

Tibet and the Right to Self-Determination

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"One hardly knows what any division of the human race should be free to do, if not to determine, within which of the various collective bodies of human beings they choose to associate themselves."

(John Stuart Mill, *On Representative Government*, 1873)

Introduction

In 1959 news of a large scale revolt in Tibet shook the World. Armies of the People's Republic of China¹ had occupied Tibet since 1949, and now open fighting broke out between Tibetan nationalists, loyal to the Dalai Lama, and the People's Liberation Army. Before the crushing of the revolt by the Chinese army, the Dalai Lama, spiritual and temporal ruler of Tibet, fled and sought exile in India, followed by some hundred thousand Tibetan refugees.² The establishment of tighter Chinese political and military control over Tibet followed, but without the expected result of eliminating the resistance to the Chinese presence there. The Tibetans in exile, and the Dalai Lama in particular, have been demanding the right of all Tibetans, both inside and outside Tibet, to determine their own future, free from outside intervention, for example by means of an internationally supervised plebiscite.³

The question inevitably arises whether Tibetans have a right to self-determination under International Law: is the Dalai Lama's call for an internationally supervised plebiscite in Tibet, to determine Tibet's future, a legitimate right? The principle or right of self-determination is a controversial issue. On the one hand it is recognized as an important principle, is enshrined in the Charter of the United Nations⁴ and has been invoked for the creation of a large number of states, now members of the United Nations. On the other hand, some states regard its potential implications to be a threat to their continued existence.⁵

¹Hereinafter referred to as the P.R.C. or China.

²See H.H. The Dalai Lama, *My Land and My People* (1962); see also Int'l Comm'n of Jurists, *The Question of Tibet and the Rule of Law* (1959); Tibetan Affairs Coordination Office, 6 *Tibetan Messenger*, Special Commemoration Issue (1978); G.N. Patterson, *Tibet in Revolt* (1960); Union Research Institute, *Tibet 1950-1967*, (1968).

³This call was made on numerous occasions, especially by the Dalai Lama. See H.H. The Dalai Lama, *Dalai Lama speaks his mind*, Asian Wall Street Journal Aug. 25, 1977; see also Tibetan Affairs Coordination Office *supra* n.2.

⁴U.N. Charter art. 1 para. 2.

⁵See F. Greene, *Dynamics of International Relations* 380 (1964).

This essay will examine two questions:

1. What is the status of the principle or right of self-determination under international law?
2. Does the principle or right of self-determination extend to the Tibetan People?

In order to answer the first question, we will examine the development of the notion of self-determination. For the second one, we will analyse the meaning and applicability of the principle or right of self-determination.

Part I

THE STATUS OF THE PRINCIPLE OR RIGHT OF SELF-DETERMINATION UNDER INTERNATIONAL LAW

A philosophical notion

The concept of self-determination is as old as government itself. Although it has repeatedly been denied weaker peoples by those claiming some form of superiority over them, it has nevertheless unceasingly been cherished by all peoples.⁶ It was expressed by Greek and Roman philosophers, and later by Machiavelli, Vitoria, Bodin, Suarez, Gentili and others, who either extended or restricted the notion of self-determination.⁷

The fundamental notion, that government should rest on the consent of the governed, the basis of democracy, is also the basis for self-determination.⁸ John Locke showed this relationship in 1690, when he wrote :

Though policies can not be founded on anything but the consent of the people. . .many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government.⁹

⁶U. Umzurike, *Self-determination in International Law* 4 (1972).

⁷Id. at 5.

⁸Int'l Comm'n of Jurists, *East Pakistan Staff Study*, 8 *The Review* 47 (1972)

⁹John Locke, *The Second Treatise on Civil Government* 87 (J.W. Gough ed. 1947)

He later writes about the conquered and their children, who having no court or arbitrator on earth to appeal to, must appeal to heaven,

and repeat their appeal, till they recovered the native right of their ancestors, which was to have such a legislature over them as the majority should approve and freely acquiesce in.¹⁰

Jean-Jacques Rousseau expressed his belief in self-determination and popular sovereignty by saying that

(i) t is making fools of people to tell them seriously that one can at one's pleasure transfer peoples from master to master, like herds of cattle, without consulting their wishes.¹¹

He however found the Nation to be the only community to which the people would give their support, and still maintain their liberty while accepting the necessity of political society.¹²

It was these combined principles of democracy, nationality, and self-determination which formed the ground philosophy for the French and American Revolutions.¹³ "It was as a nation that people were to consent to be governed. If people were sovereign as a nation, they had to be free to form their own state and each state had to be free to establish its own government."¹⁴ Jefferson argued that Americans, like the British, had the right "which nature has given to all men" to be free as a people to form free and independent states.¹⁵ His philosophy of government was embodied in the Declaration of Independence,¹⁶ and expressed in a letter he wrote to Hartley:

¹⁰J. Locke, *supra*, note 9 and 88, emphasis added. See also U. Umzurike, *supra*, note 6 at 6; W.T. Jones, *Masters of Political Thought* Ch. 5, (1960); C. Morris, *Great Legal Philosophers* Ch. 6, (1959).

¹¹J.J. Rousseau, *Political Writings* 340, 341, (C. Vaughan ed. 1915). See also F. Greene, *supra* note 5 at 367.

¹²H.S. Johnson, *Self-determination within the community of Nations* 25, (1967).

¹³H. Johnson *supra* note 12 at 25. See also U. Umzurike, *supra* note 6 at 6.

¹⁴H. Johnson *supra* note 12 at 25.

¹⁵U. Umzurike, *supra* note 6 at 7.

¹⁶*Id* at 6.

I have no fear but that the result of our experiment will be that men may be trusted to govern themselves without a master.¹⁷

The throwing off of a foreign yoke coupled with the people's sovereignty in the independent America that emerged, made the American Revolution one of the first outstanding examples of the exercise of the principle of self-determination.¹⁸

Almost a century later, in 1861, John Stuart Mill captured the essence of the principle of self-determination and its relation to that of popular sovereignty and nationality, when he wrote:

There is a *prima facie* case for uniting all the members of the nationality under the same government, and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed. One hardly knows what any division of the human race should be free to do, if not to determine, within which of the various collective bodies of human beings they choose to associate themselves.¹⁹

Thus the philosophical notion of self-determination developed as did the notion of nation states and popular government. "The sovereignty of the people, under democratic theory, made the sovereignty of the nation possible. Democracy created a new theory of sovereignty. Nationalism created a new basis for it. Their combination, whether inherent or evolutionary, means national self-determination, the sovereignty of the people as a nation."²⁰

An International Political Principle

The First World War brought the principle of self-determination to the fore of international politics. Both belligerents used the minority issue to their own political ends, but President Wilson gave the smaller nationalities, dominated by more powerful ones, the opportunity of realising their desire for freedom.²¹ He raised the principle of self-determination as the aim of the war: which was consequently often referred to as the war

¹⁷As quoted in U. Umozurike, *supra* note 6 at 8.

¹⁸*Id.* at 8. see also C.G. Fenwick, *International Law*, 160, (4th ed. 1965).

¹⁹J.S. Mill, *On Representative Government* 120, (People's ed. (1873).

²⁰H. Johnson, *supra* note 12 and 29.

²¹C. Fenwick, *supra* note 18 at 162. See also N.G. Levin, jr., *Woodrow Wilson and World Politics* (1968).

of self-determination.²² The United States had nothing to lose in Europe, and prestige to gain from championing the cause of the oppressed nationalities, which he did in the spirit of American anti-colonial tradition, dating back to the War of Independence.²³

Wilson's statement to Congress in May of 1917, reminds the reader of Locke's, Rousseau's, Mill's and Jefferson's earlier writings, thus disproving the view that it was Wilson who created the principle of self-determination. He declared that

(n) o peace can last or ought to last, which does not accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.²⁴

These opinions expressed by Wilson had deep and lasting significance "not only because they were taken as the legal basis of the peace negotiations, but because they form a definite and coherent body of political doctrine."²⁵ This doctrine, though developed by the war and expounded by Wilson, was not formed by them, only confirmed.

But it was not only President Wilson or the United States who raised the principle of self-determination to a major political principle. The Soviet Union, from the moment of its birth advocated the right of self-determination.²⁶ Lenin's position on self-determination was more universal in its scope than that of Wilson.²⁷ He compared the right to self-determination to that of divorce, and fervently supported both:

²²U. Umzurike, *supra* note 6 at 11, 14, 20; F.A. Middlebush and C. Hill, *Elements of International Relations* 72, (1940).

²³U. Umzurike, *supra* note 6 at 13. See also Pomerance, *United States and Self-determination: Perspectives on the Wilsonian* 70 *Am. J. Int'l L.*, I-27 (1976).

²⁴J.B. Scott, *Official Statements of War Aims and Peace Proposals* 52, (1921). See also V. van Dyke, *International Politics* 41, 42, (1966).

²⁵H.W. Temperley, *A History of the Peace Conference of Paris* 217, (1920).

²⁶H. Bokor-Szego, *New States and International Law* 12, (1970), Note also that the previous revolutionary government of Lvov proclaimed on April 10th 1917 that it would honour the right of nations to self-determination. U. Umzurike, *supra* note 6 at 14.

²⁷N. Levin, jr., *supra* note 21 at 31.

²⁸V. Lenin, *The Right of Nations to Self-Determination*, in 45 *National Liberation, Socialism and Imperialism* 72, (1968).

To accuse those who support freedom of self-determination, i.e., freedom to secede, of encouraging seperatism, is as foolish and hypocritical as accusing those who advocate freedom of divorce of encouraging the destruction of family ties. Just as in bourgeois society the defenders of privilege and corruption, on which bourgeois marriage rests, oppose freedom of divorce, so, in the capitalist state, repudiation of the right to self-determination, i.e., the right of nations to secede, means nothing more than defence of the privileges of the dominant nation and police methods of administration to the detriment of democratic methods.²⁸

On November 15, 1917, the Soviet Government issued the Declaration of Rights of the Peoples of Russia, laying down the policy for Russia's minorities, which is to this day part of the constitution of the U.S.S.R. It recognises the equality and sovereignty of the peoples of Russia, including the right of complete separation and the establishment of free, independent states.²⁹

In Great Britain, Lloyd George also made explicit reference to self-determination on numerous occasions. An example is the statement delivered on January 5th, 1918, in which he applied the principle beyond the boundaries of Europe:

With regard to German colonies, I have repeatedly declared they are held at the disposal of a conference whose decision must have primary regard to the wishes and interests of the native inhabitants of such colonies. . . . The general principle of national self-determination is, therefore, as applicable in their cases as in those of European occupied territories.³⁰

Adherence to the principle of self-determination was however, not only expressed by the Allies, such as the United States, The Soviet Union, Great Britain, France and Italy³¹ but also by all belligerents, including the Central Powers.³²

²⁸T.A. Taracouzio, *The Soviet Union and International Law* 29, (1935).

