

TIBET:

The Position in International Law

Report of the Conference of International Lawyers on Issues
Relating to Self-Determination and Independence for Tibet

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Report of the Conference of International Lawyers
on Issues relating to Self-Determination and Independence for Tibet,
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PREFACE

**- The Rt Hon Lord Ennals,
Chairperson of the Organising Committee**

There is no more challenging claim in 1994 than 'the right of self-determination of peoples'. It is a theme of many international conferences but, more importantly, it is a cause of many bloody conflicts.

Several international conferences have been organised on the general issue of self-determination. But there is, as yet, no universally accepted definition of 'peoples' for the purpose of these rights nor is there any agreed procedure for processing claims to self-determination. UNESCO has organised a series of meetings of experts to provide an acceptable definition but their terminology does not carry the weight of international law.

A conference of international lawyers was organised to examine every aspect of the issue of the right of self-determination as it applies to Tibet. China maintains that Tibet has been part of China for over 700 years – a claim repudiated by the Tibetans. There have been no negotiations between China and the Dalai Lama, or any other representative of the Tibetan people, on any issues where the sovereignty of Tibet has been in question. It is the view of the sponsoring organisations that a claim by Tibet to the right of self-determination is one that can only be settled peacefully and in accordance with international law. The sponsors of the conference were the International Commission of Jurists and the United Kingdom All Party Parliamentary Group for Tibet.

From the start it was decided that the number of participants should be limited and that the conclusions should be reached by distinguished lawyers from different parts of the world. All were individually invited. In some cases, to ensure a representative and high standard of participants, the lawyers were given financial grants to enable them to attend. As both the sponsoring organisations have a record of support for Tibet's case for self-determination it seemed important to the organisers that the legal analysis should be impartial and that the Chinese case should be carefully considered. Most of those invited had no firm view on the application of the right of self-determination to Tibet and were by no means expert on the situation in Tibet or its history. For this reason, Committees on Evidence were organised prior to the legal analysis part of the Conference.

The hope of the organising committee and the participants is that the record of this International Lawyers' Conference will be helpful to governments, lawyers, universities and national and international organisations as they face the issues posed by the claims made by the Tibetan government in exile and those who support the case and by any counter-claims. It is also the view of many of those involved that, as a result of this Conference, there is much work to be done in finding the way to an acceptable definition of 'peoples' and a satisfactory mechanism for the UN to handle claims for self-determination. The method adopted by this Conference may prove an appropriate model in considering these claims.

OPENING REMARKS TO THE CONFERENCE

- **The Hon Justice Michael Kirby,**
Chairperson of the Conference

Welcome to all participants to this Conference of international lawyers to discuss issues relating to self-determination and independence for the Tibetan people.

I suggest that there should be some guiding principles for the conference, being:

1. *Professionalism*: the nature and approach of the conference should be one of integrity, with decisions not based on slogans or the heart alone, but on evidence and principle.

2. *Objectivity and Neutrality*: the Chinese government has declined an invitation to attend the conference but it had submitted its White Paper on Tibet and other documents to me, as chairperson of the conference. It had requested on 14 December 1992 that the Conference be cancelled and reiterated its position that Tibet is an inalienable part of China. Because of this, the conference must be particularly mindful of China's position and the participants must, as lawyers of principle, test propositions and not simply accept them because they are stated.

3. *Be conceptual*: the Tibet issue must be seen in the wider context of what is undoubtedly one of the great issues of international law and international politics of this time: the right of self-determination. Peoples' right to self-determination is being asserted virtually everywhere in the world, for example by the aborigines in Australia and within the former Yugoslavia and the former states of the USSR. The participants are urged not to take an overly simplistic or naive view about the assertion of the right to self-determination, which, although contained in the opening words of the United Nations Charter, must be seen in its context. It is not an unqualified right but exists in international law in the context of a Charter which has other provisions which are designed to respect other important international principles (such as international peace and the position of States). The conference must test its conclusions in respect of the Tibetan case by applying their implications elsewhere in the world where self-determination is being advanced.

4. *Time*: there should be an economical use by the participants of the limited time available at the conference.

5. *Practicality*: the object of the conference is to apply the right of self-determination specifically to Tibet. The conference would try to conclude with a statement to which as many as possible of the participants would be willing to put his or her name.

6. *Optimism*: 1992 had been an extraordinary year in terms of international law. The events in Kuwait, the humanitarian intervention in Somalia and the preventative action taken in the Macedonian People's Republic of the former Yugoslavia were all con-

ducted with remarkable speed. These are important steps in terms of the development of the role of the United Nations and a new world legal order. Assertion of the right of self-determination has increased. The Baltic States were now independent and Czechoslovakia has divided peacefully into two Republics. Although the Tibet debate has gone on for so long with apparently no change, the conference can take some degree of heart and optimism from the developments that are occurring elsewhere with such remarkable speed.

There is a growing acceptance of the principles as to what are the pre-requisites of who are a 'people' for the purpose of enjoying the people's right to self-determination guaranteed by international law and mentioned in the United Nations Charter. The participants may wish to look at the criteria set out in the Paris meeting of UNESCO.

7. Flexibility: the Conference should be run in a way which is flexible.

I wish you all the very best in your endeavours.

INTRODUCTION TO THE REPORT

- **Robert McCorquodale,**
Rapporteur of the Conference

'One is bound to recognise that the right of peoples to self-determination, before being written into charters that were not granted but won in bitter struggle, had first been written painfully, with the blood of the peoples, in the finally awakened conscience of humanity.'

- Judge Ammoun in Namibia Case'

The bitter struggle about the right of self-determination, of which Judge Ammoun spoke, continues today. It is still being written in the blood of peoples due to the actions of oppressive governments. But the conscience of humanity has been awakened and the content, application and exercise of the right is now a focus of concern within the international community. Unfortunately, there has been no coherent framework of legal rules universally accepted and no peaceful settlement procedure which have been developed to resolve this bitter struggle between peoples and States.

A Conference of International Lawyers offered the chance to assist the development of legal rules and procedures to settle these struggles. These lawyers had gathered to examine the right of self-determination and to consider its application to a particular situation - that of the Tibetan people. By their method of analysis of the facts and the law it is hoped that the Conference contributed to the resolution of bitter struggles over the right of self-determination.

Conference Procedure

a. Purpose of the Conference

At the instigation of David Ennals, a committee was set up to organise a Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet. It was to be a small conference of a few days duration with about thirty participants, plus some observers, to assist creative, detailed discussion in an efficient manner. The backgrounds of the participants varied, with academics, judges, legal practitioners and legal advisers among them, though all were eminent international lawyers with some interest in the right of self-determination. Disappointingly, despite many requests, the Chinese government refused to participate (see Appendix B), although its views on the situation in Tibet were made known to the Conference. The list of participants is set out in this Report.

The objective of the organising committee was to ensure that the participants of the Conference would form a largely independent legal body, whose role was to examine the facts and the law relevant to the Tibetan situation. Very few of these international lawyers had detailed knowledge of the situation in Tibet or any direct connection with

either Tibet or China. Thus the conclusions reached were free and fair and based on legal principles.

b. Conference Procedure

The Conference was held from 6-10 January, 1993 in London at the London Business School (the Conference programme is Appendix A). It was intensive, with most days starting at 08.45 and concluding at 22.00. The first day and a half of the Conference were devoted to examining the relevant and available evidence about the situation in Tibet. The purpose of this was to enable the later discussion of international law to be based on conclusions reached as to the factual position. Nearly all the participants attended these Committees on Evidence and analysed closely the evidence presented, both written and oral. As chapters 1 and 2 make clear, the evidence was voluminous and took into account both Chinese and Tibetan views, as well as independent experts' accounts. A summary of the written reports on evidence are annexed to this Report as Appendix C. The conclusions reached on the evidence are discussed below.

The main Conference was opened by the Hon Justice Michael Kirby, whose remarks are summarised in Part I of the Report, and the Conference was conducted in the light of his seven principles. As the intention of the Committee was that as much full and frank discussion of the applicable international law relating to the right of self-determination and independence should occur, there was plenty of time for this discussion. The major issues relating to the right of self-determination (see below) were considered with each one introduced by one or two of the participants. These speakers were excellent and produced a paper prior to the Conference and spoke to it. Their papers, together with any appropriate additional statements or revisions by the speakers, are reproduced at the beginning of the relevant part of each chapter in Part III. The issues were then discussed by all participants, with many alternative views expressed, additional information provided, questions asked and comments made. These discussions were lively, frank, constructive and of high quality and were assisted by the chairpersons, who were each familiar with the particular issue. As far as is possible, these discussions are summarised in this Report in the relevant chapter.

Issues Discussed

a. Context of Issues

As the opening quotation indicates, the right of self-determination is a contentious matter. There are many issues about the content, application and exercise of the right which are the subject of divisive debate. Most of these issues were raised and confronted by the Conference participants as topics of discussion. While the topics necessarily related to the situation of the Tibetan people, this was in the context of the broader application of the right of self-determination in the world and the increasing velocity of change in the international community and in international law, as well as in the context of the protection of human rights in China as a whole. This context was acknowledged and dealt with by the participants. Thus many comparisons with the situation of other people and other regions of the world were made.

b. Tibetans as a Distinct People

The issue of who are the 'peoples' (or the 'self') to whom the right of self-determination applies is central to any clarification of the right. As James Crawford notes, 'from the perspective of international law, the key feature of the phrase 'rights of peoples' is not the term 'rights', but the term 'peoples'.²

Yet there is no international agreement on a definition of 'peoples'. International human rights treaties and instruments do not provide a definition, although it is clear that the right is not limited to those who comprise all the inhabitants of a State, and that it is a right of peoples not of governments. Also, as 'peoples' are formed and reformed, created and intertwined, over time, a permanent, universal and objective definition of 'peoples' is difficult to discern. International recognition of a group as a 'peoples' is helpful but not determinative, as the existence of a right cannot depend on the will of States. Subjective elements such as self-identity are also part of any definition. Therefore, a definition of 'peoples' must combine both objective and subjective conditions and not be too inflexible or solely reliant on international recognition. A tough requirement.

c. The Extent of International Human Rights Law

International human rights law is developing at a tremendous rate. Human rights, either as a collection of rights or as a particular right, are promoted and protected by a large array of multilateral treaties, both global and regional, together with General Assembly resolutions, international instruments of strong presumptive force, such as those emanating from the CSCE process, and even bilateral agreements. These documents, together with other State practice, have meant that a number of human rights are now part of customary international law and so binding on all States. The rights legally protected have grown to include civil and political rights, economic, social and cultural rights and group rights. The role of international lawyers is often to clarify the content, application and exercise of these rights and the extent of States' obligations with respect to each right.

While enforcement of the obligations of States to protect human rights is still not satisfactory, non-legal pressures are brought to bear on many States. Indeed, the development of international human rights law has had an impact on the sovereignty of States, as the way a State treats its inhabitants can no longer be considered a matter exclusively for that State. This was confirmed by the 1993 World Conference on Human Rights, which concluded that 'the promotion and protection of all human rights is a legitimate concern of the international community'.³

d. Human Rights under the Law of the People's Republic of China

A constant tension in human rights is between the universality of human rights and cultural relativism. The culture within each society must be respected, yet a few of the practices within some societies may be at odds with the terms of international human rights law. While the concepts of most human rights are accepted by nearly all societies around the world, the application of those concepts varies considerably due to the diversity of societies and of governments. But the concepts are universal.

Nevertheless, when the protections of human rights within a State are being examined, the cultures within that State and its political structures need to be considered, so that the application of the rights are put in context. In this instance, the history and present position of China – cultural, social, political and legal - was elucidated by scholars steeped in this knowledge, together with material provided by the Chinese government. In this way, the extent of the protection of rights within China and in Tibet were placed in context.

e. The Context of the Right of Self-Determination

Common Art 1 of the two International Human Rights Covenants provides that ‘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’.⁴

The right of self-determination has also been declared in other international treaties and instruments⁵ and it probably forms part of customary international law, perhaps even *jus cogens*. It is not merely a matter of moral persuasion but it is a right which places legal obligations on States.

Issues of the type of territory or State to which the right applies and the extent to which the internal affairs of a State are affected by the right, together with the possible forms of exercise of the right, require clarification by international lawyers. Because the right was developed most consistently in the context of decolonization⁶, it has been thought that it cannot apply to independent States. Yet very few international instruments or other State practices limit the application of the right to colonial territories. Linked with this is the question of whether a State’s internal political framework is subject to the right of self-determination. The view has been put that ‘self-determination is not a one-off exercise. It cannot be achieved for any people by one revolution or one election. It is a continuous process. It requires that peoples be given continuing opportunities to choose their governments and social systems, and to change them when they so choose . . . Many peoples today are deprived of their right of self-determination, by elites of their own countrymen and women: through the concentration of power in a particular political party, in a particular ethnic or religious group, or in a certain social class.’⁷

This statement by a major colonial power seems to be a persuasive argument for the application of the right to all States, no matter what their past or present political and territorial status.

At the same time, the right of self-determination has limitations on its exercise. The territorial integrity of a State must be respected as must the colonial boundaries (under the principle of *uti possidetis*). In addition, the rights of others and the interests of the entire society must be taken into account. Yet the amount of weight to be given to these limitations on the right of self-determination is not resolved and will depend on the circumstances in each instance. Similarly, all exercises of the right do not result in secession or independence, as there are a multitude of possible exercises, with secession or independence being very rare outside the colonial context. These are matters which require clarification by international lawyers.

f. Denial of the Right of Self-Determination to the Tibetan People

The General Assembly decided that the Tibetan people have the right of self-determination when, after the actions of the Chinese government in 1959, it 'solemnly [renewed] its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination'.⁸

In order to determine if the right of self-determination of the Tibetan people is being denied, it is necessary to examine whether those people are able freely to determine their political status and economic, social and cultural development. In other words, it must be discovered the extent to which they can participate in the political process and decide the rules whereby their society is governed without being subject to oppression by subjugation, domination or exploitation. These are largely factual matters.

The consequence of deciding that there is a denial of the right of self-determination is that the possible exercises of the right must then be considered. These can extend from control over cultural activities to autonomy over all matters within the relevant territory which affect their economic, social and cultural development, such as education, natural resources and population transfer. It could even include the option of secession, especially if it is decided that the oppression which is occurring is analogous to a colonial administration. Any decision on the law and its application to the facts should be able to assist in the devising of peaceful and mutually acceptable solutions which respect human rights.

g. Denial of Other Human Rights in Tibet

The denial of human rights in Tibet other than the right of self-determination is relevant to the context in which the right of self-determination is being considered. The Human Rights Committee has made clear that 'the right of self-determination is of particular importance because its realization is an *essential condition* for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants [the ICCPR and the ICESCR] and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants'.⁹

The right of self-determination is considered an 'essential condition' because if a peoples are being subject to oppression then they are not in a position to be able to have any of their individual rights fully protected. This is another issue where the law to be applied depends on the determination of the facts.

Conclusions Reached by the Conference

a. General

To the surprise of many participants, the Conference reached clear conclusions on most issues. While these conclusions were by consensus, there were very rare instances of any dissent. The conclusions on the evidence are set out in chapter 9 and the conclusions on the law and its application to the facts, which formed the International Law-

yers' Statement on Tibet (the London Statement), are given in chapter 10. Recommendations were also determined, as set out in chapter 11.

The participants must be congratulated on undertaking the task of evaluating a huge body of evidence and law in a short space of time and reaching such clear conclusions. They looked at the facts closely: sifting and analysing the evidence, both oral and written; debated at length the law governing the right of self-determination; and then decided on the conclusions which could be drawn. This process meant that the conclusions reached were based on evidence rigorously examined and applied to a clearly defined law governing the right of self-determination.

b. Conclusions on the Evidence

In its conclusions on the facts, based on the evidence presented, the Conference decided that Tibet was for all practical purposes an independent State by 1959 and that it is now administered by China as if it were a colony of China. An attempt at delineation of the boundary of Tibet was made, assisted by the map reproduced in Appendix E. There was very little disagreement that, on any acceptable definition of the term 'peoples', the Tibetans were a distinct people.

Investigation as to any infringements of the Tibetans' right of self-determination led the participants to the conclusion that control by the Chinese in Tibet meant that there was no real or effective ability of the Tibetans freely to determine their own political status or their economic, environmental, social or cultural development. This was affected by Chinese policies which encouraged population transfer from other areas of China into Tibet and continuance of this population transfer would be to the long-term detriment of the Tibetans' right of self-determination. The participants also concluded that there were significant breaches by China of many other human rights of the Tibetans.

c. Conclusions on the Law

The Conference concluded that the Tibetan people did have a right of self-determination, which was being denied. It called upon the Chinese government to commence without delay negotiations to facilitate this right. In its recommendations the Conference also made requests to United Nations organs and other international bodies to act in regard to the right of self-determination of the Tibetan people. The recommendations included specific, practical proposals to facilitate the resolution of this matter, such as the appointment of a Special Rapporteur on Tibet by the Commission on Human Rights and requesting the World Bank to refuse to fund projects which supported population transfer into Tibet. Further suggestions of action were proposed by Marcus Einfeld (Appendix D), though there was a lack of time for the Conference to discuss these.

The London Statement has been widely distributed to governments, including to the Chinese government and the Tibetan government in exile, as well as within the United Nations, to international governmental and non-governmental organisations and to interested persons. It is a coherent and powerfully reasoned document with clear conclusions and recommendations.

Conclusion

This Report aims to set out the proceedings of the Conference and, hopefully, it reflects accurately what occurred at the Conference. It is a combination of papers delivered at the Conference; summaries of the comments made by participants in the course of discussions; summaries of the evidence presented to the Conference; and the conclusions reached on the evidence and on the law. In attempting the daunting requirement of summarising four days of discussion, I, as Rapporteur, was assisted by the Conference being tape-recorded and then a transcript being produced from those tapes by a team of volunteers brilliantly organised by Sheila Oakes. Jenny Blaker deserves special thanks for her efforts here. This record was then matched with the summaries made by Nicholas Orosz, the Assistant Rapporteur and then summarised by him in particular, and by Kevin Valerio-Smith. This took a considerable period of time. All the material was gathered together and put on the one computer system and then published by the ever patient Hansjörg Mayer. I must express my particular thanks to John Heath and the rest of the Committee and, above all, to Nicholas Orosz.

It is the hope of the organising committee and the Conference participants that this Report should be of benefit to international lawyers generally and to those involved in the situation in Tibet in particular. The process of the Conference participants in evaluating the evidence and determining the relevant legal rules and then applying the law to the facts in order to reach a conclusion is part of the development of a coherent framework to consider the right of self-determination. Therefore this Report should assist governments, the international community and all those concerned about human rights in making decisions and taking action in regard to the right of self-determination, especially that of the Tibetan people, so that these bitter struggles can be resolved peacefully.

NOTE:

'China' is used throughout this Report to refer to the State of China, including the present name of that State, being the People's Republic of China. However, if the context requires a distinction to be made in the name of the government of the State of China, 'PRC' is used to refer to the People's Republic of China.

¹ Separate Opinion of Judge Ammoun in Legal Consequences for States of the Continuing Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970) (Namibia Case) 1971 ICJ Rep 16, pp.74-75.

² J. Crawford, 'The Rights of Peoples: 'Peoples' or 'Governments'?' in J.Crawford (ed), *The Rights of Peoples* (OUP, Oxford, 1988), p. 55 at p.55

³ Art 4 Vienna Declaration and Programme of Action arising from the 1993 United Nations World Conference on Human Rights, adopted by consensus 25 June, 1993 (32 ILM (1993) 1661).

⁴ Art 1(1) of the International Covenant on Civil and Political Rights 1966 and Art 1(1) of the International Covenant on Economic, Social and Cultural Rights 1966.

⁵ E.g. Art 20 African Charter on Human and Peoples' Rights 1981 (ACHPR), Part VIII Helsinki Final Act 1975 and the Declaration on Principles of International Law 1970, General Assembly Resolution 2625 (XXV).

⁶ The International Court of Justice in the Namibia Case 1971 ICJ Reps 16, p.31 held that the 'development of international law in regard to non-self-governing territories, ...made the principle of self-determination applicable to all of them'.

⁷ Statement by United Kingdom representative to Third Committee of the General Assembly on 12 October, 1984, 55 BYIL (1984) p.432.

⁸ General Assembly resolution 1723 (XVI), 20 December, 1961. This resolution was affirmed by General Assembly resolution 2079 (XX), 18 December, 1965.

⁹ Human Rights Committee General Comments 12(21) para 1, General Assembly Official Records, Doc A/39/40 pp 142-3 (my emphasis)

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Robert McCorquodale (Rapporteur)

Nicholas Orosz (Assistant Rapporteur)

Sue Byrne

Sarah Cooke

Bill Peters

John Rowley

PART II - EVIDENCE

CHAPTER 1

Purpose and Functions of the Committees on Evidence

Before the Conference began, in what was a rare feature of such legal conferences, it was decided to conduct Committees of Evidence to review all the facts about Tibet. In this way the discussion of international law and the later legal analysis by the Conference would be based on factual conclusions. All the Conference participants were invited to attend the Committees on Evidence and about ninety percent did so.

Preliminary reports were prepared on a number of factual issues pertaining to the legal topics to be discussed at the Conference. These were distributed to all the Conference participants and are set out in Appendix C. Great care was taken in these reports to present all views, particularly the Chinese government's views, as accurately as possible, as the Chinese government had declined to be represented at the Conference. A considerable body of material published by the Chinese government, including material sent to the Chairperson of the Conference, was considered, and Tibetan and other material was also closely scrutinised. A bibliography of the major material considered is set out in Chapter 2. As well as these reports, some oral evidence was given to the Committees, including by Alastair Lamb, an historian with a number of published books on Tibetan history, and by Alice Tay, a member of the Australian human rights delegation to China in 1991 and 1992.

As there was such an enormous volume of factual evidence, both written and oral, two Committees on Evidence were formed: Committees A and B.

Committee A considered the questions:

- What is the history of Tibet?
- Are the Tibetans a distinct people?
- Is Tibet a colony of China?
- What is the relevant territory of Tibet?
- What is the scale and effect of population transfer into Tibet and what is the nature and effect of Chinese policies on this?

Committee B considered the questions:

Are there denials of the right of self-determination of the Tibetan people in three areas

- political;
- economic and environmental;
- social and cultural?

Are there denials of other human rights of the Tibetan people?

It was important that the evaluation of all the factual evidence should be thorough and impartial. To ensure this, a judge was appointed to head each of the Committees. Judge Grogan headed Committee A and Justice Einfeld headed Committee B. Active participation in the Committees by the Conference participants occurred and the oral and written evidence was intensely scrutinised.

At the end of the two days of evidence, the two judges presented their conclusions. These conclusions are set out in Chapter 3. These conclusions were considered by the Conference to be an accurate representation of the consensus of opinions about the evidence and were referred to repeatedly during the legal analysis part of the Conference. It was felt that this method of considering the factual situation prior to any legal analysis was immensely helpful and could be usefully adopted in other situations where the right of self-determination was in issue.

CHAPTER 2

BIBLIOGRAPHY OF PRINCIPAL WRITTEN EVIDENTIARY MATERIAL CONSIDERED

There is an enormous amount of material written on and about Tibet. Most of the items listed below are reports on or drawn from fact-finding missions to Tibet; from first hand information from Tibet; reports published by the Chinese government; or are reports published by the TGE (Tibetan Government in Exile). Full details of all the material considered by the Committees on Evidence can be obtained by contacting Prof John Heath, c/o Rt Hon Lord Ennals, House of Lords, London, UK.

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CHAPTER 3

CONCLUSIONS OF THE COMMITTEES ON EVIDENCE

- Peter Grogan and Marcus Einfeld

A. HISTORY

1. There appears to be little serious disagreement that at the time of the entrance of the Peoples Liberation Army of the People's Republic of China (PRC) into Tibet, Tibet was for all practical purposes an independent State and had been so for an extended period.
2. For most of its history Tibet possessed the essential attributes of statehood, was not an integral part of any other state, and remains a separate entity despite, at times, close political ties with the Mongols, the Gorkhas of Nepal, the Manchus of the Qing Dynasty and with British India.

B. TIBETANS AS A DISTINCT PEOPLE

1. In November 1989, under the auspices of UNESCO, a meeting of 'Experts on Further Study of the Rights of Peoples' produced a report published in February 1990 which states a suggested definition of the concept of 'peoples', which is in accordance with other generally accepted statements of the relevant criteria. This definition is:

'A people for the rights of people in international law, including the right to self-determination, has the following characteristics:

a. A group of individual human beings who enjoy some or all of the following common features:

- (i) A common historical tradition;
- (ii) Racial or ethnic identity;
- (iii) Cultural homogeneity;
- (iv) Linguistic unity;
- (v) Religious or ideological affinity;
- (vi) Territorial connection;
- (vii) Common economic life.

b. The group must be of a certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a State.

c. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness.

d. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.'

2. This definition of the concept of 'people' is adopted. The Tibetan people satisfy each of these criteria and are a distinct people under international law. The PRC has in its constitution, legislation and practice, identified and treated the Tibetans as a separate and distinct people.

C. TIBET AS A COLONY OF CHINA

Since the invasion by the PRC, Tibet has been under the alien occupation and domination of the PRC and has been administered by the PRC with the characteristics of an oppressive colonial administration.

D. TERRITORY

The territory of Tibet extends and extended to the north-east and east of the boundaries of the Tibet Autonomous Region (TAR) (which was proclaimed by the PRC on 1 September 1965) and includes the provinces of Amdo and Kham. This extension coincides largely with the designation by the PRC of the Tibetan autonomous prefectures and counties outside the TAR.

E. POPULATION TRANSFER

1. The Scale of Population Transfer

a. Since 1949 there has been a significant population transfer from the PRC into Tibet.

b. This transfer includes military, administrative and professional workers, technicians, skilled and unskilled workers, farmers, traders, entrepreneurs and prisoners, many of whom are required to remain in Tibet after release.

c. The population statistics for the TAR published by the PRC are misleading because they do not include a large number of Chinese, particularly the military temporary workers and a significant proportion of other worker categories. Most transferees do not register and are not counted.

2. The Policies

a. Much of the population transfer is the result of PRC policies which either lead to the direct transfer of personnel or create conditions whereby Chinese are encouraged to transfer to Tibet on a temporary basis.

b. The conditions include pay incentives and bonuses, career advancement and other employment benefits including extended pay leave and high altitude allowances.

c. These population policies of the PRC are intended to establish and maintain effective Chinese administrative, political, economic and military control over Tibet.

3. The Effect of Population Transfer

a. This population transfer has led to Tibetans becoming a minority in the vast areas of Tibet, including Amdo, parts of Kham and Lhasa and other major cities.

b. The inevitable consequences of population transfer policies is the destruction of the Tibetan culture and national identity.

c. Crucial aspects of Tibetan political, social, economic and cultural life are dominated by Chinese control and influence, particularly in urban areas.

d. This population transfer affects the rights of Tibetans to exercise autonomy under the Chinese Constitution and relevant laws.

e. The effects include environmental deterioration, notably extensive desertification, inappropriate land use through poorly planned development and a threat to the economic and employment prospects of Tibetans.

f. In the course of implementing population transfer policies there is extensive and increasing discrimination against Tibetans in employment, housing, provision of other social services and religion.

F. POLITICAL QUESTIONS

1. PRC political control is exercised on substantially all areas of Tibetan life, including the monasteries. All expression of political opinion is subject to PRC government control.

2. The political structures established by the PRC authorities do not in fact give Tibetans legislative control over their own affairs, since those legislative structures are under the control of the PRC Communist Party and subject to the laws and policies of the PRC Central Government.

3. Despite the PRC claims that the Tibetan people have substantial autonomy, Tibetans do not wield effective authority over their own affairs.

4. Without being members of the PRC Communist Party, there is a severe limit to the possible progress of Tibetans within the local administration. Even such membership does not guarantee access to effective positions of authority for Tibetans.

5. There is a significant PRC military and police presence in Tibet, which by its size, composition and placement appears to be unjustified for legitimate PRC defence needs. The presence of the military and paramilitary in Tibet serves to intimidate peaceful political dissent.

