

DIE VERFASSUNG VON BHUTAN*

Von HELLMUTH HECKER

Die Gründung des Himalaya-Staates Bhutan geht auf das Jahr 1557 zurück, als ein tibetischer Lama dort eine staatliche Organisation errichtete. Seit dieser Zeit wurde Bhutan von Königen regiert. Im 17. Jahrhundert trennte der König die geistliche und weltliche Gewalt, indem er einen Premierminister (Deb-Raja) ernannte, während er selber geistliches Oberhaupt (Dharma-Raja) blieb. Seitdem herrschte für 300 Jahre in Bhutan eine Dyarchie. Der Dharma-Raja kam (ebenso wie der Dalai- und Pantschen-Lama in Tibet) durch die sog. Tulku-Erbfolge zur Macht. Der Deb-Raja wurde für drei Jahre von einem achtköpfigen Staatsrat gewählt. Nachdem lange Zeit ein Machtkampf der Gouverneure untereinander bestanden hatte und die Würde des Dharma-Raja 1905 endete, wurde am 17. 12. 1907 der erste erbliche König von Bhutan, Ugyen Wangtschuk, auf den Thron erhoben. Ihm folgte 1926 sein Sohn als 2. König, diesem 1952 dessen Sohn als 3. König, und nachdem dieser am 21. 7. 1972 in Nairobi (Kenia) einem Herzinfarkt erlegen war, kam dessen Sohn, Jigme Singhye, auf den Thron.

Die Beziehungen Bhutans zu europäischen Mächten begannen im 18. Jahrhundert mit Großbritannien. Nach einem Krieg zwischen Bhutan und der Ostindischen Kompanie von 1773/74 wegen eines Thronstreites im indischen Fürstenstaat Kutsch Behar wurde am 25. 4. 1774 ein Friedensvertrag geschlossen, der zwar engere Beziehungen zu Großbritannien herstellte, aber noch keinerlei Protektorat errichtete. 1864/65 brach ein 2. Krieg mit Großbritannien aus, diesmal um den Besitz der sog. Duars, d. h. der südlichen Täler Bhutans. Der Krieg endete mit dem Friedensvertrag vom 29. 11. 1865, in welchem insbesondere alle Duars an Großbritannien abgetreten wurden. Auch dieser Vertrag enthält noch kein Protektorat. Erst durch einen Änderungsvertrag vom 8. 1. 1910 zum Vertrag von 1865 wurde dessen Artikel 8 so gefaßt, daß Bhutan zu einem „Protected State“ wurde. Mit diesem Jahre endeten dann auch chinesische Oberhoheitsansprüche, die seit Mitte des 18. Jahrhunderts qua Tibet über Bhutan bestanden hatten.

Als Indien am 15. 8. 1947 die Unabhängigkeit erlangte, endete auch das britische Protektorat über Bhutan. Dieses schloß dann jedoch am 9. 8. 1949 einen Freundschaftsvertrag mit Indien, dessen Artikel 2, der aus dem Protektoratsvertrag von 1910 übernommen wurde, wie folgt lautet:

*) Dazu ausführlich Hecker, Sikkim und Bhutan, Die verfassungsgeschichtliche und politische Entwicklung der Himalaya-Protektorate, Hamburg 1970, darin insb. S. 22—36; mit Abdruck der Verträge von 1865 und 1949 sowie Literaturangaben.

Von neuerer Literatur sei erwähnt:

V. H. Coello Sikkim and Bhutan, Delhi 1967, 138 S.; 2. Aufl. 1971, 148 S.

T. T. Poulouse Bhutans external relations and India,
in: ICLQ 1971, S. 195—212.

R. Ram Modern Bhutan, Delhi 1971, 173 S.

o. V. Le Bhoutan
in: Corpus constitutionnel, Tome I, Fasc. 3, Leiden 1972,
S. 625—628

“The Government of India undertakes to exercise no interference in the international administration of Bhutan. On its part the Government of Bhutan agrees to be guided by the advice of the Government of India in regard to its external relations.”

