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Research Article

Trade treaties of Russian and British empires with Yattishar: historical and legal study

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Abstract. The relations of the Russia and Britain with the self-declared state of Yettishar was a striking example of different approaches of two empires to the states and peoples of the Central Asian regions within so called “Great Game”, i.e. Russo-English rivalry in the 19th c. The trade treaties of Yattishar with the Russian Empire of 1872 and with the British Empire in 1874 became a legal reflection of these approaches and are of great interest within the context of the historical experience of the legal status of unrecognized states and positions of the rival “world powers” towards such states. The purpose of the article is a historical-legal analysis of above-mentioned treaties and comparative-legal analysis of them with the similar treaties signed by Russia and England with other Central Asian states during the same period. Author attempts to clarify if treaties of 1872 and 1874 confirmed recognition by both empires of Yettishar as a subject of international relations and how these legal documents reflected confrontation of Russia and England in the region. The study is mainly based on the formal-legal, historical legal and comparative-legal methods. Also author used the methods of legal anthropology and general history. The results of the research to a certain extent correlate with modern approaches in the policy of Russian and western powers in Central Asia in terms of political situation in the region as well as political, legal and cultural traditions of Central Asian states and peoples.

Key words: Yattishar (Kashgharia), Russian Empire, British Empire, the Great Game, international treaties of commerce

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Соглашения Российской и Британской империй с Йэттишаром: историко-правовое исследование

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Аннотация. Актуальность статьи обусловлена необходимостью осмысления исторического опыта международных отношений в центрально-азиатском регионе в контексте противостояния «великих держав» за сферы влияния. Объектом исследования являются отношения России и Великобритании с самопровозглашенным государством Йэттишар (также фигурирующим в исследовательских трудах как Кашгария), существовавшим в 1864—1877 гг. в Восточном Туркестане. В качестве предмета исследования выступают торговые договоры, заключенные с этим государством Российской и Британской империями, соответственно в 1872 и 1874 гг. Целью исследования является историко-правовой анализ содержания договоров. Автор предпринимает попытку ответить на вопросы, в какой степени эти договоры свидетельствовали о признании двумя империями Йэттишара в качестве субъекта международных отношений, и как заключение этих договоров отражало противостояние империй в Центральной Азии — в рамках так называемой «Большой игры». Основными методами исследования являются формально-юридический, историко-правовой и сравнительно-правовой подходы, наряду с которыми автор использует юридико-антропологический и общеисторический исследовательский инструментарий. Полученные результаты до некоторой степени отражают и современные подходы России и западных держав в выстраивании правоотношений со своими партнерами в Центральной Азии, учет ими политической ситуации, политико-правовых и культурных традиций стран и народов региона.

Ключевые слова: Йэттишар (Кашгария), Российская империя, Британская империя, Большая игра, международные торговые соглашения

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Introduction

The reason for studying the issue rests in the desire to comprehend the historical experience of the policy of “world powers” in Central Asia and, in particular, the territory of the Eastern Turkestan which is a part of Xinjiang Uygur Autonomous

Region. The origins of this instability have long-standing history and, consequently, influenced the policy of states which had political and economic interests in Central Asia including relations with neighboring peoples, countries and regions.

In the mid of the 18th century, Eastern Turkestan was conquered by the Qing Empire. But during the next century representatives of deposed dynasty (so-called Khwajagan or “White Mountain Khwajas”) occasionally excited rebellions and called local Muslim inhabitants to overthrow the rule of “infidel” Manchu dynasty. All these attempts were unsuccessful: Khwajas had an opportunity to establish their control only over the part of their former state and, at best, for several months (Valikhanov, 1985:141—156).

However, in the first part of 1860s next mighty anti-Chinese rebellion flared up in the North-Western part of the Qing Empire. The Manchu authorities were expelled, and several self-declared states were established there. The most powerful of them was Yettishar (“Seven cities”)¹ founded in 1864 by the amir Yaqub Beg originated from the Khanate of Khoqand in Central Asia. In a short time, this ruler was able to secure his state from Qing authorities’ attempts to restore their control over the region as well as to subjugate most of self-declared states in Eastern Turkestan. In contrast to previous “short-term” states established as a result of Khwajas’ rebellions the realm of Yaqub Beg was strong and controlled practically all the territory of Eastern Turkestan.

In 1860s—1870s Russian and British empires considered the realm of Yaqub Beg rather stable and important in the region to respond to the attempts of amir to establish diplomatic and trade relations with them. As a consequence, Russian and British authorities signed the treaties with Yaqub Beg, although they withdrew from this step before, during the previous rebellions against the Qing Empire (Bellew, 1875:386). This study is an attempt to clarify the status of Yettishar in the opinion of Russian and British authorities based on the analysis of these treaties as well as their intentions to influence the policy of Yuaqub Beg’s.