²⁹Quoted in 2 H. Temperley, *supra* note 25 at 227.

³¹U. Umzurike, *supra* note 6 at 18: Italy's Prime Minister, Vittorio Orlando made a statement on Dec. 12, 1917, and France's Foreign Minister, Stephen Pichon, on Dec. 28th of the same year and Jan. 18th of the next.

³²The Central Powers also adopted the principle of self-determination, as stated in their reply to the first peace treaty draft:

"In this war, a new, fundamental law has arisen which statesmen of all belligerent peoples have again and again acknowledged to be their aim: the right of self-determination. To make it possible for all nations to put this privilege into practice was intended to be one achievement of the war." U. Umzurike, *supra* note 6 at 18.

On January 8th, 1918, President Wilson announced his Fourteen Points program to a joint session of Congress. Though the term itself was not expressly mentioned, seven of the points related to self-determination.³³ Thus, far from being a mere statement of policy, self-determination became “an imperative principle of action which statesmen would henceforth ignore at their peril”.³⁴ This was evident at the peace conference, when the political map of Europe was re-drawn on the basis of self-determination of nationalities.³⁵ Austria, Hungary and Czechoslovakia emerged as separate states; Finland, Estonia, Latvia, Lithuania and Poland became independent states, while Yugoslavia, Greece and Rumania grew in size. Though a number of plebiscites were provided for in the peace treaty, eight of them were actually held.³⁶ But not all boundaries could be drawn on the principle of self-determination or nationality for various reasons, so an elaborate system for the protection of remaining minorities was drawn up, as a substitute.³⁷ “The international protection of minorities is, therefore, a strict and logical corollary of the principle of self-determination of nations.”³⁸ In some cases, though, neither the principle of self-determination, nor its substitute, minority protection, was applied.³⁹

The fact that the principle of self-determination was not applied everywhere in the European reconstruction, is not reason to stop short of recognising that it had become a paramount international political principle by the attitude of the bellige-

³³J.L. Kunz, *The Changing Law of Nations* 180, (1968); U. Umzurike, *supra* note 6 at 18; See also R.L. Jones, *History of the Foreign Policy of the United States* Ch. 22 (1933). For an opposing view, see W. Ofuatey-Kodjoe, *The Principle of Self-determination in International Law* 72, (1977).

³⁴V. van Dyke, *supra* note 24 at 41, quoting Pres. Wilson.

³⁵F. Middlebush, *supra* note 22 at 72. See also E. Luard, *Conflict and Peace in the Modern International System* 94, (1968), and J. Kunz, *supra* note 33 at 298.

³⁶F. Middlebush, *supra* note 22 at 83; U. Umzurike, *supra* note 6 at 21.

³⁷F. Middlebush, *supra* note 22 at 83; J. Kunz, *supra* note 33 at 204; see also C. Fenwick, *supra* note 18 at 163.

³⁸J. Kunz, *supra* note 33 at 299.

³⁹E.g., the German speaking territories in Northern Italy, and German territories signed away to other Powers without consultation with the respective populations. See F. Middlebush, *supra* note 22 at 121.

rents during and after the war. Through the wide application and frequent reference to self-determination as a right, it became incorporated into the *jus cogens* of international law.

Though a fundamental principle of the peace conference, and an underlying ideology of the League of Nations,⁴⁰ self-determination, had no express mention in the League of Nations Covenant. "The chance was thereby lost to clear some of the present doubts about its legal nature and content."⁴¹

A Right Incorporated into International Law

Whereas at the close of World War I, the right of self-determination, though proclaimed in universal terms, was for practical purposes applied primarily on the European territorial settlement, after World War II the focus of attention turned to the disintegration of overseas Empires, which had remained unaffected by the application of self-determination advocated by President Wilson.⁴²

Forecasting the provisions of the Charter of the United Nations, the Atlantic Charter of 1941 declared the desire of the United States and Great Britain "to see no territorial changes that do not accord with the freely expressed wishes of the people concerned"⁴³ and that the member states respect "the right of all people to choose the form of government under which they will live."⁴⁴ The expression of the further wish "to see sovereign rights and self-government restored to those who have been forcibly deprived of them" was defeated by political conditions, namely the Soviet Union's annexation of Lithuania, Latvia and Estonia, and the occupation of Poland.⁴⁵

It was, however, upon the initiative of the Soviet Union that the Dumbarton Oaks Proposals, adopted in 1944, were amended at the San Francisco Conference, to the effect that the purpose of the United Nations was declared to be the development of

⁴⁰J. Kunz, *supra* note 33 at 729; see also Dinstein, *Collective Human Rights of Peoples and Minorities*, in 25 *Intn'l and Comp. L.Q.* 106, (1976).

⁴¹U. umozurike, *supra* note 6 at 26.

⁴²Emerson, *Self-determination*, in 65 *Am. J. Intn'l L.* 463, (1971).

⁴³C. Fenwick, *supra* note 18 at 164.

⁴⁴*Id.*

⁴⁵C. Fenwick, *supra* note 18 at 164.

friendly relations among nations, "based on respect for the principle of equal rights and self-determination of people."⁴⁶ In fact, the very first article of the Charter of the United Nations, in Chapter I, on Purposes and Principles, affirms that the purpose of the United Nations is

to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;⁴⁷

In addition, Art. 55 in Chapter IX, on International and Social Co-operation, also provides for the creation of conditions which are necessary for peaceful and friendly relations among nations based on respect for the principle of self-determination.⁴⁸

Chapters XI, XII and XIII, provided for particular responsibilities in respect to dependent territories (non-self-governing and trust territories), embody the principles of self-determination in spirit, and their provisions, which impose obligations on Member States, are designated *inter alia* to attain that goal.⁴⁹

Though the inclusion of the principle of self-determination in Charter has undoubtedly affected its international legal content, to what extent can it be regarded as a binding and applicable rule of international Law?

⁴⁶H. Bokor-Szego, *supra* note 26 at 12.

⁴⁷U.N. Charter Art. 1, para 2.

⁴⁸H. Bokor-Szego, *supra* note 26 at 13; Art. 55 reads:

"With a view to the creation of conditions of stability and well being which is necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

• • •

c. universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

⁴⁹M.I. El-Kaya¹, *The Role of the United Nations in the Protection of Human Rights* 312, (1975).

Under U.N. Charter Art. 73, the administering powers regard as a "sacred trust the obligation to promote to the utmost... the well being of the inhabitants of these territories..." The purpose of the trusteeship system, according to U.N. Charter art. 76, is to promote the progressive advancement of these territories towards self-government or independence as may be appropriate to "the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement..."

See also C. Fenwick, *supra* note 18 at 164.

The General Assembly indicated the meaning of the Charter provisions when, in 1950, it requested the Commission on Human Rights to make a study of the "ways and means which would ensure the right of peoples and nations to self-determination."⁵⁰ The Assembly's intentions became even clearer two years later when, after initial opposition,⁵¹ it was resolved to include an article in the international Covenants on Human Rights, then being drafted, "on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations."⁵² In the same year, the Assembly emphasized the importance of this right with regard to the administration of dependent territories.⁵³

The Commission on Human Rights, at its eighth session, drafted an article for inclusion in the above mentioned Covenants, providing both a definition of the right, and the demanded reference to the obligation of states to promote its realization and respect its maintenance in other states.⁵⁴ The draft provision served as a starting point for the United Nations to take further action towards implementation of the right to self-determination. In 1966, on December 16th, the Two Human Rights Covenants⁵⁵

⁵⁰U.N.G.A. Res. 420, 5 U.N. GAOR (1950).

⁵¹U. Umozurike, *supra* note 6 at 49.

⁵²U.N.G.A. Res. 545, 6 U.N. GAOR (1952). The text of the resolution is as follows "(The Assembly) decides to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations. This article shall be drafted in the following words: 'all peoples shall have the right of self-determination', and shall stipulate that all States, including those having responsibility for the administration of non-self-governing territories, should promote the realization of that right, in conformity with the Purposes and Principles of the United Nations, in relation to the peoples of such territories."

⁵³U.N.G.A. Res. 637A, 7 U.N. GAOR (1952). In the resolution, entitled: "The right of peoples and nations to self-determination, the General Assembly recognizes that this right is a prerequisite to the full enjoyment of all fundamental human rights, and that every member of the U.N. shall respect and uphold it.

⁵⁴H. Bokor-Szego, *supra* note 26 at 20.

⁵⁵The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, hereinafter referred to as ICESCR and ICCPR resp. or as the Human Rights Covenants. U.N.G.A. Res. 2200, 21, U.N. GAOR supp. 16, at 49 (1966).

were finally adopted by the General Assembly, with a common Article I which reads:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to the Covenant, including those having responsibility for the administration of non-self-governing territories shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations.⁵⁶

After the original drafts of the Human Rights Covenants were made, the General Assembly adopted a number of resolutions incorporating the Declaration on Granting independence to Colonial Countries and Peoples.⁵⁸ It was adopted by a vote of 89 to 0 with 9 abstentions. It is argued that this large majority and the decisive language used in the resolution "make the right of self-determination legally binding and obligatory" as well as directly enforceable.⁵⁹ Consequently, it is the most

⁵⁶Art. 1, common to the ICESCR and the ICCPR.

⁵⁷e.g. U.N.G.A. Res. 742, 8 U.N. GAOR (1953); U.N.G.A. Res. 1004 (Emer. Sess. II) (1956); U.N.G.A. Res. 1005 (Emer. Sess. II) (1956); U.N. G.A. Res. 1312, 13 U.N. GAOR (1956) (concerning Hungary); U.N.G.A. Res. 1723, 15 U.N. GAOR (1961) (concerning Tibet).