G. ECONOMIC AND ENVIRONMENT QUESTIONS

1. Tibetans lack control over their economy and its development. Consultation with Tibetans in respect of major development projects in Tibet is inadequate or non-existent.

2. Although there has been substantial economic progress and development in Tibet under PRC rule, these advances have significantly tended to favour the Chinese over the Tibetans.

3. The declaration of the area round Lhasa as a Special Economic Zone is accelerating these problems and creating special difficulties for the Tibetan population.

4. Tibetan culture places considerable emphasis on the protection of the environment. Tibet has an especially fragile ecosystem. In its mining, deforestation and other projects in Tibet, the PRC is committing environmental degradation.

H. CULTURAL & SOCIAL QUESTIONS

1. Religion

Tibetan Buddhism is an extensive and complex religion, and is fundamental to Tibetan civilisation. There is evidence of many attempts by the PRC authorities to interfere systematically in the practice and teaching of the faith. For example there is direct interference in the selection of reincarnations and religious leaders, in the management of monasteries and nunneries, and in the training of monks and nuns. There is evidence that the PRC authorities are attempting to trivialize Buddhism and to use it as a tourist attraction. Without the full, unimpeded and extensive training of monks and nuns there can be no effective way of transmitting the Tibetan Buddhist religion to future generations. The future of Tibetan Buddhism is under threat from PRC interference.

2. Education

a. The general education system in Tibet follows the PRC pattern and does not take sufficient account of Tibetan educational interests and needs.

b. There is inadequate facility for teaching in the Tibetan language, especially at higher educational levels. Many Tibetans are literate in Chinese but not in Tibetan.

c. Equal opportunity in education of Tibetans is not available. Illiteracy rates among Tibetans are much higher than in the PRC, despite over 40 years of PRC administration. In addition, only a small number of Tibetan students have ever been allowed to study abroad and their opportunities to learn foreign languages in Tibet are limited.

3. Housing

The PRC is building modern housing in urban areas for Chinese. This housing is provided with better and wider support services and facilities than are available to urban Tibetans.

4. Health

a. Tibetans are denied access to health services equal to those provided for the PRC.

b. Infant mortality is three times higher in Tibet than in the PRC as a whole.

5. Cultural

a. The cultural life in Tibet is subject to considerable control by the PRC authorities.

b. Tibetans are continually exposed to Chinese culture alone and have no access to foreign culture.

c. The media, especially television, are dominated by PRC programmes and by political education. There are insufficient opportunities for the presentation of Tibetan programmes.

I. HUMAN RIGHTS QUESTIONS

1. General

a. The PRC pursues policies and practices throughout the territory it controls which violate international standards of human rights.

b. The Tibetan people suffer from these violations along with other people governed by the PRC authorities in Beijing, but there are particular features of PRC government practices which impinge particularly on the human rights of Tibetans.

c. There is evidence that the attitude of the PRC authorities to the Tibetan people has elements of racial and religious prejudice. Legal and administrative remedies for this discrimination are inadequate.

2. Population Control

a. Birth control regulations and targets are PRC government policy for the whole population of the PRC. However, their introduction and implementation for the Chinese population are basically economic, whereas the population controls on Tibetans are not an economic need. In fact there is substantial evidence that the policy as applied to Tibet is racially based.

b. The PRC ratified the Convention on Elimination of all Forms of Discrimination Against Women. Article 16(1)(e) provides that men and women shall have the same right 'to decide freely and responsibly on the number and spacing of their children'.

c. There has been an extension of these birth control regulations and policies into rural areas where the majority of Tibetan women live.

d. Sterilizations and abortions are performed under PRC authorisation on Tibetan women without their consent being freely given.

3. The Rights of Woman and Children

a. Women are subjected to particular disabilities in relation to work and basic rights. Equal opportunity for work, fair wages and education is denied.

b. Children are recruited for labour at early ages in conflict with ILO Conventions relating to child workers and the International Convention on the Rights of the child. Tibetan children are denied the education opportunities made available to Chinese children.

4. Political Offences

a. Significant numbers of Tibetans have been imprisoned for a broad and loosely defined range of actions such as writing letters to the United Nations, collecting names of Tibetan detainees, publishing documents including a Tibetan translation of the Universal Declaration of Human Rights, teaching 'reactionary' songs and possessing the Tibetan flag. Monks and nuns have been particular targets in these respects.

b. Torture is widely practised on Tibetans arrested for such above matters. In particular there is widespread cruelty and sexual abuse of women.

c. The death penalty and extra-judicial executions or killings have been periodically carried out by the PRC authorities on Tibetans as a means of intimidating and oppressing the Tibetan population.

d. The definition of many offences charged as being counter-revolutionary crimes is discretionary, such that a Tibetan person cannot know at the time of a particular action that such activity may attract penal sanctions.

5. Fair Trial

The PRC legal system does not provide protection or adequate manifestations of the rule of law in respect of criminal trials. The Tibetan people have particularly suffered from administrative detention without charge or trial. In many cases sentences may nevertheless be imposed, but some Tibetans have remained in detention for long periods without any sentences at all.

6. Freedom of Expression

a. The right to protest or demonstrate peaceably is defined so restrictively in PRC law as to prevent its effective exercise. This is particularly acute for Tibetans wishing to protest injustices practised against them.

b. There is widespread censorship in Tibet of the mail, telephone conversations, publications and cultural manifestations such as theatre, opera and art. Writings on Tibetan history are restricted to interpretations authorised by the PRC authorities.

c. There is no ability by Tibetans to exchange artistic, literary or other forms of cultural expression with persons from other countries.

7. Freedom of Movement

There are restrictions on the freedom of movement of Tibetan people including their ability to travel and emigrate and the availability of a passport.

8. Penal System

a. The treatment of Tibetans in official detention is inhuman and harsh.

b. The penal system often provides for double punishment in that after the serving of sentence a prisoner can be sent into a form of internal exile. There is evidence that the Tibetan people have suffered more harshly from these features of the system than Chinese, especially in the case of alleged political offenders.

c. The criteria for parole, commutation of sentences and treatment in Tibetan detention are based on PRC political, rather than true penal, principles.

NOTE: This document does not embrace all evidence of the violation of human rights in Tibet, but concentrates on the more important and recent violations of human rights in Tibet.

PART III - LEGAL ANALYSIS

CHAPTER 4

TIBETANS AS A DISTINCT PEOPLE

**Paper delivered by Emmanuel Bello:
Tibetans as a Distinct People**

As it turns out, the lot has fallen on this speaker to assume responsibility to introduce this topic. As Professor Ian Brownlie, a distinguished friend and colleague, would say: '[I] . . . am not associated with any pressure group, whose role will be that of the chorus in Greek tragedy . . . I shall speak as an "interested spectator" sympathising with the fortunes of the characters and giving expression to the "identity", legal and moral critique evoked by the action of the play'.¹

The scope of this topic is about the distinct quality which sets Tibetan people apart from others in the region and cuts across a fairly broad spectrum, namely people, social structure and the interpretation of events in which the complex historical antecedents are explored. No attempt will be made however to deal copiously with all the issues involved.

This paper is divided into two parts. The first relates to the institutional foundations of Tibet, old and modern; and the second part examines both the manifestations of attitudes and the legal projections which demonstrate the distinctiveness of the Tibetans.

A Institutional Foundations of Tibet

(1) Institutional and social structures of Tibet

(a) Geographical setting

Tibet stretches across the vast and sparsely populated area north of the Himalayas, comprising mainly the high plateau.²

The only town of any reasonable size in the country is Lhasa, which serves as the capital of Tibet. The average height above sea level in the populated areas of the country is around 12,000 feet.

Climatic conditions in the regions of Tibet vary considerably and Tibet is rich in natural resources, including iron, chromium, copper, lead, zinc, borax, mica and gypsum as well as geothermal resources.³

(b) Population distribution and division of Tibet

Tibet has now been divided into six regions by the Chinese. These are:

- (I) Central Tibet or U-Tsang, now known as the Tibet Autonomous Region (TAR);**
- (II) Amdo and Kham, now called Qinghai Province;**

- (III) Gansu Tibetan Autonomous Prefecture in Gansu Province;
- (IV) Ngapa Tibetan Autonomous Prefecture in Sichuan Province;
- (V) Kanze Tibetan Autonomous Prefecture in Sichuan Province; and
- (VI) Dechen Tibetan Autonomous Prefecture in Yunnan Province.⁴

I endorse the Committee on Evidence's conclusion that 'Tibet' includes all the regions above.

The population of TAR is roughly 3 million and the population of Tibetans in the bordering Chinese provinces ranges between 2-3 million. China claims that the minorities (including Tibetans) in these regions occupy over half of the land areas, much of which is strategically vital to Chinese external security.⁵

(c) Tibetan Culture and Tradition

The view has often been expressed that Tibet has a unique and sophisticated culture which has survived for over a thousand years until the arrival of the communists. China accepts that Tibet has a different culture and civilization.⁶ Hugh Richardson, the former British and Indian Consul in Lhasa stated in 1982 that: 'The Tibetans had a civilization that had developed for 1300 years. They had an immense literature . . . and they had developed a very special and very important practice of Buddhism. They are a unique people; they have their own language and their own civilization. Surely it is a tragedy to see any civilization dying, even if it is not so long established, so literate, and so polished as the Tibetans?''⁷

(d) Religion in Tibet

The Tibetan culture with the greatest impact on the society is the Buddhist religion, which came from India during the 7th Century. Central to the practice of Buddhism is the monastic life.⁸ For many Tibetans the three great monasteries of Lhasa were centres of education and were the guardians of Tibetan culture.

A singular tenet of the Buddhist religion is Lamaism. This is the strong belief in the reincarnation of the spirit of a 'Living Buddha' in successive Grand Lamas, as in the reincarnation of the Bodhisattva Chenrezig in His Holiness the Dalai Lama. State and religion are closely identified in the Tibetan society, with the Dalai Lama holding the supreme temporal power and the supreme religious authority for Tibetan Buddhists.⁹

Religion has had a profound influence on the economy, culture, politics, and the arts of Tibet.¹⁰ A large number of Tibetans take their spiritual practice seriously with many able-bodied young men therefore not directly involved in the country's system of production and economic development.¹¹

(e) Agriculture

The Southern Tibet valleys from the Gangdise Mountains and the Himalayas, at less than 4,000 metres above sea level and crossed by the Yarlungzangbo River and its tributaries, is the principal farming/pastoral area of Tibet. Here the climate is temperate with plenty of rain and dense forests. This fertile farmland produces large quantities of wheat, corn, rice, vegetables, and fruit trees. Ethnic Tibetans are essentially farmers who are also engaged in animal husbandry. Their staple food is tsampa, which is made

from (barley) flour. The Lhobas who live in the area of the Himalayas are said to be highly skilled in hunting.¹²

(2) The Institution of the Dalai Lama

This institution started in 1578 when the Abbot of the great monastery paid a visit to the most powerful Mongol chief, Altan Khan. The latter conferred the title of 'Tale' (Dalai), signifying 'Ocean of Wisdom', upon him. The Abbot also assumed the position of the Third Dalai Lama. The 5th Dalai Lama was known as the 'Great Fifth' as he unified the whole of Tibet under his own authority. Under the Great Fifth the dual responsibility of Government of Religion and Politics was established and used to describe the twin functions of the Tibetan Government. That concept, it was claimed, derived from the ten principles of Buddhism and involved the temporal welfare of the people of Tibet as well as their spiritual welfare in the next life. The institution of the Dalai Lama is vested with the secular and spiritual authority which have become the most significant feature of the Tibetan 'state'.¹³

The 13th Dalai Lama died in 1933. When a Dalai Lama dies, a search is conducted to find his reincarnation. This process sometimes takes several years. High Lamas travel on horseback to all parts of Tibet to find a baby boy answering to the description of the 'Living Buddha'. Once the reincarnation was established the baby boy would then be taken to the capital, Lhasa, and into a small private apartment in the Potala palace. Pursuant to the custom in Tibet, after the discovery of an infant Dalai Lama the country would thereafter be governed by a Regent until the young Dalai Lama attained the age of majority. Normally the Abbot of one of the great monasteries in Lhasa would be chosen to occupy the high office of Regent. It is pertinent to add that the 9th, 10th, 11th and 12th Dalai Lamas died before they reached the age when they would have assumed responsibility for governing Tibet. The current Dalai Lama is the 14th reincarnation of Chenrezig, the Buddha of Mercy.

(3) Conclusion

Tibetans stand out as an entity with their own history, language, culture and tradition that show quite distinctly that they are neither Chinese nor part of any other group of people, but Tibetans, with a way of life that is essentially peculiar to them. I adopt the conclusions of the Committees on Evidence that the Tibetan people satisfy all criteria to be a 'people' and are a people under international law.

B Actions indicating acceptance of the Tibetans as a distinct people

(1) Actions by the Chinese government

A policy known as 'Destroying the Four Olds', ie old ideas, old culture, old customs, and old habits was forcefully put in place by the Chinese government after 1950 in order to create what was then regarded as a new 'homogeneous and atheistic communist culture' in place of the traditional one.¹⁴ It has also been stated that 'private religious activities were forbidden, religious buildings, including monasteries, temples, and even prayer walls were torn down and Tibetans were forced to abandon deeply held values and customs...'.¹⁵

The International Commission of Jurists in 1960 conducted a thorough investigation and found 'that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group and that such acts were acts of genocide independently of any conventional obligations.'¹⁶

In 1956 The Preparatory Committee for Establishing the Autonomous Region of Tibet was created with the Dalai Lama as its Chairperson. In 1965 the Tibet Autonomous Region (TAR) formally came into being. TAR is said to be fully autonomous to the extent that it can formulate regulations and local laws within the constraints of the PRC's constitution. It is also authorised to carry out special policies and flexible measures consonant with the practical circumstances prevailing in Tibet. Other measures within the competence of the TAR administration consist of arranging its economic policies, construction and planning. The TAR is allowed to exercise authority on the disbursement of local revenues and the financial subsidy allocated by the central Government. It can also take decisions affecting education, arts, language, literature and matters relating to the culture of Tibet.

Therefore, the Chinese government accepts that Tibet has a different culture and civilisation.

(2) Actions by the United Nations

In 1959, 1961 and 1965 the UN General Assembly passed Resolutions indicating 'grave concern' in respect of the violation of fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life and autonomy that the Tibetans had traditionally enjoyed.¹⁷

On 20 December 1961 the UN General Assembly passed a resolution calling 'for the cessation of practices which deprive the Tibetan people of... their right to self-determination.'¹⁸ The conduct of the debate demonstrated that the resolution which followed took into account the provisions under Articles 1 and 55 of the Charter of the UN, the Universal Declaration of Human Rights and the Declaration on Granting Independence to Colonial Countries and Peoples.¹⁹ The Resolution of 1965 stated grave concern at the on-going events; it noted with deep anxiety the hardships on the Tibetans, particularly the exodus of refugees; and it considered that these events violated the UN Charter. Furthermore, the UN General Assembly asked for the cessation of the violations of the rights of the Tibetans, including their right to self-determination.

The hardening of attitude of the UN General Assembly pointed to only one direction and that was to the unmistakable fact that Tibet's demand, persistent and unequivocal, was justifiable. Moreover, the Tibetans had the right to self-determination.

(3) Actions by the International Community

In October 1987, the US Senate unanimously adopted a resolution, later signed by the President, linking the United States sale or transfer of defence articles to the treatment of Tibet by China.²⁰

The award of the Nobel Peace Prize of 1989 to the Dalai Lama was a major boost to the morale of the citizens of Tibet. He has never allowed an occasion to pass by without asserting the need for an independent Tibet and its right to self-determination.

C Final Observations

China with its vast population, offering unlimited scope for trade, commerce, development and financial attractions, is contra-distinguished from a small, mountainous, and underdeveloped rural economy with difficult access such as Tibet. The people of Tibet are a distinct people and deserve to live in peace and security with their neighbours as an independent state, and to avail themselves of those benefits under the provision of Article 2(4) of the United Nations Charter.

¹ Ian Brownlie, 'The Rights of Peoples in Modern International Law' in James Crawford, (ed), *The Rights of Peoples*, OUP, 1988, p.1. This author would like to add that in preparing his paper many generous helpings have also been taken from the contributors to *The Rights of Peoples*, op. cit.; *Human Rights in International Law, Basic Texts*, Strasbourg, 1985; Ian Brownlie, *Principles of Public International Law*, 4th Ed, OUP, 1990, Ian Brownlie, *Basic Documents on Human Rights*, 3rd Ed, OUP, 1992; G.E. Clarke, *China's Reforms of Tibet and their Effects on Pastoralism*, Discussion Paper, Inst. of Development Studies, Oxford, 1987; A.D. Hughes, 'Tibet' in R. Bernhardt (ed) *Encyclopedia of Public International Law*, Instalment 12 (1990) p. 375; U.O. Umzurike, *The Protection of Human Rights under the Banjul (African) Charter of Human and Peoples Rights*.

² See A.D. Hughes, 'Tibet' in Bernhardt, ed., *Encyclopedia of Public International Law*, 1990, p.375.

³ See C.Mullin and Phuntsog Wangyal, *The Tibetans: Two Perspectives on Tibetan-Chinese relations*, p.14.

⁴ *Ibid*, p.14.

⁵ *Ibid*., p.5.

⁶ *Ibid*., p.8.

⁷ H.E. Richardson in BBC documentary 'Tibet, The Bamboo Curtain Falls' 2nd of two films cited by Wangyal, p.23

⁸ See Hughes in Bernhardt, op. cit. 1990, p.375.

⁹ See Mullin and Wangyal; op. cit.5

¹⁰ See Report No. 49 on Minority Group Rights by C. Mullin & P. Wangyal, 1982. (Winner UNA Media Peace Prize).

- ¹¹ See H.E. Richardson, *Tibet & Its History*, OUP, 1962, p.11, cited by Mullin and Wangyal, p.16.
- ¹² Mullin & Wangyal, Report No. 49, p.3.:
- ¹³ See Ram Rahul, *The Government and Politics of Tibet*, Delhi, 1969, p.5, cited by Mullin and Wangyal in Report 49, p.16.
- ¹⁴ See M. Goldstein, *The Dragon and the Snow Lion: The Tibet Question in the 20th Century*. Wastview Press, 1990, p. 16.
- ¹⁵ *Ibid.*, p.16.
- ¹⁶ See M. van Praag, *The Status of Tibet*, Wisdom Publications, London, 1987, p.196 and p.282 at note 56.
- ¹⁷ *Ibid.*, p.196 and Note 50 at p.282.5
- ¹⁸ *Ibid.*, p.194 and Note 41 at p.282.5
- ¹⁹ *Ibid.*, p.194.'
- ²⁰ *Ibid.*

Discussion
Tibetans as a Distinct People

Chairperson: The Hon Justice Michael Kirby
Discussion Leader: Professor Emmanuel G Bello

KIRBY: We can all be in favour of self-determination but we are tested when it comes to our own backyard. As an Australian his country's integrity is tested when it comes to the Aboriginals' right to self-determination and the assertion of the people of Bougainville of their right of self-determination in Australia's former colony Papua New Guinea and by the people of East Timor. There are many similar examples in Africa other than the secession of Biafra from Nigeria.

He urged the participants to be scrupulous in considering how to reconcile the competing rights of the territorial integrity of the state and the rights of peoples to self-determination which is guaranteed under international law.

KELLER: Stressed that on the basis of the boundaries of Tibet decided by the Committee on Evidence, Tibet probably represents about 20% of the territorial area of the China. So Tibet is a big country.

KIRBY: At the heart of this is the uncomfortable idea that the nation-state cannot prevent the rights of peoples to self-determination provided that this is consistent with international peace and security.

BELLO: Territory does need to be clearly identified before certain people could be considered a 'distinct people', even if there is uncertainty over detailed boundaries. A recent case was Mali and Guinea. The colonial power felt unable finally to settle the boundaries even though it had itself administered both countries and changed the boundaries itself many times. Eventually the International Court of Justice had to settle the boundaries. He also cited the problematic boundary between Nigeria and Benin. There it is difficult to distinguish between the 'peoples' in the border area and, at the present time, an acceptable boundary has not been found, although this has not soured friendly relations between Nigeria and Benin.

BENEDEK: It had been concluded by the Committees on Evidence that the Tibetans are a distinct 'people' and that there is also a distinct territory. What is therefore obviously lacking is the effective control of this territory by the Tibetan people. The Chinese argument is based on historical control. He questioned the relevance of historical notions of subordination and suzerainty to the modern interpretation of self-determination. Citing the fact that no Chinese lived in certain parts of Tibet at the end of the 1940s, he questioned whether this traditional relationship created any legal rights for China to invade Tibet in 1950 and the effect for the implementation of the rights of self-determination.

KIRBY: Emphasised the Chinese historical arguments are intended to establish the territorial integrity of China, which may not be interfered with and which therefore comes into conflict with the competing principle of the peoples' right of self-determination. He suggested that this was the critical point for discussion within the Conference. In the White Paper, China calls Tibet 'China's Tibet', evidencing ownership, and part of China's booty or dowry - a very mercantile approach.

BELLO: Noted that nomads wandered freely between Ethiopia & Somalia with no problem until the question of Eritrea's self-determination became relevant. But this does not prevent Eritrea from asserting the right of self-determination. He stressed that the delicate equilibrium of boundary disputes can be disturbed which can harm relationships with other tribes within a country and with its neighbours, thereby destroying peace and security within the region. He cited Idi Amin's claim that a large part of Tanzania belonged to Uganda, and the resulting war destroyed both of their economies.

FALK: Did not wish to oppose China's territorial integrity with the claims of Tibetans. Both China and Tibet can interpret the historical record consistently with the principle of territorial integrity. He warned against ceding to China the notion that it is their territorial unity which is in jeopardy. Therefore history is inconclusively linked to the idea of territorial unity. Professor Benedek's real point is that the missing element in Tibet's case is the lack of Tibet's capacity to realise self-determination - in other words it is a question of effectiveness and political capacity to assert self-determination.

CHAPTER 5

THE EXTENT OF INTERNATIONAL HUMAN RIGHTS LAW

**Paper delivered by Gerhard Erasmus:
The Extent of International Human Rights Law**

1. Objective

The aim of this paper is to remind experts of what they already know regarding the context, content and ethos of international human rights, and the extent to which that can serve as a yardstick in applying principles to Tibet. It aims at providing a framework for further discussion and was written prior to the Committees on Evidence Reports.

The focus will be on certain questions:-

1. Why is international human rights law relevant to the Tibetan issue?
2. How does international human rights law relate to efforts to solve some of the political, human and legal problems experienced by the Tibetan people?
3. What are the possible consequences of the infringement of international human rights obligations in Tibet? and
4. What are the implications of international human rights law for the international community and for international organisations?

2. Context

What is the Tibetan question about? How did it originate? Many of the legal and political problems surrounding this issue have to find their answers in the area of inter-state relations. Had Tibet been a state and an independent subject of International Law in 1950, then the invasion by China in that year has to be judged within a certain legal context where rules such as those against force (Art. 2(4) UN Charter) and the conquest of territory apply. Then it can be argued that China's presence in Tibet is unlawful *ab initio* and that the maxim *ex injuria jus non oritur*, applies. This should be the case (in particular) with respect to such a fundamental principle as the rule against aggression with its claim to *jus cogens* status. In such an instance it can hardly be argued that the unlawful origin has been consolidated into lawful title on the basis of *ex factis jus oritur*.

The remedy, in principle, then lies in the restoration of Tibet's sovereignty and exclusive control over its territory and people. Strictly speaking Tibet would not have disappeared as a State. The further implication will be that China will be fully responsible for the infringements of the rights of Tibet and its people. An international order claiming to be a legal order cannot ignore the application of such principles if the facts support the claim to Tibetan statehood prior to 1950. The fact that China is a permanent member

of the Security Council and that its veto power in that body obstructs steps under Chapter VII of the UN Charter is, of course, a political reality. Recent political developments have demonstrated how unexpected and fundamental changes can nevertheless occur - resulting *inter alia* in a different role for the United Nations and the Security Council in particular.

It would be unfortunate if the question of Tibet's pre-1950 status is ignored. Theoretically it is possible to focus on Tibetans as a minority or as individuals (accepting that Tibet had been under Chinese sovereignty before) and then still bring the problem within the ambit of International Law as a human rights issue, for example. The question of statehood can be ignored because of the political inconvenience. The steps which the international community would like to take against China because of human rights infringements, be it against Tibetans or students on Tiananmen Square, are however also not without their political difficulties. There is no convenience in a selective judgment.

The reason why the question of Tibetan statehood is relevant and constitutes a point of departure is not only because of a purist argument. There is a more basic reason, a 'conservative' reason. The international order has its legal foundation in the fact that States are the original subjects of International Law and bearers of rights and duties. Sovereignty and the indivisibility of international peace remain without content and basis unless this is acceptable.

The link between a people and their territory also has a human rights dimension. A true and final implementation of the right of self-determination occurs when a people exercise that right by pursuing the political, economic, social and cultural destiny of their country free from foreign dictates. In the words of Judge Dillard in the Western Sahara Case '... it is for the people to determine the destiny of the territory and not the territory the destiny of the people.'¹ In this case questions as to the identity of the entity entitled to act on behalf of the Tibetan people also arise.

The United Nations in 1950 accepted an Indian suggestion to postpone discussion of the Tibetan matter in the General Assembly, expressing the belief that '... a peaceful settlement would be reached safeguarding Tibet's autonomy while maintaining its association with China'.² This cannot be the final word on the matter - it is hardly a discussion. The basic question remains unresolved and valid. In the words of the 1959 study of the International Commission of Jurists: 'The basic question is whether Tibet is an internal part of China or whether Tibet has *locus standi* before an international tribunal or political authority. The very existence of Tibet as a State is involved ... with the result that for United Nations purposes, the Sino-Tibetan events are between two States and not an internal affair of China.'³ It can also be shown that there was no subsequent acquiescence by Tibetan authorities or recognition in general by other States of China's claim to sovereign title over Tibet.⁴

If Tibet was not a State before the invasion of 1950, then its *sui generis* status must be determined. Claims to Tibetan independence of some kind find support in various sources. 'Between 1914 and 1950 Tibet resisted numerous attempts by the PRC to persuade or coerce her into becoming a province of the PRC and maintained her independent identity'.⁵

Gross violations of human rights such as those claimed to be occurring in Tibet is however a concern of International Law irrespective of whether Tibet was a State in 1950 or not. The manner in which states treat their own inhabitants is not a domestic matter which will exclude scrutiny by other States or the United Nations. The next section is premised on these beliefs and will endeavour to provide a picture of what International Human Rights Law includes - in order to be able to determine, when evidence is available, whether the treatment of Tibetans infringes International Human Rights Law obligations binding China.

3. International Human Rights Law

3.1 Definition

Human rights have been defined as ‘those liberties, immunities and benefits which, by accepted contemporary values, all human beings should be able to claim “as of right” of the society in which they live’.⁶ National constitutions may be the most immediate source within States of the rights protecting the individual against abuses or neglect by the State or society. Many constitutions, however, do not include these protections. Through International Law, States have now assumed international legal obligations to respect human rights.

The principles of International Human Rights are thus created through the same means as other principles of International Law, i.e. through custom, agreement or general principles of law. The term International Human Rights Law (IHRL) is hereinafter used as referring to all those human rights principles containing legal obligations for States⁷, irrespective of the specific source.

The obvious but fundamentally important characteristic of IHRL is that, although the aim is to benefit individuals (including nationals, residents and others subject to the jurisdiction of the State), it creates obligations among States. This is true of both human rights agreements as well as customary law. Whereas the former bind only parties, customary human rights law applies *erga omnes*.⁹ A violation by a State of the rights of persons under its jurisdiction is therefore a breach of an obligation to all other States. The increasing acceptance of IHRL, especially since the Second World War, has consolidated the challenge against State sovereignty and its corollary of non-intervention. The effective protection of human rights traditionally requires a check on the exercise of sovereign power. Human rights based in International Law are not matters ‘which are essentially within the domestic jurisdiction’ of States (Article 2(7) of the UN Charter). So a State can never prevent scrutiny of its human rights by the international community.