Russian-Kashgar treaty of 1872 and Anglo-Kashgar treaty of 1874 attracted attention of scholars for different reasons. They were of certain interest to those who studied the history of Central Asia during the period of Anglo-Russian confrontation — so-called “Great Game” (Terent’ev, 1875; Khalfin, 1965; Sergeev, 2012), as well as scientists who studied the history of Yettishar (1864—1878), personality of Yaqub Beg and his foreign policy (Alpysbes et al., 2018; Baskhanov, 1990; Boulger, 1878; Garbuzarova, 2009; Henze 1989; Isiev, 1981; Kim, 2004; Moiseev, 2003; Vasil’ev, 2019). There are works that studied treaties themselves as well as circumstances of their signing. Thus, in the mid of the 20th century N.V. Baykova defended a thesis on the Anglo-Kashgar treaty of 1874 (Baykova, 1952) with analysis, in a accordance with Soviet historiography tradition, of “aggressive and predatory policy of England in the

¹ The name of this state is differently mentioned in historiography: Jettyshar, Yatishar, etc. It is also often called “Kashgaria”, as Kashgar was a capital of Yakub Beg. This name was used in official documentation and contemporary historiography; therefore, we use definitions of analyzed treaties as “Russian-Kashgar” and “Anglo-Kashgar” in this paper. Also, it is necessary to notice that we use forms of personal and geographical names in citations given by their authors.

Eastern Turkestan”. At the beginning of the 21st century S.V. Moiseev defended a thesis and wrote several works on political situation during the signing of Russian-Kashgar treaty of 1872 and its consequences. He analyzed official position of Russian authorities towards Yettishar (Moiseev, 2001; Moiseev, 2003; Moiseev, 2019).

However, in most cases scholars used and studied these treaties mainly as historical source with minor focus on their legal nature. In fact, there is a contradictory statement in historical works: scholars note the similar content of treaties, but at the same time suppose that Russian-Kashgar treaty did not change the format of relations between the Russian Empire and Yettishar, whereas Anglo-Kashgar treaty meant official recognition of Yaqub Beg’s state by the British authorities (Alder, 1963:50—51; Garbuzarova, 2009:61; Moiseev, 2003:163; Pierce, 1960:146; Sergeev, 2012:329).

The article is the first attempt to study both treaties as official legal acts. For this end, a formal legal analysis is to be used to study their form and content. Historical and legal approaches allow considering the treaties within the context of political situation of their signing and clarifying reasons and consequences of their conclusion. The comparative legal analysis helps to understand, firstly, the similarities and differences of studied legal documents, secondly, their correspondence with diplomatic practice of both empires in the Central Asian region. To answer the last question, it is necessary to use other treaties signed by Russian and British authorities with other states and nations of the region during the same period.

Historical and legal analysis of the Russian Empire’s treaty with Yettishar of 1872

Signing of Russian-Kashgar treaty of 1872 was preceded by the long-term and aggressive diplomatic activity with participation not only of Russian Empire and Yettishar, but also British Empire, Qing Empire, Khanate of Khoqand and Sultanate of Kuldja (also called Ili or Taranchi Sultanate) — another self-declared state in the Ili Region adjoining the state of Yaqub Beg which was also established during the Muslim rebellion.

After his coming to power Yaqub Beg began to arrange relations with Russia in the hope of its recognition (Isiev, 1981:37; Moiseev, 2019:78). But imperial authorities, namely, K.P. von Kaufman and Governor-General of Turkestan, consistently rejected his proposes as they did not wish to worsen relations with the Qing Empire by recognizing territorial integrity of Yettishar. Before his settling in Yettishar Yaqub, Beg was a high-ranking official of the Khokand Khanate; he was well aware of the international political climate in Central Asia and, certainly, the confrontation of Russian and British empires for the control over the region was not a secret for him. Trying to “push” Russian authorities to sign the treaty in the appropriate form, the ruler of Yettishar began to establish contacts with the administration of British India: the series of exchanges by diplomatic missions took place during 1868—1870; with that, British authorities, unlike Russian ones, let

Yaqub Beg knew that they were ready to keep in touch with him as sovereign ruler (Garbuzarova, 2009:58, 60; Isiev, 1981:38).

Some scholars suppose that relations of the ruler of Yettishar with the authorities of the British India stimulated Russian administration to conclude the treaty with Yaqub Beg as Russians were afraid of strengthening the British Empire into Eastern Turkestan in case they signed the treaty with its ruler before Russia (Alpysbes et al., 2018:160; Isiev, 1981:41—42; Kiernan, 1955:325; Pierce, 1960:28). According to another version, Yaqub Beg, who insisted for a long time to sign valuable international treaty, at last, agreed to sign it on terms offered by Russia when Russian Turkestan authorities joined Sultanate of Kuldja (Henze, 1989:74; Vasil'ev, 2002:53). This event took place in 1871 after numerous hostile actions against Russia by the local ruler Alakhan Abil-ogly. The administration of Turkestan previously notified the Qing authorities on its intentions and occupied the territory of the Sultanate, then transformed it temporarily into the Kuldja District within the Semirech'e Region. Russian authorities promised Manchus to return this region after stabilization of the situation in Eastern Turkestan.