Indien legte diese Bestimmung so aus, daß die Außenpolitik Bhutans durch Indien geführt würde. Bhutan vertrat den Standpunkt, daß es seine Außenpolitik selber bestimme, jedoch dabei Indiens Rat folgen würde. Eine dritte Version besagte, daß Bhutan nur verpflichtet sei, den Rat Indiens einzuholen, ohne indes absolut daran gebunden zu sein. Im Jahre 1962 stimmte Indien zu, daß Bhutan Mitglied des Comlombo-Plans wurde. Am 7. 3. 1969 wurde es Mitglied des Weltpostvereins und am 12. 2. 1971 stimmte der Weltsicherheitsrat einstimmig zu, daß Bhutan als 128. Mitglied in die UNO aufgenommen werden sollte.

Die geltende Verfassungslage Bhutans ergibt sich aus den im folgenden abgedruckten Unterlagen:

Der 1. Text ist eine Zusammenfassung der geltenden verfassungsrechtlichen Lage des Landes, der 2. Text enthält die Rules und Regulations der Nationalversammlung, während der 3. Text grundlegende Verfassungsbestimmungen aus dem Jahre 1969 wiedergibt.

I. TSONGDU — THE NATIONAL ASSEMBLY OF BHUTAN*)

The vital role played by the Tsongdu in the political set-up of Bhutan is little known outside due to lack of published material. Its role as an Advisory Body on national affairs and its functions as a legislative and parliamentary body have assumed an importance over the years which is vital for any study of Bhutan Affairs.

Origin

When representatives of the people, the monasteries and the Government gather together for discussion, the meeting is known as TSOGDU. In common language, any gathering of people for discussing their common interest is called JOMDU; but putting it more politely or for higher and bigger meeting, it is called TSOGDU. The present Ruler of Bhutan, His Majesty the Druk Gyalpo, on accession to the throne in 1952 decided to establish a National Assembly, representing the people, the monks and the officials, to advise the Government on all matters of national importance. With his wisdom and foresight, the King realised as far back as 1952, that for the rapid progress of the country all sections of the people must participate in discussing national issues and advise on the formulation of policies which affected the country and the people.

*) Gleichnamige zehnteilige Broschüre, verfaßt von B. S. Das, Special Officer der Regierung von Indien in Bhutan, gedruckt von Information Service of India, Political Office, in Gangtok (Sikkim) am 6. 2. 1971 (1. Aufl. 1969).

Consequently, the National Assembly or the Tsongdu, as it is called in Bhutan, was inaugurated at Punakha in the year 1953. It later shifted its sittings to Thimphu, the new capital. When the old Thimphu Dzong was demolished for reconstruction, the place of meeting was shifted to Paro. Tsongdu meets twice a year—once in Spring (April) and the second time in Autumn (October). Dates vary according to the Bhutanese calendar.

Over the years, Tsongdu has developed into a legislative and parliamentary body also playing a vital role in the political set up of the country.

Composition

The total membership has varied from time to time, the variation ranging between 140 to 200. The present strength is 150.

There are three categories of members, namely (a) peoples' representatives, (b) Monastic representatives and (c) official representatives. The significance of these three categories is both traditional and in keeping with the political requirements of the country. As there are no political parties, this division has some significance and will be discussed later.

(a) The peoples' representatives are elected by an indirect method. The villagers by a consensus select their representatives and nominate them to the Tsongdu. The number of representatives are based on the population and, therefore, the number of villages in each district. Although the size of each constituency has not been specified, the number is dependent on the size of the population. For example, Tashigang, a district in Eastern Bhutan, being, the most populous, sends the largest number of representatives.

The peoples' representatives are elected for a term of three years only. They roughly constitute half the total strength of the Tsongdu.