These general notions are mentioned because ideological differences have in the past resulted in different emphases on the nature of human rights. China often stresses the paramouncy of socio-economic (second generation) rights, although without denying, it seems, the validity in general of all human rights. It will be argued that there is increasing agreement on the content of basic human rights, including classical first generation rights. Even states who are not party to any of the international human rights agreements are bound by a growing corpus of customary human rights.

Important recent political developments, such as the demise of totalitarian regimes in Eastern Europe and in developing countries, the acceptance of democracy in one-party States and an end to apartheid have probably made it possible to maintain that human rights obligations have also been absorbed into International Law through general principles of law common to the major legal systems. At least there is a new international political environment which is relevant in devising strategies to deal with the question of Tibet.

3.2 Content

The debate over the content and scope of human rights often refers to the three generations of human rights. This is a useful, but not watertight, classification. The first generation covers civil and political rights and freedoms, flowing from a political philosophy and history of liberal individualism and laissez-faire. It favours abstention rather than involvement by government. Human rights, in terms of this approach, are 'negative', restraining government, rather than demanding a 'positive' involvement by State authorities.

Examples of such first generation rights are those found in Articles 2-21 of the Universal Declaration of Human Rights of 1948 and the 1966 International Covenant on Civil and Political Rights. The dividing line is however not watertight. The realisation of human rights increasingly rely on the modern State's involvement. So-called first generation rights such as to a fair trial and free elections need some government action in order to be effective.

Second generation rights refer to economic, social and cultural rights and flow more from a 'socialist' tradition, although one should again guard against the impression of definite boundaries. They are said to require the positive involvement of government in order to be realised. Examples are Articles 22-27 of the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights. The factor of positive government involvement as constituting the basic characteristic has again to be qualified. Joining a trade union or participating in cultural activities are for example largely individual choices. In general these rights do however necessitate the allocation of resources because they aim at materially improving conditions of life.

Third generation rights are posed as collective rights of peoples aimed at securing an international order that will eliminate obstacles to economic and social development. Examples include the important concept of political, economic, social and cultural self-determination.¹⁰ This is a concept with deeper historical roots and although it has been closely associated with the process of decolonization, it has lately gained new prominence as a result of recent political developments in Eastern Europe. It has considerable relevance for the Tibetan people and will be dealt with later in the Conference.

Other examples of third generation rights deal with entitlements to a clean environment, economic development, sharing in common resources, peace and humanitarian disaster relief. They are often associated with Third World demands for a new international order and reveal the weakness of many modern nation-States.¹¹ Their acceptance in International Law is, with the exception of self-determination, still an ongoing process.¹²

When the evidence on the treatment of the Tibetan people will be evaluated, it should be dealt with also on the basis of relating breaches to specific rights. The texts of international human rights agreements will then have to be consulted.

As for the content of International Human Rights Law, bearing in mind that China is party to very few international agreements, conventions and covenants, it is suggested that the UN Charter, and the 1948 Universal Declaration and customary international law constitute the sources of International Human Rights Law which, combined, bind all states, including China. Ultimately, in light of the broader topic under discussion, focus here must be on the essential purpose of human rights law, which is to benefit human beings.

3.3 Specific Obligations

Where are the most important human rights to be found and what obligations do they entail? This section will not try to give an overview of all universal and regional human rights conventions. The aim will rather be to mention some of the more important human rights which may relate to the question under discussion. Some of them are more extensively dealt with by other papers at this Conference.

It should be noted that the UN Charter, of which China is a member, itself is also a source of human rights obligations. Articles 1, 55, 56 are the better known examples. Taken together with the various UN resolutions and declarations passed over the years as well as state practice consolidating custom, a clear picture as to the content of IHRL has emerged.

The binding character of the Universal Declaration is also to be taken into account. It seems to be accepted as a 'general articulation of recognised rights.'¹³ It has also been argued that the general pledge under the UN Charter has been made definite by the Universal Declaration.¹⁴ That it must have played an important role in consolidating custom, seems generally accepted.

Customary law is a source of a number of important human rights. They have been listed as the following:-

'A State violates international law if, as a matter of state policy, it practices, encourages, or condones:

- (a) genocide;
- (b) slavery or slave trade;
- (c) the murder or causing the disappearance of individuals;
- (d) torture or other cruel, inhuman, or degrading treatment or punishment;
- (e) prolonged arbitrary detention;
- (f) systematic racial discrimination; or
- (g) a consistent pattern of gross violations of internationally recognised human rights.¹⁵

Genocide has also been dealt with in the Convention on the Prevention and Punishment of the Crime of Genocide which defines it as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;

- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

This definition is also accepted for purposes of customary law.¹⁶

A State violates its obligations if it practices, encourages or fails to punish genocide, or if it condones it.¹⁷

It should be noted that the Nuremberg Charter defines crimes against humanity as murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds.¹⁸

The International Law Commission has proposed that 'a serious breach on a wide-spread scale of an international obligation of essential importance for safeguarding the human being, such as genocide' be an international crime with the suggested implications about the differences with ordinary torts.¹⁹

Systematic religious discrimination is included in practically all equality clauses as a ground, together with race, for outlawing discrimination.²⁰ It should be considered part of customary law.

3.4 The Nature of State Obligations

In the words of Article 2(1) of the Covenant on Civil and Political Rights, a State party 'undertakes to respect and to ensure to all individuals within the territory and subject to its jurisdiction the rights recognised in the present Covenant'. This is an indication of the nature of the obligations in general associated with IHRL. The human rights obligations under customary law also require States to respect and to ensure the rights protected.²¹

The obligation to 'respect' requires the State itself to refrain from violating those rights. It will be responsible for violations by its officials. To 'ensure' in principle includes an obligation to prevent infringements of human rights by private people not officially representing the State.²²

Legislation will have to be passed in order to ensure that these rights are protected, that judicial and administrative remedies will be available in the domestic order and that compensation will be paid in appropriate cases (eg unlawful arrest or detention). Certain human rights will require criminal prosecution. This is true of the rights against genocide, slavery and even apartheid, which are not to be considered political crimes for the purposes of extradition. Universal criminal jurisdiction exists in such cases.

China continually asserts that the obligation of the State to ensure that these rights are protected by providing for judicial and administrative remedies in the domestic order amounts to undue interference in its domestic affairs. This issue emphasizes the particular political order prevailing in each State. It is necessary now to face the implication that if we believe that the obligation, in terms of International Human Rights Law, amounts to ensuring, respecting and providing certain remedies and providing a certain order immediately, it creates tension with the type of political order prevailing in China. It has an implication for the type of constitution and legal order prevailing in China.

In the case of socio-economic rights the 1966 Covenant requires steps 'to the maximum (of the State's) available resources, with a view to achieving progressively the full realisation of the rights recognised'²³. This requires a deliberate effort and a clear progression. In terms of Article 55 of the UN Charter member States 'shall promote' economic and social development and human rights. Those who retrogress are in violation of a Charter obligation.

The Conference had seen evidence of extensive economic development and activity in Tibet. However, this development was probably for a different purpose than that referred to in the 1966 Covenant.

3.5 Remedies

Remedies for violating IHRL have been listed as the following:

- (1) A State party to an international human rights agreement has, as against any other State party violating the agreement, *the remedies generally available for violation of an international agreement, as well as any special remedies provided by the agreement.*
- (2) Any State may pursue international remedies against any other state for a violation of the *customary international law of human rights.*
- (3) An individual victim of a violation of a human rights agreement may pursue any remedy provided by that agreement or by other applicable international agreements.²⁴

The usual remedies under International Law include the right to make an international claim, to resort to the International Court of Justice or other tribunal able to exercise jurisdiction and, in some circumstances, to measures of self-help. For these human rights violations the affected people need not be a State's own nationals, since the obligations are *erga omnes*. In principle a claim for a violation of a human right should not be waived or settled by a State without the consent of the person involved. Such claims are also not an interference in domestic affairs or other improper interference under International Law.

Remedies are available against individuals charged with crimes resulting in universal jurisdiction.

In general, individual victims do not have remedies directly under International Law unless provided for by international agreement. Could the Tibetan people or the government in exile have standing? This question should be investigated as it related to the question of the status of Tibet in 1950. Under the right to self-determination peoples are considered bearers of certain rights and there are examples of some (eg the Namibian people) being treated as *sui generis* subjects of International Law.

Humanitarian intervention to rescue victims of human rights violations is a controversial matter in the light of Article 2(4) of the UN Charter.²⁵ Such intervention may of course be undertaken pursuant to a resolution of international organisation endowed with the necessary powers.

Individual states may apply sanctions. That they are not without their effect can be demonstrated by reference to contemporary developments in South Africa.

Consideration by United Nations bodies deserves serious consideration. This entails both political pressure, which has gained a new relevance lately and which includes a

role for NGOs such as Amnesty International, as well as legal and institutional steps. The General Assembly, ECOSOC and the Commission on Human Rights must be considered. The Security Council, of course, has the powers provided for by Chapter VII, where the veto however applies. Certain human rights violations have been held to fall under the ambit of Article 39.²⁶

The powers of the Security Council under Articles 34 and 36 of the Charter permit consideration of disputes or situations likely to endanger the maintenance of international peace and security.

3.6 Other Areas of International Law

3.6.1 International Humanitarian Law

International humanitarian law could be relevant to the Tibetan question because it applies to conflicts between States and because of the growing trend to protect victims of intra-State violence. There is a growing convergence of IHRL and humanitarian law, with human rights also concerned with 'protecting certain basic human rights in situations of international and internal armed conflict and in other situations of violence'.²⁷

The human rights to be protected in such situations should include those on torture and cruel, inhuman or degrading treatment or punishment; arbitrary arrest or detention; discrimination on grounds of race, sex, language or religion; and due process.

The relevance of humanitarian law for the situation in Tibet creates the potential of a role for the ICRC and the Red Cross movement.

3.6.2 The Rights of Minorities

The protection of the rights of persons belonging to ethnic, religious and linguistic minorities has become a specialized field which entails an increasing number of principles.²⁸ Before this course is propagated for the people of Tibet, a serious study should first be made of the implications for other, more fundamental, claims to statehood and being a separate people. Minorities exist under the permanent constitutional dispensation of an existing State. Article 27 of the International Covenant on Civil and Political Rights only create rights of a minority to its own culture, religion and language. Full self-determination is not included. Having regard to the needs of the Tibetan people, the issue is not one of minorities but of the self-determination of people proper.

4. China's Responses

China will not admit to claims on behalf of the Tibetan people which are based on human rights grounds such as discussed here. The advantage of the gathering of evidence and official policies is to narrow the issues and to clarify counter-responses. Denial of Tibetan statehood has implications for the Tibetan claims in general and for human rights in particular. This issue has to be dealt with in terms of all the relevant criteria for statehood, including more recent ones relating to respect for basic human rights. Recognition as a people or as a minority is part of this argument.

On the level of the protection of human rights the focus is finally on the individual human being irrespective of his or her citizenship or ties to a people or a minority. The

human rights discussed here focus on the protection, ultimately, of individuals enjoying certain rights.

The majority of human rights are not absolute in their application. This brings the question of limitation and derogation to the fore. What it entails is explained by the following exposition by Henkin:

'Art 29(2) of the Universal Declaration provides: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." In the Covenant on Civil and Political Rights some provisions are expressly made subject to limitations: for example, the freedom of movement and residence within a country, and the right to leave a country "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others" (Art. 12(3)). Most civil and political rights are subject to derogation during public emergency where the life of the nation is at stake, to the extent strictly required by the exigencies of the situation, but some rights, including freedom from torture and mistreatment, and freedom of conscience, are not subject to derogation even in emergency. The rights in the Covenant on Economic, Social and Cultural Rights are subject "only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society" (Art. 4).'²⁹

Fundamentally States are entitled to limit the exercise of human rights by individuals under certain circumstances. This is a typical legal tool for judicial review in weighing the claim by the individual and on the other hand and the claim by the State in that particular case to limit its exercise. There is thus a limitation on the limiting power of the State but this is obviously unavailable here given the political and constitutional conditions in Tibet because it is not a democratic society as referred to in Article 29(2). But this position opens up the possibility of the principle of proportionality being used to respond to official Chinese denials of human rights violations.

Deciding a particular case is a balancing act, typical of the judicial function. Municipal and international jurisprudence can be of considerable assistance in preparing proper responses to official Chinese denials for human rights violations. In order to be convincing such denials will have to be based on facts which bring them within the ambit of the limitation and derogation grounds. In drawing final lines concepts such as proportionality, the fact that limitation clauses also contain limitations on the limiting power, that the essence of these rights should not be denied and arguments relying on a margin of appreciation will then be weighed.

5. Conclusions

The international community, not only because of what is happening in Tibet, must consider what is available in terms of sanctions, what is the political reality, what is the ethos in the community and what constitutes the possible principles, instruments and

arguments applicable to each situation. It must inevitably focus on what is being provided and offered by International Human Rights Law. This is not limited to the principles or the mechanisms of this law but extends to the values underpinning that law.

The question of statehood is important. This question has implications for self-determination and for human rights issues. The factual context for exercising self-determination - the link to the State - is obvious. Therefore, if Tibet was a State in 1950, obviously one answer to the human rights problem is to return to the pre-1950 *status quo*. But it is difficult to make clear and direct pronouncements regarding Tibet's status at that time. Despite this, the question must not be ignored altogether. The *sui generis* status and the international implications of this must be considered. There are principles and precedents like Namibia, which was never a colony of South Africa, which can be applied. There is also the question of who has the standing to argue on behalf of the Tibetan people.

In considering the Chairperson's reminder that the Conference participants must be consistent in identifying and determining the content of the right of self-determination, it was said that the implication of this right is that the nation-state cannot deny the rights of people to self-determination. Part of the problem with resolving this is the non-availability of historical characteristics of a nation-state in States where the issue of self-determination has arisen, particularly in Africa. If, for political purposes, people demand self-determination, the historical context must be fully considered to obtain the wider picture. In order to consider the integrity of the State and the right of self-determination, the nature of the State and the status of Tibet in history remains relevant and must be addressed.

This paper had to address a particular topic - International Human Rights Law. The broader international context and the political dimension has to be remembered. In the final analysis, the protection of human rights is very much a function of a particular place, time and political setting. Human rights for the people of Tibet are to be achieved against the background of an old and complicated international conflict which goes back to the heyday of the Cold War and the coming to power of a communist government in mainland China. Since then some dramatic political changes have occurred and 'The Emerging Right to Democratic Governance' is detected by eminent scholars - as part of International Law.³⁰ Hopefully it will come the way of Tibet too. This will not easily happen without a well-planned and concerted international effort.

- ¹ ICJ Reports 1975, 12 at 122.
- ² UN Doc A/1543, 24 Nov 1950, cited in *The Question of Tibet and the Rule of Law*, International Commission of Jurists Geneva 1959 at 95.
- ³ *The Question of Tibet and the Rule of Law*, p.97.
- ⁴ M.C. van Walt van Praag, *The Status of Tibet - History, Rights and Prospects in International Law*. Westview Press, Boulder, 1987 Chapter 10.
- ⁵ A.D. Hughes 'Tibet' in *Encyclopedia of Public International Law*, Max Planck Institute, Heidelberg, Vol. 12 375 at 377.
- ⁶ Henkin, 'Human Rights', *Encyclopedia of Public International Law*, Vol 8 268.
- ⁷ Other subjects of International Law (such as international organisations) are not to be excluded in a comprehensive study of this field.
- ⁸ Most of the subsequent discussion in this section is taken from the Third American Restatement of the Foreign Relations Law of the United States 1987 Vol 2 152 et seq.
- ⁹ In the Barcelona Traction Case 1970 ICJ Reports 32 the International Court of Justice explained *erga omnes* obligations as follows: 'Such obligations derive ... from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination'.
- ¹⁰ Which is however also found in both the 1966 International Human Rights Covenants.
- ¹¹ See further Weston 'Human Rights' in *Human Rights in the World Community*, University of Pennsylvania Press, Philadelphia 1989 at 17-18.
- ¹² Henkin 272.
- ¹³ Restatement 156.
- ¹⁴ Ibid 155.
- ¹⁵ Ibid 161.
- ¹⁶ Ibid 163.
- ¹⁷ Ibid 163.18.Ibid 168.
- ¹⁹ 1980(2) Y.B. Int. Law Comm. 32.
- ²⁰ For sources see Restatement 173.
- ²¹ Henkin 273.
- ²² Ibid.
- ²³ Art(2)91) of the International Covenant on Economic, Social and Cultural Rights.
- ²⁴ Restatement 175.
- ²⁵ See Restatement 177 for an argument in favour of this possibility.
- ²⁶ Eg SC Res 418 of 1977 re South Africa.
- ²⁷ Theodor Meron, *Human Rights in Internal Strife: Their International Protection*, Grotius, Cambridge 1987 26-27.
- ²⁸ See the elaborate study under Capotorti for the United Nations: *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*, Centre for Human Rights, 1991.
- ²⁹ *Encyclopedia* 271-72.
- ³⁰ Thomas M. Franck, *American Journal of International Law* January 1992 46.

Discussion
The Extent of International Human Rights Law

Chairperson: Professor James Crawford
Discussion Leader: Professor Gerhard Erasmus

CRAWFORD: The relationship between the dual roots of self-determination - decolonisation and chapters XI and XII of the UN Charter and, more recently, human rights and Article 1 of the two International Human Rights Covenants - is certainly a source of tension. It may even be profoundly problematic.

PARTSCH: Disliked the terminology of 'first', 'second' and 'third' generation rights, as the existence of the concept of third generation rights rather implied that first generation rights should be disregarded which he was not willing to accept.

Self-determination is not isolated but is to be balanced with other principles enunciated in the 1970 Friendly Relations Declaration. This Declaration establishes this balance by stating that there is a priority of self-determination over the principles of national unity and of territorial integrity only in the case of dependent territories and those countries where not the whole people is represented in the government, such as is the case with apartheid. He suggested that the appropriate way to balance the two principles should be on the basis of the Friendly Relations Declaration. He disagreed with those who asserted that this balance should be established by the principle of democratic legality citing the fact that UN membership is not conditional on democracy or on any other type of constitutional system.

VAN WALT: Was concerned about the consequences of addressing the Tibetan issue as a question of minority rights. This could undermine any claim to self-determination. In addition, this might further encourage the Chinese Government to see Tibet as a minority rights issue and thereby to implement further minority policies, which would not address the real problems. Many governments now appear to echo the Chinese perception that this is an ethnic or religious minority question. Furthermore he agreed that Tibet's status prior to 1951 needs to be clarified.

CRAWFORD: Emphasized the three areas under discussion, namely: (1) the relationship between self-determination and minority rights, pointing out that the modern law of self-determination developed during a period when there was virtually no law of minority rights at all, when the debate was in the context of general human rights; (2) the status before 1951 of Tibet and its relevance to the present; and (3) the problem of evidence. Lawyers must consider the evidence by reference to legal standards and by the application of substantive criteria for particular purposes, not merely by adjectival standards in relation to the burden of proof. He asked what criteria must be applied to employ the evidence. For example, is the 1989 UNESCO 'experts' test (as used by the Committees on Evidence) in relation to the definition of 'peoples' relevant or is the test narrower?

KAMENKA: Opposed the notion that this issue should be addressed as a minority rights question. He pointed out that the Chinese used the term 'nationalities' until this term was changed to the term 'minorities' for external political reasons. On the basis of the voluminous evidence presented, there was in his opinion no doubt whatsoever that

the Tibetans are a people and have been so for longer than most European nations. Very few European nations have had borders nearly so definite. The Tibetans are a people, certainly in the sense in which each of the English, the French and the Germans (who have not had settled borders for most of their history) are a people. It is not necessary to define the borders of a people, but to link them with a territory. The borders can be negotiated later.

BENEDEK: There are three levels to discuss, all of which are interrelated: self-determination; minority protection; and human rights in general. He felt that there was little difference between self-determination in its internal dimension and minority protection. Accordingly, for practical reasons, it was useful to discuss the Chinese assertion that they do provide Tibetans with minority protection and proper autonomy, even though Tibet may well constitute a case for external self-determination.

BELLO: On the basis of what the Conference had so far heard, in his opinion it was clear that Tibet is a state and that the Tibetans are definitely a people, who should be recognised as an entity by the international community. The fact that they shut themselves off from the international community for centuries was irrelevant.

BERMAN: Need to distinguish between the minority rights concept and various self-determination issues including internal self-determination. He pointed out that the development of minority rights in the UN Charter era is rather sparse but it can be concluded that its content covers the right of persons belonging to a minority category essentially to equal protection of the law without discrimination. The concept of minority rights intentionally leads away from the notion of the right of a people as such and so away from the right of self-determination.

SALL: Recommended that this issue should be approached on the basis of the Tibetans as a people under colonial domination and therefore having the right to self-determination. There are precedents for this position especially in Africa. He asserted that this was a better approach than considering Tibetans as a minority or oppressed people suffering human rights violations. There is no state practice leading to the right to self-determination on these latter bases alone.

FALK: Commented on the relationship between a human rights approach and the best way to validate a claim of self-determination. There is a conceptual confusion in regarding human rights as an alternative approach, as self-determination is itself a norm of human rights that is embedded in the Covenants themselves.

The colonial foundations of a relationship between two entities, being one of alien subjugation, does create one kind of foundation for the exercise of self-determination. But the political will of the people effectively expressed also creates a potential foundation for a claim of self-determination without any necessary history of prior colonial domination. The recent examples of Croatia and Slovenia are important, as there the international community accepted a political process of disaffiliation from the former Yugoslavia. There the claim of self-determination was validated for these distinct peoples in the absence of any relevant colonial background. In the case of Tibet, these two grounds are mutually reinforcing and not exclusive. The will of the Tibetan people, aggravated by denials of other human rights (it is important to say 'other' human rights in order to acknowledge that self-determination is a human right), is a foundation of their claim, which is reinforced by the experience of invasion, alien subjugation and, at

least, a quasi-colonial background in the relationship. The question is how best to conceptualise this relationship between human rights and self-determination.

FRASI: Reminded the Conference of the conclusion reached in the Committees of Evidence regarding Tibet as a colony, namely that Tibet is living under the alien occupation and domination of China. Therefore the situation was considerably more than just a question of minority rights violation or general human rights violation.

CRAWFORD: Summarised Professor Falk's comments as attempting to integrate the quite distinct strands of development of self-determination in the post-1945 period. The problem is that the mechanism for identifying colonial or quasi-colonial situations has atrophied and the Human Rights Committee, for example, with its responsibility for implementing the International Covenant, has taken the view that collective complaints under Article 1 are inadmissible under the Optional Protocol and, more importantly, that Committee was increasingly taking the view that the 'peoples' to whom Article 1 refers are the whole peoples of States. Therefore Article 1 was being directed more towards a form of democratic pluralism, than at situations which might be regarded as colonial or where people may seek independence or something very close to independence.

DOWD: stated that it was dangerous to talk of self-determination as an automatic right in itself; it must be looked at in international terms and in relation to some sort of international recognition. There are enormous difficulties in determining the mechanics of asserting self-determination and in particular, which people to be included: what criteria will determine who has the vote and who does not. Specifically which Chinese people, who may have been in Tibet for several generations, will be able to vote and express an opinion on Tibet. How does one determine minorities within, for instance, the Tibetan area, and their rights? By way of a parallel he cited the problems in New Caledonia which has a majority of Melanesian people and where France maintains the fiction that New Caledonia is a part of France. It has a significant Polynesian imported group but, of those, a minority only are New Caledonians. It was an example of how good the French are at integrating people, but it raises very difficult questions in terms of minority rights and who can vote. These very same questions will become apparent in the context of the former Soviet Union where large areas are being decolonised. Those new States are going to have to work out how to vote particularly where there are significant minority groups. He urged the Conference to look beyond Tibet to the application of these principles in other States.

CRAWFORD: Pointed out that the International Law Commission is seeking to define the principle of *restitutio in integrum* as the primary international remedy. It was confronted with the problem of what exceptions there are to the principle that the normal remedy is restitution. One of the suggested exceptions was where there was a violation of the norms of *jus cogens*, for example where this would violate the right to self-determination of the people now living in the territory concerned. Restitution may not always be the appropriate remedy. If a State had valid title to a territory, which it no longer occupies and is indeed now occupied by other people, the question that arises is whether or not restitution is the appropriate remedy. These situations are very difficult and the problems of the critical date (which are classic problems of international law in the context of acquisition of territory) also occur in the context of self-determination. These two principles may well conflict.

This raises the whole question of the position of Tibet in 1951 and whether or not it was a State. He summarised the case against Tibetan statehood in 1951, namely that there was a degree of international recognition (including by the UK) of some authority by China over Tibet, notwithstanding that there was also a recognition of Tibetan autonomy going back to the conventions concluded at the beginning of the century. This position was in the context of an international system moving in the direction of black and white divisions between statehood and non-statehood and becoming increasingly intolerant of the refinements of autonomy, suzerainty and so on. As a result Tibet was effectively lumbered with China and Tibetan autonomy was subordinated to Chinese sovereignty.

KIRBY: Directed the chairperson's attention to the discussion of this issue by the Permanent Tribunal of Peoples in Strasbourg recently which accurately summed up the competing arguments. One of the relevant factors was that, in the period 1911-50, Tibet did not seek to be a member of the League of Nations or the UN, when it could have done so. Whilst this is relevant to the issue of whether there was ever an established statehood on the part of Tibet, it is not conclusive. There was a kind of vassal relationship prior to 1911 but afterwards there are some indications of independence arising out of international recognition. On this he agreed with Professor Falk: what happened in 1950-51 is useful but does not answer the question of whether there is a people's right to self-determination in 1993, which is an issue to be addressed in its own right.

PARTSCH: Pointed out that in 1949 Tibet wanted to be a member of the UN but was dissuaded from doing so by the UK and the US. It was also interesting to note that according to the Simla negotiations, Tibet should not have representatives in the Chinese Parliament. This was changed with the constitution of China after 1949. In 1988, the Chinese Government reported to the Committee for the Elimination of Racial Discrimination that there was a 13% representation of minority nationalities in their Parliament, although they only represent 6.7% of the total population of China.

LAMB: In 1943 the British Government represented by Anthony Eden discussed Tibet's status with the US, whose view was expressed by Mr Horbeck, the effective head of the Asian Department of the State Department. The US always regarded Tibet as a part of China. Eden was less clear and was slightly inclined to ignore the suzerainty question and just declare Tibet independent for all practical purposes but, embarrassingly for the UK, Churchill (without consulting anyone) sent a telegram to that conference recognising Chinese suzerainty over Tibet. None of this was vital because the only time that he (Lamb) was aware when the issue was discussed at a high level between the UK and China, the Chinese Foreign Minister made absolutely clear that Tibet was an integral part of China. When, eventually, a document summarising the discussion between Eden and the Chinese Foreign Minister was sent, it toned down what had previously been said about autonomy. As a result two documents emanated from this period: one is a recognition by the British of Tibetan autonomy, the other in which it is not so clear what the British are recognising. In any event, the Chinese never replied to the summarising document (which did require a reply), and the issue was left in abeyance. A possibility for sorting out the position of Tibet was thus tragically missed.

In 1951 US State Department records show a clear US offer to the Dalai Lama through his brothers and various other associates, that if he formed an exiled regime it

would be easier for the US to recognise the fact of Chinese occupation and the government-in-exile as the legitimate inheritors of Tibetan independence. Various places for exile, including Thailand and Sri Lanka, were suggested. The Dalai Lama's advisors turned this offer down and returned with his entourage to Lhasa. This created another ambivalence and another possible opportunity lost.