⁵⁸U.N.G.A. Res. 1514, 15 U.N. GAOR (1960).

⁵⁹M. El-Kayal, *supra* note 49 at 314. The resolution declares that:

"...

2. All peoples have the right to self-determination: by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delayed independence."
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territories shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories, which have not yet attained inde-

frequently cited resolution in the United Nations and is considered by most of the African and Asian Nations "as a document only slightly less sacred than the Charter."⁶⁰ Resolution 1654,⁶¹ adopted in November of 1961, by which a committee was created to recommend on the Declaration's implementation, stresses the fact that it is more than a moral declaration.⁶²

In 1963, the General Assembly established the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, and instructed it to consider, among other principles and duties, the "principle of equal rights and self-determination of people."⁶³ The result was the drafting of the Declaration, bearing the same name as the committee, which was adopted on October 24th 1970.⁶⁴ It is a strongly worded, detailed resolution, whose significance is apparent from the preamble:

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary International Law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality.⁶⁵

Continued

pendence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom."

⁶⁰Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*. 65 Am. J. Int'l L. 370, (1971).

⁶¹U.N.G.A. Res. 1654, 16 U.N. GAOR (1961).

⁶²R. Higgins, *The Development of International Law Through the Political Organs of the United Nations* 100, (1963).

⁶³Rosenstock, *supra* note 60 at 713.

⁶⁴U.N.G.A. Res. 2625, 25 U.N. GAOR (1970), incorporating the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*. Hereinafter referred to as the Declaration of Friendly Relations.

⁶⁵Note that this paragraph is immediately followed by:

"Convinced in consequence that any attempt aimed at the partial or total disruption of national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter."

In Art. 5 the right of all peoples to self-determination is once more defined as being

the right to freely determine, without external interference, (the people's) political status and to pursue their economic, social and cultural development. . . .

The Article goes on to state that the obligation of States to promote the realization of the principle, and asserts that

bearing in mind that subjection to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.⁶⁶

Although the text of Art. 5 of the Declaration of Friendly Relations contains some tortured phraseology, two conclusions can be drawn from it. First, it is beyond doubt that the General

⁶⁶Art. 5 of the Declaration of Friendly Relations further reads:

“Every State has the duty to promote through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprive peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence: In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Charter....”

A specific mention is made of Non-Self-Governing Territories, followed by the concluding paragraphs, proposed by the Canadian and Italian delegations (J.G. Castel *International Law* 71 (3rd ed. 1976), which reads:

“Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

Assembly considers the right to self-determination to be a legally binding and enforceable right, incorporated in the body of International Law; and second, the implementation of the right is not absolute, but subject to the limitations set by other principles of the United Nations Charter.⁶⁷ The latter conclusion is the subject of Part II of this essay. Here we are concerned with the first one.

Despite the overwhelming evidence that the vast majority of member States of the United Nations regard the right to self-determination to be a legally binding and enforceable right, it is sometimes still argued that this is of little consequence, since a principle can not derive its legal status in international law from General Assembly resolutions that have no binding force themselves.⁶⁸ However, as Emerson concludes, the actual differences of opinion on the legal effect of such resolutions "are not likely to take the form of flat opposition between a negative and an affirmative. No one is likely to deny that principles laid down by the United Nations may under appropriate conditions set in motion forces which ultimately have the effect of bringing law into being, nor on the other side, does anyone assert that Assembly resolutions laying down general principles automatically create international law."⁶⁹

Taking into consideration the frequency and consistency of the language of the resolutions and declarations, the impact the United Nations has had on the implementation of the right to self-determination, particularly in the field of decolonisation,⁷⁰ and the coming into force of the Human Rights Covenants⁷¹

⁶⁷See J. Brossard, *Le Droit du Peuple Quebecois de Disposer de Lui-meme au Regard du Droit International* 15 *The Can. Y.B. of Int'l L.* 91, (1977).

⁶⁸For a discussion of the two points of view, see Emerson, *Self-Determination* 459 et. seq. (1971). See also Sloan, *The Binding Force of a "Recommendation" of the General Assembly of the United Nations*, 25 *Brit. Y.B Int'l L.* 1 (1948); Johnson, *The Effect of Resolutions of the General Assembly of the United Nations*, 32 *id.* at 97 (1955-56.)

⁶⁹Emerson, *supra* note 68 at 460.

⁷⁰T.M. Franck and P. Hofman, *The Right of Self-determination in Very Small Places* 8 *N.Y. J. Int'l L. and Pol.* 332, (1976).

⁷¹The Covenants on Human Rights came into effect on March 23, 1976, three months after the date on which the thirty-fifth instrument of ratification or accession was deposited, in accordance with Arts. 46, para. 1 and 27, para. 1 of the ICCPR and ICESCR resp. .

leads to the almost inevitable conclusion, that the United Nations has elevated the already strong principle of self-determination, expressed, one could argue, as a *lex imperfecta* in the Charter, to the status of a right, legally binding on all States, and enforceable in International Law.⁷²

This view is confirmed by the pronouncements of the International Court of Justice, in the Western Sahara Case.⁷³ The Court here stressed a policy consistent with that of the United Nations, "which will respect the right of the population of Western Sahara to determine their future political status by their own freely expressed will."⁷⁴ With regard to non-self-governing territories the Court had already affirmed the right to self-determination in its *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*.⁷⁵

The practice of states, particularly manifest through the organs of the United Nations, also confirms today's "generally accepted view. . . that the right of self-determination has become, in the last generation, an integral part of customary international law."⁷⁶

The first United Nations involvement in this respect was in the conflict between the Netherlands' forces in Indonesia (then

⁷²A growing number of commentators come to this conclusion. See Emerson, *supra* note 68; M. El-Kayal, *supra* note 49 at 314, 315; H. Bokor-Szego, *supra* note 26 at 16, 17; U. Umozurike, *supra* note 6 at 272; Brossard, *supra* note 67 at 90-92; Dinstein, *Collective Human Rights of Peoples and Minorities* 25 Int'l and Comp. L.Q. 106, (1976).

⁷³*Advisory Opinion on Western Sahara* (1975) I.C.J. 6; See also Suzuki, *Self-determination and World Public Order: Community Response to Territorial Separation* in 16 Vir. J' Int'l L. 827, (1976).

⁷⁴*Advisory Opinion on Western Sahara*, *supra* note 73 at 35, 36; See also Suzuki, *supra* note 73 at 827.

⁷⁵*Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Res. 276 (1970)* [1971] I.C.J. 16 at 31. The Court stated:

"...[T]he subsequent development of International Law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them."

⁷⁶Dinstein, *supra* note 72 at 106; see also M. El-Kayal, *supra* note 41 at 315.

Dutch East Indies) and Indonesian nationalist forces. The resulting understanding provided for Indonesia's independence. The United Nations also supported the struggles for self-determination of the Moroccan, Tunisian and Algerian Peoples.⁷⁷ The Special Committee on the Implementation of the Declaration of Independence⁷⁸ became entrusted with the task of establishing independence and majority rule in countries like Angola, Mozambique, Rhodesia and South West Africa. In the latter two areas efforts are still being made, whereas the first two territories have achieved independence. These are a few examples of the implementation of the right to self-determination in relation to decolonization. But also outside the context of decolonization there have been claims to self-determination, such as those of Manchuria, Katanga, Biafra, Bangladesh, Eritrea, Quebec, Tibet, and Southern Sudan, Taiwan, Somalia and Palestine. Though these claims have not all been regarded as equally valid, and not all the claimants have as yet succeeded in exercising self-determination, some have been considered to be legitimate and justified, and have been recognized as such both by the United Nations and by the states individually. The denial of the Manchurian, Katangese or Biafran attempts to secede, for example, does not necessarily preclude nor contradict the right to self-determination. To argue that, is to consider only one side of past events,¹⁹ and to ignore the differences in the character of the movements and the nature of their claims factors such as the extent to which the claim represents the interests of the population concerned.⁸⁰ The subject will be dealt with in detail in Part II of the essay. Here it suffices to indicate in regard to the examples mentioned, that neither the puppet state of

⁷⁷See U.N.G.A. Res. 612, 8 UN GAOR (1953); U.N.G.A. Res. 611, (1952); 8 NU GAOR, Annexes, Agenda Item no. 56 at 5, UN Doc. A/2530 (1953); U.N.G.A. Res. 1573, (XV); U.N.G.A. Res. 1724 (XXI).

⁷⁸Expanded to 24 members by the 17th Gen. Ass.

⁷⁹Suzuki, *supra* note 73 at 807.

⁸⁰For a detailed discussion of the differences of the cases mentioned below, and others, see Suzuki, *supra* note 73; Sanborn III, *Standing Before the International Court of Justice: The Question of Palestinian Statehood Exemplifies the Inconsistencies of the Requirement of Statehood* 7 Ca. W. Int'l. L. J. 458 e.s. (1977); Franck *supra* note 70; Kaladharan Nayar, *Self-determination Beyond the Colonial Context: Biafra in Retrospect*. 10 Tex. Int'l. L. J. 321-45, (1975).

Manchuria, nor the clientele state of Katanga represented the interests of a significant segment of the population concerned. Each was created by a few elites who were supported substantially by an external power. The same is true for the Smith regime in Rhodesia in its claim for independence, which the United Nations refused to recognize as it was not in accordance with the expressed wishes of the majority.

The case of Bangladesh, on the other hand, is a clear example of the assertion and exercise of the right to self-determination, which was promptly recognized both by the United Nations, and by states individually.⁸¹ In the cases of Eritrea, Tibet, and Portuguese Timor for example, the United Nations also explicitly recognized the people's right to self-determination,⁸² although to this day, it has been of no avail. A very recent example is of course the explicit recognition by the United Nations and many states, of the "inalienable right of the Palestinians" to self-determination.⁸³

⁸¹For a detailed discussion of the topic, see Int'n'l. Comm'n. of Jurists, *supra* note 3: see also Suzuki, *supra* note 73.