(b) Monastic representatives are nominated by the various monastic bodies located in the main Dzongs of the country like Thimphu, Paro, Wangdiphodrang, Tongsa, Lhuntshi and Tashigang. (Dzongs are the headquarters of the main districts). The term of these representatives is also three years. They roughly constitute one third of the total strength of the Tsongdu.

(c) Official representatives are nominated by His Majesty the King mainly on the functional basis. They consist of Ministers, Members of the Royal Advisory Council, senior civil servants like the Secretary General, Development Wing, Deputy Chief Secretary, the Thrimpons (civil administrators) of each Dzong area, Ramjams (Sub-divisional Officers) or Assistant Civil Administrators of minor Dzongs where there are no Thrimpons or Nyerchens (Revenue Officers). It may be mentioned that unlike India, there is no cadre of civil servants in Bhutan. They are appointed from amongst the public on merit or loyal service by a Royal Command and can reach the highest position in the country, that is a Minister. For example, the present Home and Finance Ministers were originally appointed from the public as public servants and later on elevated to their present rank due to their long and meritorious services to the country.

The term for the official representatives is three years but they can be retained even after the expiry of the term, if so desired by the government.

Speaker

The Speaker is the Presiding Officer of the Tsongdu and the most important person in the hierarchy of the members. He is elected from amongst the members for a term of three years. Candidates are proposed on the floor of the Assembly and elected by a simple majority vote. Generally, the Speaker is a very senior member. The present Speaker Yanglop ranks very high in his own right in the monastic order.

Powers and Functions

The Tsongdu, at the end of the Spring Session of 1970, emerged as the most powerful institution in the political system of Bhutan. Besides enacting laws, approving senior appointments in the Government and advising on all matters of national importance, it has now acquired important constitutional powers of removing and appointing the monarch.

(a) Enactment of Laws

The Tsongdu has played an important role in enacting various civil, criminal and property laws. For instance, nearly all the civil and criminal laws applicable in the law courts have been passed by the Assembly and duly codified. It has decided issues and passed laws relating to land taxation, compensation, property and land tenure system.

A bill could be initiated either by the Government or by any member of the Assembly and only a simple majority is required for its passage. A Bill passed by the Tsongdu will go to the King for his approval and signature as Head of the State before becoming an Act. If the Head of the State disagrees with the Bill or any of its provisions, he can refer it back to the Tsongdu with his objections and can also address the members on the subject if he so desires. If the Tsongdu again passes the Bill with a simple majority, it will automatically become an Act. Thus the veto powers of the King have been abolished.

(b) Senior Appointments in Government

There is no Cabinet system in Bhutan with a joint responsibility. Each Minister is, therefore, responsible to the Tsongdu in respect of his Ministry only. The Tsongdu now approves the appointment of a Minister by a secret ballot. The nomination comes from the King but the approval must come from the Tsongdu by a majority vote. Though not spelt out, by implication, a Minister can be removed by an adverse vote. Such adverse vote in a particular Minister does not lead to fall of the Government, there being no joint responsibility system in Bhutan.

Senior Appointments in Government are also approved by the Tsongdu. For instance, in anticipation of Bhutan joining the United Nations, the Assembly nominated a senior official of the Government to the post of Permanent Representative of Bhutan in New York. Similarly, other senior appointments are also approved by the Tsongdu. Such nominations are generally made by the Head of the State and the Tsongdu is required to approve them.

(c) Constitutional Powers

The Tsongdu has now acquired the supreme power to remove and appoint a monarch. By a two-thirds majority vote of the total members of the House (excluding the officials, who are debarred on voting on this matter), the King can be removed and by a similar vote a new monarch can be elected from the line of succession. Again, every three years (which is the normal tenure of Tsongdu members), the King must obtain a vote of confidence from the Tsongdu by a two-thirds majority. If he fails to obtain it, the Tsongdu must elect a new King. The Tsongdu has powers to dispense with this provision for a limited period in case of war or national emergency.