Yaqub Beg, who pretended to be an ally of sultan Alakhan, was worried about determination of Russian authorities and himself offered to sign the treaty on Russian terms. In 1872 Baron A.V. Kaul'bars, representative of the Turkestan Governor-General, arrived to Kashgar. Despite the fact that “negotiations were challenging”, he persuaded Yaqub Beg to sign the treaty on the terms offered by K.P. von Kaufman. That took place on June 8, 1872.

Now let us turn to analysis of the form and content of the treaty².

Above all, it is necessary to notice that the term “treaty” is not *strict* for this document, as its formal name was “Conditions of free trade were proposed and agreed upon between General Aide-de-Camp von Kaufman and Yakoob Beg, ruler of Djety-Shahr”. Thus, it was not a treaty in its traditional way as it was a result not of concordance of sides, but only an acceptance by Yaqub Beg of conditions offered him by the Russian side. The name “conditions”, as we suppose, had to signal other interested states in the region (firstly British and Qing Empires) about not very high legal force of the document. It seems that this goal was achieved: when the situation in Eastern Turkestan was discussed in the British Parliament on May 3, 1874, this treaty was characterized as a commercial agreement “which is of no practical importance and the type usually concluded with Asian countries” (Mezhov, 1873:110).

Also, it is important to draw attention to the fact that it was signed on the Russian side not by the head of the state, but only by the chief of the regional administration — Turkestan Governor-General K.P. von Kaufman. Certainly, the first ruler of Russian Turkestan had extraordinary credentials in comparison with other governors and governor-generals including the right for independent foreign relations, as modern scholars assert (Sergeev, 2012:107). Nevertheless, signing the treaty by the head of the state (though unrecognized) on one side and only by regional administrator (though

² The treaty analysis is performed on the text published in (Kim, 2004:187—188).

with extraordinary status) on the other was a reflection of the position of the Russian authorities who did not consider Yettishar as a sovereign state on the international arena.

Unusual nature of the treaty is also marked by the term “ruler” (Russ. *vladetel'*) toward Yaqub Beg (Kim, 2004:142—143). Unlike “khan” or even “emir” this title did not have any fixed legal status, so we do not doubt that Russian authors of the document accentuated that. By using this title toward the ruler of Yettishar, they reflected his illegitimate governance. It is worth mentioning that earlier Russian authorities and diplomats used the term “ruler” (*vladetel'* or *vladelets*) toward monarchs of Central Asian region if they were not sure of their status. In 18th — first half of 19th century, that title was attributed, for example, to rulers of Bukhara, Khiva, Junghar Khanate (before establishing direct relations with them), Tashkent, Kazakh hordes (*zhuzes*), etc.

As for the content of “Conditions...”, we can state that the document was rather short: it contained only five articles.

Art. I provided Russian merchants with the free entry to Yettishar, whereas “the honorable ruler” of Yettishar was obliged to guarantee safety to Russians and their goods. It is significant that similar rights were provided for Yettishar merchants on the Russian territory with no indication who was obliged to guarantee them.

Art. II allowed Russian merchants to have their own *caravanserais* on the territory of Yettishar which could serve as warehouses at the same time. The same right was provided for merchants of Yaqub Beg’s realm.

One of the most important articles (and self-contradictory as some scholars assert) was Art. III which gave Russian merchants in Yettishar and local merchants in the Turkestan Region the right to have commercial agents (*caravanbashis*). K.P. von Kaufman determined their functions as “watching over the regular courts of trade and over the legal imposition of custom duties”. Some scholars suppose that those agents were official Russian diplomatic representatives (Alder, 1963:45; Henze 1989:81; Kiernan, 1955:326). But this opinion seems to be inaccurate. “Conditions...” state that the right belonged only to merchants, not to the Russian Empire or Turkestan regional authorities. Thus, those commercial agents, in fact, were only representatives elected by merchants themselves from their trustworthy colleagues to control trade operations and trade taxation. This specific feature seems obvious if we compare “Conditions...” with Russian-Chinese treaties on the trade in the same Eastern Turkestan in 1851 (Kuldja Treaty), 1860 (Beijing Treaty) and 1881 (St. Petersburg Treaty). Those agreements directly provided for the residence of the Russian diplomatic representatives (trade consuls) in the region, and, particularly, in Kashgar (Skachkov, Myasnikov, 1958:26—29, 34—40, 54—60).