⁸²U.N.G.A. Res. 390, 5 UN GAOR Supp. (No. 20) 20 (1950). re. Eritrea; U.N.G.A. Res. 1723, 15 UN GAOR (1961) re. Tibet;

"Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their Fundamental Human Rights and freedom including their rights to self-determination,";

U.N.G.A. Res. 384, (1975) and S.C. Res. 389, (1976), re. Timor.

⁸³U.N.G.A. Res. 2535, (B), 24 UN GAOR Supp. (No. 30) 25-26, (1969); U.N.G.A. Res. 2672, 25 UN GAOR Supp. (No. 28) 36, 1970);

U.N.G.A. Res. 2787,

U.N.G.A. Res. 3236, 29 UN GAOR Supp. (No. 31) 4, (1974).

In 1974 the General Assembly adopted the most complete statement to date of its conception of Palestinian rights.

In relevant part, this resolution states:

The General Assembly,

Recalling its relevant resolutions which affirm the right of the Palestinian people to self-determination,

1. *Reaffirm* the inalienable rights of the Palestinian people in Palestine, including:

- (a) The right to self-determination without external interference;
- (b) The right to national independence and sovereignty,

2. *Reaffirm* also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return.

See also Radley, *The Palestinian Refugees: The Right to Return in Internatio-*

It is interesting to note also, that the right to self-determination is being recognized in a context different from that of the International Human Rights Covenants, namely, in the field of Humanitarian Law of War. The Protocols Additional to the Geneva Convention of 1949 refer to the right of self-determination of peoples and regard struggles for self-determination as international armed conflicts,⁸⁵ thus granting participants belligerent rights heretofore granted only to sovereign states.⁸⁶

Conclusion

The concept of self-determination as being a fundamental right of peoples is not a 20th Century creation. Long before President Wilson and his contemporary heads of states championed the oppressed peoples' right to self-determination in Europe at the close of World War I, which led to the reconstruction of that continent, the principle had been expounded by the world's greatest legal and political theorists, and had formed the philosophical basis for the American Revolution.

Its adoption as one of the purposes of the United Nations, as expressed in the Charter, and the subsequent active and firm policy of the said Organization in the furtherance of self-determination of peoples, the effect its implementation has had on the reconstruction of the world since the World War II, and its repeated assertion and recognition, all contributed to raising what was once a principle, to a right of self-determination of peoples, legally binding and enforceable, under International Law.

nal Law, 72. A.J. Intn'l. L. 606-608, (1978), for a discussion on the validity of this resolution in light of the principle of sovereignty of a U.N. Member State.

See also Sanborn, *supra* note 80.

⁸⁴*Protocol I and Protocol II Additional to the Geneva Conventions of 1949*, opened for signature Dec. 12, 1977.

⁸⁵Art. 1, para. 4 and Art. 96, para. 3, of *Protocol I Additional to the Geneva Conventions of 1949*.

⁸⁶See A. Rosas, *The Legal Status of Prisoners of War*, 275, (1976); Baxter, *Humanitarian Law or Humanitarian Politics?* 16 Harv. Intn'l L. J. 14, (1975); Veathey, *Les Conflits Armes de Caractere Non-International et Le Droit Humanitaire*, in *Current Problems of International Law*, 188, 189 (A. Cassese ed. 1975).

The further question of who may exercise the right to self-determination, and under what conditions, remains to be examined in Part II.

Part II

DOES THE RIGHT TO SELF-DETERMINATION EXTEND TO THE TIBETAN PEOPLE ?

Where the Charter of the United Nations refers to the “principle of equal rights and self-determination of peoples”, and other instruments of international Law such as the Covenants on Human Rights state that “All peoples have the right to self-determination. . .”, what is meant by “all peoples”? Do the Tibetans constitute a people? Under what circumstances can the right of self-determination be exercised? In other words, how is the right to be reconciled with other legally recognized rights and principles of international law, such as territorial integrity? Do the Tibetan people have a right to self-determination which should be enforced?

These questions shall be examined in this part of the essay.

The numerous authors that have attempted to define what constitutes “a people” in the context of the right to self-determination, agree upon certain objective requirements, while at the same time stressing the subjective ones.⁸⁷

Members of human communities recognized as people have certain common characteristics, which act as a bond between them. The nature of the most important of these common features may be historical, ethnic or racial, cultural, linguistic, religious or ideological, geographical or territorial, economic or quantitative.⁸⁸ This list is far from exhaustive, and none of the features are in themselves either essential or sufficiently conclusive to prove that a particular group constitutes a people.⁸⁹

⁸⁷See K.W. Deutsch, *Nationalism and Social Communication* 86 e.s. (2nd ed. 1966); see also Brossard, *supra* note 67 at 93; Int'l. Comm'n. of Jurists, *supra* note 8 at 47; Dinstein, *supra* note 72 at 104; Suzuki, *supra* note 73; and U. Umzurike, *supra* note 6.

⁸⁸*Id.*

⁸⁹Int'l. Comm'n of Jurists, *supra* note 8 at 47.

Some authors suggest that the ethnic and historical link is required, but they also admit that the link should manifest itself in the other features mentioned above, and that none of these objective requirements should be applied too harshly.⁹⁰ All agree, however, that the determining factor, the essential and indeed indispensable characteristic, is a subjective one:⁹¹ "A People begins to exist only when it becomes conscious of its own identity and asserts its will to exist."⁹²

Thus, although there is no all inclusive definition of what constitutes "a people" with a right to self-determination, there is the clear understanding that it refers to a group of persons, conscious of its own identity, based on common historical, ethnic, cultural, religious and other background. In other words, the concept of self-determination stresses the *subjective* perception of an affected group, based on its objective characteristics.⁹³

When discussing the population of Tibet, or the Tibetans, the present essay refers to the population of the 'Tibetan plateau': historical or geographical Tibet,⁹⁴ covering about 900,000

⁹⁰Dinstein *supra* note 72 at 104.

⁹¹Int'l. Comm'n. of Jurists, *supra* note 8 at 47; Suzuk, *supra*, note 73 at 87; Brossard, *supra* note 67 at 93; Dinstein, *supra* note 72 at 102, 104, 105.

⁹²Int'l. Comm'n. of Jurists *supra* note 8 at 47.

⁹³Consequently "there is no place for a *diktat* from outside (the group) in this respect: one people cannot decree that another group is not entitled to peoplehood." Dinstein, *supra* note 72 at 105. See also K. Deutsch, *supra* note 87 at 96, 97, 98.

Note the close relationship of the term 'people' and 'nation'. Some of the earlier resolutions on self-determination referred to both terms, thus indicating a difference. The term people as used here, however, refers to a broader category of groups than does the term nation. See H. Johnson, note 12 at 55, 56; Brossard, *supra*, note 67 at 93; See also I. Brounlie *Principles of Public International Law* 575 (2nd ed. 1972), who refers to "national groups"; see also Dinstein, *supra* note 72 at 102.

⁹⁴See H. Hoffmann, *Tibet, A Handbook* (Ind. U. Asian Stud. Research Inst. 5 Oriental Series), 1; H.E. Richardson, *A Short History of Tibet* 2, 3 (1962); G. Gyaltag, *Tibet Einst und Heute*, 8 (1979); P.P. Karan, *The Changing Face of Tibet*, 5 (1976). Prof. Karan writes: 'Tibetan scholars distinguish three Tibets; the geographical, the cultural or ethnographic and the political. Geographical Tibet includes parts of Sinkiang and areas which have since 1928 formed the provinces of Tsinghai (Chinghia) and Sikang. The people of Tibet have regarded Tsinghai and Sikang as part of their homeland. Cultural or ethnographic Tibet comprises all areas which were at one time in-

square miles, extending from approximately the 79th through 102nd degree East longitude, from Ladakh in the West to Dartsse Mdo (Chinese: Ta-chien-lu) in the East, and from approximately the 28th through 39th degree North longitude, from the Himalayas in the South to the Kunlun and Altyn-Tagh ranges in the North.⁹⁵ In other words, the essay concerns six million Tibetans.⁹⁶

Tibetans are a distinct race or ethnic group with their own language, culture, religion and historical heritage. The racial origins of the Tibetans are little known, but the relations to the ancient Turkik race and true Mongols have been claimed as well as to the Proto-Chinese race. "The subject is one for specialists,

habited exclusively or predominantly by people of Tibetan extraction. Political Tibet embraces only that part of geographical and cultural Tibet ruled by the Tibetan government from earliest times to 1951. For brief periods between the fourth and ninth centuries A.D., the political authority of Tibet extended from northern Burma to Afghanistan and from Siberia to well inside present-day China."

⁹⁵At various times in history, the political borders of Tibet changed, and one may therefore find varying descriptions of the surface area and geographical limits of Tibet. At the present time the "Tibet Autonomous Region of China" constitutes only a part of the Historical or Geographical Tibet and is much smaller than former political Tibet. The former North-Eastern province of Amdo and the Eastern province of Kham have now largely been incorporated in the Chinese provinces of Szechuan, Yunnan, Chinghai and Sinkiang. Note, the ethnically related areas of Northern India (e.g. Ladakh or Sikkim), Bhutan and Nepal are not included.