VAN WALT: Asserted that in looking at the right of self-determination, first and foremost it is imperative to look at the status of the people and the territory at issue from its own perspective and how it relates to the rest of the world, rather than concentrating on the recognition or opinions of other States. For example, a treaty between Britain and Russia about the status of Tibet or a discussion between the US and Britain about the status of Tibet, is important but more important is how Tibet related to those States and how they communicated with Tibet. One of the things that is very often looked at is the communications of China to the outside world about its view of Tibet being part of China in the period 1911-1949. What is usually ignored is the communications by the Chinese Government to the Dalai Lama and the Tibetan Government about its relations with Tibet during that same period. Those communications repeatedly invited Tibet to join the 'motherland' and to become the fifth race. They were not saying that Tibetans are already part of China. The Tibetans repeatedly rejected this offer. He therefore, urged the Conference to look at the will of the Tibetans at the time, without necessarily minimising how third party governments viewed the status of Tibet at that time.

He then stressed the ambiguous position of the UK throughout that period arose as a result of British colonialist or imperialist needs at the time. On the other hand, China asserts that British recognition of Tibetan independence or autonomy or suzerainty - all of which fall short of China's claim to Tibet being an integral part of China - was the result of a British colonialist policy to split the larger China.

He then explored another key aspect to the issue, namely the basic Chinese argument that the 40 year period (1911-1951) was an aberration from the usual relationship of Tibet and China over hundreds of years during which Tibet was an integral part of China so that all China has been doing since 1951 was re-establishing its rightful position in Tibet. He stated that in making this argument China is redefining the Chinese empire and the Confucian system of relationships, in terms of modern nation-state concepts. He emphasized that relationships between the emperors who sat in Peking must be seen in terms of a Confucian relationship and not in a modern State sense. Indeed the emperors who had close ties with Tibet were not Chinese: they were Mongolians or Manchus. What China is in fact saying is that the Chinese, Manchu and Mongolian empires, and others, were a Chinese State and that therefore any relations with neighbours close enough to China meant in some sense that that neighbour (whether it was Vietnam, Korea, Tibet or Mongolia) was an integral part of China. From this point of view it can be said categorically that the statement that Tibet was ever an integral part of China is simply wrong. At no time in history was Tibet ever integrated into a Chinese State - except arguably since 1951 - and that raises the issue of the legality or illegality of the Chinese invasion. Even in Chinese records themselves, and particularly during the imperial periods since 1720, Tibet was described as a vassal or a tributary of the emperor but not as an integral part of China.

Finally, with regard to the 1951 Peking Agreement, there was much discussion with American representatives and others at the time, of the possibility of the Dalai Lama seeking asylum in Sri Lanka or even in the US and to reject the Agreement as having been imposed on the Tibetans by duress and force. The Dalai Lama chose to return to Tibet. The sequence of events was that the Tibetan delegation which went to Peking was only authorised to discuss and negotiate, without any authorisation to sign anything. The Agreement was imposed on the Tibetan delegation under duress and for most of the final stages of the discussion it was not allowed to report back to its government in Lhasa. Indeed the Dalai Lama first heard about it from the BBC. The Dalai Lama decided, after his delegation returned with a Chinese official, that it would be best in the interest of peace for him to return to Lhasa and try to renegotiate with more senior Chinese officials who were on their way to Lhasa. This was a practical decision rather than an acceptance or a rejection of the 1951 Agreement. He soon realised the intransigent attitude of the Chinese after the Chinese army entered Tibet. From that time on he tried to find a *modus vivendi* with the Chinese. The Dalai Lama categorically denied the validity of the 1951 Agreement at the first opportunity he had of doing so, which was in full freedom in 1959 after he had fled. He did so quite categorically.

LAMB: Agreed with Mr van Walt's comments. He further stressed that large parts of Tibet are now Chinese provinces, emphasizing the geographical boundary problems. He also referred to the two types of opposition in Tibetan politics; one advocating links with China and the other advocating an end to theocracy and increasing modernisation along western lines.

DOWD: Emphasized that the use of the different terms of 'suzerainty' and 'sovereignty' in British diplomacy was deliberate. The British went to a lot of trouble, because of their other interests, to ensure that 'suzerainty' meant that the Chinese had some sort of interest in, but not 'sovereignty' or ownership over, Tibet. In all the treaties of that time Tibet was dealt with separately. The UK ignored China in entering into the 1904 Treaty with Tibet. In the 1907 Treaty between the UK and Russia, (by which time the British were dealing directly with China), the UK recognised Chinese suzerainty rights over Tibet. Agreements were then entered into whereby China would keep everybody out of Tibet except the British.

He emphasized that 'suzerainty' means having some control or interest over and is not 'sovereignty', which is a form of total control or ownership. For example, China had suzerainty over Vietnam in the First Century AD. He emphasized that, importantly, Tibet was recognised as a separate entity in all the treaties at that time.

BENEDEK: Considered that ownership issues dating from a different time in international law are largely irrelevant. Indeed, issues of sovereignty cannot be addressed in terms such as those used in China's booklet: Tibet - Its Ownership and Human Rights Situation. He wished to consider further the 1951 Agreement which was signed under duress, and for which it might be said that there was a certain acceptance in the sense that the Dalai Lama sought a *modus vivendi* before unconditionally rejecting it after fleeing to India. It was worth considering whether the 1951 Agreement still has any relevance to Chinese obligations in Tibet (in which case they would have been violated) or whether it was irrelevant. In his opinion, the Agreement is not of much value because implementation of a right to self-determination can be pursued independently of previ-

ous history. Accordingly, earlier claims by China in dynastic times are basically irrelevant. Interestingly, the Chinese booklet referred to did not, unlike earlier booklets, reprint the 1951 Agreement.

ERASMUS: The general question raised in the discussion was: what is the precise legal foundation of the Chinese presence in Tibet. If the Chinese are engaged in activities which, for example, deny Tibetans permanent sovereignty over their natural resources, there is no getting away from the need to address the problem of what is the legal foundation of the Chinese presence there. He finds interesting the statements of Professor Falk and others that a new basis in international law and international relations is emerging whereby a claim to self-determination does not necessarily relate to historical evidence or require a history of colonial domination. Such claims would need evidence to bring them within the UNESCO Experts' criteria on 'peoples' (adopted by the Committee on Evidence) and would not limit them to human rights violations.

As a final remark, the concluding paragraph in his paper refers to an article written by an American scholar entitled 'The Emerging Right to Democratic Governance'. That particular writer discerns a tendency towards an emerging right to democratic governance not only in isolated cases of self-determination denials but also in those parts of the world where a democratic government is not now available. This may be an attractive view, but more conservative legal minds such as his own would regard this idea as needing to be consolidated and developed further. Tibetans would need, for the time being, to rely on more usual mechanisms.

CHAPTER 6

HUMAN RIGHTS WITHIN CHINESE MUNICIPAL LAW

Paper delivered by Perry Keller:

The Legal Status of Tibet and its Claim to Independence under Chinese Law

I am a specialist on China, not Tibet. I have sought to understand how the new Chinese legal system that has been established in the last dozen years is supposed to work at its basic level and how it does actually work. This analysis aims to bring into sharper focus the nature of possible autonomy for Tibetans within China. Without prejudice to the Conference's recommendations, it was important to consider the constraints and what can be offered within the Chinese system.

1. International Human Rights Law in China

The Chinese government clearly accepts that international law encompasses human rights. In 1991 China's supreme executive body, the State Council, released a report entitled 'The Human Rights Situation in China' in which it stated that, 'the Chinese government also holds the Universal Declaration on Human Rights in high regard and considers that it is the primary international document concerning human rights issues and which lays the foundation for the practice of international human rights.'¹ The report however also states that every State has the right to interpret its international obligations in accordance with its own historical, social, economic and political circumstances. Moreover, the State Council emphasizes that, 'although human rights issues have an international aspect, the most important issues lie within the domestic jurisdiction of the State.'²

This report is China's first major effort to set out a coherent position on human rights issues. During the 1980s Chinese policies of economic development and opening to the outside world were welcomed abroad and the country's human rights situation received scant foreign attention. The government itself evidently found little need to articulate its approach to human rights issues. However, in apparent reaction to the spasm of international condemnation that followed the suppression of the Tiananmen protests in 1989, China has sought to develop a political and legal position which can be used to meet foreign and domestic criticisms. As part of this effort the government has sponsored a national academic programme of human rights research and publication. Although this academic work is often highly abstract, in many cases it contains useful insights into China's still evolving official position on international human rights law.³

Chinese authorities have responded to foreign criticisms regarding the ineffectiveness of civil and political rights in China with arguments that are familiar to international human rights disputes. Chinese commentaries have emphasized that China is a socialist country committed to the implementation of socialist rather than bourgeois

rights and consequently must balance the rights of the individual against the rights of the whole of the society. In addition, as a developing country, China must give priority to the development of the economic and social well-being of its citizens and that this is a prerequisite to the enjoyment of civil and political rights. And finally, as a non-western country China must be free to implement human rights in accordance with its own history and culture which, unlike the individualist traditions of western States, is collective or group orientated. These arguments are often mixed together and are not necessarily distinct in the Chinese human rights literature.⁴

The issue of self-determination and independence for Tibet causes special problems for China's official approach to human rights questions. As one Chinese commentary argues, there is a distinction between direct and indirect international human rights. Direct rights are those, such as the rights to peace, development and self-determination, that are enjoyed by 'peoples' as represented by the sovereign States in which they reside.⁵ Indirect rights are the first generation civil and political rights and the second generation economic, social and cultural rights which are enjoyed by individuals as interpreted and implemented by the State in which they reside. In that commentary, indirect rights are said to be a matter of domestic jurisdiction.

The difficulty is plain to see. If China accepts that the international legal right to self-determination is directly enjoyed by peoples and is not within the exclusive domestic jurisdiction of States, it must explain its refusal to countenance the independence of Tibet. In the State Council report 'Tibet - Its Ownership and Human Rights Situation', the Chinese government attempts to do this by reference to the 'great unification of various regions and races within the domain of China' achieved by the Mongol Yuan dynasty in 1279 AD.⁶ This argument, which is in reality based on a concept of irreversible historic conquest and control, is logically incoherent. Admittedly the tension between the principles of self-determination and territorial integrity remains unresolved in international law. However, the Chinese view, which gives overriding importance to territorial integrity at the expense of self-determination, is not so much a resolution of this tension but a denial of its existence. It seems to me that the Chinese approach can only be understood as a Marxist historical materialist argument that assumes a progressive development of human society towards greater union and the eventual overcoming of cultural, racial and linguistic barriers. Even within the confines of Marxism, the argument appears to give inordinate significance to the existence of the State and its institutionalized Communist Party.

2. Ethnic Rights and Autonomous Government

The Communist victory over the Nationalists in 1949 did not bring about a revolution in Chinese policy towards territorial sovereignty. The Communist government has pursued all of the territorial claims of its predecessor, except in relation to Mongolia, which China agreed to recognise as an independent State.⁷ Any notion that territorial claims over Tibet might be relinquished were dispelled in 1950 when the People's Liberation Army (PLA) entered Tibet.

The incorporation of Tibet into China's new civil administrative framework took

much longer to accomplish. In the early years of Communist government, administrative and military authority throughout the country went hand in hand. Under the loose provisions of an interim constitution, the Common Programme of 1949, the country was divided into large military-administrative regions (Da Xingzhengqu).⁸ Legal authority was rudimentary and considerable administrative discretion rested in the hands of regional and local commanders.⁹ In a similar manner the government of the Dalai Lama was permitted to remain in existence in Tibet, but it is apparent that ultimate control rested with the Tibet Area Military Command of the PLA.

The Communist Party first entrenched the general principle of autonomy for minority ethnic groups in 1947 when it established the Mongol Autonomous Region in the North China Communist base area. In 1949 the Common Programme provided a legal basis for the creation of autonomous minority governments at the regional, provincial, prefectural and county levels. In principle these administrative bodies held the power to issue autonomous regulations and special regulations. But in the chaotic conditions of that time, when active resistance to Communist rule was continuing, it is doubtful that many autonomous minority governments were created.

The first formal constitution of the People's Republic of China (PRC) was enacted in 1954 and established a national administrative structure that remains largely in place today. Under this Constitution, ethnic minorities were guaranteed equality with other Chinese citizens and a degree of autonomy in the management of their own affairs. Article 70 of the Constitution preserved the right of autonomous minority area governments down to the county level to issue 'autonomy regulations' and 'special regulations', subject to central government approval. This was in fact a major concession of principle in a Constitution that otherwise stripped regional and local governments of any formal legislative power. But what it meant in practice was not at all clear. The development of a legal basis for civil administration in the PRC was slow and hesitant. The implementing legislation necessary to give detail and enforceability to this constitutional promise of autonomy was never enacted. In practice, central and regional Communist Party policy directives determined the degree of autonomy enjoyed by any of the country's ethnic minorities. There seems to be no public record of the administration of the minority areas in this period on which the nature of their purported autonomy can be verified.

Tibet's formal integration into the national administrative structure set out in the new Constitution began in 1955 with the creation of the Preparatory Committee for the Tibet Autonomous Region (TAR). But the installation of a Chinese model of administration was delayed by the unrest in the region which culminated in the 1959 revolt. The creation of the TAR People's Government was not formally announced until 1965. Outside of the boundaries of the TAR, ten Tibetan Autonomous Prefectures and two Tibetan Autonomous Counties were also created between 1951 and 1967 in neighbouring provinces with large Tibetan populations.

This was a fleeting appearance of normality. During the Great Proletarian Cultural Revolution (officially 1966-1976), the principle of autonomy was denounced and Tibet, among other areas, was subject to vigorous, even frenzied, efforts to suppress religious freedom and cultural diversity. The Chinese government now acknowledges that these policies were mistaken and that serious injustices occurred during that period.¹⁰

In 1979 the Communist Party, under the authority of Deng Xiaoping, announced its current on-going programme of economic reform and opening to the outside world. The Party also committed itself, as part of this programme, to the building of a comprehensive legal system to assist economic development and also to prevent a return to the chaos of the Cultural Revolution. The essential foundation for a formal system of law was laid in 1982 with the enactment of a new Constitution to replace the politically compromised one of 1979. In this new Constitution the Communist Party recreated a version of the national governmental structure formalized in 1954 under the first Constitution of the PRC.

The present Constitution also guarantees the rights of ethnic minorities to equality, economic and cultural development, the right to use and develop minority languages as well as the right to preserve and develop minority customs.¹¹ The Constitution also outlines the powers and duties of autonomous regions, prefectures and counties.¹² In these areas the authorities hold the normal powers of regional or local governments as well as the power to 'exercise autonomy within the limits stipulated by the Constitution, the Minorities Regional Autonomy Law and other laws and to implement national laws and policies in accordance with actual local conditions'.¹³ The nominal legislatures of these areas, the people's congresses, are accordingly allowed to issue 'autonomous regulations' and 'special regulations' in accordance with their economic, social and cultural conditions.¹⁴ In this way the Constitution re-established the principle of autonomy for minority areas. But again the key terms, such as 'autonomous regulation' were left undefined. In principle the interpretation of these terms should be found in national implementing legislation, in this case the Minorities Regional Autonomy Law. Unfortunately this law, enacted in 1984, does not provide any significant assistance. On key constitutional provisions, such as those concerning legislative powers, it merely restates the general wording of the Constitution.¹⁵ The relevant legislation of the TAR Peoples Congress also restates the constitutional principle without additional clarification.¹⁶

Separating the reality from the rhetoric of 'autonomy' for the minority peoples of China is immensely difficult. The Chinese legal system plainly fails to provide a sufficiently precise definition of autonomy that can serve as a legal basis for effective autonomy in minority areas. I believe the reasons for this failure are to be found as much in the fundamental uncertainties of China's system of law and administration as in the policy choices of China's leaders. These uncertainties need some explanation.

First, the lack of detailed provisions in the Minorities Regional Autonomy Law regarding the special powers of regional and local autonomous governments has caused considerable confusion within the administrative system. According to Chinese commentaries, a broadly accepted understanding of the function of 'autonomous regulations' has yet to emerge.¹⁷ In particular, it is not clear whether these legislative powers can be used to create special laws that are in fact contrary to the express terms of superior national legislation or whether these powers can only be used to vary the effect of superior legislation within defined limits.¹⁸ In short, to what extent can an autonomous minority government act autonomously?

Second, comparison with China's regular hierarchy of legislative and administrative authority throws little light on the problem. Indeed, the ambiguities of the autonomous

administrative system are unmistakably rooted in the larger problems of the country's legislative and administrative structure.

The 1982 Constitution created a tiered system of legislative authority which has two principal divisions: firstly between two types of state institutions, the people's congresses (the nominal legislatures) and the people's governments (the administrative organs); and, secondly, between the central institutions and the regional and local institutions. This legislative framework is set out in the chart contained in Annex I. The main reason for this division of legislative authority between the central and the regional and local governments was to provide a legal basis for the flexible implementation of national laws that did not endanger the unitary structure of the country. As Chinese commentaries emphasise, the Constitution was never intended to create a federal structure.¹⁹ It grants primary legislative authority in all areas to the central government and merely leaves implementation, in accordance with local conditions, to the regional and local governments.

In practice this flexible unitary system has created a great deal of uncertainty. In every area of law the limits of regional legislative authority are set by the varying provisions of national legislation, many of which are exceedingly vague. On top of this many secondary relationships essential to the effective working of this formal system of law are only being worked out now. For example, what are the limits of regional legislative authority where relevant national law is nonexistent? Or what is the proper relationship between central government ministerial regulations and regional legislation, and what is the essential difference between people's congress and people's government legislation? All of these questions are currently the subject of debate within China.²⁰

In this situation the legal status of China's autonomous regions and localities is obviously difficult to determine. Chinese accounts confirm that there are many different views within Chinese Government over the degree of actual autonomy authorised by the Minority Regional Autonomy Law.²¹ In practice, legislative and administrative authority throughout China largely depends on *ad hoc* approval or acquiescence by central authorities to the initiatives of local leaders. Moreover, one of the consequences of major economic restructuring has been that formal divisions of law and administration often lag behind shifts in national and regional policy. The uncertainties present in the legal and administrative structure are magnified by the pre-eminent position of the Communist Party. In many cases this ultimate supremacy of the party over the institutions of the State has provided a rationale for 'extra legal' amendments and exceptions to the law where experimental or special measures are thought to be required.²² For these reasons the degree of actual autonomy experienced by the Tibetan Autonomous Region must depend on the evolving policies of the Communist Party regarding this territory. China's formal legal and administrative system of autonomy for ethnic minorities is not sufficiently developed to provide either a theoretical or practical definition of autonomy. In Tibet, with its recent history of anti-Chinese rebellion and unrest, the Party's policies are certain to be cautious, framed by a perceived imperative of national unity. But as Party directives are usually classified and are rarely published, Beijing's instructions for the governance of Tibet and the TAR Communist Party Committee's understanding of those instructions are in most cases unavailable to the Chinese or foreign public.

In this situation one can only understand the degree of autonomy enjoyed by the Tibetan Autonomous Region by examining the legislative and administrative measures of the TAR and then comparing those measures with actual practice. Although it is beyond the scope of this paper to review the actual practice of administration within Tibet, some useful observations can be made about the laws of the TAR.

First, the legislative record of the TAR People's Congress is in fact far less extensive than that of the more developed provinces of eastern China.²³ This body has simply enacted fewer laws in fewer areas than its counterparts have in other major provinces. See Annex II for a list of current TAR People's Congress legislation.

Second, the content of this legislation does not show that Tibet enjoys, in any significant way, a greater degree of autonomy than that enjoyed by regular provinces. The authority to issue 'autonomy regulations' and 'special regulations' is certainly acknowledged in TAR legislation. But, as noted above, this authority is undefined and in itself appears to be of no special significance. In the political sphere the TAR authorities evidently hold no authority to alter the existing political or administrative system established by the central government.²⁴ However, in the social and cultural spheres, there is some specific legislative evidence of autonomy. The legal age for marriages in the TAR (20 years of age for men and 18 years of age for women) is two years younger than that stipulated by national law. As well, the 'Trial Regulations on the Study, Use and Development of the Tibetan Language' require, among other things, that Tibetan be used in all public institutions.

Whilst effective political autonomy in Tibet is clearly not a policy supported by the Chinese leadership, economic development has certainly been high on the official agenda.²⁵ It is however difficult to determine to what extent any legislative or administrative measures concerning economic matters represent a degree of autonomy for the TAR. Economic reform in the PRC has proceeded most rapidly in the developed coastal regions where foreign capital, educated labour and good transportation links are all available. These provinces have been granted special economic powers not enjoyed in the rest of the PRC. It seems to me that comparison of the remote, under-developed TAR with these areas is unrealistic.

Ultimately the question is not to what extent TAR enjoys more or less political or economic power than is enjoyed by a regular province. The critical question must be to what extent Tibetans as individuals and as an ethnic group have a genuine freedom to use and develop their language and culture in aspects of life and hold effective control over the land, waters and other resources of their traditional places of residence. Accordingly, international law is highly relevant to the situation in Tibet as it potentially offers an objective standard on which to measure the degree of real autonomy enjoyed in the Tibetan areas of the PRC.

3. Rights of the Individual

In Parts 1 and 2 of this paper I have shown that the Chinese government does not recognise any international right of self-determination for the Tibetan people and that the constitutional guarantee of autonomy for the TAR is both ambiguous in principle and

evidently limited in practice. In this part I consider the legal position of individuals or groups who attempt to espouse publically the cause of Tibetan independence. This requires an examination of the Constitutional rights of Chinese citizens to freedom of assembly and expression.

a) Freedom of Assembly

Chapter II of the 1982 Constitution refers to most of the individual rights and freedoms that are set out in the Universal Declaration on Human Rights. Article 15 contains the sweeping statement that 'Citizens of the People's Republic of China enjoy the freedoms of expression, publication, assembly, association, marching and demonstration.' However these rights are not intended to be interpreted as they would be in a liberal democracy. China insists on the socialist character of these rights and in particular emphasizes the unity of the rights of individuals with their duties to the state and society. Thus Article 51 states that 'When citizens of the People's Republic of China are exercising their freedoms and rights, they must not injure the interests of the state, society or collectives or the legal freedoms or rights of other citizens.'

The implementation of these constitutional provisions depends entirely on the enactment of national and regional legislation. Under Chinese law there is no judicial authority to interpret or to apply the Constitution directly, although it may influence judicial decisions.²⁶ Therefore there can be no judicially created constitutional jurisprudence. The Standing Committee of the National People's Congress (NPC) holds exclusive responsibility for the interpretation of the Constitution. However it is a matter of debate as to whether it has ever used this power. China's legal policy makers have preferred that the Constitution find its meaning through the enactment of subordinate legislation and not through specific pronouncements.

In the first years of the 1982 Constitution scarcely any national or regional laws were created concerning the rights and freedoms set out in Chapter II. It was not until 1987, following demonstrations in Beijing and other cities in which student demonstrators invoked the constitutional rights to assemble, march and demonstrate, that legislation defining these specific rights appeared. Local regulations were issued in the major cities concerned, while the central government ordered the drafting of a national law. However drafting work on this law was overtaken in 1989 by the massive demonstrations that occurred in Tiananmen Square and elsewhere. The result was the rapid appearance in the same year of a restrictive Law on Assembly, Procession and Demonstrations.²⁷

The basic approach of this national law is to prohibit any assembly, march or demonstration, outside of those connected with work or sports, that has not been previously approved and licensed by the relevant Public Security Bureau. The law requires that a designated organiser make a detailed application which includes the exact purpose of the demonstration, the number of participants, the slogans to be shouted or used on placards, the number of megaphones to be used and other details. The designated organizer is personally responsible for the exclusion of bystanders.

In 1992 the Ministry of Public Security, with State Council approval, supplemented the Law on Assembly, Procession and Demonstration with national implementing regulations.²⁸ These regulations clarify provisions of the law, such as, for example, the

specific responsibilities of the designated organiser to exclude bystanders. Many regional and local governments have also issued their own regulations to supplement these national legislative measures. In 1990 the municipal authorities of Lhasa issued regulations concerning assemblies, processions and demonstrations which prohibit among other things the use of 'religion and other activities' in 'demonstrations and processions [which] . . . endanger national unity or social stability.'²⁹

This agglomeration of national and regional laws has provided the legal foundation for an administrative system in which public authorities have enormous discretionary power over the holding of assemblies and demonstrations. Consequently, it is the general and specific policies of the Communist Party that determine how the law is to be applied and what in particular is lawful in any given circumstance. The question must then be: to what extent do those policies prohibit lawful demonstrations in support of Tibetan claims for independence?

The answer is plain enough. Article 12 of the national law prohibits the issue of a permit for any assembly, procession or demonstration which incites the splitting of the country. This is consistent with the constitutional duty of all Chinese citizens to protect both the unity of the country and the union of all nationalities of China. All available evidence indicates that the Chinese government interprets these provisions very broadly. Any public assembly or demonstration in support of Tibetan independence, however peaceful, is apparently unlawful.³⁰

b) Freedom of Expression

Article 35 of the Constitution also contains a fundamental legal guarantee for all Chinese citizens of freedom of expression. But in this case the NPC has not yet enacted national laws which would serve to implement directly the Article 35 rights to freedom of expression, the press and publication. The NPC plans to enact a Press Law to govern the print media, a Publications Law to govern other print publications as well as a Broadcasting Law to govern radio and television. The drafting of the Press Law began in the mid 1980s. However, the outright opposition to government policy voiced by many journalists and editors during the protests of 1989 seem to have brought a halt to any further progress on the Press Law.

The failure of the NPC to enact national laws in this area has not resulted in a regulatory vacuum. The Communist Party has always maintained close control over all media of public communication. One of the Party's earliest tasks on taking power was to establish direct Party control over all newspapers, journals and other forums of publication, closing down many in the process. Party surveillance in some form remains an aspect of all press, publication and broadcasting bodies. This pervasive system of Party control is coupled with direct state licensing and regulation of these services. Even during the worst years of the Cultural Revolution when many state institutions were disbanded, the State Publications Bureau continued to function. But it should of course be remembered that this system of control is only as strong as the willingness of Party and media personnel to carry out enforcement. Quite plainly there are many instances when rules and guidelines are deliberately breached.

In the absence of NPC national laws on press, publication and broadcasting, legal control of these media of communication had been carried out through administrative

regulations. As part of China's legalization programme, national and regional government bodies have issued hundreds of subordinate regulatory measures directed at various problems.³¹ The most significant of these are intended to ensure that all published or broadcast information is subject to prior approval through licensing and pre-approval requirements. However in a country as large and populous as China the appearance of unauthorized publications is a daily occurrence. Hence much of the state's regulatory efforts are directed towards the elimination of these publications.³² The importance given to this work can be seen in the joint State Council and Central Committee Decision Concerning the Strengthening of Publication Work issued in 1983.³³

Aside from the maintenance of general control, government regulations are also directed at specific problems including the protection of state secrets, the suppression of pornography, and the suppression of unauthorized political opinion. The latter issue has always been subject to legal and extra legal controls. Legislators during the PRC's first programme of legal development that took place in the 1950s gave special attention to the prohibition of any publication of political dissent. One of the few laws from that period that still remains in effect is the NPC Standing Committee 'Decision Concerning the Treatment of Illegal Books and Periodicals' which proscribes books and periodicals that, among other things, 'damage the unity of China's various nationalities'.³⁴

c) Administrative and Criminal Punishments

Demonstrations or publications which are deemed to violate national, regional or local regulations are subject to sanction by the State. Depending on the seriousness of the offence, the responsible authorities may choose to impose either an administrative or criminal punishment.