The Instrument of Succession has to be ratified by the Tsongdu. Recently, the Tsongdu has also acquired the power to appoint a Regency Council during the minority of a King.

(d) Advisory Role

As an Advisory body on national issues and policy decisions, the role of the Tsongdu has been vital. The issues are put up before the House by the King or the Ministers and these are debated with full freedom. Even the Head of the State is not immune from criticism even as a person. Members also have full freedom to raise any issues and call upon representatives of Government to explain Government action and invariably such issues are hotly debated till Government is able to give a satisfactory answer. The members have used this right unhesitatingly.

In this context, the membership of official representatives is significant. Besides representing an important section of country's life, they explain their actions and Government policies and have a right to answer in person any criticism of their policy or action. Officials other than those who are members can be called by the House and asked to explain their actions. Heads of Departments are occasionally called to discuss matters relating to their departments. Small groups of Tsongdu members meet the Heads of Departments to discuss local issues. Recently, since the appointment of Council of Ministers, the onus of defending the policies and actions of a department or official is falling more and more on the Minister concerned. This is a healthy development.

In the advisory capacity, the Tsongdu has recently shown considerable interest in devising a system of checks on the Ministries. For instance, the draft of Third Five Year Plan was debated in detail and the Tsongdu appointed three of its representatives to act as advisors to the Minister for Development for negotiating financial assistance from foreign countries. Similarly, an Auditor General with two others were appointed to audit the expenditure of various Ministries.

The King in his opening address gives the members an idea of the issues he would like the Tsongdu to discuss and consider. His address is more in the form of presenting before the House the important issues facing the country and Government's thinking on such matters. In certain cases, the address seeks the approval of the Tsongdu of the line adopted by the Government and in other cases the King seeks a consensus to determine the future course of action.

Voting by members is by secret ballot and the proceedings are now recorded and decisions taken officially printed and released to the Press.

Future Role of the Tsongdu

The body though only 18 years old, has developed into a mature and vital institution in the political system of Bhutan. Its developing into the most powerful political institution is a most significant development in the history of Bhutan.

The entire credit for this goes to the present Ruler. Encouraged by the results achieved as a result of the Tsongdu's performance and the rapid changes taking place in the country as a result of economic development, the King felt that the people must be directly involved in the affairs of the country in an effective way. The recent interest shown by the members of the Tsongdu in the country's development programmes clearly indicates the beginning of national participation in all the important spheres. Recently, a Public Accounts Committee type of system has also been established to keep a watch on the functioning of the Ministries on the financial side. While the present King's personal prestige and power will continue to be the guiding factor in the thinking of the Tsongdu, the power and independence of the Tsongdu in all matters is now predominant and the official organs of the Government are deeply conscious of this and act accordingly.

Role of People's Representatives

Like other countries with a system of parliamentary democracy, the peoples' representatives are in close touch with their constituents. Grievances and representations of the people are presented before the House. On return to their villages after the Session, the representatives are required to give a report on the proceedings and in particular the outcome of the representations of the people. It has been noticeable that ineffective representation has led to severe criticism of the member by his constituents.

No doubt, due to lack of education and experience, the peoples' representatives are not able to give thought to national issues in the wider perspective and as such local issues tend to predominate their thinking. Nevertheless, these last few years have seen an awareness amongst the people to judge the issues in a wider perspective. This has been particularly noticeable in spheres of Development activities in the country. Important issues like the functioning of the Council of Ministers under a watch-dog system of the people, country's external relations and even the question of succession to the throne have been debated.

Royal Advisory Council

Though this body is separate with other functions, it will be useful to mention its functioning in the context of checks and balances existing in the political set up of Bhutan. It has developed as a 'Council of Elders' and thus closely linked up with the Tsongdu. All its members are also members of the Tsongdu.

The Council consisting of eight members has five representatives of the people representing the different regions, two Lamas representing the monasteries and one representative of the Government. This body was also formed during the reign of the present Ruler.

