bhutan had signed in 1910 and 1865. Under Article 2 of the Darjeeling treaty, the Government of India undertook to exercise no interference in the internal administration of Bhutan. On its part the Government of Bhutan agreed to be guided by the advice of the Government of India in regard to its external relations. This treaty did not provide that India's advice in Bhutan's external relations are binding on her. The Government of India proclaimed the policy of non-interference in the internal affairs of Bhutan. Although this clause of 1910 Treaty or the Punakha Treaty has been retained in the 1949 treaty, nevertheless the latter's widened scope and altered background made Indo-Bhutanese relations more enduring. The Preamble of the new treaty emphasises "that the government of India and the Druk Gyalpo's government are equally animated by the desire to regulate in a friendly manner a solid and durable basis the state of affairs caused by the termination of the British government's authority in India, and to promote and foster the relation of friendship and neighbourliness so necessary for the well-being of the people."1 The treaty was signed by Harishwar Dayal on behalf of the Government of India and Deb Zimpon Sonam Tobgye Dorji, Chho-Zim Thondup, Rin-Zim Tandim and Ha Drung Jigme Palden Dorji on behalf of the

Government of Bhutan. Harishwar Dayal was the Political Officer of Sikkim. The Treaty of Friendship of 1949 till date has formalized and institutionalized the relationship between a big country, India and a small country, Bhutan.

In 1946, on the occasion of the visit of the British Cabinet Mission in India, the Government of Bhutan presented a memorandum. It affirmed its separate identity from other princely states in India, but confirmed its special ties with India. After the British withdrew from India on 15 August 1949, “the status of Bhutan was undecided and therefore, a matter of conjecture. Druk Yul was not a part of India : it was autonomous. Its position was between Nepal and Sikkim. It was less independent than Nepal but enjoyed more freedom than Sikkim. Bhutan’s relations with independent India began in a climate of suspicion and misunderstanding”. Moreover Ram Rahul has stated that Bhutanese authorities apprehensive of new India’s imperialism towards them, thought of forging a union of Sikkim, Bhutan and Tibet as a counter weight to India. Towards the end of 1948 Bhutan was assured by the Government of India that it would respect Bhutan’s autonomy provided the latter maintained the same relationship with independent India as it did with the British. “Under these circumstances,” states Parmanand, “Druk Gyalpo Jigme Wangchuck, the second Wangchuck King of Bhutan (Ugyen Wangchuck being the first) decided to renew Bhutan’s connection with the new and independent India and signed the Treaty of 1949”.4

II

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The first Article of 1949 treaty lays down : “There shall be perpetual peace and friendship between the government of India and the government of Bhutan”. While the British Government paid Bhutan the annual subsidy of Rs. 50,000 and later one lakh annually by the 1865 and 1910 treaties respectively, the independent India had

4. Parmanand, p.185.
enhanced the subsidy to Rs. 5 lakhs every year under the Article 3 of the 1949 treaty. It was agreed that the annual payment would be made on the tenth day of January every year and it would continue as long as the treaty remains in force and its terms duly observed. Further, to mark the friendship existing and continuing between the two countries, the Government of India (under Article 4) agreed to return a stretch of 32 square miles of territory to Bhutan within one year of the signing of the treaty. The said territory was in the area known as Dewangiri. Dewangiri was the gateway of Bhutan situated in Kamrup district of Assam within the Indian territory. The Government of India in this connection appointed a competent officer to mark out the area so returned. Regarding the secession of Dewangiri to Bhutan, debates took place in the Indian Parliament in 1950. The questions that were raised were as follows:

(a) What are the circumstances that led to the secession of the territory (b) What safeguards if any, have been given to the indigenous Indian traders there (c) Is our government represented in Bhutan (d) Is any entry permit necessary for Indians to go into Bhutan (e) Why was not the Parliament consulted and why was a part of the territory of the Indian Union seceded to Bhutan without taking the sanction of Parliament by law? The questions were put by the members of the Parliament namely, M. Hazarika, Tyagi, Buragohain, Borooah, A.B Gurung. The answers were given by the Prime Minister of India Jawaharlal Nehru and the Deputy Minister of External Affairs Dr. Keskar. Dr. Keskar said that under Article 4 of the 1949 treaty, and as a measure of goodwill, 32 sq. miles of territory in the Dewangiri was returned to Bhutan.