Art. IV specified the rate of custom tax for the goods imported from Russia to Yettishar — 2½ per cent *ad valorem*. Just the same rate was used for Muslim subjects of Yaqub Beg who was engaged in commerce inside his state. So, the tax for the Russian traders was equated to traditional Islamic profit tax — *zakat* which was 1/40 of income in accordance with Sharia law.

Finally, Art. V provided Russian merchants with the free transit trade, i.e. duty-free traverse through the territory of Yettishar to coterminous countries (it is likely that authors of “Conditions...” meant China, first of all). The same right was provided for Yettishar merchants who intended to traverse the territory of Russia. But we doubt that the rule was relevant for them: it is unlikely that Yaqub Beg’s subjects planned to trade with European states and, even more so, travel there through Russian land; as we see below, trade routes in British India were enough for them.

Thus, we can be certain that all articles of the Russian-Kashgar treaty of 1872 regulated only trade relations and their goal was a defense of interests of Russian merchants who traded in Yettishar or traversed its territory. The “agreed” nature of the treaty was realized in the principle of mutuality of all rights and guarantees for Russian merchants as well as for Yaqub Beg’s subjects.

Ambiguity of international legal status of Yettishar in connection with importance of Eastern Turkestan as commercial and transit region could explain such cautious statements of the treaty. As we can see, there were not any political issues; all the rules were in line with the interests of Russian trade (Moiseev, 2019:79). No doubt, that K.P. von Kaufman’s personal efforts as well as efforts of his representative Baron A.V. Kaul’bars are worthy of respect. But at the same time, it is necessary to note that “Conditions...” were not established from nothing, and Turkestan administration already had certain experience of drafting and executing such treaties.

Four years before signing the Russian-Kashgar treaty, in 1868, K.P. von Kaufman concluded treaties with the Khanate of Khoqand and the Emirate of Bukhara, and that was the beginning of the Russian protectorate over those Central Asian states. When we get familiarized with those documents, it is surprising to find out that both treaties had close resemblance with the analyzed treaty of 1872. Moreover, Russian-Khoqand treaty authorized by K.P. von Kaufman and Khudoyar Khan of Khoqand in January-February of 1868 contained the same five articles found in Russian-Kashgar treaty. Though identical in many ways they only disagreed in the first article, however the format of the agreement was preserved. The treaty with Khoqand is no more than “Trade obligations” signed by Russia (represented by Governor-General K.P. von Kaufman) and Khokand (represented by Khudoyar Khan) as sovereign powers.

We have enough reasons to suppose that the treaty with Khoqand was a “prototype” for “Conditions...” to Yaqub Beg; it is clear not only from similarity of wording. As it was mentioned above, the ruler of Yettishar earlier was a high-ranking official in the Khanate of Khoqand and participated actively in court intrigues and civil wars. Moreover, Khokand origins of Yaqub Beg substantially influenced the initial stage of relations between Russian Turkestan authorities and Yettishar ruler. K.P. von Kaufman considered Yaqub Beg a subject of Khudoyar Khan (nominally, at least) and therefore appealed to the latter as a mediator in negotiations with Yettishar ruler. It seems possible, that such position of Kaufman was determined by previous ties of the Khanate of Khoqand with Kashgaria. As early as 1830s—1850s, Khoqand khans had their own administrators and tax collectors in Kashgar according to the agreement with

the Qing Empire. Only in 1872 Yaqub Beg succeeded in convincing the Russian Turkestan authorities to negotiate with him directly (Kim, 2004:142; Vasil'ev, 2019:269—270).

As for the Russian-Bukharan treaty signed on May 11, 1868, it also had similarities with the “Conditions...” of 1872, but its execution took place in a different situation, so its clauses had more differences with the Russian-Khoqand treaty. The agreement with Khudoyar Khan (just as with Yaqub Beg) was a result of diplomatic negotiations, not of military confrontation. While the treaty with Bukhara was signed after a short war with the Emirate which was victorious for Russians. That treaty was titled “Conditions of peace were proposed by General Aide-de-Camp von Kaufman to His High Dignity Emir of Bukhara Sayyid Muzaffar Bakhadur Khan” and included three documents. The most interesting for us are “Conditions of trade”, “Addition to conditions of peace” (fixing the change in borderline between the Russian Empire and the Emirate of Bukhara) and “Secret addition to conditions of peace” (providing the size and terms of contribution by the Bukharan emir). However, the subsequent “loyal” relations of Muzaffar with Turkestan authorities realized in “Conditions of trade” that was the only legal document determining the status of Bukhara towards the Russian Empire until the “Treaty of friendship” (“Shaar Treaty”) authorized on September 28, 1873. We can notice that even the name of that document was similar to the Russian-Kashgar treaty of 1872.