⁹⁶Due to the often politically motivated, varying opinions concerning Tibet's borders, there is considerable disagreement on the population of Tibet. According to New China News Agency reports in May, 1951, the Chinese considered the population of Tibet to be 3.75 million (Int'l. Comm'n. of Jurists, *The Question of Tibet and the Rule of Law*, 1 (1959), but today official Chinese sources claim 1.37 million to be the population of the Tibet Autonomous Region of China. Six million is believed to be the total number of Tibetans inside and outside the said Autonomous Region, although this figure also is not accurate. See for varying estimates, Int'l. Comm'n. of Jurists, *supra* note 2; H. Richardson, *supra* note 94 at 6; H.H. The Dalai Lama, *supra* note 3; P. Karan, *supra* note 94 at 52-54. Mi-Shing-Ru, *Kham* (1934): the population of Kham alone was reported to be 3,800,500. *The Statesman Yearbook*, (1972-73) uses Chinese records of the Tibetan population as being 1.237 million for the Tibet Autonomous Region, 1.677 for Chinghai (Amdo) and 3.4 million for Sikang (Kham); quoted in Gyaltag, *supra* note 94. For different numbers see also *China, A Handbook* (New York 1973) at 104.

but it is evident that the Tibetans cannot, with scientific accuracy, be described as a 'Chinese people'; and indeed, the Chinese have for 2,000 years or more, looked on them as a separate race."⁹⁷

The Tibetan language, being Tibeto-Burman, is distinct from the Sino-Thai group of languages.⁹⁸ The script originated in India, and more precisely represents the nor-western variety of the Gupta script of the Seventh Century,⁹⁹ and therefore, needless to say, is entirely different from the Chinese.¹⁰⁰

One aspect of the Tibetan character that has influenced every expression of the Tibetan culture and history is the devotion to religion "which dominates the thoughts and actions of every Tibetan."¹⁰¹ The religion is a specialized development of Mahayana Buddhism, of which the seeds were planted in Tibet during the 7th Century A.D. by teachers from India, but also from Nepal and China. Due to the powerful position of the Church also in temporal affairs (Church and State were unified in the rule of the Dalai Lamas and their governments), religion had immeasurable and decisive influence on the political and cultural development of the Tibetan people. Events in Tibet since its occupation in 1949 are to a large extent the result of the Tibetans' strong religious convictions, making this aspect a very important one.¹⁰²

Although each of the neighbouring civilizations in India, China and Nepal had their effect on Tibetan life and culture, "whatever was borrowed from outside was adopted to suit local conditions and the native Tibetan character and mentality, with the result that remains strikingly original and homo-

⁹⁷H. Richardson, *supra*, note 94 at 5. See also G. Gyaltag, *supra*, note 94 at 8.

⁹⁸H. Richardson, *supra*, note 94 at 5.

⁹⁹Id. at 15; see also H. Hoffmann, *supra*, note 94 at 15.

¹⁰⁰E.g. Tibetans have never employed ideograms. See also as illustration, Sherab Gyaltzen Amipa, *Textbook of Colloquial Tibetan Language*, (1974) or other Tibetan language books.

¹⁰¹H. Richardson, *supra* note 94 at 11. See also P. Karan, *supra*, note 94 at 5; 64 at 69.

¹⁰²H. Richardson, *supra* note 94 at 11; see also H.H. The Dalai Lama, *supra* note 2 at 239; N.C. Sinha, *An Introduction to the History and Religion of Tibet*, 9, 11-20, (1975); P. Karan, *supra* note 94 at 64; R.A. Stein, *La Civilisation Tibétaine*, 134-141, (1962).

genous."¹⁰³

Tibetan history can be traced down to the Third Century, A.D., although there are records of nomadic tribes called the Ch'iang, believed to have been the ancestors and precursors of the Tibetans, as far back as the Second and Third Centuries, B.C.¹⁰⁴ The Seventh Century, A.D. saw the rise of an extremely powerful and unified nation, under the rule of King Song-tsen Gampo, and of military expansionism into China and Nepal.¹⁰⁵ It saw also the adoption of Buddhism as Tibet's religion. Since then, the history of Tibet has been, internally, that of the formation of a system of government representing the religious and lay elements, under the supreme leadership of more or less powerful Dalai Lamas.¹⁰⁶ Externally, it has been a history of a number of invasions by Mongols, Gurkhas and Chinese forces and their subsequent expulsion. Recent history was marked by Chinese military invasions, and at one instance (in 1904) a British military expedition. To go into the Tibetan history in detail at this point is unnecessary,¹⁰⁷ for it is undisputed that the history of Tibet is that of one nation which at the very least kept its *de facto* independence at all times before 1949.¹⁰⁸ The issue of controversy is the question whether China had suzerainty over Tibet at any time, and if so, what this term should

¹⁰³H. Richardson, *supra* note 94 at 13.

¹⁰⁴Id. at 28; H. Hoffmann, *supra*, note 94 at 39; see also R. Rahul, *The Government and Politics of Tibet*, 1-4, (1969).

¹⁰⁵Id. See also, N. Sinha, *supra* note 102 at 21-30.

¹⁰⁶See R. Rahul, *supra*, note 104, Ch. 2; "The Institution of Dalai Lama; N. Sinha, *supra*, note 102 at 31-54.

¹⁰⁷For detailed study of the history, see *inter alia*: H. Richardson, *supra*, note 94; H. Hoffmann, *supra*, 94; Int'l. Comm'n. of Jurists, *supra*, note 2; H.H. The Dalai Lama, *supra* note 2; D. Norbu, *Red Star Over Tibet*, (1973). N. Sinha, *supra* note 102; Anand, *The Status of Tibet in International Law*, 10, Int'l Studies 401-446, (1969); R. Stein, *supra*, note 102 at 25-59. R. & S. Gelder, *The Timely Rain* (1964); G. Patterson, *supra*, note 2; A. Rubin, *The Position of Tibet in International Law*, 35 China Q. (1968); T. Norbu, *Tibet* (1969); Barbet, *A Look Through the Window of Tibetan History*, 2 *Tibetan Messenger* (1973).

¹⁰⁸See R. Rahul, *supra*, note 104 at 119 e.s.; Int'l. Comm'n. of Jurists, *supra*, note 2 at 72-99; B. Mullik, *The Chinese Betrayal* 11-55 (1971); Rubin, *supra*, note 107; P. Karan, *supra*, 94 at 69.

be understood to mean in this particular case.¹⁰⁹

From the above brief survey, it must be concluded that "there can be no doubt as to the distinct characteristics of the Tibetan race, language, religion, culture, historical development and political structure from that of any other country."¹¹⁰

A further look at more recent history will show that up to the present time, Tibetans have regarded themselves as one people, distinct from any of the neighbouring peoples, and have acted accordingly. The Tibetans' resentment and resistance to any foreign interference in Tibet's affairs, the strong adherence to Buddhism as it was developed in Tibet, and the unfaltering loyalty to the Dalai Lama's spiritual and temporal leadership, has been evident at all times in Tibet's history. During the short occupation of Tibet following the Chinese military invasion in 1910, the animosity of Tibetans towards foreign domination was evidenced in the official statements of the Tibetan Government, and the popular resistance.¹¹¹ The exiled Dalai Lama proclaimed Tibet's independence, and regained control over the whole country after the Chinese troops, weakened by the revolution in China, were expelled from Tibet. Whatever may be the official Chinese view on the subject of her suzerainty over Tibet, from 1911 until the Communist Chinese invasion of Tibet in 1949, Tibet was at least *de facto* independent, but

¹⁰⁹Id. See also Chakravarti, *India and the Tibetan Question*, 10 Int'l. Studies, 450 (1969). Note that even the Chinese government recognized Tibet's ability to make international agreements, and regarded the country as *de facto* independent. How else is the Tibetan-Chinese agreement of Aug. 12, 1912 to be explained? (it was an agreement signed by representatives of both government concerning the surrender of all Chinese arms and ammunition in the country at the time, and the return of all Chinese officials and soldiers to China by way of India). For a full text of the agreement see, R. Rahul, *The 1912 Agreement Between the Chinese and the Tibetans*, 14 Tibetan Review (Feb. 1979) at 20.

¹¹⁰Tibetan Affairs Co-ordination Office, *supra*, note 2 at 6. See also D. Snellgrove and H. Richardson, *A Cultural History of Tibet*, (1968).

¹¹¹The invasion and occupation was "for all its military success, . . . an administrative failure. No one would co-operate. Not only was the Dalai Lama in exile, his leading ministers too were with him. The Tibetan National Assembly was sullenly obstructive; and it kept in touch with the Dalai Lama and sent messages to the Government of India through him, denouncing the Chinese action. There was still active resistance in parts of southeast Tibet. . ." H. Richardson, *supra* note 94 at 100.

strong arguments point to *de jure* independence as well.¹¹² Tibetans certainly did not consider themselves as subordinate to China.¹¹³

Since the invasion of Tibet in 1949, there has been no indication of a co-operative attitude of the Tibetans towards the Chinese. On the contrary, all subsequent events, particularly the growing open resistance to Chinese domination, starting to organize in 1956, and culminating in the large scale revolt in 1959 and flight to exile of the Dalai Lama and some 100,000 refugees, are evidence of Tibetans' intense dissatisfaction with what they clearly consider to be alien domination.¹¹⁴ The continuing resistance at the present time¹¹⁵ indicates that the feelings

¹¹²Prof. Ram Rahul writes. "After the Chinese revolution of 1911, Tibet proclaimed its independence from China and demonstrated that it possessed all the attributes required for sovereign statehood. It became to all intents and purposes an independent country. During this period the Government of Tibet exclusively conducted its own foreign relations, and the countries with which it had relations treated it as an independent country. Tibet appeared as an equal participant with Britain and China in the tripartite conference held at Simla in 1913-14. The signing of the convention and the Anglo-Tibetan declaration on 3 July 1914 meant not only that Tibet was conducting its own foreign relations, but also that another State, i.e. Britain, regarded it as capable of incurring international obligations. Of course, Tibet erred in neglecting to seek recognition of its statehood from the comity of nations. On both occasions it failed to publicize its position and to counter Chinese propaganda in this regard. It was because the leaders of Tibet never thought it necessary to move in the matter." R. Rahul, *supra* note 104 at 119,120. See also B. Mullik, *supra*, note 108 at 38-55; Rubin, *supra* note 107; Intn'l. Comm'n. of Jurists *supra*, note 2 at 75 e.s.; Sir C. Bell, *Tibet, Past and Present* (1924).

¹¹³*Id.*

¹¹⁴See H.H. The Dalai Lama, *supra* note 2; G. Patterson *supra* note 2; F. Moraes, *The Revolt in Tibet*, (1960); Int'l. Comm'n. of Jurists, *supra*, note 2; M. Peissel, *Cavaliers of Kham: The Secret War in Tibet*, (1972); Lowell Thomas, jr., *The Silent War in Tibet*, (1959); N. Barber, *From the Land of Lost Content*, (1970); Union Research Institute, *supra*, note 2. See also G.T. Andrutsang, *Four Rivers, Six Ranges: Reminiscences of the Resistance Movement in Tibet*. (1973). Regarding the Refugees, see Bureau of H.H. The Dalai Lama, *Tibetans in Exile, 1959-1969*, (1969), and *Tibetan Messenger, Tibetan Review*.