Since the Treaty provides for continuance of free trade and commerce between India and Bhutan and secures equal justice to the Indian subjects residing in Bhutan with the subjects of the Government of Bhutan, special safeguards for the Indian traders in the seceded territory was not considered necessary. As a measure of goodwill to Bhutan the original subsidy paid by India to Bhutan had increased from 1 lakh to 5 lakhs. Dr Keskar further said “Secession has not been made on any racial basis. This area together with a still larger territory was seceded by the government of Bhutan to India. Some negotiations took place recently between the two governments and we thought it advisable as a measure of goodwill and friendship to give them back this small piece of territory. Though an entry permit is necessary for Indians to go to Bhutan, but Dr.

Keskar added that people who traditionally traded with Bhutan especially from Assam side were not required to produce any permit. Answering to the last question, Prime Minister Nehru said that the secession of the small territory of Dewangiri was done before the Indian Constitution came into existence. Besides this, "there is a great deal of talks about secession of territory. This is a very small territory of a few square miles involving certain area, but it has a certain religious and sentimental value to the people of Bhutan but which has no other value to anybody else". The Government of Bhutan renamed this transferred territory as Devathang.

Article 5 refers to free trade and commerce between the two countries. India agreed to grant the landlocked Himalayan kingdom every facility for the carriage by land, water and forest roads of the produce of the kingdom throughout the territory of India.

Under Article 6 of the treaty the Government of Bhutan was allowed to freely import with the assistance and approval of the Government of India, from and through India, into Bhutan whatever arms, ammunitions, machinary, war like material or stores may be required for the strength and welfare of Bhutan. The Government of Bhutan, on the other hand, agrees that there shall be no export of such arms, ammunitions etc., across the frontier of Bhutan either by the Royal Government or by private individuals.

Article 7 deals with equal justice to the people of each other’s country with the subjects of that country.

Article 8 has reciprocal stipulations for extradition of fugitives from the law.

Article 9 has the provision of negotiations between the two signatories, in case of disputes and differences in application of the treaty provisions. In case the negotiations fail, within the period of three months, the issue shall be referred for Arbitration by three arbitrators. The three arbitrators will be comprised of one member nominated by the Royal Government of Bhutan, a second member nominated by the Government of India and the third arbitrator called as Chairman will be a judge of the Supreme Court or High Court of India to be chosen by the Bhutan government. The judgement of this tribunal shall be final and executed without delay by either party.

Article 10 provides that the treaty of 1949 is to “continue in force in perpetuity unless terminated or modified by mutual consent”.

Thus based on the foundation of the well being of the people the friendly relation between the two countries had become stronger after signing of the 1949 treaty. The nature of India-Bhutan relationship was correctly explained by Prime Minister Lal Bahadur Shastri in his talk with the King Jigme Dorji Wangchuck, the third King of Bhutan in Calcutta on 11 January 1965. Shastri assured:

Some may think that since India is a great and powerful country and Bhutan is a small one, the former might wish to exercise pressure on Bhutan. It is therefore essential that I make it clear to you that our wish is that you should remain an independent country taking the path of progress according to your will. At the same time we two (India and Bhutan) should live with mutual goodwill. We are members of the same Himalayan family and should live as friendly neighbours, helping each other. The freedom of both Bhutan and India should be safeguarded, so that no one from outside can do any harm to them.7