Unlike Russian-Khoqand and Russian-Kashgar treaties, the “Conditions” for Bukhara contained not five, but six articles. At the same time there were some formal differences in art. 1 and 2; in fact, they were similar to art. I of the Russian-Kashgar treaty. The first article provided Russian merchants with free entry to Bukhara, while the second one bound the emir with guarantees of their safety. Other articles (3—6) were practically identical to articles II—V of Russian-Khoqand and Russian-Kashgar agreements.

Thus, the content of the Russian-Kashgar treaty of 1872 was not unique: it was based on the experience of relations with other Central Asian states which had many similarities with Yettishar in terms of political and legal systems. Comparison of this treaty with Russian-Khokand and Russian-Bukharan ones gives reasons for certain conclusion. As it was mentioned before, those treaties’ execution was connected with establishing Russian protectorate over the Khanate of Khoqand and Emirate of Bukhara. However, we made sure that those treaties, per se, were similar to the agreement with Yettishar which was not treated as a protectorate by the Russian authorities (as Russia had specific relations with the Qing Empire). Hence, the comparative legal analysis of three documents gives reasons to assert that treaties with Khoqand and Bukhara did not secure their dependent status towards Russia, and their vassalage to the empire was realized in practice, while legally both states were recognized as sovereign ones.

Historical and legal analysis of the British Empire's treaty with Yettishar of 1874

No doubt that conclusion of Anglo-Kashgar treaty was the direct consequence of the Russian-Kahsgar treaty: British authorities did not mean to let Russians an opportunity to exert influence over that strategically important region (adjoining to borders of the British India) without fight (Baskhanov, 1990:104).

The conclusion of the treaty of 1874 was the result of long-term and staged negotiations of the authorities of the British India and self-proclaimed ruler of Yettishar; sides came to agreement and then found new contradictions, blackmailed one another using “Russian” or “Qing” factors, etc. It is interesting to notice that at the initial stage of Anglo-Kashgar relations Yaqub Beg himself avoided discussion on signing the treaty with the English as he expected better profit from the agreement with Russia (Henze 1989:73). In 1873 Sayyid Yaqub Khan, ambassador of Yaqub Beg in Calcutta, offered British authorities to sign a treaty with Russia on recognition of Yettishar as a “buffer state” between two empires (Karpát, 1991:22; Kim, 2004:145; cf.: Veselovskiy, 1899:100).

No wonder that the English firstly did not intend to build full-fledged relations with Yettishar, according to Prince A.M. Gorchakov, Minister of Foreign Affairs of the Russian Empire, who stated that “Russia did not have any aggressive intensions toward Kashgar and would like to develop only trade and neighbor relations with it, but could not recognize it because of uncertainty of its power and non-recognition from the China” (Baskhanov, 1990:115). Yet, further actions of Turkestan Governor-General K.P. von Kaufman resulted in joining the Ili Province in 1871 and signing the treaty with Yettishar in 1872 forced British authorities to speed up and, at last, sign their own version of treaty with Yaqub Beg (Baskhanov, 1990:118). That took place on February 2, 1874 during the mission to Kashgar of the British official and diplomat T.D. Forsyth, who already negotiated with Yaqub Beg in 1869—1870 on establishing diplomatic and trade relations.

As it was mentioned above, scholars more than once noted similarity of Russian-Kashgar and Anglo-Kashgar treaties (which is a reason for this study), but only detailed formal legal analysis allows to confirm or deny this statement. That is why we intend to analyze the form and the content of that document³ just as we did it with the “Conditions...” of 1872.

Firstly, we should pay attention to the type of the document; unlike to the “conditions of free trade” offered by K.P. von Kaufman and signed by Yaqub Beg, the Anglo-Kashgar agreement is officially called “Treaty of commerce”. The sides are named “high contracting parties” — that also confirms the agreed nature of the document.

As we remember, in the Russian “Conditions...” Yaqub Beg was mentioned with unclear title of “ruler”. In the treaty of 1874, he is titled officially “the Ameer

³ The treaty is analyzed on the text published in: (Kim, 2004:189—193).

Mahomed Yakoob Khan, Ruler of the territory of Kashgar and Yarkund”. The treaty provided for prolongation of its regulations for “heirs and successors”. The treaty was executed on the British side by T.D. Forsyth, the plenipotentiary of T.G. Baring, Baron of Northbrook, viceroy of India who signed and attested that document on April 13, 1874. Thus, the formal legal similarity of two analyzed documents is in signing them from the “imperial” side only by heads of regional administrations. But it is important to note that K.P. von Kaufman had the right to sign such document as he was empowered personally but next Governor-Generals of the Russian Turkestan did not have such right. As for Baron Northbrook, he signed the treaty as a viceroy of India⁴.