¹¹⁵Evidenced by confirmed reports of both open and underground resistance, by the imprisonment and execution of Tibetans for alleged anti-Chinese activities as recently as 1978. See generally, K. Paljor, *Tibet: The Undying Flame* (1978); D. Choedon, *Life in the Red Flag People's Commune*,

of Tibetans has not changed; clearly the element of subjective perception of Tibetans of being a people, and the assertion of a will to exist as a people is abundantly present.

It follows from the above that however restrictive an interpretation of the term "people" is used, the Tibetans are to be regarded as a "people" with a right to self-determination.¹¹⁶ Indeed, a clearer example of a people with a right to self-determination, i.e. a group of persons fulfilling all the objective criteria referred to above, and clearly perceiving itself as a people and asserting its right to exist as such is hardly conceivable.

Does the Right of Self-Determination Extend to the Tibetan People?

By the right to self-determination of peoples is meant their right to "freely determine, without external interference their political status, and freely pursue their economic, social and

(1978); Information Office of H.H. The Dalai Lama, *Glimpses of Tibet Today*, (1978); Tibetan Affairs Co-ordination Office, *supra* note 2. Prof. Luttwak, who recently visited Tibet writes: "If any doubts remained on the status of Chinese rule in Tibet, they were settled by what we saw during this journey (to the airport) in the dark of early morning. A goodly share of the thousands of troops on garrison duty around Lhasa were guarding our route. As our convoy of cars drove on the unpaved road down the valleys, it was preceded by four jeeps loaded with armed soldiers, and at every turn of the road we saw policemen and soldiers, the former standing openly on the road, the latter only dimly visible in typical defensive guard position off to the sides. After a while, we stopped counting the army trucks parked by the side of the road, each with the capacity of a platoon". Luttwak, *Tibetan Interlude*, 12 *Tibetan Review*, April, 1977. See also Union Research Institute, *supra* note 2; Kleine, *Meer Verzetsacties in Tibet*, 9 *Prana* 42-45 (1977); Patterson, *Recent Chinese Politics in Tibet*, 12 *China Quarterly*, 191-202, (1962); "Renewed Unrest Reported in Tibet", *New York Times*, Nov. 16, 1969, p. 6; *Violence Raging in Tibet*, *Times* (London), Sept. 72, 1967, p.1. See also G. Gyaltak, *supra*, note 96. *Christian Science Monitor*, Sept. 23, 1969 reported that Tibetans were bitterly opposing communes.

¹¹⁶Prof. Karan concludes that "Despite Chinese insistence that Tibet has always been a part of China, Tibetan religion, customs, culture and language are all distinctive, amply sustaining a claim to self-determination and independence." P. Karan, *supra* note 96 at 14.

¹¹⁷The Declaration of Friendly Relations, *supra* note 64 Art. 5; see also Art. 1 common to the Conventions on Human Rights.

cultural development"¹¹⁷ and determine their relation to other groups.¹¹⁸ The choice may be independence as a state, or autonomy or assimilation in a unitary state.¹¹⁹

It is evident that, as is true for any collective or individual right, it cannot be absolute, so that where it conflicts with other rights or principles recognized by international law, a process of weighing and balancing of the rights and their underlying values must take place. The furtherance of human dignity and human rights is one such value that is of paramount importance in the described decision-making process.¹²⁰ The emphasis placed by the United Nations on the right to self-determination in the context of human rights¹²¹ is significant in this respect. The United Nations considers the right to self-determination as a fundamental human right, particularly as

"a collective right, appertaining to all peoples and nations, and...a prerequisite of the enjoyment of all the rights and freedoms of the individual"¹²²

It is with this understanding that the conflicting principles and rights must be viewed. This is particularly true for the apparent irreconcilability of the right of self-determination and the principle of territorial integrity.¹²³ Neither is absolute, consequently neither should be dogmatically applied: instead they should be seen as a pair of complementary opposites¹²⁴ subservient to the overriding concern for human rights and dignity.¹²⁵ For

¹¹⁸I. Brownlie, *supra* note 93 at 575.

¹¹⁹Id.; see also Int'l. Comm'n. of Jurists, *supra* note 8 at 44.

¹²⁰Suzuki, *supra* note 72 at 862.

¹²¹Note that most legal instruments of the U.N. wherein the right to self-determination is established, concern human rights, e.g., the Covenants on Human Rights. See also *supra*, at 17.

¹²²10 UN GAOR, Annexes Agenda Item No. 28(11) 14 U.N. Doc. A/2929 (1955).

¹²³This conflict was well described by Sec. Gen. U Thant in 1971:

"A...problem which often confronts us and to which as yet no acceptable answer has been found in the provisions of the Charter, is the conflict between the principles of the integrity of sovereign states and the assertion of the right to self-determination, and even secession, by a large group within a sovereign state. Here again, as in the case of human rights, a dangerous deadlock can paralyze the ability of the U.N. to help those involved."

U Thant, *Introduction to the Report of the Secretary General* (1971).

¹²⁴Suzuki, *supra* note 73 at 801, 802.

¹²⁵Id. at 848.

this reason the United Nations organs do not permit Article 2, paragraph 7 of the United Nations Charter to impede discussion and decision when the right to self-determination is in issue.¹²⁶

In the ensuing discussion the total context of the claim to self-determination must be considered, using the test of reasonableness as the determining factor in deciding how to respond to such a claim.¹²⁷ The critical questions are whether the people's disidentification with the larger unit of which they politically form a part, is Real and whether its demands are compatible with basic community interests: the potential effects of the grant or denial of self-determination upon the people in question, the dominant group, regional and world community interests.¹²⁸

A group can become dissociated because of its subordinate status in relation to the dominant group, because of differences in policy, or because of a combination of both.¹²⁹ But a group's disidentification can also have its origin in a combination of *inter alia* ethnic, cultural, ideological and historical factors. This will most strongly be felt when a people has been subjected to alien domination against its will. The annexation or colonization of peoples, including those forming independent states, by stronger powers, has given rise to legitimate claims for self-determination.¹³⁰

The ultimate outcomes of struggles for self-determination are not necessarily indicative of the legality of the claims, or of how future claims should be resolved. On the other hand, given the variety and complexity of individual claims, different state

¹²⁶I. Brownlie, *supra* note 93 at 577; see also R. Higgins *Internal War and Internal Law* in 3 *The Future of the International Legal Order* 104 (C. Black & R. Falk eds. 1971) For a recent study of Art 2 (7) of the U.N Charter, see Watson, *Autointerpretation, Competence and the Continuing Validity of Article 2 (7) of the U.N. Charter*, 71, *Am. J. Int'l. L* 60 (1977).

¹²⁷Suzuki, *supra* note 73 at 784.

¹²⁸*Id.*

¹²⁹*Id.*

¹³⁰The history of decolonization is a clear example of this, and so are the claims by the Lithuanian, Estonian, Latvian, South Molukkan and Eritrean peoples. The United Nations also repeatedly refers to peoples under alien domination or foreign occupation or subjugation, as having the right to self-determination.

policies in this regard are not necessarily inconsistent.¹³¹ Needless to say, when a people endeavours to exercise its right to self-determination, particularly where, as in the case with the Tibetan people, this could result in a secession from the existing political unit, “the latter is not apt to accept calmly the prospect of its being carved up between several peoples, and it tends to resist the secession movement. Neither Pakistan nor Nigeria submitted gracefully to the scheme of its dismemberment”.¹³²

The determining factors then, in resolving claims for self-determination, are the nature and extent of the common characteristics and values of a people and of their disidentification with the dominant group; the stability of expectations and extent of public support; the viability of the (anticipated) end and its compatability with the dominant group’s vital interests, and those of the region and world community as a whole and, above all, its contribution to the furtherance of human rights and dignity.

Common Values and Disidentification

The common values of a people are the product of its common characteristics, traditions and history. In effect, as we have seen, they are determinants for peoplehood.¹³³ What we are concerned with here, though, is the nature and extent of it, a question of degree rather than of categorization. The more cohesive the group and the greater the number and intensity of disidentification with the dominant group, the more reasonable the claim for self-determination, and the greater the need to honour it.

The common characteristics and background of the Tibetan people, described above,¹³⁴ not only helps prove peoplehood,

¹³¹e.g. “. . . [I]t is wholly irrelevant to argue that the United States, having denied the Confederate attempts to secede from the Union in the 1860’s would contradict itself by assisting the Bengalis to realize their demand for self-determination. Consistency in improving the quality of public order, rather than consistency in supporting change or stability should be the goal.” Suzuki *supra*, note 73 at 785.

¹³²Dinstein, *supra* note 72 at 108.

¹³³*supra* at 33.

¹³⁴*supra* at

but also goes a long way to suggesting the reasonableness and legitimacy of the claim for self-determination. The history of the Tibetan people and their continued resistance to domination by the Chinese, as evidenced by *inter alia* popular uprisings, underground resistance movements and protracted guerilla activity,¹³⁵ illustrate the people's extreme and real disidentification with the dominant Han-Chinese group. The disidentification is based both on the many differences of the two distinct peoples and the incompatibility of these differences, in particular their religious and ideological values, in which both peoples put great importance.¹³⁶

Stability of Expectations and Popular Support

By stability of expectations is meant the relation of the peoples' present expectations to their past and present fact situation and to the future: to project how reasonable and persistent these expectations will be in the immediate and long range future.¹³⁷ Clearly, the isolated demand for self-determination bearing no relation to past experience and having no reasonable foreseeable continuity, does not carry the weight of one that does. Similarly such a demand carries little weight when it originates and is supported only by a small segment of the population. Moreover, the extent of popular support over time for claims of self-determination is an indication of the

¹³⁵See *supra*, note 115 at . See also G.H. Corr, *The Chinese Red Army* 57-62, (1976).

¹³⁶Although Marxist ideology is not necessarily wholly incompatible with Buddhist teachings, the Chinese attempt to destroy the Buddhist religion by forbidding its practice and attacking its doctrine, institutions and priests obviously is. N.B.: The Intn'l. Comm'n. of Jurists concluded after its inquiry that "acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group. . . ." Intn'l. Comm'n. of Jurists, *Tibet and the Chinese People's Republic* 3, (1960).