The Indo-Bhutan Treaty of 1949 contained no clause concerning the defence and integrity of Bhutan. With regard to defence however the position of Sikkim is quite different from that of Bhutan. Article 2 of the India-Sikkim Treaty of 1950 clearly states that Sikkim is a protectorate of India. “The Government of India will be responsible for the defence of and territorial integrity of Sikkim. It shall have the right to take such measures as it considers necessary for the defence of Sikkim or the security of India, whether preparatory or otherwise, and whether within or outside Sikkim. In part the Government of India shall have the right to station troops anywhere within Sikkim”. The present position between India and Bhutan is the result of mutual understanding rather than actual legal arrangements. “The King of Bhutan had always been admirably zealous of guarding the independence of the state and therefore, for understandable reasons, reluctant to accept any military or even economic assistance from India. But the Indian Prime Minister has repeatedly assured Bhutan that India fully respects her independence”.8

Controversy regarding Article 2

Article 2 of the 1949 treaty by which India undertook to guide Bhutan in regard to its external relations was viewed by many as a means to limit the political sovereignty of the kingdom. They characterised the treaty as an unequal treaty. Even in the 1960s the King Jigme Dorji Wangchuck felt that Bhutan could not be hundred percent independent because of the 1949 treaty.

It was a matter of concern for both India and Bhutan when the Tibetan herdsmen moved extensively deeper into Bhutanese territory in the summer of 1979 across the traditional grazing line in the south west segment of the border adjoining the Chumbi Valley. The Bhutanese Government had clearly adhered to its treaty obligations to keep India informed of what happened and also to seek Indian assistance. The violations by the Tibetan graziers were however confined to a relatively small strip of land around the Sankosh river valley, which according to Indian maps is indisputedly a part of Bhutan. Though Bhutan is an independent country, it had politically remained part of the Indian subcontinent. But the Chinese maps continued to show a considerable part of Bhutan’s eastern territory as a part of the Tibet region. According to the Government of India the Bhutanese however never showed a great anxiety to get this matter settled to their satisfaction. “This ambivalent attitude on the part of Bhutan has created problems for India in the sense that there is a variation between its concept of the undemarcated border line and the Bhutanese ideas of the traditional grazing line in several sensitive sectors of the common border region.”

There was an insinuation in India that Bhutan was moving closer to China at the expense of India’s own strategic interests.

The King Jigmie Singye Wangchuck, the fourth King of Bhutan on his way home from the Havana Non Aligned Summit in 1979 expressed with wrath that “it was utter nonsense to say that Bhutan was turning towards China”. He called for an “updating”

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to the 1949 Treaty with India under which Bhutan agrees to be guided by the advice of the Government of India in regard to its external relations. In an interview to The Times of India the young King said, “There are no problems between our countries and our friendship is deeper today than in 1949. But why leave anything for loose interpretation. It will be to the advantage of both India and Bhutan to update the treaty.”\(^{10}\) He further said that if Bhutan wanted to revise the 1949 treaty it was because of the changed situation. Under the treaty, it was not mandatory on the part of Bhutan to accept India’s guidance in its foreign policy, although Bhutan agreed to be guided by India. He said that till then Government of India had accepted this interpretation. The King stated that the Chinese and Tibetan yak graziers coming into Bhutanese territory to graze had posed a seasonal problem for several years. He was of opinion that “although this year (1979) the intrusions were more than in earlier years, but it was wrong to say there was a crisis situation.” Meanwhile the King reminded that the National Assembly of Bhutan had passed an unanimous resolution in 1978 against establishing trade and diplomatic relations with China. No one could change the decision, “not the King, not even the government,” he affirmed.

The call for revision of Article 2 of 1949 treaty was further evident during the regime of Janata Government (S) led by Charan Singh. During Foreign Secretary Jagat Mehta’s visit to Bhutan, not only did Bhutan want the revision of 1949 treaty, it also indicated some of its demands which included (1) right of independent access to and from Bhutan to third countries (2) the right to enter into bilateral agreement with other countries for running air services to obviate the need for innerline permit (3) the right to seek developmental assistance independently from other countries including the UN, (4) new trade and transit facilities on the basis of visas issued by Bhutan and finally (5) Bhutan’s bid to open an embassy in Bangladesh.\(^{11}\) Prime Minister Morarji Desai agreed that the kingdom is entitled to enter into direct trade relations with third countries.