The content of the Anglo-Kashgar treaty is substantially larger than the “Conditions...” of 1872 as it includes twelve articles and several of them are rather extensive. However, the analysis of their content gives a reason to suppose that the English purposely exaggerated some regulations to “surpass” their Russian competitors.

For instance, Art. 1 provided British subjects with the free entry and trade and Art. 2 prescribed absence of restriction in pass and transit of merchandise for both parties. The similar regulations were stated briefly in the Art. I of “Conditions...” of 1872.

Art. 3 requested passports for “European British subjects” (possibly, that concerned English merchants who were not residents in India); without such documents they could not use their rights and privileges.

Art. 4 introduced import duty at the rate of 2 ½ per cent for goods from British India to the realm of Yaqub Beg (i.e. above-mentioned *zakat*), whereas goods could be imported to India without any taxations. This strange and unequal clause (for English side) could make up for ability to impose such goods “to such excise regulations and duties and to such municipal or town regulations and duties, as may be applicable to such classes of goods generally”. Art. 5 is an addition of previous one as it prohibited unpacking goods from India until their delivery to the destination. Only if the value of such goods could not be determined, custom officers had right to take 1/40 of such goods “in lieu of the payment of duty”. Any disputes on this question should be solved by officers: one from Yaqub Beg’s officials and the other from the “importers”.

Art. 6 seems to be the most important in the treaty of 1874 as it provided British authorities with the right to appoint a representative at the court of Yaqub Beg as well as commercial agents subordinate to him in the towns and places of Yettishar. This representative should have “the rank and privileges accorded to ambassador by the law of nations” and agents should have “the privileges of consuls of the most favored nation”. Just this article gives reason to scholars who consider that Britain by the treaty of 1874 recognized the sovereignty of Yettishar officially and Yaqub Beg as its legitimate ruler and established official diplomatic relations with him. This opinion is

⁴ Some scholars state that further resignation of Lord Northbrook was connected with substantial discords on the “Kashgar issue” between him and central British authorities (Baskhanov, 1990:104—105).

supported by Art. 8 (the most extensive in the document) which provided the above-mentioned representative and agents with judicial authority towards British subjects on the Yettishar territory. If one side in the criminal case was the subject of Yaqub Beg, it should be heard under jurisdiction of local court but in the presence of the British representative. Moreover, such representative had the right to request (at his own discretion or by request of participants of the trial) to retry the case in another local court if he considered the verdict unfair.

In such circumstances Art. 7 seems to be “wedge by pure accident” between Art. 6 and 8 as it was devoted to the right of British subjects to have their own lands, houses and warehouses as property or rent. But its meaning becomes clear when we turn to its second part: nobody had the right to intrude into those lands or buildings without permission of the British representative or agents and such intrusion should be realized only in the presence of persons deputed by them.

Art. 9 provides with rights and privileges on the territory of Yettishar not only British subjects, but also “the subjects of all princes and states in India in alliance with Her Majesty the Queen”. We will clarify reasons of inclusion of such provision into the treaty below.

Art. 10 is just of procedural nature: it defined the terms of presentation copies of different legal documents and their confirmation in appropriate court.

Art. 11 is devoted to the property of the British subjects who died on the territory of Yettishar and, *mutatis mutandis*, the property of Yaqub Beg’s subjects who died in the British India. The English tried to establish the “European” principle of disposing such property which should be passed to successors or other representatives of interest but not be appropriated by local authorities.

Finally, Art. 12 defined the terms of debt collection at the expense of the property of British subjects by their creditors in Yettishar and, *mutatis mutandis*, the same actions regarding Yaqub Beg’s subjects in the British India. However, participation of the British representative in debt collection in Yettishar is provided for by the article.

Thus, we can see that the Anglo-Kahsgar treaty, although it had “trade” nature, included a series of regulations on diplomatic relations between the British India and Yettishar⁵. And only literal interpretation of these regulations could convince us that such diplomatic representatives should concentrate on questions in the field of trade and defend interests of British subjects in case of conflicts connected with their trade activity.

Just as administration of Russian Turkestan, authorities of the British India referred to their previous experience in relations with other subjects of international law — in particular, with Indian principalities. The closest in chronology and content example seems to be the treaty between the British Government and Maharaja Runbee Singh of Jammu and Cashmere of 1870 (Aitchison, 1892:360—362).

⁵ According to M.K. Baskhanov, five articles out of twelve had political, not trade meaning (Baskhanov, 1990:121—122).

This agreement also had the status of the treaty and was confirmed by the viceroy of India, R.S. Bourke, Viscount Mayo, Baron Naas. It also provided British merchants with the right of free entry and traverse, appointment of British officials to control trade routes (Art. 1) and commissioners to control taxes and duties and to solve disputes with participation of British subjects. It is interesting to note that the treaty of 1870 was signed to a considerable degree to provide the British merchants with the traverse to Eastern Turkestan. Thus, it seems to be a “preparatory stage” for the treaty with Yaqub Beg.