In a statement to the Lok Sabha (Indian Parliament), Premier Jawahar Lal Nehru described his discussion with Premier Chou En-lai over Tibet in 1956 and commented: "He told me that while Tibet had long been part of China, [the Chinese] did not consider Tibet as a province of China proper. . . . He told me further that it was absurd for anyone to imagine that China was going to force communism on Tibet." (Statement to the Lok Sabha, 27 Apr. 1959) Repr. in *National Integration*, Independence No. 2, (1964).

¹³⁷Suzuki *supra* note 73 at 795.

future prospects for stability of the group's expectations in this regard.

It is hard to determine with accuracy the extent of popular support for self-determination inside Tibet, since access to that country has been almost completely forbidden. The extensive participation in the revolt of 1959 and subsequent resistance activities indicate that feelings of nationalism are widespread.¹³⁸ Only a plebiscite, as called for by the Dalai Lama, would conclusively establish the extent of popular support for the claim.¹³⁹

¹³⁸See Luttwak, *supra* note 115; see also, 'Class Enemies' Still Active, a series of Radio Lhasa broadcasts, in *Glimpses of Tibet Today*, *supra* note 115 at 72 e.s.; Information and Publicity Office of H.H. The Dalai Lama; *Tibet Under Chinese Communist Rule, A Compilation of Refugee Statements, 1958-1975*, (1976); Kleine, *supra* note 115 at 45. Prof. Karan writes: "The revolt by ethnic and religious minorities is a source of major trouble for the Chinese in Sinkiang as well as in Tibet." He further writes, "The mass arrests and executions provide a clear indication that China has been encountering a fresh wave of discontent and opposition. . . ." P. Karan, *supra* note 94 at 29 and 80. See also *id.* at 28 regarding strong Tibetan resistance to the organizing of communes, and at 43 regarding resistance by herdsmen.

G. Corr writes: "In areas such as Tibet and Sinkiang, The PLA operates to some extent as an occupation army and has to be ready to deal with local disturbances, for these are troubled lands where the indigenous peoples might try to shake off China's hold, should the opportunity ever present itself." G. Corr, *supra* note 135 at 159. Martial law was instituted on various occasions because of violent resistance. (e.g. *Pravda*, Moscow, June 20, 1969). The Dalai Lama stated that: "Many of the Tibetans may be ideologically communist, but they are definitely nationalist communist. To these Tibetans their nation comes first, ideology second. We are fighting against colonialism and not against communism." 16 *Asian Recorder*, 9502-03, (1970).

¹³⁹Since the right to self-determination belongs to a people, this should be determined by the participation of all its members. Consequently, plebiscites have throughout the years been regarded as the most satisfactory means of exercising the right of a people to self-determination. See H. Johnson, *supra* note 12.

Since 1973 the Chinese government has requested the Dalai Lama to return to Tibet. The Dalai Lama has considered going back only on the condition that the Chinese hold an internationally supervised plebiscite on the future of Tibet. P. Karan, *supra* note 94 at 30. See also *supra*, note 3. For the most recent 'invitation' by the Chinese, see Beijing Rundschau, No. 3. Jan. 23, 1979, "Warten auf die Rückkehr des Dalai Lama und Anderer Tibeter", 3. The Chinese expression of hope that the Dalai Lama return is followed by the qualification, "dass der Dalai Lama die Interessen der Nationalen (i.e. Chinese, *red.*) Einheit über alle anderen Interessen stellt und zur Wahrung der Einheit unseres Vaterlandes beiträgt."

In the case of Tibet, the stability of expectations is evident from its past and recent history. Tibetans have governed themselves for centuries and have always shown a strong dislike for foreign intervention. The demand for self-determination is therefore aimed at regaining what was lost rather than to create a new situation, with unforeseeable consequences.

Viability and Compatibility With Other Interests

The viability of the political units resulting from the exercise of the right to self-determination, and their compatibility with regional and world community interests must be considered. It was long held that a defined territory and a sizeable population were among the prerequisites for viability of independent states. The creation of Israel and a large number of micro-states, fully participating in the international community, contradict the contention.¹⁴⁰ There are no clear cut rules. However, the concentration of a people within a particular area, where it constitutes a clear majority of the population, does contribute significantly to the viability of independent existence, or in fact any other exercise of self-determination. The geographical and economic viability should also be considered.

Once again, the Tibetan claim poses less problems than some others do, since the existence of at least a *de facto* independent state of Tibet, prior to the 1949 invasion, which functioned as well as any other state, goes a long way to prove its viability. Certainly its striking natural borders could only enhance the viability of the state. The tremendous mineral resources of the Tibetan Plateau would make Tibet a viable economic unit in the 20th Century, besides the traditional farming and trading.¹⁴¹

The people exercising the right to self-determination must project an identity compatible with the dominant group's inte-

¹⁴⁰Although it could be argued that where no previous territory existed, the creation of a new state may still not be compatible with regional interests, using Israel as example.

¹⁴¹See Han Suyin, *Chinas Sonne uber Lhasa*, 152 (1978). The author states that in geographical excavations, at least forty rich minerals were found in Tibet, such as; gold, bauxite, silver, iron, borax, manganese, copper, zinc, salt, graphite, uranium, oil and coal.

See also P. Karan, *supra* note 94 at 49-50.

rest. More specifically, the dominant group must also remain a viable unit, once the people has broken away or otherwise exercised the right to self-determination. In addition, the new situation should contribute to rather than disrupt world (and of course regional) peace and order.

China's strategic interest in Tibet is clear from the geography of the region and the heavy military concentration.¹⁴² Undoubtedly, Tibet contributes to China's military security. The economic interest, though of some significance, is not of great importance to China's overall economy. Neither of these two interests are vital to China's continued existence or viability. The existence of a large, independent state of Tibet in Central Asia would not only be in the interest of India, but would contribute to the stability and peace of the area, rather than endangering it.¹⁴³

Human Rights

"The territorial integrity of the State is not a goal to be pursued. It is merely one of the conditions under which the enjoyment of human rights can be secured. The goal is instead, the protection and fulfilment of the fundamental basis for a dignified human existence."¹⁴⁴

Self-determination is increasingly being recognized as a fundamental human right and a prerequisite to the enjoyment of other human rights and freedoms.¹⁴⁵ Deprivation of human rights

¹⁴²P. Karan, *supra* note 94 at 78-80. It is also the site for nuclear facilities. Estimates of the number of Chinese troops stationed in Tibet vary from 125,000 to 300,000 men. See Sawhney, *China's Control of Tibet and its Implications for India's Defence*, 10 Int'l. Studies, 486-495, (1969). See also P. Karan, *supra* note 94 at 53; G. Corr, *supra* note 135 at 62.

¹⁴³R. Rahul, *supra* note 104 at 121; A. Dastur, *The Tibetan Ordeal and India in National Integration*, *supra* note 136 at 62 e.s. . See Sen, *Tibet and the Sino-Indian Impasse*, 10 Int'l. Studies, 523-542, (1969); see also Sawhney, *supra* note 142; J. Josten, *The Future of Tibet*, in *Controversial Political Issues in Asia* (R. Yap-Diangco ed.) 77-93, (1966).

¹⁴⁴Suzuki, *supra* note 73 at 807.

¹⁴⁵See *supra* at 44. See also the Bandung Declaration of 1955, *Doc. on Int'l. Affairs* 426 (N. Hrankland ed. 1968); The Declaration on Granting Independence, U.N.G.A., 1514, which reads in part: "The subjection of Peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the U.N. and is an impediment to the promotion of world peace and co-operation."

of a people, non-compliance with the principle of equal rights and discrimination are important grounds for the exercise of the right to self-determination of a people. In fact, although some international lawyers subscribe to the view that the right to self-determination can be exercised once only,¹⁴⁶ that also is subject to the requirement that the government does comply with the principle of equal rights and does represent the whole people without distinction. "If any one of the constituent peoples of a state is denied equal rights and is discriminated against, it is submitted that their full right of self-determination will revive."¹⁴⁷

Not only is the deprivation of human rights a ground for the exercise of the right to self-determination, but denial of the right to self-determination itself, constitutes a violation of a fundamental human right.¹⁴⁸ This was also made evident in the General Assembly Resolution adopted in 1961 regarding Tibet:

The General Assembly,

...solemnly renews its call for the cessation of practices which deprive the Tibetan people of the fundamental Human Rights and freedoms including their right to self-determination.¹⁴⁹

This resolution and two others¹⁵⁰ called on the People's Republic of China to put an end to the "violation of Fundamental Human Rights of the Tibetan People, suppression of their distinctive culture and religious life."¹⁵¹ The International Commission

¹⁴⁶See Emerson, *supra* note 42 at 463; Intn'l. Comm'n. of Jurists, *supra* note 8 at 46; According to this view, if a people has once chosen to join with others within a state by genuine exercise of self-determination, the people cannot afterwards claim to secede under the same right. Needless to say, the exercise of the right must have been a true expression of the will of the people.

¹⁴⁷Int'l. Comm'n. of Jurists, *supra* note 8 at 46.

¹⁴⁸See *supra* at 46 and 57.

¹⁴⁹U.N.G.A. Res. 1723, 15 UN GAOR, (1961).

¹⁵⁰U.N.G.A. Res. 1353, 14 UN GAOR, (1959).

U.N.G.A. Res. 2079, (XX) UN GAOR, (1965). See also Bureau of H.H. The Dalai Lama, *Tibet in the United Nations 1950-1961*.

¹⁵¹U.N.G.A. 1353, *supra* note 150. The question of the violation of the Human Rights was brought up in 1965 by, *inter alia*, the Philippines. The Philippine Ambassador to the U.N. declared that this was being done because the Chinese were violating 16 of the 30 articles of the Universal Declaration of Human Rights. (The Daily Mirror, London, Dec. 15, 1965). In

of Jurists found, after an extensive investigation, that acts of genocide had been committed in Tibet "in an attempt to destroy the Tibetans as a religious group, and that such acts are acts of genocide independently of any conventions."¹⁵²

The Commission further came to the conclusion that the Chinese authorities in Tibet had violated human rights both of the civil and political kind and economic and social kind.¹⁵³ Since these resolutions on Tibet were passed, Chinese authorities have made no significant change of policy regarding Tibet, although the recent tendency for liberalization in China has also affected Tibet in a general way.¹⁵⁴ In the past twenty years, the Chinese have carried out a harsh and ruthless policy in Tibet, with the manifest purpose of eradicating the Tibetan political

memoranda sent to many Heads of States, including that of the P.R.C. and to the General Secretary of the U.N. by Tibetan organizations in exile and by the Tibetan Affairs Co-ordination Office in The Netherlands, in 1978 and 1979 the Chinese government is accused of violating Arts. 1 and 55 of the Charter of the U.N. and the Universal Declaration of Human Rights, Arts. 2, 3, 5, 9, 12, 13, 17, 18, 19, 20, 21, 23, and 26. The memorandum also alleges the said govern-violates articles of its own constitution protecting human rights and freedom, namely Arts. 3, 85, 87, 88, 89, 90, 91, 92, 95 and 96 and the *Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet*, of May 23, 1951, in particular Arts. 3, 4, 5, 6, 7, 11, 13, and 15.