Its basic function is to advise the King and his Minister on all matters of national importance. Its scope of functioning has widened during the last two years. It meets regularly every day except when members go out in their respective areas to assess the implementation of Government's policies and directives and peoples' reactions thereto. All the Ministers are required to attend its meeting once a week and answer questions relating to their Ministries. The Ministers also consult the Council on all important issues and take their advice. Members of the Council have access to His Majesty the King who also consults the Council on all important matters.

The most important function recently allotted is the power of arbitration between the Ministries or between the Departments in case of disputes or differences of opinion. The Council's decision is final in such cases.

Being constantly in session and representing all the regions of the country, the Council acts as an effective check on the Government, particularly the Ministers. In other words it not only effectively advises but also acts as 'watch-dogs' of the people.

II. VERFASSUNG DER NATIONALVERSAMMLUNG

His Majesty the King has been pleased to command the following Rules to be observed by the Members of the National Assembly (consisting of the Members of the Royal Advisory Council).

It is the duty of every Countryman to develop this beautiful country of ours in the political and religious fields; when our country is developed then every Dzong and the people living therein will be happy and prosperous.

Our Constitution may not be as big in comparison to other countries of the world but taking into consideration the welfare and the improvement of the living conditions of the People all the Members have agreed to take up the measures necessary so His Majesty the Druk Gyalpo graciously established the National Assembly.

It is always wiser to arrive at a decision (to improve our country) in consultation with many intellectuals than to have one single person make that decision alone. This will prove beneficial not only for contemporary times but for posterity too. The National Assembly has been established with this aim in view.

The administration will be run according to the decisions taken by the National Assembly. Due to the Grace of God and the able steps taken by our previous rulers, we have maintained the independence, and national integrity of our country. But, while preserving the gem of independence, we are still backward because of lack of education. We have not been able to improve much.

Other countries of the world have achieved rapid improvement because of rapid progress in education. Under the present circumstances, we too must bring ourselves to a point equal to that of these developed nations. As such, we must place greater emphasis on national development. This must be the foremost duty of all of us.

All Members, therefore, should work in unity to improve the country keeping in mind our culture, religious heritage and traditions of the past. We must thrust aside selfish attitudes and dedicate ourselves to the task of nation building. We must learn from our past follies. With these in view, the following 18 Rules and Regulations will be followed by the National Assembly.

RULE 1. — His Majesty will nominate Members of the Royal Advisory Council from Government servants, the Monk Body will elect its Members from the Central Monk Body and the People's Representatives shall be elected by the People.

RULE 2. — The Identity Cards of the Royal Advisory Council will be issued by His Majesty, Identity Cards from Members from the Monk Body will be issued by the Central Monk Body and People's Representatives' Identity Cards will be issued by the People's Body.

RULE 3. — Members unable to attend the National Assembly sessions due to sickness or otherwise cannot send any other person on their behalf. The Speaker must be informed of any inability to attend in writing.

RULE 4. — In accordance with Bhutan Law Book A (12), Chapter 2, the following persons shall not be eligible for Membership of the National Assembly:

1. A person who is not a Bhutanese National.
2. A person who is less than 25 years old.
3. A person who is mentally disabled.
4. A convict.
5. A person who has served a prison sentence.

RULE 5.— A Member shall hold office for three years but should it be necessary for the Member to be changed, an application should be made to the Speaker.

RULE 6. — Should a Member be found unfit to serve as a Member, the Assembly may decide in favour of his removal.

RULE 7.— The number of Assembly Members shall be decided once every five years by the Assembly itself and the number decided upon shall be fixed — no more, no less.

RULE 8. — Election of the Speaker: The Speaker shall be elected by the National Assembly every three years. Should the Speaker be unable to attend due to sickness or any other reason, then the Assembly reserves its right to elect another Speaker.

RULE 9. — The Speaker has full powers to maintain proper order in the Assembly hall. No Member may object against him.