Officials and commissioners of the British Government in the Jammu and Cashmere had many similar functions with the British representative and commercial agents in Yettishar. However, we should take into account that that Indian principality fell under the English control in the first half of the 19th century and became the British India vassal. That is why in the residence of British officials there was an obvious element of control from the suzerain state and signing similar treaty with Yaqub Beg meant that English authorities intended to subdue Yettishar while Russian administration of Turkestan did not have such intension.

In view of such circumstances it seems to be appropriate to make a comparative legal analysis of the Russian-Kashgar and Anglo-Kashgar treaties and consequences of their signing.

Comparative legal analysis of the treaties of 1872 and 1874

The conducted formal legal analysis of both treaties and their comparison with agreements signed with other Central Asian states by Russia and Britain gives us an opportunity to answer the question on their similarities and differences and, consequently, on validity of statements on recognition or non-recognition of Yettishar by the authorities of the Russian and British empires.

Formally, the different names of two documents are eye-catching: Russian-Kashgar agreement is called “conditions”, while Anglo-Kashgar one is an official “treaty”. Also, we noticed cautious titling of Yaqub Beg by Russian authorities as a “ruler” and his recognition from the British administration as “Ameer” with the right of succession the throne.

Basically, issues on organizing trade activity with Yettishar are rather similarly regulated in both documents, however, a more detailed legal procedure is fixed in the Anglo-Kashgar treaty in connection with trial, collection of debts, possession of dead foreigners, etc. In fact, that situation reflects the specific features of the English law in general, and such detailed procedure is a distinguishing feature of the British regulation of civil relations.

The most questioned are Art. III of the Russian-Kashgar treaty and Art. 6 of the Anglo-Kashgar treaty devoted to status of Russian and British representatives in Yettishar. It seems, that in both cases they are officials authorized to control the observance of trade rules, lawfulness in the tax collection and defense of interests of merchants of both states. But it is easy to notice that there is certain distinction in

kind of the treaties of 1872 and 1874. Art. III of the Russian-Kashgar agreement provided Russian merchants with the “right to have” commercial agents (*caravanbashis*), i.e. elected representatives of trade community at their own discretion⁶ whereas Art. 6 of the Anglo-Kashgar treaty directly indicated the appointment of the representative at the court of Yaqub Beg and commercial agents by the British Government. Thus, the private status of appointment and activity of Russian commercial agents opposed the public status of British representatives; that difference was accentuated by entitling them to the “rank and privileges” of ambassador and consuls, i.e. diplomatic officers.

Are these differences give us the reason to support the scholars’ opinion on recognition of Yettishar as an independent sovereign state in the Anglo-Kashgar treaty unlike the Russian-Kashgar one?

We suppose, there are not enough reasons for that⁷.

Firstly, according to the treaty, British representative and commercial agents are only “entitled to rank” of ambassador and consuls, but, in fact, were not the same officials. Therefore, the opening of embassy and consulate in Yettishar was not provided by the treaty. Secondly, we already compared those officials with English officers in Jammu and Cashmere being under control of British India authorities. Thus, it seems to be obvious that the English did not intend to recognize Yettishar as an independent state and lawful participant of international relations and consider it as a region potentially controlled in political and economic respect equally to their vassal principalities of the Northern India (Baskhanov, 1990:120; Isiev, 1981:42—43). Besides that, it is need to be taken into account that the English already were already familiarized with the Russian “Conditions...” of 1872 and aimed to go better than their competitors; that is why the Anglo-Kashgar treaty of 1874 contained more attractive rules and provided British representatives in Yettishar with the higher status.

Naturally, this intention was obvious for such well experienced and acute politician as Yaqub Beg. No wonder that he willingly signed the treaty with the English, but critically evaluated regulations on the status of the British representative at his court and soon displayed his position practically. Just after signing the treaty and departure of T.D. Forsyth’s mission such representative was left at the court of Yettishar ruler in the person of R. Shaw, “officer on special duty”. He was an experienced diplomat who had more than once visited Kashgar previously (Kim, 2004:145). At first his presence was convenient for Yakub Beg as it was a demonstration of established relations with Britain in the eyes of Russians. Besides, shortly after signing the treaty, in the same

⁶ It is interesting to notice that during the negotiations with Baron A.V. Kaul’bars on the “Conditions...” of 1872 Yaqub Beg insisted on full diplomatic relations with Russia and claimed his readiness to send his own permanent ambassador to St. Petersburg. But Kaul’bars reasonably answered that he, as a representative of the Turkestan Governor-General, could guarantee the pass of such ambassador only to Tashkent (capital of the Turkestan Region) and no farther (Moiseev, 2019:78).