Parmanand perceives that Article 2 of 1949 treaty is “now obsolescent except for the purpose of regular consultations in which the King declares himself as an

\(^{10}\) The Times of India, 11 September 1979.

\(^{11}\) The Hindu, 23 March 1980.
enthusiastic believer.” Thus at one point of time the condition was such that India insisted on the application of Article 2 and Bhutan too started thinking in terms of Article 9 which provides for negotiations followed by arbitration in case of disputes between the two countries. Parmanand commented, “Mercifully this prospect did not become pronounced in the near future for more and durable understanding has developed after the beginning of misunderstanding and communication gap.”

Moreover the views and patterns of voting in the General Assembly suggest that India and Bhutan share common feelings on different issues, differences being only of minor nature, infrequent and insubstantial. The King expressed that although the two countries were likely to vote alike owing to similarities of their policies, nevertheless he upheld that Article 2 of the treaty did not imply that Bhutan would compulsorily vote with India at the UN. But though India does not see Bhutanese sovereignty as being circumscribed, the Bhutanese themselves feel that the controversial clause places them at a disadvantageous position in international fora. This probably explains Thimpu’s stand that advice will voluntarily be sought and when given will not be mandatory. India accepts this interpretation.

However revealing a change of stand during his four day official visit to India in February 1980 after Indira Gandhi’s return to power (1980), King Jigmie Singye Wangchuck in an interview with The Hindu said, “If the treaty does not create any problem there is no need to discuss it with India.” He however asserted that Bhutan “must take the final decision on matters affecting the country’s interests.” New Delhi welcomed the King’s statement that there was no need to discuss the provisions of the 1949 treaty between the two countries. The two sides agreed that since the treaty served the mutual interest of both the countries, it was unworthy to go into it again. The changed standpoint seemed to be the repetition of the King’s views in 1972 when he said, “There is no need at all to review the Indo-Bhutan treaty that was signed more

than two decades ago. Neither did India approach us for such review nor did we approach her. India has been helping us a lot to accelerate the pace of economic development set forth by my late father. We are receiving very good technical assistance from India and all our trade is coming either from or through India.”

Thus King Jigmie Singye Wangchuck’s annoyance with the Lok Dal regime and consequent demand for abrogation of Article 2 of the 1949 treaty was forgotten. Choosing his words with meticulous care, the monarch said that the relations have not merely improved from good; they have become “excellent” in the last three or four years (that is in the 1980s). As Sunanda K. Datta Roy observed in his article, “India’s closest Friend, Ancient Oath on Ties with Bhutan”

Like so much else, the old alliance too has been subtly transformed. A shift is evident when the Druk Gyalpo asserts that India has in Bhutan her closest and most friendly neighbour. Others elaborate that Thimpu and New Delhi stand together in the South Asia Forum. Pakistan invites suspicion, Bangladesh bristles with complexes, Nepal is unpredictable, Sri Lanka has different perceptions of many global issues, and the Maldives are too far away for effective support. Bhutan alone can be relied on always to uphold the Indian point of view.

The young King dismissed the possibility of any diplomatic intercourse with China in near future except to maintain “just correct relations” with the country.

On the implications of the Article 2 of 1949 treaty, the Foreign Secretary of Bhutan, Ugyen Tshering spoke extensively in an interview with me on 9 June 1999. He said that the Indo-Bhutan friendship treaty is one of the major landmarks in India-Bhutan relations. He argued that Bhutan looks into the spirit of the agreement and the actual practice of it, but not the theoretical and legalistic aspect of it. “In broad foreign policy issues this Article has never hampered Bhutan in achieving what it has considered legitimate foreign policy objectives. We have never shown dissatisfaction. Though the press was vocal about the Article in 70s but since 80s and 90s it did not.”