In the Chinese legal system minor violations of the law are classed as administrative rather than criminal offences and may be punished without resort to any judicial process. The Public Security organs have exclusive authority over most forms of administrative punishment, imposing fines and terms of detention for a wide range of offences.³⁵

The most significant of these powers is the authority to sentence individuals to as much as three years of 're-education through labour'. According to Amnesty International there are several cases in which individuals attempting to demonstrate in support of Tibetan independence have been sentenced to terms of 're-education through labour'.³⁶

Where a case is judged by the Public Security authorities to be more serious, a criminal punishment may be imposed by the courts. Criminal cases in which the accused has actively supported the cause of Tibetan independence, either by demonstration or publication, fall within Part I, Chapter 2 of the Criminal law which concerns 'counter-revolutionary' offences.³⁷ Under Article 90 of the Law any act which is intended to 'overthrow the proletarian dictatorship and the socialist system or otherwise harms the country' is potentially a counter-revolutionary crime. There is no question that this extends to the peaceful promotion of Tibetan independence. In numerous public statements Chinese authorities have asserted that public support for separatist causes amounts to counter-revolutionary activity.³⁸ In Tibet several individuals are known to have been sentenced as counter-revolutionaries to lengthy prison terms for their involvement in pro-Tibetan independence demonstrations or publications.³⁹

d) Avenues of Redress

As pointed out above, the concept of a judicially created constitutional jurisprudence, developed in accordance with fundamental principles of justice and applied to limit the exercise of the government's legislative and regulatory powers, has no place in China's current system of law. Because the Supreme Peoples' Court has no power to interpret the Constitution, an aggrieved individual has no basis on which to raise a constitutional issue in legal proceedings. The only available remedy lies in sending a letter of complaint to the Standing Committee of the NPC which does have the power to interpret the Constitution. However the refusal of that body, presumably in accordance with Party policy, to develop its own constitutional case work indicates that there is little hope of assistance in that quarter.

The Chinese courts are also powerless to declare void any subordinate regulation that is contrary to the superior legislation under which it was issued.⁴⁰ The power to rescind invalidly created subordinate legislation is divided, according to the type of legislation concerned, between the Standing Committee of the NPC, the State Council and the provincial level people's congresses.⁴¹ Consequently an individual who, for example, believed that a regulation issued by the TAR People's Government is in violation of a national law on the same subject has no judicial remedy. Once again the remedy must be sought through a letter of complaint, in this case addressed to the Legislative Bureau of the State Council in Beijing, which reviews regional and provincial laws for invalid provisions.

The courts do have the power under the Administrative Procedure Law to declare that the actions of a specific state official are contrary to the law and to require remedial action.⁴² This law, enacted in 1989, is the foundation for judicial review under Chinese law and despite its limited scope offers the promise of judicial redress for illegal acts by government officials. Nonetheless the problems that must be overcome to make the law effective are not to be underestimated. Aside from the limited independence of the judiciary from government control, the vague language of most Chinese laws and regulations makes it difficult for judges to determine whether conduct is unlawful. Moreover, given the cautious implementation of this law in the more developed regions of China, it seems unlikely that the Administrative Procedure Law will so far have had any major impact in the TAR.

¹ State Council Media Office, *Zhongguo de Renquan Zhuangkuang* ('The Human Rights Situation in China'), No. 39 *Guowuyuan Gongbao* 25 December 1991, 1348.

² *ibid* at 1349.

³ In 1991 and 1992 leading Chinese law journals, such as *Zhonggho Faxue* (Chinese Legal Science) and *Faxue Yanjiu* (Studies in Law), have published several articles concerning human rights.

⁴ *Supra* note 1 at 1349, 1350 and 1358.

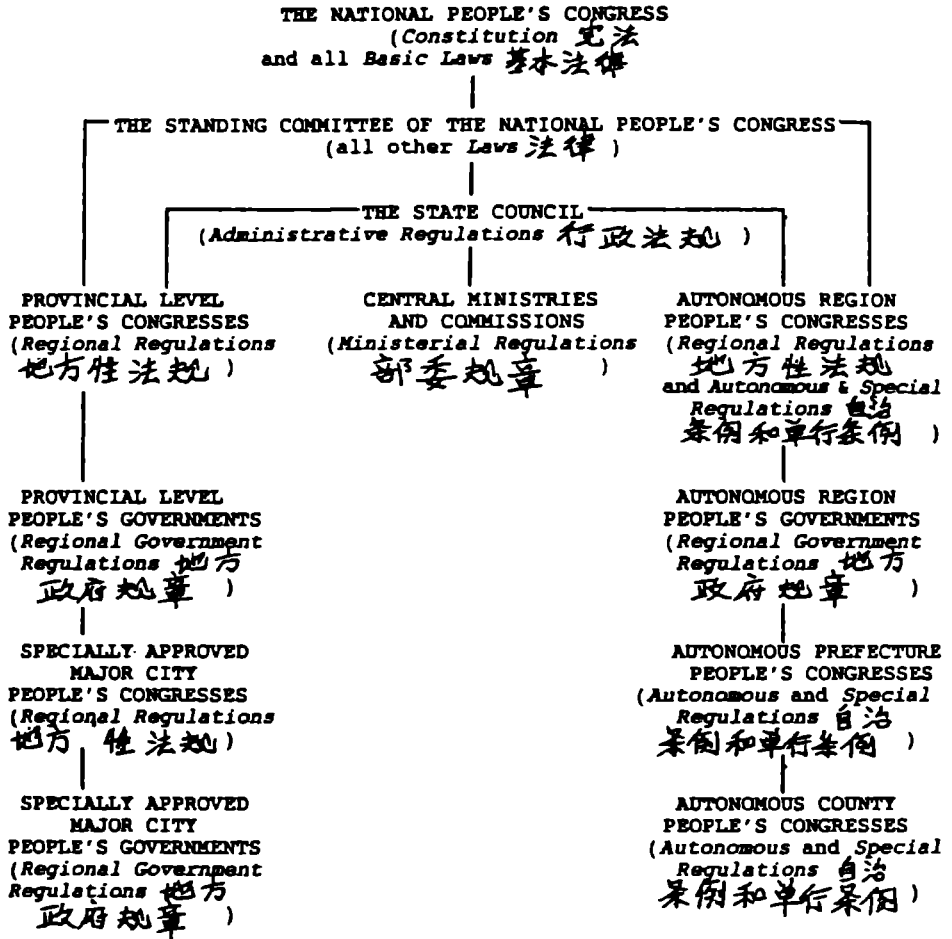
⁵ Xu Goujin, *Guojia Luxing Guoji Renquan Yiwu de Xiandu* (The Boundaries of China's Obligation to Implement International Human Rights) 2 *Zhongguo Faxue* 1992, 13-21 at 14.

⁶ State Council Media Office, *Tibet: Its Ownership and Human Rights Situation* issued in translation by Summary of World Broadcasts, September 1992, FE 1494 c1/1.

- ⁷ A large ethnic Mongol population remains within the P.R.C. in the Inner Mongolia Autonomous Region.
- ⁸ Zhongguo Renmin Zhengzhi Xieshanghui Gongtong Gangling (The Common Programme of the Chinese People's Political Consultative Congress) 1949.
- ⁹ Jonathan Spence *Modern China* London, 1990, 519-524.
- ¹⁰ *Supra* note 6.
- ¹¹ *Zhonghua Renmin Gongheguo Xianfa* The Constitution of the Peoples Republic of China 1982. Preamble and Article 4.
- ¹² *ibid* at Chpt. 6 of Part III.3
- ¹³ *ibid*, at Article 115.
- ¹⁴ *ibid* at Article 116.
- ¹⁵ *Minzu Quyu Zizhi Fa* (Minorities Regional Autonomy Law) 1984.
- ¹⁶ See, *Difangxing Fagui Xuanbian* (Selected Regional Regulations) vols I and II, 1991 Beijing.
- ¹⁷ Liu Jinghai, *Minzu Quyu Zizhifa Shishi Zhong de Jige Wenti*, (Several Issues in the Implementation of the Minorities Regional Autonomy Law) in 5 *Zhongguo Faxue* 1991, 41.
- ¹⁸ *ibid*.
- ¹⁹ Wang Shuwen, *Xianggang Tebie Xingzhengqu Jibenfa Daolun* (An introduction to the Basic Law of the Hong Kong Special Administration Region) Beijing, 1990, 23.
- ²⁰ See, for example, Zhang Xiaohong, *Guanyu Lifa Quanxian Deng Wenti de Yanjiu Zongshu*, (Summary of Research Concerning the limits of Legislative Authority and other Issues) 1 *Zhongguo Faxue* (Chinese Legal Science) 1992, 115.
- ²¹ Shi Yun, *Guanyu Minzu Faxue Wenti* (Issues Concerning Minority Jurisprudence) 5 *Zhongguo Faxue* 1991 40. See also *supra* note 17.
- ²² For an example of this process, see Perry Keller, *Legislation in the People's Republic of China* 23 *U.Brit.-Colum.L.J.* 1989, 659.
- ²³ *Supra* note 16.
- ²⁴ See, *Xizang Zizhi Renmin Daibiao Dahui Changwei Gongzuo Tiaoli* (Shixing), (Provisional Working Regulations of the Standing Committee of the People's Congress of the TAR) 1984.
- ²⁵ *Supra* note 6 at C1/13.
- ²⁶ *Supra* note 11 at Article 67.5
- ²⁷ *Jihui Youxing Shiwei Fa* (Law on Assembly Procession and Demonstrations) 1989.
- ²⁸ *Jihui Youxing Shiwei Fa Shishi Tiaoli* (Implementing Regulations for the Law on Assembly, Procession and Demonstrations) 1992.
- ²⁹ Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992*, ASA 17/19/92.
- ³⁰ *ibid*.
- ³¹ For central government regulations, see State Press and Publications Administration, *Xianxing Chuban Fagui Huibian 1949-1990* (Collected Press and Publication Regulations in Force) Beijing, 1991.
- ³² *ibid*
- ³³ State Council and Central Committee Party, *Guanyu Jiaqiang Chuban Gongzuo de Jueding* (Decision Concerning the Strengthening of Publication Work) 6 June 1983.
- ³⁴ Standing Committee of the NPC, *Guanyu Chuli Weifa de Tushu Zazhi de Jueding* (Decision concerning the Treatment of Illegal Books and Periodicals) 1955.
- ³⁵ Amnesty International has produced an excellent summary of the use of administrative punishments in the PRC entitled, *Punishment Without Crime: Administrative Detention*, 1991, ASA 17/12/91.
- ³⁶ *ibid* at 47.
- ³⁷ *Xing Fa* (Criminal Law) 1980.
- ³⁸ *Supra* note 1 at 1367. See also Amnesty International, *Secret Violence: Human Rights Violations in Xinjicing* 1992, ASA 17/50/92.
- ³⁹ *Supra* note 28 at 8-11.
- ⁴⁰ *Xingzheng Susong Fa* (Administrative Procedure Law) 1989 at Article 12.c
- ⁴¹ *Guanyu Jiaqiang Falu Jieshi Gongzuo de Jueyi* (Resolution Concerning the Strengthening of Legal Interpretive Work) 1981.
- ⁴² *supra* note 40 at Article 11.

ANNEX I

THE CONSTITUTIONAL STRUCTURE OF LEGISLATION IN THE PRC *



* Adapted from Wu Daxing and Liu Han (eds), Zhengzhi Tizhi Gaige Yu Fazhi Jianshe (Political Structural Reform and Legal Construction), Chart No. 15, 57, Shehui Kexue Wenxian Chubanshe

ANNEX II

Laws of the People's Congress of the Tibet Autonomous Region

(1949 - 1990)

1. Forest Protection Fire Prevention Eight Point Regulation, November 1979.
护林防火八项规定
2. Measures regarding Reward and Punishment for the Protection of Public Roads and Roadworks, November 1979.
公路路产保护奖惩办法
3. Provisional Birth Control Regulations for Ethnic Han Cadres, Technicians and Workers, December 1979.
汉族干部职工计划生育暂行规定
4. Adaptation Regulations for the Implementation of the Marriage Law of the PRC, April 1981.
施行《中华人民共和国婚姻法》的变通条例
5. Provisional Regulations for the Investigation and Punishment of Profiteering Activities, May 1982.
查处投机倒把活动暂行办法
6. Provisional Regulations for the Administration of Trade in Urban and Rural Markets, May 1982.
城乡集市贸易市场管理暂行办法
7. Forest Protection Regulations, August 1982.
森林保护条例
8. Special Adaptation Regulations for the Implementation of the Civil Procedure Law of the PRC, September 1983.
实施《中华人民共和国民事诉讼法(试行)》若干变通办法
9. Trial Regulations for the Work of the Standing Committee of the People's Congress, December 1984.
人民代表大会常务委员会工作条例(试行)
10. Regulation for the Administration of the Urban Environment and Health in Lhasa, approved July 1986.
拉萨市城市环境卫生管理条例
11. Regulations for the Administration of Urban Forestation in Lhasa, approved July 1986.
拉萨市城市绿化管理条例
12. Trial Regulation on the Study, Use and Development of the Tibetan Language, July 1987.
学习、使用和发展藏语文的若干规定(试行)

13. Implementing Rules for Elections to Various Levels of People's Congresses, July 1987.
各级人民代表大会选举实施细则
14. Procedural Rules for the Standing Committee of the People's Congress, July 1987.
人民代表大会常务委员会议事规则
15. Provisional Regulation for Labour Safety, December 1988.
劳动安全暂行条例
16. Measures for the Appointment and Removal of Personnel by the Standing Committee of the People's Congress, May 1989.
人民代表大会常务委会员人事任免办法
17. Trial Procedural Rules for the People's Congress, August 1989.
人民代表大会议事规则(试行)
18. Measures for the Protection of Electrical Installations, September 1989.
电力设施保护办法
19. Provisional Regulations for the Safeguarding and Development of Posts and Telecommunications, December 1989.
保障和发展邮电通信的暂行规定
20. Procedures for the Issue of Regional Regulations, February 1990.
地方性法规制定程序

Discussion
Human Rights under Chinese Municipal Law

Chairperson: Professor Alice Tay
Discussion Leader: Perry Keller

TAY: She reminded the Conference that for more than twenty five years China explicitly rejected law as a means of government. The 1975 Constitution made this quite clear, in calling for judges to decide cases together with the Public Security Bureau. In 1978 the procuracy of the courts was restored, though with only the barest possible mention of their existence. The open door policy in China was followed by the 1982 Constitution which opened up a new era. The Chinese now adopted a new and fresh attitude to law. The law was then viewed as a convenient and useful tool, an aid to China's four modernisations, so much so that some commentators, especially western scholars, call law the fifth modernisation.

However, when China started a programme of using law as a means of government - as an aid to the four modernisations - it is only one of the means and not the only one. The issue is raised as to whether, under Chinese law, law is a sufficient; important; insignificant; or perhaps a negative means of government. The question then follows as to whether there is any legal basis upon which to consider the status of Tibet, and its claim to independence, under Chinese law.

ACKERLY: Even though a region is 'autonomous' it could actually have less real autonomy than a 'province', even though the 'autonomous region' is actually granted more 'powers' over and above a 'province'. The evidence suggests that this is the case in Tibet. In the last five years, as Tibet has shown a propensity to be rebellious, Beijing has shown a similar propensity to rule Tibet more directly. As found in the Committees on Evidence, economically Tibetans have no control over large-scale migration into Tibet. It would be very significant, for example, whether, in the exercise of autonomy, Tibetans could control land ownership laws which may otherwise restrict Tibetans from certain ownership. He pointed out that it was ironic that Tibet became designated 'autonomous' in 1965, just at a time when autonomy was effectively being rejected throughout China. Had the designation not happened then it would not have occurred until after the Cultural Revolution. He suggested that Tibet is still operating under the reality of having been created as an autonomous region at a time when no real autonomy was on offer. He also noted how difficult it was to obtain copies of important Chinese regional legislation.

KELLER: China can be quite flexible about what can be incorporated into its rather eclectic system but really its policy for Tibet has been driven by very strong concerns about national sovereignty and territorial integrity. There is no legal requirement for the legislation of the People's Congresses to be published. Only at the national level is there a requirement for laws to be published and this does not extend to regulations put out by ministries. Regulations can therefore be kept secret. So if one were to ask for a copy of the laws of the TAR, one could receive a selection of what the authorities are prepared to release. He stated that he had never seen any material from the TAR People's Government. This would explain why the Chinese government, in evidence, refers to

60 regulations by the Tibet legislative authorities and it only lists 40. Also the Chinese have about ten different terms which we can only translate as 'regulation'.

TAY: Stressed that because of the strength of the concept of national unity and because laws do not mean what they say, as law is not the sole means of government, it is policies which are relevant and important. Indeed policies can bypass both the People's Congress and the People's Government, and can be directly issued, so far as autonomous regions and prefectures are concerned, from the central government. Herein lies one of the great faults in the concept of autonomy, when policies can be directed downwards in this manner.

She stressed that if and when laws are visible, they are very vague and general, and not subject to interpretative constitutional jurisprudence, as pointed out by Mr Keller. Laws can be applied in conflicting ways from one day to the next - although in reality they are rarely applied. This indicates the ineffectiveness of the laws as set out in the complex constitutional hierarchy of law-making and legal framework resulting from the 1982 Constitution.

KELLER: Pointed out that China is witnessing a transition from an entirely administrative system to one that is trying to grasp some concept of law but is not yet able to distinguish between a law and an administrative policy document. The legal system is in a very early phase of development. This is why Chinese officials genuinely become very annoyed when western academics ask questions about the law because they believe that we are prying into their internal administration.

GOODHART: Referred to the power of the Standing Committee of the NPC to interpret the Constitution, which Mr Keller had dismissed as unimportant in practice. He wondered whether in fact the Chinese government does place greater importance on this power since, in relation to the Basic Law for Hong Kong, China insisted on conferring on this body the power to interpret the basic law. This has been done in the face of very strong objections from those who regard this conferring of power as inconsistent with the Chinese government's commitment to allow independence for the judiciary in Hong Kong.

KELLER: The Standing Committee of the NPC had interpreted some of the laws issued by the NPC but not the Constitution. However he expected the NPC Standing Committee to be very active in interpreting the Hong Kong Basic Law because the system in Hong Kong will not have the same power structure whereby control can be exercised at all levels. Hong Kong is distinctive in this respect.

BENEDEK: Referred to a system of administrative detention in China of rehabilitation or reform through labour, as an illustration of the difficulty of working through Chinese regulations. A Chinese scholar had recently pointed out that there were at least twelve regulations about this, many of which were contradictory and the most important ones remained unpublished. That academic had proposed that legislation was necessary to clarify the situation.

He also stressed that there is no judicial autonomy in the TAR and that generally the provinces are fully integrated in the central judicial system. In his opinion the Standing Committee of the NPC's potential role on the Hong Kong Basic Law could be a nucleus for developing a Chinese constitutional jurisprudence, but this would only be in the distant future.

KELLER: Many people in China see the problems with its legal system quite clearly and there is a distinct movement within China for law reform. One cannot look to the present judiciary for much assistance, since at each level the judiciary is integrated within the local government. The judiciary is funded and staffed by the local government. It is important to realise that the Party cannot be seen outside this structure as there is an interlocking of the Party within the State. It is basically a fusion of State and Party. Thus the Higher People's Court of the Autonomous Region is established by the Autonomous Region's government and the Party Committee within the Court is under the direct control of the Party Committee for the Region, through a body called the 'Political Legal Committee'. More often than not, in every province the head of the Political Legal Committee is also the head of the Public Security Bureau.

He stressed that it was important not to see this system as a farce. The legal system does function and handles hundreds of thousands of civil cases, which do get decided according to what the law says, by people honestly attempting to do justice. It is simply that the system is open to alternative routes which can de-rail that process, particularly when more powerful interests are involved.

TAY: The Chinese legal judicial system is basically like the continental civil law system. There is a criminal investigative process whereby a judge takes evidence from the prosecutor as establishing a case. There is no system of precedents. However general guiding principles on how to apply certain laws at certain times are periodically issued, similar to the case in the former Soviet Union. These guiding principles may, for example, state which politically correct terms should be used. There are no objective, independent precedents to guide judges. This is why telephone justice (where judges talk to politicians) in its various permutations is so very important if a judge is not sure of how to make a decision. Also judges are not systematically trained. There is now a move to have a thorough, intensive, judicial education under the auspices of the Ministry of Justice. Just before the Tiananmen Square action, she had met a number of young lawyers who were able to boast about how they had raised technical issues concerning statutes of limitation to win technical points of law. This is potentially significant for an embryonic legal system.

Most young Chinese lawyers are acutely aware that the majority of judges and lawyers have no status, especially in the criminal process. As a result many are leaving general legal practice and going into a private commercial legal practice, especially since Tiananmen Square. Quotas for post-graduate studies in law are not now being met, whereas enrolment figures into law schools had increased significantly before Tiananmen Square.

KIRBY: Urged the Conference not to view the Chinese system as a farce, particularly not the Standing Committee of the NPC. He showed examples of mixed judicial and administrative decisions in a number of countries, including Australia (about deportations) and the UK, where the House of Lords (the highest court) hears cases in committee rooms in the Houses of Parliament. He expressed the hope that the power of ideas from the common law system in Hong Kong may be a powerful force for development in China through the Standing Committee of the NPC, in a way which the West would consider beneficial and constitutional.

He urged the Conference not to see China as an aberration. It is part of a long line in

the Confucian tradition: not individuals but community; not rights but duties; not the rule of law but the rule of powerful men of virtue. He asked whether there could ever be any actually independent judiciary and the rule of law as we know it, if these notions are an anathema to Chinese ideals and the cultural norms of Chinese people. Does the Confucian model of society fundamentally embrace human duties and duties to the community and the rule of powerful men of virtue to the exclusion of the rule of law and, so in a sense, human rights?

TAY: The Confucian view is rosier from outside than from within. It is built on the tyranny of the powerful over the weak. She has no illusions about a new Confucian society. There are many powerful men of virtue who have driven women to suicide after a life of service and misery. The issue raised about Confucian society is certainly an important social point. She had been struck during the second visit of the Australian Delegation on Human Rights in China how much the younger people had appreciated her assertiveness with older people. China's authoritarianism is not only Communist but also Confucian. Four of the five Confucian relationships that govern society are hierarchical. The most benevolent relationships can easily become ones of domination and submission which is why again and again in China the young dare not speak, enabling the old to maintain the *status quo*. She paid tribute to a previous generation of young Chinese lawyers who have gone to the US, Canada, Australia and elsewhere and have returned to China to play an important part in improving the legal system for the future. Many of them demonstrated what they had learnt from their western experience in Shanghai and in other major cities, not just Beijing, in the events leading up to Tiananmen Square. She doubted whether an influx of Hong Kong lawyers into China will inspire the Chinese youth.

KELLER: Agreed that there are powerful traditions in China, but pointed out that Chinese interchange with the rest of the world did not begin ten years ago. Any change in China towards a rule of law system, will not occur in the short term.

HEATH: As the Communist Party is the key to power in China, can there be any significant changes in the laws and administration in China without a corresponding reform of the communist system?

KELLER: The Chinese system has shown itself to be very flexible to changes, adapting itself to the canons of Marxist-Leninism, Mao Zedung, and recently, Deng Xiaoping. It is fascinating to note that the degree of violence used by the police in detention centres and prisons during the 1980s has increased with the collapse of the strict ideological views. Although Marxism is, to a large extent, a dead issue in China, the Marxist-Leninist structures serve as an excellent basis for maintaining an authoritarian structure. The situation is more complex than being based on Confucianism.

FRASI: Asked whether the Chinese legal system could develop so as to embrace the self-determination of Tibetans; or whether this could never happen, thereby forcing Tibetans to look elsewhere for redress?

KELLER: This is a difficult question because of the uncertainties of what autonomy means in the context of the overall uncertainty within the hierarchy of Chinese legislation. Hong Kong may offer a good model - a Chinese precedent for something that is outside the existing structure. But even this model is fraught with problems which the Chinese are content to leave to the future to resolve. The autonomous region structure is simply too interlaced with vague notions of power.

TAY: Stated that basically China needs a new constitution in order to define autonomy clearly and unambiguously, so that the areas of competence which an Autonomous Region can claim for its own legislature are clearly defined. This would, of course, be contradictory to the primacy of central government. If China would take the devolution of power from Beijing to the regions seriously then real progress could be made. While this was not a realistic prospect in the immediate future, the more that young people are made aware of notions of decent government, and notions of the proper use of power, then some real changes may penetrate the system, but this would be unlikely within the next twenty or thirty years.

FALK: In the last twenty years China has shown a flexibility in resolving disputes, not only in relation to Hong Kong but also in its accommodation of Taiwan and in resolving certain border disputes. Perhaps China, more than most major States, has shown a diplomatic flexibility which allows it to depart dramatically from prior legal positions to negotiate a resolution when it is politically advantageous to do so.

KELLER: So far China has never moved beyond a position that ultimately all primary legislative and political power must reside in Beijing and everything else is devolved and delegated. Hong Kong has been approached in this way too, namely that Hong Kong's Basic Law is an act of grace for Hong Kong for a period of fifty years. This is very pragmatic, but the overall framework of centralised power and the unity of the State remains unchanged.

GOODHART: Did not see Hong Kong as a model for Tibet. There are no ethnic differences in Hong Kong where the overwhelming majority of the population are Han Chinese and most speak Cantonese. What was given by China to Hong Kong is substantially for China's own benefit. He suspects that there will not be a working democracy in Hong Kong after 1997 but instead Beijing will tightly control the legislative council and the executive. Beijing is prepared to allow substantial economic independence to Hong Kong, which is of very great mutual benefit as there is enormous Chinese investment in Hong Kong and enormous financial investment by Hong Kong in South China. He could not so see Hong Kong as an effective precedent for Tibet because it is difficult to see any comparable benefit for China in granting real and effective autonomy to Tibet.

FALK: Agreed that Hong Kong was not a useful model for Tibet. Rather he was emphasizing the fact that the Chinese have shown political imagination and flexibility in relation to, say boundary disputes. He therefore suggested that it would be productive not to foreclose the possibility of change occurring in Tibet. Twenty years ago nobody could have imagined that China would be prepared to live with the current Hong Kong situation. Similarly, it would have been very difficult years ago to imagine the United States adjusting its relationship to Puerto Rico. There is something in the Chinese political culture which enables them to take unexpected political initiatives and wondered if those characteristics of its political culture could have any bearing on its relationship to Tibet.

GOODHART: Agreed that Beijing was capable of a very high degree of pragmatism (which would not have been expected twenty years ago) but that this pragmatism is absolutely linked to Beijing's self-interest. It was hard to see how change in Tibet could be in Beijing's self-interest. He was not hopeful that the 'one county, two systems' philosophy could be extended to a third system.

SALL: Asked whether the structure of China in the early 1950s was not in fact intended to be a federal structure as the early Constitution refers to the delegation and distribution of responsibilities on a regional basis. It was only in the 1960s and the 1970s that the notion grew that China was a unitary State with multi-ethnic dimensions. Did not this view gain in strength to some extent because of Tibetan claims to distinctiveness? This is reminiscent of the former USSR, which although it was a federal structure, in practice there was a denial of the freedom of the various regions or constituent republics to take decisions independently because of the political system of the State. Bearing in mind the tendency of African States to find a middle way between regionalism and centralism, could there not be a constitutional chamber under the 1982 Constitution which would, in a positive sense, allow for notions of regional competence.

KELLER: The 1982 Constitution was in many ways a return to the structure envisaged in the early 1950s. Immediately after the civil war with the Nationalists when the Chinese had their first interim Constitution, they allowed a great deal of legislative power to be given to the lower levels within a unitary system. The 1954 Constitution represents a much more centralist position, influenced by the events when two Communist Party regional officials were accused of separatist tendencies. The powers for autonomy in the 1954 Constitution are really an aberration in a Constitution that otherwise took all the legislative power back to the centre and gave none to the provinces. So the Constitution has always been unitary in form. In the USSR it was only when communist disciplines broke down that people began to exercise their legislative and legal powers. But in China there simply are no such legislative or legal powers. Even without the Communist system, under the present Constitution it is still a unitary system.

CHAPTER 7

THE CONTENT OF THE RIGHT OF SELF-DETERMINATION

Paper delivered by Richard Falk:

**Locating the Right of Self-Determination of Peoples as a Principle of International Law:
General Considerations**

I welcome the opportunity to consider the right of self-determination at this very important time when new issues are being raised in the so-called 'post-Cold War world'. How one conceives of self-determination in this new era of international relations and how international law will develop will specifically affect the Tibetans' prospects for realising the right of self-determination.