⁷ It is significant that even British parliamentarians did not consider the treaty of 1874 as a confirmation of establishing the official diplomatic relations with Yettishar when they studied its text on May 3, 1874 (Mezhov, 1873:107).

1874, large consignment of weapons and ammunition was delivered to Yettishar from India, which was an evident contradiction to Russian-English agreements on Central Asia. (Isiev, 1981:43). But as soon as the British representative tried to interfere in the Yaqub Beg's policy, i.e. to do his actual duties as they were seen by his superiors, he was expelled by the ruler of Yettishar under the pretext that his candidature was not agreed with the Ottoman sultan, official suzerain of Yaqub Beg (Alder, 1963:52; Alpysbes et al., 2018:164).

Thus, Britain did not gain anything by signing the treaty, and its further observance was nominal (Alder, 1963: 55). With time, its nominal character was also explained by political reasons: since 1876 the Yaqub Beg's realm weakened under the pressure of the Qing troops who tried to return the control over Eastern Turkestan. In such situation British authorities did not have any reason for confrontation with Manchu dynasty for the sake of dying self-proclaimed state. No wonder, that they in every way ignored attempts of Yaqub Beg to revive and widen diplomatic relations (Baskhanov, 1990:125—126)⁸.

Objectively, Russian-Kashgar treaty was not as effective as both sides expected. Contemporaries noticed the insignificance of the Russian trade in Yettishar; at that, they acknowledged its good prospects considering long-term trade relations of Russia with the Eastern Turkestan since the period before Qing and during Manchu ruling in the region (Kuropatkin, 1879:50—59; Maev, 1876:86, 89). They blamed Yaqub Beg for poor development of trade relations shortly after signing the “Conditions...”. He realized their nominal nature and showed his displeasure by obstructing Russian merchants in his realm (Biddulph, 1874:75; Mezhev, 1873:103, 124—131). Duplicity of Yettishar ruler was well reflected in his correspondence: in his letters to K.P. von Kaufman and Russian central authorities Yaqub Beg wrote about his satisfaction by friendly relations and concluded agreement (Kotyulova, 2018:67—70), while in messages to other Islamic rulers of the Central Asia (particularly, to Khudiyar, khan of Khoqand) he complained of numerous rights and privileges for “infidels” in his realm and wished to prohibit them access to Yettishar (Startsev, 2014:254—256).

Thus, practical implementation of Russian-Kashgar and Anglo-Kashgar treaties demonstrated once again the clear-cut distinctions of European and Asian authorities' views on international legal relations and ineffectiveness of treaties drawn up under the principles and rules of European legal traditions in Central Asian political and legal realities.

Conclusion

The analysis of Russian-Kashgar and Anglo-Kashgar treaties gives reasons for the following conclusions.

⁸ British historian A. Morrison, well known specialist on the history of international relations in Central Asia, dates the beginning of relations between British India and the Qing Empire just by 1869, when first contacts of the English with Kashgar were established (Morrison, 2009).

Firstly, both agreements in general, despite the specifics of the legal status of Yettishar, corresponded to the policy of Russia and Britain in Central Asia. Treaties of 1872 and 1874 had similarities (word for word sometimes) with treaties which were signed by two empires with other states of the region not considered to be independent participants of international relations. Considering such specific features, Russia and Britain remained in diplomatic contacts with Yettishar until its fall.

Secondly, the content of both treaties gives no reasons to state that imperial authorities recognized legality of Yettishar and legitimacy of Yaqub Beg as its ruler. As for Russian-Kashgar agreement of 1872, scholars never considered it as recognition of Yettishar. But there was not unanimous consent on the Anglo-Kashgar treaty of 1874. The analysis of its form and content confirms that the authorities of British India did not see Yettishar as their lawful partner and intended to make it their “vassal state”. Thus, the comparative legal analysis contributes to the idea of “colonial” policy of Russian and British empires in Central Asia.

Thirdly, careful formulation of regulations in both treaties (especially in Anglo-Kashgar one) confirms instability of Yettishar’s positions in the eyes of Russian and British authorities. As the case might be, they could interpret the clauses in a different way either to develop relations with Yaqub Beg’s state, or to put pressure upon the Qing Empire. However, the short-term existence of Yettishar which fell just after the death of Yaqub Beg (1877) terminated the both treaties (Kiernan, 1955: 319).

Finally, although the main reason for signing the both treaties was the confrontation between Russia and England in Central Asia (within the framework of the “Great Game”) and their competition for control over Eastern Turkestan with its strategic importance, both empires took into consideration different additional factors while contacting with Yettishar. So, the Russian Empire considered balancing its relations with the Qing Empire and Yaqub Beg’s state. As for Britain, its basic stimulation for signing the treaty of 1874 was just confrontation with Russia, and the “Chinese factor” was not taken into consideration by British India’s authorities until the fall of Yettishar.

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