¹⁵²Int'l. Comm'n. of Jurists, *supra* note 136 at 3.

¹⁵³Id. at 4. In the earlier report the Commission recorded that "On the basis of the available evidence, it would seem difficult to recall a case in which ruthless suppression of man's essential dignity had been more systematically and efficiently carried out." Int'l. Comm'n. of Jurists, *supra* note 2 at 59. See also Amnesty Int'l., *Political Imprisonment in the People's Republic of China* 155 e.s., (1978). The Afro-Asian Council, *REPORT of the Afro-Asian Convention on Tibet and Against Colonialism in Asia and Africa*, (1960). See also Information Office of H.H. The Dalai Lama, *supra* note 115, *Present State of Religious Institutions*, at 51 and *Prisons in Tibet*, at 61.

¹⁵⁴Indications are for example, the reappearance of the Panchen Lama on the Tibetan political scene. after twelve years, presumably spent mostly in prisons. (13 *Tibetan Review*, Feb.-Mar. 1978 at 4): the release of 34 Tibetan political prisoners, (13 *Tibetan Review*, Nov., 1979 at 5). Two of these released prisoners may visit relatives in India. (13 *Tibetan Review*, Dec., 1978 at 5). Some Tibetan exiles may visit Tibet. (14 *Tibetan Review*, Jan., 1979 at 5). See also however, the *New York Times*, Feb. 3, 1979: The Dalai Lama states that though there may be some liberalization in Tibet, it is too early to draw the conclusion that there is a veritable change of policy.

entity, and also its cultural, religious and ethnic personality.¹⁵⁵ Thus Tibetans have been denied equal political rights;¹⁵⁶ they have been severely restricted in their right to travel and have been granted no freedom of expression.¹⁵⁷ Thousands have been sent to prison, and many have been executed for alleged anti-Chinese activities.¹⁵⁸ Tibetans have been forced to marry Chinese.¹⁵⁹ Food has been confiscated and rationed¹⁶⁰ and religious persecution has been intensive.¹⁶¹ As Professor Luttwack wrote after a visit to Tibet in 1977,

“The Chinese obviously can see no virtue in the survival of the local cultures, and still less in the survival of local religion. Chinese colonialism is therefore

¹⁵⁵Prince Peter of Greece and Denmark, *The Chinese Colonisation of Tibet*, 13 *Tibetan Review*, Apr., 1978 at 24. See also P. Karan, *Supra* note 94 at 81, 82, 84; G. Corr, *supra* note 135 at 63.

¹⁵⁶P. Karan, *supra* note 94 at 31-37; G. Gyaltag, *supra* note 94 at 35-37.

¹⁵⁷*Daily News*, Chicago, Aug. 21, 1968: see also G. Gyaltag, *supra* note 94 at 35; *Statesman*, Calcutta, Apr. 4, 1969.

¹⁵⁸See *New York Times*, Dec. 19, 1969, concerning 20,000 Tibetans and Chinese prisoners forced to work under bad conditions to build an airfield in South Tibet. See also Information and Publicity Office of H.H. The Dalai Lama, *supra* note 115 at 61; Tibetan Affairs Co-ordination Office, *supra* note 2 at 12: “On June, 1977 about 600 Tibetans were arrested and deported to unknown destinations for singing anti-Chinese songs (a not uncommon way in Tibet of expressing political feeling). On the first of August and October [1977] about 200 Tibetan youths were executed on alleged charges of anti-Chinese activities” (according to Chinese radio broadcasts).

¹⁵⁹*Time*, New York, Sept. 13, 1968; *Age*, Melbourne, Dec. 17, 1968.

¹⁶⁰*London Observer*, Feb. 4, 1969, stated that famine in Tibet had become so threatening that the Chinese were suppressing Tibetan food marches. Most of the local food available was commandeered by the Chinese occupation authorities for Chinese troops. *The Statesman*, Calcutta, Apr. 4, 1969, reported that the Chinese retained three fourths of the harvested crops.

¹⁶¹*Youmouri*, Tokyo, Feb. 7, 1967 quoted an A.P. report that 90% of the more than 100,000 Lamas in Tibet had been stripped of their priesthood and placed in industrial labour camps. This was disclosed by Premier Chou En-lai on Oct. 15, 1966. Similar reports appeared in *Time*, New York, Sept. 13, 1968; *Sunday Standard*, Bombay, Mar. 30, 1969 (according to which the monks were “forced to forego their religious vows and were subjected to various atrocities, to which members of their families were witnesses”) See also *Indian Nation*, Patna, Jan. 19, 1967, *Manchester Evening News*, Manchester, June 17, 1969, *People’s Daily*, Peking, Nov. 19, 1968 and *Red Flag*, Peking, Nov. 8, 1969.

oppressive not merely politically but also culturally.’’¹⁶²

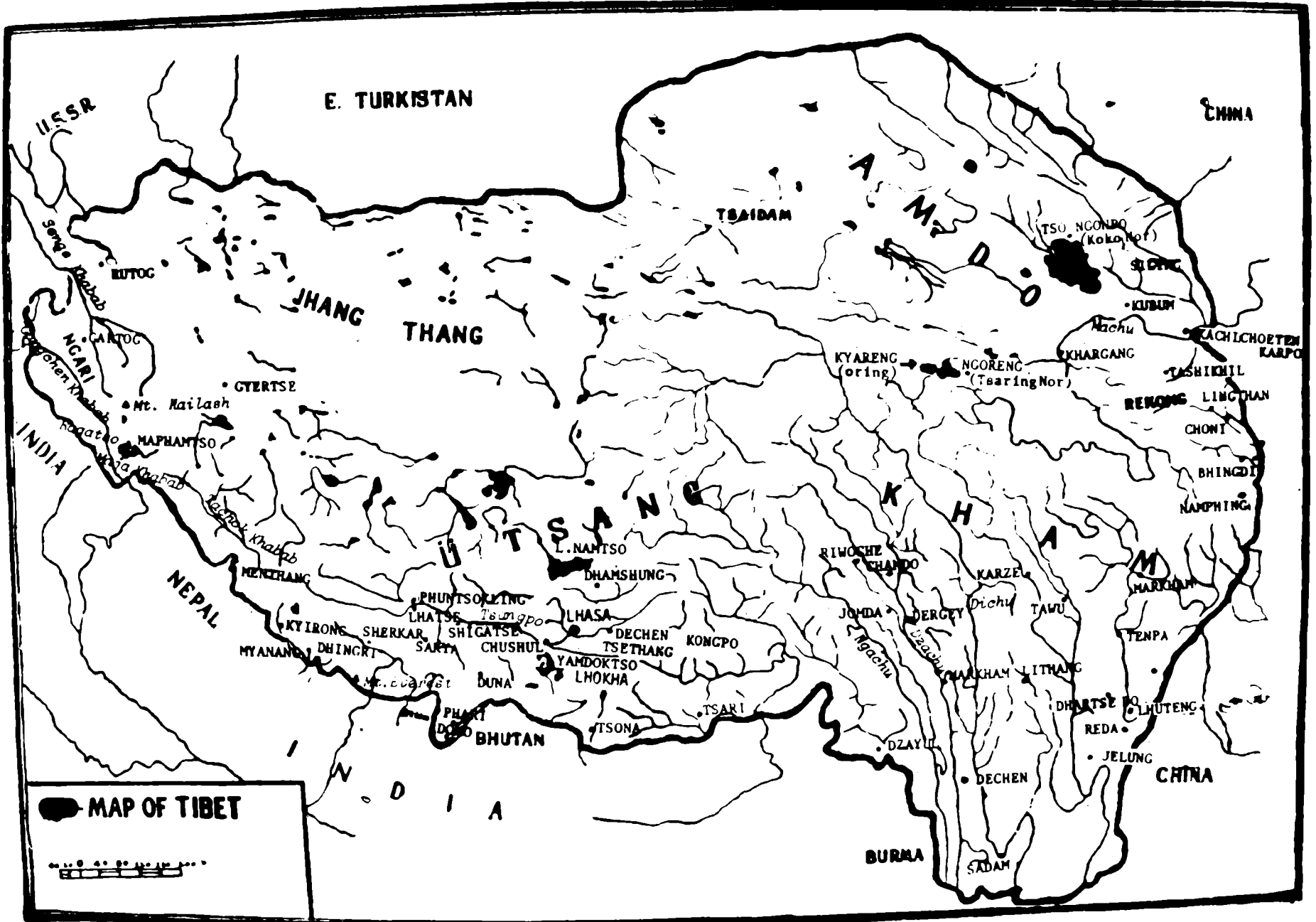
Conclusion

The People’s Republic of China has been a member of the United Nations for a number of years. In becoming a member that country accepted the principles: rights and freedoms laid down in the Charter of the United Nations, besides being subject to international law generally.

From the above analysis, it is evident that the Tibetans are a people with a right to self-determination, enforceable in international law. It is in fact, difficult to conceive a clearer example of a people with a right to self-determination, and one whose right is being so flagrantly violated.

For the People’s Republic of China to deny the Tibetans the exercise of this right is violation of International Law, including the Charter of the United Nations. China’s Government is obligated to comply with the United Nations’ resolutions on Tibet: to restore the human rights and fundamental freedoms to the Tibetan People and to recognise and provide for the implementation of their right to self-determination.

¹⁶²Luttwack, *The Times*, London, May 17, 1977.



MAP OF TIBET

0 10 20 30 40 50 60 70 80 90 100