The Foreign Secretary comments:

I think there is a very good understanding between India and Bhutan on the spirit and practicality of this Article. Let me put it this way. In many ways the 1949 treaty is one of the landmarks as I have said. In many ways so many things have overtaken. Today, when we have negotiations with the Government of India or when we go on delegations to India, nobody even mentions it. It’s back in the history and it provides a good framework of trust, but we are talking of about current issues, we are talking about projects, we are talking about programmes, we are talking about international events here and there. We are talking about bilateral cooperation. In fact we are talking about so many things. Article 2 is historically important but it does not in any way interfere with the progress of changes and that has to be understood. Even in media, even in academic, as I was saying, this is something of historical importance.

IV

China factor

Although the Indo-Bhutanese treaty contains no reference to the defence of Bhutan, India assumed the responsibility for the defence of Bhutan because of China’s ruthless actions in Tibet and its aggressive posture towards Bhutan. India forestalled China in Bhutan by signing the Treaty of Friendship with Bhutan. China condemned the Indo-Bhutan Treaty of 1949 as a “special relationship”, between the two countries. The Chinese point of view is that “basically Bhutan is a free country”, but the Indo-Bhutan treaty of 1949 providing for “special relationship” stood in the way of the Himalayan kingdom exercising its “free and self determined policy.”

During the heydays of Indo-China relations and especially after the Sino-Indian Treaty of 1954, China did not question India’s special relations with Bhutan from 1949 to 1958. “It gave an unwritten recognition of India’s special relationship with Nepal, Bhutan and Sikkim.”19 By July 1958 Communist China laid claim to vast Indian territory. Chinese maps showed about 200 sq. miles of Bhutanese territory as part of Tibet. In accordance with the 1949 treaty, India started to consider the issue with China on behalf of Bhutan. Chinese Premier Zhou-en-lai refuted India’s offer of intervening into the issue on behalf of Bhutan. He stated that China had “always respected the proper relations” between Bhutan and India. Firm to maintain the treaty obligations with Bhutan, Nehru in his letter to Zhou en-lai dated 26 September 1959 stated that under the treaty obligations, “the Government of India are the only competent authority” to take up with other Government matters concerning Bhutan’s external relations. China since her dispute with India in 1958-59 refused to recognize India’s special relationship with Bhutan. Nehru yet held that India was bound to protect Bhutan against foreign aggression. At the onslaught of Chinese propaganda that Bhutan and Sikkim were part of China,20 Nehru declared in the Lok Sabha on 28 August 1959: "The Government is responsible for the protection of the borders of Sikkim and Bhutan and of the territorial integrity of these two states and any aggression against Bhutan and Sikkim will be considered as aggression against India".21

20. Bhutan and Sikkim became the ‘extension of Tibetan territory’ needed to be assimilated with Chinese territoriality like Tibet. This type of cartographic aggression was given attention to by India. A map of China was published in “China Pictorial” magazine (No. 95-July 1958 pages 20-21) in which the border of China have been indicated by a thick brown line. The border as indicated in the map includes as Chinese territory (1) four of the five divisions of India’s North East Frontier Agency; (2) Some areas in the North of the state of Uttar Pradesh; (3) large areas in Eastern Ladakh which form part of the state of Jammu and Kashmir. The entire Trashigang area of Eastern Bhutan and a considerable slice of territory in North-West Bhutan have also been included as Chinese territory. See Satya Paul, Sikkim, Bhutan and India p.18.
21. Lok Sabha Debates, Session 8 of 1959, Second Series, 33, (28 August 1959), Question No. 5, The question put forward by Dr. Ram Subhag Singh and Raghubir Sahai to the Prime Minister and External Affairs Minister, J. Nehru was that what action the Government of India propose to take to remove the anxiety created by Chinese reports that Bhutan and Sikkim were part of Chinese territory in the past. pp. 4800-4804.
In 1959 both India and Bhutan felt threatened by Chinese military actions against Tibet. Fearful of the changed situation and infiltration of Tibetan refugees into Bhutan, King Jigme Dorji Wangchuck during his visit to India in August '59 sought a written guarantee of Indian support in the event of Chinese attack on Bhutan. The Sino-Indian war of 1962 produced an unsettling effect on the special relationship between India and the Himalayan kingdoms. The Royal rulers becoming "Extremely circumspect about Chinese susceptibilities were disinclined to provoke or annoy China by affirming the special relations with India. They endeavoured to adopt an Ostrich Policy of equidistance between India and China. They made an unrealistic proposition that their countries and India belong not to the same region but to two different regions".  