There are at least four generic features of the right of self-determination that render its application as a matter of international law both indispensable, yet complex in the setting of Tibet. It is indispensable because it expresses the essence of the claim being posed by the Tibetan people and their legitimate representatives, a claim that has been sustained for decades under an array of difficult circumstances. It is complex because the status and content of the right of self-determination are intensely contested issues in international political life and, while general considerations are a necessary part of discussion, the concreteness of specific circumstances, and a consensus as to their relevance is invariably decisive. That is, the achievement, or not, of self-determination is generally resolved on the concrete plane of political struggle and not on the abstract level of relative rights.

A first feature of the right of self-determination arises from its importance for moral and political discourse, as well as for legal discourse, and the fluidity of the boundaries separating law, morality and politics in relation to claims of self-determination. To the extent that law is derivative from politics and morality, especially when it comes to endowing rights with content in international relations, the practice of States and the prevailing patterns of geopolitics (the core expressions of politics at the global level) and the attitudes, beliefs and values of peoples (the core expressions of morality) interpenetrate the establishment and implementation of rights (the core expressions of international law). Recent international developments are having a contradictory and an uncertain impact upon the extent and direction of an overall discussion on the content and application of the right of self-determination. There are many factors at work, but perhaps most relevant is a growing fear that claims of self-determination are serving as a vehicle for ultra-nationalism that, in turn, gives rise to ethnic strife, collective violence, severe denials of human rights and massive displacement of threatened peoples. To validate a claim of self-determination it is increasingly helpful to demonstrate that its realisation will not have disruptive effects on regional stability but, on the contrary will help resolve outstanding conflicts, encourage the repatriation of refugees, and create favourable economic conditions for the peoples affected. Tibetan claims fall convinc-

ingly within this constructive category, but such an assertion must be demonstrated and cannot be taken for granted by supporters.

A second feature of self-determination is this problematic mood that is being shaped by the impact of recent history, which for better and worse seems to be illuminating both the emancipatory role of self-determination, as well as its potentially destructive impacts. On one side, the end of the Cold War and the breakup of the Soviet empire constitutes one of the great triumphal moments for those who champion the morality, politics and lawfulness of the self-determination of peoples. On the other side, the continuing strife in the former Yugoslavia with the prospect of a widening and deepening war in the Balkan region, dramatizes a far broader potential for strife and bloodshed associated with what might be called 'indiscriminate self-determination', including arguably premature recognition of the right in inflammatory multi-ethnic settings previously stabilised by means of historic compromises. These compromises might include federalist schemes that embody delicate balances vulnerable to disruption by either indigenous or interventionary influences. Such preoccupations have caused one writer to insist recently that 'with rare exceptions self-determination movements now undermine the potential for democratic development in nondemocratic states and threaten the foundations of democracy in democratic ones' and hence, that '(i)t is time to withdraw moral approval from most of the movements and see them for what they mainly are - destructive.' [Amitai Etzioni, 'The Evils of Self-Determination', *Foreign Policy* 89: 21-35, at 21 (1992-93), though he gives two exceptions: Tibet and Mongolia.]

Intertwined with these concerns about the inherent destructiveness of the self-determination movement in a variety of circumstances is the availability of the right of self-determination as 'a card' to be played by others, or not, in specific circumstances, that is, its utility as an instrument of geopolitics as well as a legal right of peoples. Thus, arguably, the premature affirmation of self-determination by way of diplomatic recognition of a new political entity may be dangerously interventionary (arguably, in the recent cases of Croatia, Slovenia, and Bosnia), but so may its denial in circumstances of severe alien subjugation and oppression (arguably, in relation to Tibet, East Timor and Inner Mongolia). Such geopolitically motivated State practice creates precedents that can either nurture respect for or discredit the legal conception of self-determination. More specifically in relation to the concerns of this Conference, the post-colonial breakup of artificial States on the basis of the popular will of 'captive nations' reinforces strongly the claims of the Tibetan people to exercise their own right of self-determination, but the strife attendant upon the promotion of contested claims might suggest caution in the broader interest of 'world order.' Again nothing should be taken for granted and it becomes useful to show specifically in each instance why the realisation of self-determination claims as a matter of legal right will also have beneficial moral and political effects on the Tibetans and other affected peoples.

A third feature of the right of self-determination arises directly from its doctrinal profile: variable in content, resistant to generalisation, dependent on context and intensely contested. This variability causes conceptual confusion, as well as political and moral ambiguity. In practical terms, claims of self-determination can vary from seeking full protection for group rights in relation to cultural identity and religious worship to claims for full statehood and sovereignty, including membership in the United Nations and an

independent foreign and defence policy. It is important to identify the contours of each specific claim as accurately as possible. Also, the political and moral dimensions of self-determination come into play. The issue of attainability may induce modest aspirations with respect to the negotiation of rights (as in the case of the Palestinians or the Kurds), the issue of sustainability may counsel caution in the timing of the assertion of rights, as when the emergence of new political entities are likely to inflame old ethnic rivalries (as in the cases of Bosnia and Armenia), the issue of viability may induce a limited horizon in the definition of rights (as in the case of indigenous peoples). Attaining self-determination need not be all or nothing, and it may be of great significance to make known an acceptance of intermediate solutions at least on an interim basis.

The appreciation of this flexibility inherent in the self-determination discourse pertains to the Tibetan claims for at least two reasons: the Tibetan approach to their struggle is primarily by way of spiritual leadership and inspiration of a unique character, of moral suasion and through reliance upon a politics of reconciliation (rather than by reliance on armed struggle); secondly, the play of forces is such that some degree of compromise is necessary if fundamental Tibetan claims are likely to be satisfied in the foreseeable future (the reality of Chinese occupation and military superiority, the geographic remoteness of Tibet, the absence of strategic resources, the reluctance of the international community to antagonise a major trading partner). The important point here is that each claim needs to be evaluated in relation to its specific content and its prospects for realisation and it is wrong to presuppose that each and every claim seeks maximal or uniform realisation as a first step. Setting forth on the path of self-determination can be a process of successive approximations rather than an 'either it exists or it doesn't' sort of static reality. The language of rights often conveys this static sense and makes it necessary to argue explicitly on behalf of a more processive conception of self-determination evolving in response to concrete, unfolding circumstances.

The fourth feature of self-determination concerns the locus and the circumference of the legal right in the broader understanding of self-determination. The long pre-history of self-determination has been associated with the phenomenon of nationalism, ensuring that distinct peoples are governed in accordance with their political will. Given the territoriality of the modern world, this has long implied connections between self-determination and statehood, or at least autonomy within delimited territory. With the interpenetration of peoples, often deliberately encouraged as a tool of empire-building to inhibit subsequent disaffiliation (such as Russian ethnic settlement in Baltic countries and Han settlement in Tibet), the exercise of self-determination by one 'people' may be, or appear to be, at the expense of another people. In this regard, genuine multi-ethnic and multi-religious societies present complex, baffling problems for those that seek a just resolution of self-determination claims, but not all claims are so beset.

International law, in its recent phases, seems to incorporate the confusions and tensions of the real world: affirming rights of self-determination in an expanding variety of circumstances, but also denying the existence of any generalised right of secession from an existing State regardless of the will of a distinct people. Conservative readings of international law confine self-determination to a matter of human rights, while more progressive readings incorporate claims that relate to the establishment of a separate sovereign entity under an expanding variety of conditions and as part of an effort to

spread the democratic ethos. Articles 1(2), 55 and 56 of the UN Charter, UNGA Res. 2625 (XXV), Article 1 of the two UN Human Rights Covenants and Article 1 of the Declaration on the Right of Development are fundamental texts that accent various dimensions of the overall legal right of self-determination. Such general endorsements of the right may be no longer useful in view of several deforming applications of self-determination claims, but neither is it acceptable to discredit self-determination, as such, because some applications have been inappropriate.

How, then, should the Tibetan claim of self-determination be understood at this time? The argument here is that clarifying the specific contours of the legal claim can have a legitimating and mobilising effect upon the political and moral character of the struggle of the Tibetan people and, to the extent that it is concretely expressed in non-maximalist terms, might well improve prospects for realisation of the basic Tibetan claim in the near future. Evaluating this assertion more fully would also require us to incorporate the range and depth of China's concerns and claims, those unspoken considerations that appear to motivate Chinese policy, as well as those avowed, and to assess the degree to which China could meet its legal obligations under international law by correcting patterns of severe abuse of human rights in Tibet and elsewhere within its territorial domain. An important challenge to the Conference is whether China's presence in Tibet is by itself an alien subjugation of such severity that a substantial removal of military and bureaucratic personnel is a precondition for satisfying, and even properly identifying the scale and substance of Tibetan claims of self-determination. UNGA Res. 1723 (XVI) affirms a Tibetan right of self-determination, but it was adopted in 1961, and a subsequent resolution, GA Res. 2079 (XXV) refers only to 'human rights and fundamental freedoms.' This background of General Assembly action has an ambiguous relevance at this time, being both confirmatory of the justice and urgency of essential Tibetan claims and, through the long lapse of time, expressive of acquiescence by the organised international community, even if not acceptance, of a *status quo* constituted by Chinese hegemony in Tibet. One role of this Conference is to challenge this notion of acquiescence in vigorous fashion, and to reassert Tibet's essential claim to self-determination, taking advantage of the recent historical tendency to deconstruct empires in favor of their constituent parts, thereby extending the domain of self-determination far beyond its apparent scope restricted to decolonization in a strict sense.

Shaping the claim of self-determination in the concrete circumstances of the unfolding situation as it bears on the Tibetan struggle for fundamental human rights, including those bearing on its political, cultural and religious identity and independence, deserves dedicated attention at this time. It would be politically helpful and morally prudent to demonstrate, as is the case, that substantial steps towards the realisation of Tibetan self-determination claims would be likely to have a positive effect on regional international relations, and enable China to play a leading role in Asian diplomacy and on the world stage.

On a personal note, in 1986 I visited Tibet, with the authorization of the Chinese officials administering Tibet, and formed the strong impression that Tibet was an occupied country. The most fundamental presupposition is the notion of a people being entitled to be governed in accordance with its own identities, traditions and values. The Confer-

ence must not lose sight of the clarity of the reality of the Tibetan people as a people from a legal, political and moral perspective. Such clarity is indispensable as a foundation for this Conference and this type of enquiry. Therefore, the application of self-determination raises questions of morality and politics in a very pronounced way and the legal arguments strengthen the political and moral arguments – they do not stand alone. This is especially so in the Tibetan case. Much of the prominence and support for the Tibetan cause derives from the spiritual and moral integrity of the Dalai Lama. Unlike most other important struggles for the right of self-determination, the Tibetan struggle has renounced violence and is therefore very much dependent on waging a symbolic war on the terrain of legitimacy. Change will depend on the way in which the symbolic issues of morality and law are generally interpreted and understood at a global level.

The end of the Cold War and the substantial end of colonisation has shifted the understanding of the scope of the right of self-determination. This shift in understanding arises from the practice of States and international institutions. In that sense the break up of the USSR and the Yugoslavian federation is of vital importance for a legal understanding of self-determination. A careful attention to the recent practice of peoples attaining various degrees of self-determination is far more clarifying than merely looking at very general legal instruments (eg the Declaration on Principles of International Law, various UN Resolutions and the Human Rights Covenants). Important though such instruments are, they are not decisive. The various autonomy processes already under way in relation to, for example, the Kurds and the Palestinians, demonstrate clearly that realising self-determination does not necessarily lead to full sovereign independence. We are moving away from an 'either/or' view of State or non-State in this emerging world order. It is very important that non-maximalist forms of self-determination be treated as very serious and realistic possibilities in relation to Tibet, particularly as geopolitical factors are not especially favourable there. The historical situation is sufficiently ambiguous to allow larger States with strong practical interests in a continuity of relationship with China not to take too seriously the Tibetan claims.

Against that background there are several useful general considerations to be borne in mind in considering the status and future of Tibet.

Firstly, it is important to acknowledge that the legal discourse relating to the right of self-determination is deeply embedded in political and moral discourses. It is both politically naive and morally confusing to separate the law too abruptly from these other modes of discourse. That is why recent practice is so important. The fact is that those claims to self-determination which are satisfied and those which are thwarted or resisted, relate very centrally to the political and moral context and only in a very secondary way to the relative merits of the legal position. Thus the strength of the legal argument of a people struggling for self-determination is not necessarily a good indicator of their prospects of success. A mobilisation of political and moral forces is required to back a legal argument today. The whole question of legitimacy and the political realities are central to the moral suasion that underlies the Tibetan struggle for self-determination.

Secondly, the involvement of politics and morality in the evolution of the legal doctrine is further complicated by contradictory tendencies in the current historical setting. On the one hand the ending of the East-West dimensions of the Cold War has accelerated the struggles of peoples to achieve self-determination; on the other hand there is

the growing appreciation that the struggle and attainment of self-determination can, in a variety of settings, serve as a vehicle for ultra-nationalism and can be oppressive in relation to other peoples that are caught up in that struggle. Self-determination, which had been relatively unproblematic in the context of decolonisation, is now assuming historically a much more problematic character because while it is emancipatory for peoples that are oppressed by various forms of alien subjugation, it can be the vehicle for exceedingly anti-democratic and suppressive tendencies. Whilst this may not be an altogether logical set of responses, the end result at this time is a growing ambivalence towards giving moral and political support to these emergent claims for self-determination.

The third level of complexity is the exceedingly variable content that the right of self-determination has both in theory and in practice, in doctrine and in relation to specific claims. Precisely because it is so flexible and variable, it is very difficult to argue in any specific case that the right does not exist. There is enough of a plausible ground in the very general doctrinal norms that have been formulated, that there is no single way of establishing the boundaries of the right of self-determination in an influential or authoritative manner. International lawyers will be influenced and guided by the outcomes of the political and moral struggles of the world to determine what is the doctrine of self-determination. It is a very unsatisfying relationship to a legal doctrine but, in the absence of an authoritative decision-making process at the international level, it is the only acceptable way of interpreting this variable practice and content.

Finally, reservations about the application of self-determination are irrelevant in the case of Tibet. It is helpful and important to appreciate the reality of Tibet as a country essentially occupied by a foreign power. The situation resembles the coercive inner empire situation in the former Soviet Union and, to some extent, Yugoslavia, and is more closely associated in some senses with the colonial antecedents to the present discussions of the right of self-determination. In other words, the very long and complex pre-history between the people of Tibet and China is essentially a variant of a colonial relationship and should be so understood. It is misleading, and an unfortunate narrowing of the decolonisation process, to limit colonialism only to the Western colonial powers. In this sense one can suggest that the recent acceleration of the acknowledgement of this right in the UN and elsewhere that has accompanied the break-up of the Soviet external and internal empires is extremely relevant as a moral and political criterion by which to encourage the process of self-determination in Tibet. Properly construed, the negative implications that self-determination is serving as a vehicle of ultra-nationalism can effectively be distinguished. Legally, as well as morally and politically, the case for Tibetan self-determination can be further strengthened. Accordingly, this Conference, being a unique gathering of a credible group of international law experts focusing on the problem of Tibet, is urged to endorse the Tibetans' claim to self-determination.

**Paper delivered by Howard Berman:
Issues Relating to the Right of Self-Determination**

The right of self-determination, in all its dimensions, is one of the most contentious and politically charged areas in contemporary international law and relations. Although a

broad consensus developed within the international community concerning the application of self-determination for peoples subjected to European colonialism, governments and legal scholars have been strongly resistant to recognising the relevance of the right in the post-colonial era. To an extent, that reluctance has been superceded by remarkable events in Eastern Europe; nevertheless, legal doctrines touching on self-determination remain rooted in the colonial context. Even in this zone of consensus, however, it should be stressed that self-determination has always been an intensely political issue, with implementation of the right largely dependent on the political action of affected peoples.

The following is essentially a series of observations and analyses of legal issues in the context of the general rethinking process on the right to self-determination.

External and Internal Self-Determination

International instruments concerned with the implementation of the right of self-determination describe the exercise of self-determination as an act of free choice by which a people decides the nature of its political status and its relations with States. Peoples subjected to colonial or alien domination are entitled to external self-determination (complete independence), but may also elect a relationship with a single State along a spectrum of possibilities including associated statehood, integration or, in the language of the 1970 Declaration on Friendly Relations, 'the emergence into any other political status freely determined.' In practice, the decolonization process emphasised external self-determination. Most dependent peoples opted for independence. Alternative choices that resulted in a continuing relationship with the former colonial power were frequently called into question on the issue of authenticity. Out of over a hundred peoples deemed eligible for decolonization, only a handful of small island territories elected associated statehood or integration.

As a result, international legal principles regarding free association agreements and various modalities of integration are sparse. In general, an associated State retains its distinct identity, international personality and control over internal constitutional processes but grants to another State aspects of responsibility (authority) for defence and foreign relations. UNGA Resolutions 742 (VIII) of 1953 and 1541 (XV) of 1960 stress that the people of an associated State retain the right to modify unilaterally its status by democratic means, presumably toward independence. Res. 1541 also sets forth a minimum standard for integration, requiring equal status and rights of citizenship, equal guarantees of fundamental rights and freedoms without discrimination, and equal rights and opportunities for representation and participation in all organs of government. Res. 742 recognises the right of a people 'which has associated itself with the metropolitan country as an integral part of that country' unilaterally to modify its status, but that right was not restated in the 1960 text.

Neither instrument directly addresses autonomy arrangements within the concept of integration. Autonomy may be regarded as implicit; however it is clearly included within the broad terms of the Declaration on Friendly Relations along with various forms and degrees of confederation, security arrangements, free trade areas and other institutions of economic integration which may or may not involve the retention of international personality in whole or in part. Further development of alternative politi-

cal structures, including free association, for the implementation of the right to self-determination of non-State peoples may well satisfy the aspirations of many of those peoples for political expression of their distinct identities and for self-control. These structures may also come to be regarded by the international community as less threatening than the existing cycle of ethnic repression and resistance within States that presents the greatest threat to international peace and security today and the greatest source of injustice.

The concept of *internal* self-determination is as yet undeveloped in international law. Internal self-determination may be regarded as the right of a distinct people located within the boundaries of a State to freely decide its political relationship to that State. [The term 'internal self-determination' has also been used descriptively to refer to the internal dimension of the right to self-determination. Additionally, Antonio Cassese and others have defined the term as a right of the whole population of a State to a democratic form of government but this usage has not been widely accepted.] The concept has featured prominently in the discussions of the UN Working Group on Indigenous Peoples during the drafting of a 'Universal Declaration of the Rights of Indigenous Peoples'. Indigenous peoples have consistently asserted an inherent right to self-determination which they describe as the right to establish a relationship with the State on an entirely consensual basis, with the commensurate rights to control their territories, resources, and political and social orders through their own institutions without external interference. The situation of indigenous peoples is *sui generis* and it is unclear whether 'internal' self-determination entirely corresponds to their aspirations or, indeed, will be fully reflected in the final Working Group draft. Nevertheless, the text represents the most advanced standard-setting exercise on the application of the right to self-determination to non-State peoples in the UN system.

Territorial Integrity and Self-Determination

Although the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Friendly Relations and the Human Rights Covenants affirm that *all* peoples have the right to self-determination, universal application of the right has been constrained by another bedrock principle of the UN Charter – the territorial integrity of States. Unquestionably, with some exceptions in principle and practice, the international community has established the priority of territorial integrity in relation to the status of distinct peoples within existing States. The principle of territorial integrity was incorporated in the UN Charter in an effort to bring stability to European boundaries after the Second World War and was firmly endorsed by newly independent States, particularly those which defined their territories on the basis of colonial borders without regard for the ethnic character of the region or the consent of affected peoples.

In analyzing the tension between self-determination and territorial integrity, several issues should be considered:

1. Article 2(4) of the UN Charter renders illegitimate any annexation of territory acquired through the use or threat of force. Such territory is deemed under alien occupation and the rights of the people concerned remain unextinguished. The territorial integrity principle is not a doctrine of *fait accompli*.

2. The application of the territorial integrity principle has changed over time and

presently is in some state of flux. During the late stages of the colonial era, France and Portugal defined dependent territories as integral parts of the metropolitan State. This position was rejected by the international community (with some inconsistency) in relation to 'salt water' colonies, with the right of self-determination affirmed.

The reaction toward political entities whose existence involves the dismemberment of States has not been consistent. The UNGA condemned Indian armed intervention into East Pakistan but member States readily accepted the new State of Bangladesh. On the other hand, French and Moroccan forces intervened to prevent the secession of the Shaba region of Zaire and Soviet and Cuban advisors were active in the field against the independence movement in Eritrea. More recently, the international community extended rapid recognition and UN membership to entities resulting from the dismemberment and disintegration of multi-national States in Eastern Europe; however, at the same time, declarations of sovereignty and independence within the Russian Federation, in northern Somalia and on the island of Bougainville have been ignored.

At this stage, the acceptance and recognition of new political entities has been more the result of *de facto* independence in areas of perceived geopolitical importance than the emergence of a new legal regime on the rights of non-State peoples. However, some issues of legal consequence may be identified. The situation of the Baltic Republics in the final days of the Soviet Union introduced the issue of the legitimacy of political incorporation. The Baltic Republics were viewed as qualitatively different from other Soviet republics because of their prior existence, though brief, as independent States – a status extinguished by a coerced treaty of annexation. The Baltic peoples were therefore able to define their circumstances as a form of alien occupation, adding legal force to their political claims to self-determination. Second, although territorial integrity will continue to be a cornerstone principle of the State system, the dramatic political upheavals of the past few years indicate that the priority of the principle in relation to self-determination has somewhat eroded.

3. The entitlement of a State to respect for its territorial integrity and political unity in relation to the self-determination of peoples is subjected to a test of legitimacy by the Declaration of Friendly Relations. The language of the Declaration applies directly to racist exclusionary regimes but is sufficiently broad to embrace situations where distinct peoples within States are subjected to pervasive human rights violations and, in particular, to physical or cultural genocide.

4. Any application of the right to self-determination that does not result in the involuntary dismemberment of the State is consistent with the territorial integrity principle.

Secession and Recognition

Secession has not been directly addressed in international law. No general right of secession is recognised. At the same time, no prohibition against it has ever crystallized in customary international law. For the most part, the issue has been approached through the principle of effectiveness, with States assessing the prospect of recognition according to their own interests.

The territorial integrity principle has not been applied to peoples seeking to form new States. It has primarily functioned as a doctrine of non-intervention, prohibiting States and international organisations from exercising a general obligation to facilitate the self-

determination of peoples within the boundaries of existing States. It has also legitimised assistance to regimes threatened by secessionist insurrection, particularly in the absence of an authoritative analysis of human rights conditions prevailing in the receiving State.

It has been argued that 'premature' recognition is a form of intervention, contributing to international instability. Recognition in the most general sense, however, can have an impact on the way the international community approaches the question of the legitimacy of political incorporation and consequently, of the self-determination of the people concerned.

Population Transfer

Population transfer is a broad concept that has been applied to refugee movements; indentured labour; population exchanges such as the Greco-Bulgarian and Greco-Turkish agreements after the First World War; mass expulsions such as ethnic Germans from Poland and Czechoslovakia after the Second World War; and so-called transmigration programs ostensibly for national development. The term is analyzed here as a frequently used euphemism for the colonisation of an area by members and institutions of a dominant society, which usually results in the dispossession of distinct peoples from their ancestral lands. In this sense, population transfer is a policy through which a government seeks to transform the ethnic character of a region for purposes of political consolidation and/ or the integration of lands and resources into the national economy.

Population transfer impacts on self-determination in several ways. In the case of indigenous peoples, programs of internal colonialism, including removals for resource extraction, road building and hydroelectric development, destroy remaining elements of *de facto* self-control by separating peoples from the ecological, economic and spiritual basis of their cultures and ways of life. For such peoples, dispossession has genocidal consequences. Population transfer has also been employed in an effort to impede self-determination for peoples and territories recognised by the international community as subjected to colonial or alien domination such as Western Sahara, Palestine, New Caledonia and, arguably, Tibet. In each of these territories, States have sought to alter the nature of the 'self' eligible for self-determination through demographic change by creating majorities of members of the dominant society. In virtually all cases, these population transfers also involve resource extraction that violates the right of peoples to permanent sovereignty over natural resources.

Population transfers are frequently abetted and facilitated by funding from the World Bank and other intergovernmental institutions and by donor States. The World Bank funds development projects in many States which involve the dispossession of land-based peoples. The Bank and donor States have also contributed to the creation of for example, an Indonesian settler society in West Papua.

At present, these population transfers continue to be characterized as 'development' rather than as significant human rights violations. Efforts have only just begun to bring population transfer directly within the framework of the international law of human rights and State responsibility. The issue has been discussed in the UN Working Group on Indigenous Peoples and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and, in certain aspects, by the International Law Commission.

Conclusions

The resolution of any issue of self-determination radiates outwards and affects other similar issues in the world. There is a reciprocal reality here that is faced by peoples who also want to gain more control of their own destiny. In this regard no one situation can be considered in isolation. Richard Falk talked of the dilemma of self-determination in Eastern Europe which is unresolved today, where the world is still grappling with the problems of the First World War, some seventy years after the Treaty of Versailles. All of these issues had been suppressed during the period of the Cold War and have once again been raised in both consciousness and in reality.

Ethnic conflict situations that have revolved around aspirations for self-determination have also been witnessed in Africa. These were manipulated by the Superpowers during the Cold War era, trying to gain influence on that continent. Underlying these civil wars and conflicts were very complex and deeply-rooted questions of identity and aspirations, for example in Eritrea, which is on the verge of independence, and in Angola, where agreed electoral procedures had broken down and civil war is again threatened.

The Conference needs to consider the position of indigenous peoples around the world who have raised claims of self-determination. These claims may not mean the same thing as the aspirations of the Tibetans, or the aspirations of peoples within Eastern Europe. Nevertheless this adds an even more complex dimension – the rights of non-State peoples or the application of self-determination within existing States.

It was important to acknowledge that self-determination concepts and law are in a state of evolution, or certainly in a state of change. Michael Kirby referred to the velocity of that change which was likely to continue. The rigid concepts of the past had not worked. He agreed with Richard Falk that all too often the discussion begins and ends with the issue of statehood or political independence. Given the multiplicity of claims to self-determination today and the different contexts in which they arise, it is vital that the international community, the affected peoples and the affected States begin to develop new forms of political associations that will allow distinct peoples some form of political expression of their identity that is satisfactory to them. He preferred to use the term 'political association' rather than autonomy (a term with unfortunate connotations). All too often a suppression and denial of minimal claims of autonomy frequently leads to maximal claims to independence under the rubric of self-determination and even to civil war.

In some situations, States will need to be willing to reshape creatively the positivist concept of the centralised State that emerged from the French Revolution. This concept arose within a European context and has been applied inappropriately in much of the rest of the world. We have been operating in a State system with the myth of the 'nation-state'. In fact there are very few States that are ethnically homogenous. Most States are ethnically plural, whether or not this is reflected politically. Ironically, we may now be seeing the final unfolding of the logic of the nation-state, as different nations or peoples within States are now claiming statehood for themselves. In Africa after independence, the emphasis was not only on State-building but also on nation-building, creating the ideology of a single nation out of many peoples. This was problematic and led to a great deal of conflict. He urged the Conference to be involved in this rethinking process.

Unless the international community was prepared to rethink this process and be creative in its analysis of the space occupied by a State (and also the models by which self-determination might be affected) we will continue to see massive human rights violations that result from the suppression of the legitimate aspirations of peoples.

As part of the rethinking process, he urged the Conference to look at structural analogies to colonialism, found in so many ethnic conflicts, where there may be a centralised State structure or a dominant society within the State on the one hand and distinct peoples within that State who have not been incorporated within that power structure. We also need to expand our concepts of alien occupation or alien subjugation. These terms appear in several international instruments, being applied primarily to the Palestinians in the Occupied Territories. It is however an important concept for Tibetans and others. When is the relationship between the dominant society and distinct peoples in fact an example of alien occupation?

It is probably not possible to analyze self-determination claims entirely through the issue of legality – a deeper analysis is required. The starting point of analysis must be the people concerned – the people of Tibet themselves. We need to be concerned with the nature of their self-consciousness as a people, and also their aspirations. In other words, the aspirations of the people must set the stage.