RULE 10. — The Speaker shall fix the date of sessions of the National Assembly which shall be twice a year. But in emergencies and under extra-ordinary circumstances, the Speaker, with the Royal Command of His Majesty, may convene a meeting at any time.

RULE 11. — Every Member shall have the full right and privilege to express his thoughts in the Assembly. No rule or law can interfere with a Member's freedom of expression.

RULE 12. — Every Member shall be equal in the National Assembly and all Members may discuss any subject till a suitable decision is reached.

RULE 13. — No Member shall raise a subject of any nature in the Assembly which is motivated with a desire to fulfill his own or that of his relatives' self-interests. Such Matters will not be permitted to be discussed.

RULE 14.— Members may not contradict or take personal advantage of any decision that has been reached by the Assembly. Should any Member attempt to find fault with the decision, to start a quarrel or take the matter to court, he shall be termed a convict and be removed not only from service but also from society and ultimately from the country.

RULE 15. — If a Member wishes to raise a point which is for the welfare of a particular person but not a Member of the Assembly, then that Member may come to the Assembly and petition the Speaker who can grant his consent.

RULE 16. — No Member may reveal to an outsider any secret discussion that have taken place in the Assembly.

RULE 17. — All the proceedings of meetings, be they large or minor, shall be passed by a two-thirds majority vote.

RULE 18. — All Assembly decisions may be changed either by the Assembly or by the King. No one else can rectify these decisions.

III. VERFASSUNGS-KONVENTION VOM APRIL 1969

Diese Sieben-Punkte-Entschließung der Nationalversammlung Bhutans wurde in der Form eines Accord zwischen ihr und dem König niedergelegt. Der Accord wurde vom König und jedem einzelnen der 150 Mitglieder der Nationalversammlung unterzeichnet. Der wörtliche Text dieses Dokuments war trotz umfangreicher Versuche weder aus Bhutan noch aus Indien zu erhalten; jedoch konnte der inhaltliche Text der 7 Punkte ermittelt werden:

Punkt 1:

Alle drei Jahre hat die Versammlung die Möglichkeit, dem König in geheimer Abstimmung ihr Vertrauen auszusprechen oder es zu verweigern.

Punkt 2:

Im Falle des Mißtrauensvotums wird der nachfolgeberechtigte erste Erbe Nachfolger des Königs.

Punkt 3:

Unabhängig von dem ordentlichen Abstimmungsmodus in Punkt 1 kann eine gleiche Abstimmung auf einer beliebigen Sitzung stattfinden, wenn ein Drittel der dann anwesenden Mitglieder es verlangt.

Punkt 4:

Die Personen, die berechtigt sind, an der Abstimmung über die Vertrauensfrage teilzunehmen, müssen die Voraussetzungen der Rules 3 und 4 der Verfassung der Nationalversammlung erfüllen.

Punkt 5:

Das Quorum dieser Abstimmung wird auf zwei Drittel der Gesamtheit der Mitglieder der Nationalversammlung festgesetzt. Die Zahl ihrer Mitglieder, definiert nach Rule 7 der Verfassung der Nationalversammlung, beträgt gegenwärtig 150.

Punkt 6:

Die in Punkt 1 und 2 vorgesehene Abstimmung kann in Fällen von Unruhen im Innern des Landes oder in den Nachbarländern nicht stattfinden. Ob diese Fälle vorliegen, entscheidet allein die Nationalversammlung.

Punkt 7:

Wenn der erste Erbe nach der Nachfolgeordnung noch nicht volljährig ist (21 Jahre für Männer, 23 Jahre für Frauen), und der König stirbt oder die Nationalversammlung ihm das Vertrauen entzieht, wählt sie einen Regentschaftsrat von vier Mitgliedern: ein Mitglied der königlichen Familie, einen Vertreter der Lamas, einen Beamten und einen Vertreter des Volkes.