According to Labh, the King of Bhutan regarded the 1949 treaty as anachronistic in the changed circumstances and sought to revise it. In 1978 at the 48th Session of the Bhutan National Assembly, the treaty of 1949 especially the Article 2 came in for sharp criticism. Bhutan demanded re-negotiations of the treaty and also updating of the same. Nevertheless China failed finally since Bhutan (unlike Nepal in the 1960s) continued to stand by its treaty of 1949 with India. In the opinion of Labh, China's failure to supplant India in Bhutan did not deter the former from further attempting to subvert, India's special relationship with Bhutan. They took advantage of the assassination of Jigme Dorji, the Prime Minister of Bhutan in 1964, to gain Bhutan as its friend denigrating India and blaming India for the incident. Eventually King Jigme Dorji Wangchuck's pro-Indian and anti-Communist stand was completely revealed. He not only stood by the 1949 treaty provisions, but closed Bhutan's border and trade with Tibet and concentrated on Bhutan's trade and modernization process with Indian cooperation.

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23. In 1960 Bhutan sealed its borders with Tibet, closing the traditional trade routes northward to Shigatse and Lhasa from Paro, Punakha and Tashigong as well as the brisk trade via Yatung in the Chumbi valley to the west.
General assessment

Regarding the Indo-Bhutan treaty of 1949 though there was a small skirmish in the late 70's when a call for 'updating' the treaty provision was heard, however immediately the Bhutan government retraced from the position. Today according to the Bhutanese Foreign Secretary the treaty has so much institutionalised the bond of mutual trust and friendship between the two countries that in the parleys between the two countries, at any level, it never occurs. In the opinion of Ram Rahul, the treaty might have affected Bhutan’s status ever since it was signed. Nevertheless at the same time the treaty has not stood in the way of the articulation of Bhutan’s assertions of sovereignty and independene in international and regional fora. After six decades of the treaty the kingdom has developed so many traits and acquired such attributes that it is well set on the global sojourns inspite of the treaty of 1949. Manorama Kohli comments that “the treaty neither binds Bhutan to a status of dependence nor does it restrain her from the enlargement of her external contacts with the third countries. Both Tibet and Sikkim lost their status because of some historical and legal ambiguities relating to their positions. This should be an adequate cause of satisfaction to the Bhutanese. As for India, probably the objective behind the signing of the treaty of 1949 was primarily to protect her strategic interests without hurting the Bhutanese urges. The full import of this was more realised by the Indian policy makers after the Chinese misdeeds in Tibet in 1959. Contrary to Charles Bell’s prediction that India Bhutan partnership would actively turn to be hostile, the treaty of 1949 has opened a new era of bilateral relations between the two countries despite several developments in the Himalayan kingdom and the subcontinent. It is indeed worth while to mention in this context the Trade Minister Lyonpo Khandu Wangchuck’s statement when I interviewed him on 8 June 1999. He said, “The 1949 treaty is basically a broad guideline, an umbrella of friendship and partnership. Bhutan never had to sit across and negotiate on interpretation of such Articles”.