Richard Falk is correct when he says that Tibetans are engaged in a symbolic battle of definition because they have renounced the use of force and that Tibet's historical background as well as legal and moral concepts are relevant. History is not irrelevant to the right of self-determination. But in the case of Tibet it is not an abstract situation of a minority people within a State who have recently acquired self-consciousness of their identity and only now aspire to some political expression of their identity. This is an ancient people who have tasted independence to some degree in the past, who have been subjected to a coerced treaty of annexation, who have effectively been militarily occupied and who have a much stronger claim under existing doctrines to manifestations of self-determination than many other peoples who may aspire to the same.

Discussion

The Content of the Right of Self-Determination

Chairperson: Professor Carlson Anyangwe

Discussion Leaders: Professor Howard Berman, Professor Richard Falk

ANYANGWE: Thanked Professors Falk and Berman for opening up the question of Tibet in a wider context, as we were urged to do by Michael Kirby in his opening remarks. Self-determination is not only emancipatory but indiscriminate self-determination can also be destructive. If a people do not feel part of an entity and rise up against that entity from within, can the principle of territorial integrity prevent that people from aspiring to and exercising the right of self-determination? In answering this it should be borne in mind that the principle of territorial integrity is intended to prevent encroachment by outside powers. He noted that the Chinese Government talks of the 'peaceful liberation' of Tibet but, if Tibet is a part of the 'Motherland' of China, why had it been

necessary to undertake the 'peaceful liberation' by military occupation?

VAN WALT: Noted a tendency of governments and scholars to be reluctant to expand the application of the right of self-determination because of a fear that this might lead to the oppression of a people within a State newly created as a result of the exercise of self-determination. This is not a valid argument to prevent the implementation of the right of self-determination as it is akin to saying that one should not have pursued the principle of decolonisation because it might lead to incidents of oppression. It is undeniable that self-determination can lead to harmful expressions of nationalism and oppression of minorities but this should not affect the self-determination principle. It is a very dangerous concept to say that because of examples like Yugoslavia, we must not expand self-determination elsewhere, thereby preserving existing forms of oppression.

Territorial integrity was a principle which must be balanced with the principle of self-determination. Neither is absolute. In each situation one has to see how to apply the balance. One has to ask whether the maintenance of a particular State system, by giving precedence to territorial integrity over self-determination, will lead to oppression. In such balancing processes the principle of territorial integrity should weigh less than the principle of self-determination. The human rights element and the oppression or colonialist element should be brought into the equation.

The position of Tibet is very similar to the Baltic States, such that it is legitimate to talk about the possibility of full independence being the result of self-determination in the context of Tibet. This is not necessarily the case elsewhere in the world. Furthermore it is hard to conceive of the self-determination of Tibet with anything less than full independence unless there is revolutionary change in China, by which he meant not just an end to communism but also to the entire mentality of the Chinese State and even the majority of the Chinese people. It was hard to conceive of a Tibet within China that would satisfy fully the requirements of self-determination of Tibetans.

ENNALS: Noted the comments by the UN Secretary-General, Mr Boutros Boutros-Ghali, both at a recent Canadian conference on self-determination (in honour of Martin Ennals) and during a conference on Yugoslavia, warning of the dangers of linking self-determination to independence otherwise there would soon be literally hundreds more members of the UN. We must be careful that external arguments do not trample on the special case of Tibet.

BERMAN: He had not meant to foreclose on the possibility of complete independence or external self-determination; rather he was suggesting that, in looking generally at self-determination situations around the world, we are confronted with the need to look seriously and creatively at non-maximalist solutions. In the case of Tibet it is for the Tibetans to define what they wish to achieve ultimately in answer to what they now suffer. Legally speaking it is significant that there is a clear analogy between Tibet's history and the history of the Baltic States. Tibet satisfies all the criteria for statehood except for its ability to exercise statehood at the present time and at other times in its history. The fact that there was a forced treaty of annexation is extremely significant in that it calls into question any claim to legitimacy on the part of China to continue to occupy Tibetan territory. So the concepts of alien occupation and alien subjugation are relevant to Tibet. Also, historically it is very difficult to construe the relationship

between China and Tibet (although expressed previously in feudal terms) as anything other than a colonial relationship, irrespective of the absence of a European coloniser.

FALK: Agreed with Professor Berman's comments. He wanted to emphasize the need to be attentive to Tibetan wishes and aspirations as a foundation for the political, moral and legal discourse about self-determination.

With reference to Boutros Boutros-Ghali's speech, this does reflect a dangerous political mood arising out of the Yugoslav experience. It is important to acknowledge destructive tendencies associated with certain categories of self-determination claims so as to be able to distinguish cases like the Tibetans. These claims are wider than those in Yugoslavia and other situations where there is a breakdown of the very delicate ethnic religious balance, such as in Lebanon. During the Cold War we were preoccupied by the menace of the strong State that projects its military power beyond its own borders. He felt that we were now in an era where the geo-political preoccupation is with the dangers posed by the weak State, being one which is unable to uphold its own territorial integrity and political independence in relation to regional and indigenous forces. These weak States can draw within their own internal conflicts wider patterns of international involvement and can generate wars, armed conflict, massive migrations of refugees and a whole series of preoccupying problems.

As for the Baltic analogy, he felt that the Tibet case is stronger than the Baltic Republics' case. He reasoned that Tibet has a more credible leadership that has effectively communicated the moral and political foundations of its claims to self-determination. In addition there is also the general admiration that the Dalai Lama holds - he is the only leader of a self-determination movement that is the recipient of the Nobel Peace Prize. The scale and continuity of Tibet makes it appear more like a State than the Baltic Republics. He felt it necessary, however, to consider the non-maximal solutions for Tibet because the political setting is not very favourable for the kind of outcome that has occurred in the Baltic Republics (although twenty years ago we would have encouraged non-maximal solutions there). It is unlikely in the next decade that there will be either a fundamental transformation in the political orientation of the Chinese ruling elites or that there will be a dramatic worsening of the external relations with China as a result of global conflict patterns. The non-maximal approach should not be advanced as a solution by itself but rather as part of a process of considering how the situation can be improved and the process of self-determination advanced. A non-maximal approach is part of the stages or phases to realise self-determination. The crucial elements to be emphasized by the Tibetans are the denial of human rights, the population transfers, the extent to which the relationship arises out of a coerced treaty of annexation and the extent to which the Chinese relationship with Tibet resembles one of an alien occupation with a colonial character.

KAMENKA: The role of the Conference is not to take on the functions of the Tibetan government-in-exile or of its legal advisers. It should find, as a matter of legal fact, that Tibet is a people, with all the essential attributes of statehood; that it was illegally annexed and invaded; and that the occupation has been maintained only by the continual use of force and denials of human rights. Furthermore Tibet is a more compact and homogenous State than most.

He said that international lawyers have a professional interest in developing the con-

cept of the right of self-determination, independently of statehood. He considered it doubtful that we should deny oppressed peoples the right to re-establish a State which had been destroyed. Marxists used to distinguish between reactionary nationalism and progressive nationalism. Before Lenin's time the test was whether nationhood was a form of emancipation or whether it was to oppress others. In the Tibetan case we should recognise that none of the solutions will be acceptable to China. The question of persuading China is, however, not for us.

GOODHART: Drew a comparison with the Finnish situation. Between 1945 and the break up of the USSR, Finland was a State which was a member of the UN and had complete internal independence, was completely at liberty to enter into diplomatic and trade relations with any other State but which was unable to enter into military alliances as a matter of politics and practice (rather than law). He could see very good reasons why Tibet should not be allowed to have military alliances with third States but otherwise would have total independence. This type of solution could be used elsewhere in the world, such as the West Bank and Gaza and a number of mini-states, and would exclude the right of mini-states in Bosnia which are controlled by Serbians to join with a greater Serbia. He would welcome the views of the Tibetan representatives as to whether they would regard a Finnish solution, or perhaps some other solution giving them less than one hundred per cent complete independence, as being acceptable.

BERMAN: Stressed that it was not his intention to limit the options for the implementation of self-determination but, on the contrary, to open them up to match the aspirations of the people concerned. He had advised some indigenous peoples with various aspirations: some aspire to independence; others aspire to a large zone of self-control within existing States. It is not that there is a parasitic relationship with those States, in fact often there has been a significant transfer of wealth from them in the form of land and resources to the dominant society. He was suggesting that we expand the menu for conceptual availability for peoples thinking about self-determination and by the international community as a whole. He was not advocating limiting the right to self-determination to non-State peoples who are entitled to it.

FALK: Agreed with Howard Berman that, in discussing restricted forms of self-determination, he wished to shift the emphasis of self-determination in conceptual terms from self-determination as a status to self-determination as a process. An outcome can be achieved progressively through time as the situation changes.

He understood China's view that its territorial integrity was non-negotiable but he felt that there might be some flexibility in the future due to pragmatic reasons. If, for example, China wished to become a regional leader in the Pacific, in competition with Japan and the US, then it might be a pragmatic step for China to remove the Tibetan moral stain in the interests of a bigger purpose. Thus China's future definition of its own best interests may well shift so the Tibetans must be aware of this political possibility.

TAKLA: Stressed that there is so much control and suppression in Tibet that Tibetans in exile have virtually no access to information from within Tibet. Their decision not to resort to arms had, she believed, led to certain governments being reluctant to develop honest, just and active responses. She was encouraged by the increasing number of successful self-determination claims and that self-determination is on the international agenda. In this light it was a good time for Tibetans to have the situation

addressed. The simple facts are that as long as Tibet is occupied the problem will not go away – an occupied country cannot have self-determination of its people.

RINPOCHE: This is an independent meeting of international jurists not a Tibet Support Group meeting. However, he felt it may be useful to add a few comments. Forty years is not a long time in the life of a nation. Tibetans had a commitment to three things: first to the truth; second to the principles of non-violence; and third to regain freedom in any form so as to give the people of Tibet human dignity. Since 1978 China's central government has expressed a willingness to negotiate except on the issue of complete independence for Tibet. Tibetans have tried to reconcile themselves with this. The theory of the nation-state is not so important to them; what is important is the benefit to the people (and indeed to all sentient beings). As a result, in good faith, they have spent more than forty years negotiating. His Holiness the Dalai Lama has put forward two proposals: the 1987 Five Point Peace Plan and the 1988 Strasbourg proposal which demonstrated a willingness to be in an association with China, but there was no Chinese response.

DOWD: Stressed that it was only in 1989 that the Tiananmen Square massacre occurred. China is unpredictable. In addition, the Dalai Lama himself is fragile and there will be a vacuum when he dies. It cannot be assumed that the present situation will continue. He suggested that any talk of different forms of governments in terms of self-determination, ignores the fact that the only way that Tibetans will be free, in real terms, will be by the removal of an alien occupying nation. He suspected that what Tibetans wanted was for the Chinese army to leave. Looking at practicalities, there is not going to be a ballot paper asking whether Tibetans would like independence, home rule, a Finland-type or Cook Islands-type solution, or asking them to list their preferences. Pragmatism is required. There will only be changes if the world pressures China and if public opinion can be brought to bear. He was sure that the Tibetans will take whatever they can, which is better than the present appalling situation discussed in the Committees on Evidence. Tibetans want independence but other forms or self-determination may be the only forms available in 1993.

HANNUM: Agreed with Professor Falk that the scope of self-determination is changing but was concerned about the exact lessons to be drawn by international lawyers from the dissolution of the Soviet Union, Czechoslovakia and Yugoslavia. He questioned whether these events, and the world's reaction to them, were a matter of self-determination or merely internal shifts equivalent to the dissolution of the United Arab Republic or the break up of Malaya (into Malaysia and Singapore), particularly in light of the fact that the new States that have evolved have immediately denied any rights of ethnic or religious groups or forms of self-determination to those left within their borders.

The concept of internal self-determination, described by Professor Berman as being the right of a distinct people located within the boundaries of a State to decide freely its political relationship to that State, does not mean that those people have the right to force the surrounding State to accept a particular kind of relationship. That would not be negotiation but an ultimatum. Internal self-determination is simply meant to encourage dialogue between the two parties.

He had heard in this discussion two different versions of the purpose of self-determi-

nation. One had emphasized human dignity and certain other values with the nation-state not being the major issue, while the other seemed to view self-determination as an end in itself and so accepting the philosophical and moral goal of 'nation equals state' or of 'ethnic group equals power'. He asked whether self-determination is an end in and of itself or merely the means to achieve some other values and, if so, what values?

FALK: The break-up of the USSR and Yugoslavia do considerably affect our understanding of the scope and nature of self-determination because they are perceived as realisations of the right of self-determination, in both diplomatic arenas and by the media, and follow from the fundamental notion embodied in the politics of self-determination; namely that it is a right that has operated on behalf of what can be called 'assertive nationalism'. That assertive nationalism, whether in the decolonisation setting or elsewhere, has produced a new political entity, whether it is territorially distinct or one that merely represents a new form of governance. In that sense, the destructive by-products of what his paper called 'indiscriminate self-determination' inevitably cast a shadow on all discussions on self-determination. In the case of Tibet these unfortunate implications are irrelevant. He therefore urged the Conference to make the case for self-determination clearly in relation to the specific sort of characteristics that Eugene Kamenka specified. It is in trying to reassert the core legitimacy of self-determination in the context of Tibet that makes these other developments so influential in terms of peoples' anxieties and perceptions. These developments are shifting the political balance on how to perceive self-determination as a right.

In regard to the purpose of self-determination, he affirmed Howard Berman's statement about being attentive to the aspirations of the specific peoples involved. Self-determination for Tibetans may be primarily important not as a technical legal terminology but as a means to achieve the human dignity of the Tibetan people and also of all sentient beings in a wider sense. It is very much an intrinsic, moral orientation toward the issue of fulfilling Tibetan aspirations. He stressed the importance of listening carefully to what self-determination means for Tibetans - it may mean different things for other peoples who may be less rooted in a religious, spiritual and moral tradition and who may take a more pragmatic view. These different views have important relationships with human rights concerns and with ideas about political independence and democracy. This is part of a wider setting of self-determination: it cannot be reduced either to a right that is an end in itself or as a means to achieve other values. In a very real way it is both and at times neither.

BERMAN: The concept of internal self-determination does not begin with a neutral position. Neither the State nor the non-State peoples are abstract entities beginning to define the contours of a relationship. These are peoples who, because of historical circumstances, are located within State boundaries which they did not themselves create but which were imposed on them without their consent. Looking at the decolonisation process in parts of Asia, most of Africa and in the earlier decolonisation in Latin America, in many places colonial powers often aggregated diverse people together within the boundaries of colonial administration without any consultation or opportunity for those people to agree on that geographical configuration. On independence, colonial boundaries were maintained and again there was never a process of consultation and consent

with the affected peoples. In the case of indigenous peoples, most often the present situation was the result of successful settler colonialism, where European settlers become a numerical majority and ultimately dominated what became a State, whether that State came into being by its own act of independence, as in the case of the United States, or whether independence was devolved to it, as in Canada, Australia or New Zealand. In all these situations there are non-State peoples who have not had control in a general sense over their own destiny and, in a very specific sense, cannot control the direct experiences of their daily lives. In particular, they usually have no control over the land base which forms their ancestral territories. They generally have no control of the natural resources within those territories which sustains them not only materially but, in the case of indigenous peoples, profoundly culturally and spiritually as well. They often have no control over the specific nature of their social order as the legal system of the State determines legal and social relationships within the society in a way that may be extremely culturally intrusive. There may be an extensive transfer of wealth from non-State peoples to the dominant society in all of these parts of the world. The levels of oppression and the levels of human rights violations differ from State to State and so have to be characterised differently from State to State but, nevertheless, that is the reality of the situation.

Internal self-determination is one way to address these issues. It is a way of recognising that non-State peoples have at least the right to control their land base, to control their resources, to control the education processes of their children, to retain their language, to be able to define their social order, to maintain systems of customary law or traditional law or new forms of law which they themselves wish to create, to maintain traditional forms of political decision-making or to develop new forms of decision-making and political expression, as they see fit, without interference from the outside. Whether they also have the right to enter into the full range of relationships with other States or not is yet another dimension of self-determination. But internal self-determination, as it has been posed, identifies the right (at least at minimum) to control their own internal affairs as a distinct people or as a distinct society within their own distinct territory or land base. This is part of a process of negotiation with the State. If they do not wish to exercise all of their rights at a particular point, they may enter into a negotiating process which will result in a different kind of association with the State, in specific terms, but nevertheless in each case it will represent a consensual relationship with that State which will define the zone of self-control within which the State may not interfere. That is what is generally meant by internal self-determination, although it has not yet been clearly developed in international law.

In terms of the broader meaning of self-determination, he agreed with Richard Falk that no clear separation can be made between self-determination as an end in itself and self-determination as a means to a broader set of goals or moral principles. For indigenous people self-determination is defined as a state of being left alone so as to exercise an identity as a people and to continue to maintain that identity without interference from anyone else. However, given the reality of politics in the world, it is necessary to adopt legal concepts and political concepts that are cognizable to the modern world and that convey meaning and power in relation to the political structures and political processes in the rest of the world and self-determination is an effective way to do that. To

repeat a common assertion: the right to self-determination is indivisible but its implementation in particular situations may be different.

BENEDEK: What has been, and continues to be, negotiated since 1951 could be characterised as forms of internal self-determination, namely seeking a large degree of autonomy to allow Tibetans to develop their own culture, religion and way of life as they feel proper. However, from the discussions he had in July 1992 in Beijing, and afterwards in Tibet, it is difficult to be optimistic because the Chinese made it quite clear to him that they did not want any change. He felt that the events in the former Soviet Union had been a shock to China. In addition it would be difficult to establish different legal regimes within China because of the demonstrative effect that this would have on other Chinese territories or provinces. Here the Conference needed to consider the argument by Perry Keller earlier that there is no effective autonomy in China, in other words no existing model of autonomy in China which could be adapted for Tibet.

FALK: The conditions in Tibet establish an extremely strong argument for unconditional self-determination. He felt that there was very little dissent from that proposition considering the whole dynamics of alien subjugation and the denial of the dimensions of autonomy which have been mentioned. The complexity arises in trying to implement effectively this undoubted right within the political and geopolitical realities. Here internal self-determination can usefully satisfy many of the essential requirements of human dignity for the Tibetan people without at the same time denying the legal analysis which entitles the Tibetan people to unconditional self-determination without any limitations whatsoever – for the reasons that undeniably Tibet is, in effect, a captive nation. The total liberation of a captive nation in today's world has generally meant the right to have one's own State, especially if the people are sufficient in number, the size of the territory is sufficient and there is ethnic, historic and cultural unity. What is helpful to these deliberations is the distinction between the clarity of the legal analysis and the complexity of implementing that undoubted legal right.

BELLO: It would be a defeatist attitude to say that we have now given the Tibetans the necessary legal weapons and that we can now leave the rest to the Tibetans. Continued concerted international action is required. Changes often happen very unexpectedly such as the end of the isolation of China after Taiwan occupied its seat at the UN General Assembly for 22 years. There was an annual ritual at the UN when the motion for China to take Taiwan's place was effectively ignored. Then, almost overnight, the UN came to the conclusion that Taiwan had no right to sit there and Beijing suddenly replaced Taipei.

ANYANGWE: Expressed the fear that, given Chinese intransigence, young Tibetans may change their attitude and adopt a violent attitude in the future. There may then even be a war of liberation and the world's attitude may have to change.

BERMAN: Agreed with Emmanuel Bello that it was not a question of optimism or pessimism so much as persistence. As part of this process of persistence, Tibetans must undertake a strategy that is both legal and political. These two are inseparable. The Dalai Lama's Five Point Peace Plan includes a relationship with China which might be described in international law principles as free association, or associated statehood, which would retain for Tibet some measure of international personality and internal control, but nevertheless maintain a very strong relationship with China at the level of

security and foreign relations. This is quite a reasonable approach and might be pursued through an ongoing series of negotiations.

He stressed that an important component of the political context is the issue of population movement into Tibet. This is a political time-bomb for the Tibetans. He suggested that intermediate steps be taken to put pressure on China to stop some of the more obvious violations and to stop the population transfer, so as to allow a continuous space for ongoing dialogue to maximise the options available to the Tibetan people.

BUSIA: Since it would appear that the emphasis for Tibetans is on the dignity of the person rather than on questions of statehood and nationhood, he asked whether, if we woke up tomorrow and found a pluralistic and tolerant democracy in China, the situation would be any different. Would there still be a claim for self-determination for Tibetans?

HEATH: Drew an analogy with industry. If a company was run the way China is running Tibet, it would soon become insolvent. Here the analogy is of a dictatorial managing director, where there is no managerial space or delegation – a very familiar problem in industry. There are many managerial models between the dictatorial model and the management who simply become exasperated and leave or even conduct a management buy-out. In management the key terms are trust (clearly there is none here); communication, that is to say both speaking and listening (again there is clearly none here); and shared objectives (not the case here). He asked whether the lawyers might find any scope in considering these models further.

FALK: In regard to whether the democratisation of China might be enough to realise the aspirations of the Tibetan people, if there was a genuine democratization in China this would imply an end to the alien subjugation of Tibet. It is inconceivable that Tibetans could obtain human rights in a full sense without the primary human right of the sort of self-determination that is implicit in having political independence and freedom from an alien source of authority. A Chinese Gorbachev might come to view democratization as somehow vital to China's survival. It was important to recall that the pressure for change in Europe came from maintaining an insistence on human rights and democracy and that the emergence of Gorbachev from without was just as important to the emergence of Gorbachev from within. One needs both of these to be maintained indefinitely.

He found John Heath's suggestion to explore management models interesting but did not like the connotations of, for example, hierarchy, in this context. He felt they somehow would erode the spiritual and moral dignity that underlies the particular process that Tibet and the Dalai Lama are connected with. He felt that the two models achieved the same ends but in a different political language.

BERMAN: In his view there are multiple dimensions to human rights and it would not be sufficient to deny a people the right to self-determination on the basis of having full implementation of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, in the absence of Article 1 of both of those Covenants. All these rights are relevant and have an important relationship with each other but they are not the same. If a people has a right of self-determination, it has a right of self-determination, meaning that it has a right to define its own political identity and

that is a very primary right that cannot be satisfied through the implementation of other human rights.

He did not know the answer to the separate question of whether the Tibetan people would seek to implement fully the right to self-determination if they lived under a situation in which all other human rights were fully respected. What he did know from observation is that the denial of other fundamental human rights certainly contributes to aspirations for independence.

CHAPTER 8

DENIAL OF THE RIGHT OF SELF-DETERMINATION TO THE TIBETAN PEOPLE

**Paper delivered by Karl Josef Partsch:
General Problems on Self-Determination:
A Contribution to Some Selected Legal Questions**

It is a matter of considerable controversy which groups of human beings can be regarded as a 'people' and thus be entitled to claim collective rights; equally controversial are the applicability and content of the right to self-determination. Accordingly, before specific questions are addressed, some general issues need to be clarified.

'All peoples have the right of self-determination': so begins the two Covenants on Human Rights, adopted in 1966, in force since 1976, but not yet ratified by China. This principle is widely regarded as customary law and so is applicable here. Article 1 on self-determination was inserted into the two Draft Covenants at the request of the 1950 General Assembly, at a time when increasing expressions of anti-colonial feelings had won support in the United Nations and had led to a fundamental change of attitude to decolonization. In place of a regime dominating Chapter XI of the UN Charter safeguarding the well-being of the inhabitants of dependent territories and their protection against abuses, a new principle was introduced to the effect that the maintenance of colonial domination was illegal and should be abolished. Thus, the idea underlying the new principle of self-determination was often regarded as an 'adjunct of the decolonization process' (see Oppenheim's *International Law*, 9th ed., vol. I (1992) 712).

It would, however, be incompatible with the principle of self-determination in the Covenants if its application were limited exclusively to peoples in dependent territories. Article 1 of both Covenants clearly guarantees this right to 'all peoples' (para 1); further, it clearly states that dependent territories are included, along with other territories (para 3). Such 'other territories' certainly include nations organised in sovereign States. They had been expressly mentioned in earlier drafts, but subsequently deleted because as sovereign States they already enjoyed similar rights as were guaranteed by the principle of self-determination. The question of whether the populations of sovereign States and of dependent territories, as well as other groups, are entitled to claim self-determination has to be decided on the basis of the principle contained in the final part of the Declaration on Friendly Relations of 1970: '... the above principles are interrelated and each principle should be construed in the context of the other principles.'

Accordingly, not only must a balance be struck between self-determination and the fundamental principles of national unity and territorial integrity of States, but a method of striking that balance needs to be devised and tested against actual situations.

Is there any group living under the sovereignty and jurisdiction of a State identifiable by, and capable of passing, this test? Is there any difference between specific groups of citizens possessing their own identity with a consciousness of their diversity from the

majority of the nation's population on the one hand, and the peoples in dependent territories on the other hand? The answer to these questions is given in two important Declarations of the General Assembly: the Declaration on the Granting of Independence (GA Res. 1514 (XV) of 1960) and the Declaration on Friendly Relations (GA Res. 2625(XXV) of 1970), mentioned above. Both claim to constitute authoritative interpretations of the Charter, instead of being mere recommendations.

The first of these Declarations sets out the steps to be taken to 'transfer all powers to the people in those territories without any conditions or reservations ...' (No. 3) and mandates full decolonization. It fails, however, to explain how such measures are compatible with the principles of national unity or territorial integrity, although these principles are again confirmed in this same Declaration (para 6). This lacuna was filled in the Second Declaration by the statement: 'The territory of a colony or other non-self governing territory has, under the Charter, a status separate and distinct from the territory administering it ...'

Although in general the principles of national unity and territorial integrity of existing States are recognised as having priority over the right of self-determination, here an exception is established for certain territories enjoying a special status. They occupy a privileged position: they can claim self-determination irrespective of the obligations under international law to respect the two above-mentioned principles of national unity and territorial integrity. For such territories, the right of self-determination prevails over the other principles.

Attempts by learned commentators to extend this extraordinary exception to other territories under the jurisdiction of a State - namely to autonomous regions within a multi-ethnic state or even to ethnic minorities in general - are not convincing and have not been generally accepted. A 'status separate and distinct from the territory administering it' is not accorded to other groups under the jurisdiction of a State. They do not enjoy a similar privilege under international law, but are bound to respect the national unity and territorial integrity of their 'mother State'. Whether ethnic, religious and linguistic minorities can claim a certain administrative or cultural autonomy on the basis of internal self-determination is, at the very least, controversial. It would certainly help to solve many problems, but States with a centralised administrative system are not inclined to agree with such a solution.

According to the Declaration on Friendly Relations the exercise of the right to self-determination, including a right to secession from an independent State, is lawful where:

- (i) the State in question has violated the principle of equal rights; and
- (ii) (as a consequence) its government does not represent the whole people of the territory (para 7).

This provision was apparently inserted to cover the case of apartheid in South Africa, frequently denounced as illegal by reason of it constituting colonial domination. In both cases the right to vote in national elections is withheld from the 'native' population which is thus not represented by the government in power. It is frequently overlooked that this exception only applies if, by applying the principle of non-discrimination, it can be shown that the consequence of the State's actions is that the entire people within that State's territory are not represented by the government of that State.

The principle of self-determination as an element common to the rights of colonies and to the rights of peoples not represented by the government of their territory must be borne in mind when addressing the issues being considered today.

1. Is Tibet a colony of China?

(a) Internal arrangements

I have interpreted this question in terms of whether Tibet is treated by China as a colony in the legal sense of the term. Accordingly the answer has to be based on present Chinese law. The Constitution of the People's Republic of China of 1982 (English text in Blaustein-Flanz, *Constitutions of the Countries of the World*, vol. IV (1991) K 1-28) regards Tibetans as members of an ethnic minority integrated into the State of China and enjoying a somewhat limited autonomy. The relevant provisions are to be found in section VI of Chapter 3 of the Constitution and in the 'Act relating to Regional Autonomy for Minority Nationalities of the PRC of 31 May 1984'. (English text, submitted by China to the UN Committee for the Elimination of Racial Discrimination in UN Doc. CERD/C/126/Add.1 of 24 June 1985, Annex III referred to here as the '1984 Act'.)

According to Article 34 of the Constitution, all members of minorities, other than aliens, are citizens of China and as such are entitled to vote and to stand for election in national, regional and local elections. Assemblies at all levels include an appropriate number of deputies from each nationality. For instance in 1988, 404 deputies representing 55 nationalities (with minority status) attended the National People's Congress, accounting for 13.5% of all deputies, or twice their proportion to the country's total population (6.7%).

According to the 1984 Act (Article 2) regional autonomy is exercised in areas where people of minority nationalities live in compact communities. The administration of minority nationalities is structured in terms of autonomous regions, prefectures and counties. Consequently the Tibetan minority is entitled to self-administration in the 'Tibet Autonomous Region' (TAR), established on 1 September 1965 and in 9 prefectures and 2 counties in the neighbouring provinces of Qinghai, Sechuan, Yunnan and Gansu. The conditions for exercising administrative autonomy are not only valid in the TAR, but also in the prefectures and counties in other provinces. In the TAR there are no autonomous prefectures or counties of other nationalities. Thus, the provisions of Article 2 of the 1984 Act ('All the national autonomous areas are inalienable parts of the PRC') reflect the principles embodied in the Constitution.

This highly complicated system of regional autonomy does not flow clearly from the 1984 Act. The relationship between what is called the 'national autonomous area' to its organs of self-government in the regions, prefectures and counties is far from clear. Nor do ideological terms used for indicating political goals such as 'the socialist modernization drive' or 'democratic centralism' serve to clarify the concept of regional autonomy. Furthermore, the autonomy accorded to the so-called 'autonomous regions' is already substantially restricted by the 1984 Act. Approval by the National People's Congress is required in legislative matters and by the higher State authorities in executive matters. Autonomy also implies a certain degree of freedom of movement. Such freedom is

denied. On the basis of the evidence presented to the Conference at the Committees on Evidence, there exist serious doubts that the whole machinery set up on paper exists in practice. There is no real autonomy in the sphere of economic activity or in relation to environmental questions.

The elections to the National People's Congress, however, constitute the decisive element for deciding on the colonial character of the Chinese regime in Tibet. It is inappropriate to expect that elections are organised according to standards widely accepted in multi-party systems. The strong influence of a single party is an inherent feature of communist systems. It should not be forgotten that for many years a great number of member States of the UN – if not the majority – existed under such systems. The recent improvements in many States of Central and Eastern Europe, as well as in Latin America cannot be grounds for concluding that in this respect a new world standard has come into being which binds all members of the UN.

(b) The international law implications of China's relationship with Tibet

UN instruments prefer the term 'dependent or non-self-governing territories' to 'colonies'. GA Res. 1541 (XV) of 1960 defines such territories under Chapter XI of the UN Charter. They are territories of the colonial type which are *prima facie* ethnically and/or culturally distinct from the administering State and also geographically separated from it. This description of territories as being of a 'colonial type' is merely a presumption and allows for exceptions. For example, Namibia, which is contiguous to its former administering State, the Republic of South Africa, was regarded as a dependent territory under Chapter XI until it reached independence. The geographical situation of Tibet therefore does not preclude the application of Chapter XI.

Colonies include, however, only those territories 'whose people have not yet attained a full measure of self-government'. The Declaration on the Granting of Independence identifies this procedure *inter alia* with 'the emergence of a sovereign independent State'. In order to take into account the eventual limitations of sovereignty which may occur in a decolonization process, it is further provided that the territory concerned should in no way be placed 'in a position or status of subordination' to the metropolitan State, since otherwise it would be open to question whether a full measure of self-government had in fact been achieved.

While great care has apparently been used to distinguish independent territories from those which are still in some way dependent, the same care has not been used to distinguish States where citizens have full political rights from those whose citizens enjoy self-administration without enjoying self-government. The practice of the Committee of 24 – the organ established to handle this matter – has established the criteria to be applied. The decisive factor is whether the population of those territories participates in the national elections of the metropolitan State and thus has full citizen status. On this basis, the overseas departments of France (Guadeloupe, Guyana, Martinique and Reunion) do not appear on the list of dependent territories falling within the competence of the Committee of 24. On the other hand, the Committee has not regarded as sufficient a mere verbal statement that such territories are an integral part of the 'motherland', if no practical consequences flow from such a statement (as was the case with the former Portuguese colonies).

According to the criteria developed by the Committee of 24, Tibet cannot be regarded as a 'dependent territory'. This answer, which is given in relation to a question of limited scope, does not prejudice the investigations and results in relation to a different question to be discussed, which will examine the scope of authority and political power held by Tibetans today, the means of representation, military and strategic issues and the history of Tibet as a separate State.

2. Population transfers

International law recognises liberty of movement within a citizen's own State as a value worthy of protection. The individual can decide freely where he/she wishes to go, both within and beyond his/her State's borders. On the basis of a liberal teleological interpretation it can be concluded that guaranteeing this freedom to the individual creates obligations for the authorities of a State, namely to abstain from measures which inevitably lead to undermining the freedom to exercise the right. A deliberate policy of transfers of persons from one province to the other, possibly under pressure and against the will of the person concerned, constitutes an illegal measure in derogation of the freedom of movement.

The purpose for which the measure of population transfer is taken is not irrelevant. The principle of the need to safeguard the unity of all nationalities in the State is expressed in the Chinese internal law (see Article 52 of the 1982 Constitution). Furthermore, the Constitution requires the authorities to respect this unity having close regard to the national, cultural and ethnic identity of such nationality groups. If the organs of self-government in Tibet wished to reverse a transfer of Han Chinese into Tibet, they would find themselves in a difficult position, since their powers are limited to population movements within their own territory, not into their territory from outside (Article 43 of the 1984 Act). According to Tibetan sources, such transfers have had the effect of fundamentally changing the ethnic composition of the TAR. In 1989 the Government of China reported to the UN Committee on the Elimination of Racial Discrimination that not more than 3.67% of Han Chinese reside in the TAR, while 95.5% of the residents were Tibetans.

It should be noted that a group of six experts from the National Committee on US-China Relations, chaired by Harold H Saunders, former Assistant Secretary of State for Near Eastern and South Asian Affairs visited Tibet from July 28 to August 7, 1991 (see: 'Tibet Issues for Americans', National Committee China Policy Series No 4 - April 1992). The group did not visit the prefectures and counties in the neighbouring provinces with a Tibetan population and therefore did not include any information on conditions in these territories. On the basis of data delivered by Chinese and Tibetan officials and experts, but corrected on the basis of their own observations, they concluded as follows in relation to the permanent residents in TAR: according to official statistics in 1989, Han Chinese accounted for no more than 5% of the permanent residents in Tibet. These numbers do not include military personnel nor what is called the 'floating population', consisting of persons present in the TAR in public services, or as traders or specialised workers, even if they are there for several months or years. If one accepts, and

this is an estimate, that about half of the population in the few urban centres (Lhasa, Shigatse etc.) - and excluding about 400,000 farmers - are Han Chinese, it could be estimated that their total percentage of the population in the total TAR (excluding the military) could be as low as 7.5% or as high as 15%.

The divergence of this information seems to call for data on the population of the Tibetan area to be compiled on a uniform basis. It should not be limited to the TAR but should include also the Tibetan autonomous prefectures and counties in the neighbouring provinces.

3. Further comments on the political and legal status of Tibet

Caution should be exercised in basing opinions on the Declaration of Friendly Relations, because of the changes in the world political scene since the date of the Declaration. The breakup of the Soviet Union and Yugoslavia probably does not offer any useful precedents. The Slovenian and Croatian declarations of independence referred to those republics' right of secession in the Yugoslavian Constitution, not to international law. The former Soviet Republics also had enjoyed similar rights under the Constitution of the USSR. He questioned whether these developments, which took place in the context of a State's national law, were sufficient grounds on which to argue that there had been a change in international law.

General Assembly resolution 1723 of 1961 was of considerable significance as it is the only GA resolution in which the self-determination of Tibetans was expressly mentioned. Until the Declaration of Friendly Relations in 1970 there had been controversy as to whether self-determination was a right or a principle and who was entitled to assert it. The 1970 Declaration clarified both the controversy and the relationship between self-determination and territorial integrity although it left open a problem of interpretation: namely, does self-determination automatically include a right to autonomy? The UK's vote on Resolution 1723 was affected by doubts as to Tibet's international status and, consequently, as to whether Tibet was indeed a part of China or, at best under Chinese jurisdiction (see Oppenheim's International Law 9th edition). There are a number of bases for these doubts. In the first place, there was the concept of 'cho-yon', the relationship between priest and patron, i.e. between a spiritual and a secular leader, on the basis of which China asserted its sovereignty over Tibet and in which one side agreed to a subservient role. Historically, Tibet had based any request for Chinese military assistance on this relationship. However, translation of the concept is problematic, as the relationship constituted neither sovereignty nor suzerainty as those concepts were conventionally understood, although in the 1914 Simla Convention, the UK had recognised Chinese suzerainty. As was commonly known, this Convention was not ratified by China, which in turn led the UK to make the strange assertion that China's non-ratification released the UK from its obligations under the Convention. Nevertheless, the UK's recognition of Tibet at that time was followed by other States. Yet, the Convention provided that China was not to be regarded as a foreign power in relation to certain rights reserved to the UK in Tibet. The 1954 India-China Trade Agreement referred to Tibet as a region of China, while up until 1949, and on some occasions subsequently, the USA

regarded Tibet as *de facto* independent, even though sovereignty was probably, as a matter of law, vested in China.

Secondly, not all the arguments as to Tibet's independence prior to 1949-50 were beyond dispute. International treaties may, according to the relevant constitutional arrangements, be concluded by a province, a federal State or with the consent of central government (as is the case with the German 'Länder' or with the Canadian provinces). China participated in the Simla Convention negotiations of 1914 between the UK and Tibet and thus tacitly recognised the validity of the actions of the Tibetan authorities to enter treaties.

Thirdly, the right to issue passports is not conclusive as to statehood since state members of a federal State may have such rights; nor does the right to issue currency carry any implication of statehood, as could be seen in the examples of the Bank of Scotland or Bank of Naples. These considerations, at the very least, throw doubt on arguments as to Tibet's independence, at least in the period 1912 to 1950, during which time a special relationship existed which was difficult to define legally in terms of concepts derived from different situations. The assertion that Tibet was part of China ignored the nature of Tibet's relationship with its neighbours and with the UK, although this latter was a special relationship, whereby the UK's zone of interest was established and protected. Nor should it be overlooked that in 1949 the UK, the USA and India advised Tibet not to apply for UN membership.

China has been claiming that Tibet was part of its territory for eighty years, since the declaration of the Chinese president, Juhan Shikai in 1912; however, Tibet's cultural and religious traditions brought it into opposition with the system of government in force in the PRC. In the first forty years from 1912 there were no less than four revolutions in China which, shaken by civil war, was unable to press its claims over Tibet, such inactivity contributing to the impression that it had abandoned its claims. Only after the People's Republic had been declared in 1949 did China seek to take control over Tibet and transform its suzerainty into sovereignty. The PRC regarded the matter as purely domestic but, due to the force employed, international experts claimed that the PRC had forfeited any valid title to acquire full jurisdiction and to treat as no longer autonomous a State which it had previously recognised (at least implicitly) and in relation to which the Dalai Lama had claimed independence. The position of other States on this issue is not consistent. Apart from some of Tibet's smaller neighbours and those States which initiated action in the UN General Assembly, both of which groups appear to have aligned themselves with the Tibetan government-in-exile, the majority of States have remained silent, without having expressly recognised Tibet as an independent State. The position of the UK, frequently involved in the area in the past, was somewhat equivocal. It appeared to recognise that the Chinese authorities are in a special position, provided that Tibet retains autonomy (a view echoed in the 9th edition of Oppenheim's International Law). India, which has a common border with Tibet and which acts as a host to the Tibetan government-in-exile, took a less cautious position. Not only did it agree in a treaty in 1954 to recognise Tibet as a region of China but in December 1988, Rajiv Gandhi even declared that the issue of Tibetan autonomy was a matter internal to China.

4. Conclusion

In the light of the foregoing, the position could be summarised as follows:

(i) that the illegal usurpation of sovereignty by the dominant party in a patron-priest relationship was a lesser offence than the annexation of an entirely foreign sovereign State; and

(ii) that accordingly, such illegality may be more easily overcome by the consolidation of the effective exercise of sovereignty over a sufficiently long period of time, a position which was recognised by most of the international community. This application of the principle of the effective exercise of sovereignty was not regarded as being totally inconsistent with the 'Stimson Doctrine', as restated in the Declaration on Friendly Relations.

For some years the Dalai Lama had tried to reach an understanding with the Chinese authorities on the question of Tibetan autonomy but to no avail and was forced to give up in his attempts. This raised the question of whether negotiations on the basis of Tibetan independence would have fared any better. If effective autonomy, rather than outright independence, were now to be claimed for Tibet, the answer one would expect from China would be that Tibet had effective autonomy since 1965. To counter this assertion, it would be necessary to test it by reference to the provisions under which the TAR was established in 1965, which were replaced by the 1984 Act.

Mr van Walt van Praag has remarked that granting autonomy to Tibet would amount to no more than a limited delegation of authority from a central to a local administration, in that the local administration in Tibet would enjoy a slightly greater flexibility in implementing certain central government policies than that enjoyed by other provincial authorities. The precise scope of flexibility in relation to legislative and executive competence was defined in the 1984 Act, according to which there was hardly any activity that could be conducted by the local administration in the TAR without the prior approval of either the National People's Congress or the Central Administrative Authorities. Even in matters such as education or cultural activities, where a local administration was entitled to a degree of autonomy, there was still a degree of control from the centre. The main defect of the 1984 Act was the lack of a clear distinction between the powers of the central State and those of regional authorities. A condition for safeguarding the autonomy of autonomous areas was that those areas should enjoy full competence in educational and cultural matters in order to secure their cultural and religious identity.

Abstract of Paper delivered by Andrew Dulaney:

'Resolving claims of self-determination: A proposal for Integrating Principles of International Law with specific application to the Tibetan People'.

The International Committee of Lawyers for Tibet submitted to the Conference a paper 'Resolving Claims of Self-Determination: A Proposal for Integrating Principles of International Law with Specific Application to the Tibetan People', by Andrew G. Dulaney. Copies of that paper are available from the International Committee of

yers for Tibet, 347 Dolores Street, Suite 206, San Francisco, CA, 94110, USA. Phone: (415) 2525967. Fax: (415) 626-0865.

This abstract briefly summarises that paper, which includes a detailed and copiously annotated examination of each issue presented here. The paper proposes an analytical framework for resolving self-determination claims wherever they arise, so it also includes an extensive discussion of the interrelationship among the legal principles of self-determination, territorial integrity, and domestic jurisdiction.

The Tibetans raise three legally distinct, though interrelated, claims against the People's Republic of China ('PRC'):

(1) The PRC has - through genocide, systematic discrimination, population transfer, environmental depredation, arbitrary arrest and detention, extrajudicial execution, and torture - made itself illegitimate as the government over the Tibetans and their historical territory. Therefore, the PRC has no right of territorial integrity with respect to that territory. This claim does not depend upon Tibet's historical status as an independent state; nor does it depend upon the Tibetans' claim of entitlement to self-determination even against a claim of territorial integrity by a legitimate government.

(2) Tibet was historically and legally an independent State when it was invaded by the PRC. Despite the PRC's unlawful invasion and occupation, Tibet remains a legally independent state with the right of territorial integrity. Thus, even assuming that the PRC can State a claim of territorial integrity, Tibet's claim of the same right prevails.

(3) The Tibetan people are entitled to exercise their right of self-determination regardless of Tibet's historical status and even if the PRC has not made itself illegitimate. The status of the Tibetans as a people is not seriously disputed. The outcomes of particular exercises of self-determination must be balanced against the other objectives of basic international legal principles, in light of the fundamental values of the international community. The two most important factors in that analysis - maintenance of international peace and security, and promotion of human rights and fundamental freedoms - favour recognising the Tibetans' right to self-determination, and no articulate factor favours its denial.

**I. Self-Determination, Independence, Territorial
Integrity, and Governmental Legitimacy:
An Illegitimate Government Has No
Right of Territorial Integrity**

Self-determination is the right of peoples freely to determine their political status and freely to pursue their economic, social, and cultural development. It is a right well-established in international law, and it can (though it need not necessarily) be exercised through the formation of an independent State.

A. Self-Determination and Territorial Integrity are Reconciled by the Principle of Governmental Legitimacy

Although self-determination is often seen as in conflict with territorial integrity, especially when claims for secession are involved, the two principles can be harmonised by applying the principle of governmental legitimacy. An illegitimate government can raise no legally cognizable claim of territorial integrity, because it has forfeited its right of territorial integrity by engaging in conduct so grossly contrary to international law as to render it illegitimate. A government is legitimate only if it originates and continues in the governed people's act of self-determination, which requires the government to accord with internationally protected civil, cultural, economic, political, and social rights universally among the governed population.

If a government is illegitimate and, therefore, has no right of territorial integrity, it necessarily follows that the people as to whom the government is illegitimate are entitled not to be subject to that government. Moreover, any supported claim of territorial integrity made against that government (as where a claimant group alleges that it historically was, and rightfully remains, a State) must prevail, and any supported claim of self-determination made against that government must also prevail. In the former case, the claimant group's arguments concerning self-determination need not even be addressed, because its claim of territorial integrity is sufficient to carry the day.

B. The People's Republic of China is Not the Legitimate Government Over the People of Tibet

The PRC is an illegitimate government over the People of Tibet. The PRC has committed genocide against the Tibetans, which necessarily makes it illegitimate. The PRC has throughout its occupation of Tibet engaged in the systematic religious discrimination. The PRC also engaged in systematic linguistic discrimination, although there is some evidence that this policy has recently changed. The PRC has carried out extensive population transfers - mostly of ethnic (Han) Chinese into Tibet, but also of Tibetans into China proper - and is destroying Tibet's environment. The PRC, to suppress political dissent, arbitrarily arrests, detains, tortures, and murders Tibetan political activists and those suspected of pro-independence sentiments. Many of these policies and practices - especially genocide and torture - inherently make the PRC illegitimate. Even such of them as may not have that inherent effect are nonetheless calculated to undermine the Tibetans' claim of self-determination. Because respecting such claims by allowing them to proceed in appropriate international fora is a requirement of government legitimacy, those policies and practices also make the PRC illegitimate. Thus, by its own conduct, the PRC has forfeited any claim of territorial integrity over Tibet.

II. Tibet Was Historically an Independent State when the PRC Moved its Armies into Tibet in 1950, and Rightfully Remains an Independent State

Once a State exists, it is legally presumed to continue as an independent State, unless those who claim otherwise can prove their claim. Tibet indisputably existed as an independent State in its earliest history. Indeed, Tibet conquered several Chinese provinces in the eighth century, though China retook them later. Thus, the legal question is whether there is a historical basis for the PRC's claim that Tibet has become part of China. There is not.

A. The Yuan Dynasty

The primary claim of the PRC is that the Yuan Dynasty (1279-1368) incorporated Tibet into China in the thirteenth century. In fact, Tibet was overrun by the Mongols, who later overran China and founded the Yuan Dynasty. Moreover, Tibet emerged from Mongol dominance before the Yuan Dynasty collapsed in China. Tibet and China were independent States separately overrun by the same hostile invaders. The PRC cannot base a claim of sovereignty over Tibet in this course of events.

B. The Ming Dynasty

The priest-patron relationship established between the ruling lamas of Tibet and the Mongol emperors of the Yuan Dynasty lost its legal relevance when the lamas were overthrown and Tibet became a secular kingdom. There was no special relationship between the government of Tibet during its 'Second Kingdom' and the Ming Dynasty (1368-1644). Indeed, the lamas regained power in Tibet shortly before the Ming Dynasty collapsed, and the Mongol Khan who became secular ruler of Tibet continued in that position from before the collapse of the Ming Dynasty until after the establishment of the Manchu Qing Dynasty. The PRC cannot base a claim of sovereignty over Tibet on events which occurred during the Ming Dynasty.

C. The Qing Dynasty

Likewise, there was no special relationship between the government of Tibet and the early Qing Dynasty (1644-1911). During the eighteenth century, the priest-patron relationship was established between the once-again-ruling lamas of Tibet and the Manchu Qing emperors. This relationship was abandoned in fact by the Qing Dynasty in the mid-nineteenth century, when the emperors refused to assist Tibet in its two wars with its neighbors. It was formally abandoned in 1910, when the Qing emperor denounced the Thirteenth Dalai Lama. Thus, the PRC cannot base any claim to sovereignty over Tibet on this relationship, nor on the other conduct of the Qing emperors.

D. The Nationalist Republic of China

When the Qing Dynasty was overthrown in the Nationalist Revolution, the imperial framework under which China had claimed the right to rule Mongolia and Tibet was destroyed. Mongolia and Tibet considered their former relations with China to have been terminated, and they signed a treaty of alliance in 1913. Even before that, Tibet had

driven troops of the last Qing emperor out of Tibet in 1911 and proclaimed its independence in 1912.

Tibet was treated as an equal participant with plenipotentiary representatives in international conferences in 1913-1914 and 1926, and was invited to join the Nationalist Republic in 1928. When Tibet ignored this invitation, the Kuomintang Army attempted in 1931 to take Tibet's eastern province, Kham and Amdo, but Tibet successfully repelled the invasion. In 1936, the Tibetans drove the Maoist forces out of Kham as well.

During the following years, Tibet issued its own passports, which were internationally recognised, and maintained diplomatic relations with several other nations. Tibetan delegates to Nationalist constitutional conventions refused to sign the documents resulting therefrom, which proclaimed Tibet a part of China. Britain and then independent India maintained diplomatic missions in Tibet until the PRC's invasion. When the Maoist forces overthrew the Nationalist government in 1949, Tibet expelled the few remaining Chinese representatives from its territory.

Tibet's relations with the Nationalist Republic of China were, for the entire life of that Republic, an unbroken chain of assertions of independence. The PRC cannot base any claim to sovereignty over Tibet on the conduct of the Nationalist government.

E. The People's Republic of China

In 1950, the People's Liberation Army ('PLA') moved into what both sides agree was Tibetan territory. (It had already been occupying other parts of what the Tibetans claim was Tibetan territory.) While PLA troops occupied large parts of Tibet, Tibetan and PRC representatives (under highly dubious circumstances) entered into the Seventeen Point Agreement of 1951. Because the PRC threatened to move the PLA into Tibet and demanded that Tibet acknowledge the PRC's territorial claims even before the negotiations began, and because the PLA troops were already occupying Tibet when the Agreement was signed, the Agreement is absolutely void under international law. Therefore, the PRC cannot base any claim of sovereignty over Tibet on the Agreement or on events following its execution.

Nor can the PRC base any claim of sovereignty over Tibet on the PRC's own forcible acquisition of Tibet, because acquisition of territory by conquest is prohibited by international law. Military occupation can never result in title to territory, no matter how long it continues or how effectively it squelches resistance.

Nor is the failure of the international community to recognise Tibet's rightful independence of any legal significance. States exist in international law whether or not they are recognised. Non-recognition does not prevent a State's existence, and recognition does not create such existence. Thus, the PRC cannot base any claim to sovereignty over Tibet on Tibet's not having been recognised as independent, nor even on its having been recognised by some nations as part of the PRC.

III. The Tibetan People Are Entitled to Exercise Their Right of Self-Determination, Even if the People's Republic is Legitimate as Their Government, and Even if Tibet was Not a State in 1950

Because the PRC is illegitimate as the government of the Tibetan people, and because the Tibetans have amply supported their claim of rightful statehood, the Tibetan claim of territorial integrity must prevail over the PRC's claim of the same. Even were it otherwise, however - even if the PRC were the legitimate government of the Tibetans and even if Tibet had not been an independent State in 1950 - the Tibetans would still be entitled to exercise their right of self-determination. This conclusion follows from balancing the likely outcomes or their exercising that right against the likely outcomes of denying their claim, in light of fundamental values of the international community.

A. The Tibetans Are a People

Self-determination is a right of peoples, and the Tibetans are indisputably a people. Thus, complicated and perhaps intractable questions concerning the nature of peoplehood need not be addressed in the context of the Tibetan claim. (Indeed, they need not be addressed in the context of any claim.) The Tibetans have their own history, their own culture, their own language, their own religion, their own ethnic identity and a strong connection to their own territory (although the precise borders of that territory are difficult to determine). Even the PRC does not dispute that the Tibetans are a people different from the ethnic Chinese, though it generally refers to them as a 'nationality', not as a 'people'.

B. Because the PRC's Denial of the Tibetan Claim Threatens the Peace, Maintenance of International Peace and Security is a Factor in Favour of Granting that Claim

Because maintenance of international peace and security is among the cardinal purposes of the United Nations, it is among the most fundamental values of the international community. The PRC's denial of the Tibetan claim of self-determination threatens the peace. Since the taking of Tibet by the PRC in 1950, the PRC and India have been involved in a chronic border dispute which has erupted in military conflict. The likely outcome of continuing to deny the Tibetan claim is a continuation of the threat to the peace posed by the Sino-Indian border problem. The likely outcome of permitting the Tibetans to exercise their self-determination, by contrast, is that Tibet would resume its historical position as a neutral buffer zone between the two Asian superpowers. Therefore, this factor clearly favours the Tibetan claim.

C. Because the PRC Systemically Violates the Tibetans' Human Rights and Fundamental Freedoms, Whereas the Tibetan Government-in-Exile Respects and Promotes those Rights Freedoms, Safeguarding such Rights and Freedoms is Another Factor in Favour of Granting the Tibetan Claim

Respect for human rights and fundamental freedoms is also among the constitutive purposes of the United Nations and, therefore, is also among the most fundamental of international community values. The PRC has abundantly demonstrated its lack of concern for human rights and fundamental freedoms. The PRC arrests people for peacefully expressing their views, detains them without charge and without trial, tortures them, and murders them. The PRC has also imposed upon the Tibetans a regime of forced and coerced abortion, forced and coerced sterilisation, and infanticide. At least some of these practices violate norms of *jus cogens* (provisions of international law from which no derogation is permitted under any circumstances) and, therefore, render the PRC illegitimate as the government of the Tibetans. Even such of them as do not violate such norms, however, violate numerous other provisions of international law and are calculated to undermine the Tibetan claim of self-determination.

The Tibetan Government-in-Exile, by contrast, has promulgated a draft constitution (subject to approval by Tibetans in Tibet when Tibet is once again free) in which international legal norms concerning human rights figure prominently. The conduct of the Government-in-Exile amply demonstrates its commitment to human rights. A representative democracy has been established among the Tibetan refugees, centered in Dharamsala in northern India. Over the last three decades, democratic institutions have gradually been strengthened as the Tibetan polity has become more sophisticated. The traditional powers of the Dalai Lama have largely been conferred upon the elected legislature and the cabinet appointed by the legislature. The legislature is even empowered, for the first time in Tibetan history, to remove the Dalai Lama from secular office as Head of State.

The PRC engages in systematic and gross violations of human rights and fundamental freedoms, whereas the Tibetan Government-in-Exile is devoted in theory and practice to safeguarding such rights and freedoms. Thus, this factor also clearly favours the Tibetan claim.

IV. Conclusions

The PRC is illegitimate as the government of Tibet. By its conduct of genocide, systematic religious and linguistic discrimination, population transfer, environmental depredation, arbitrary arrest and detention, torture, and murder - all calculated to undermine the Tibetan claim of self-determination - the PRC has forfeited whatever right of territorial integrity it may once have had with respect to Tibet. Therefore, regardless of Tibet's historical status and whatever the outcome of balancing Tibet's exercise of self-determi-

nation against the denial of Tibet's claim of that right, the Tibetans are entitled not to be subject to the PRC.

Tibet was a factually and legally independent State when it was unlawfully invaded by the PRC. Because a State, once in existence, retains its right to continue as a sovereign entity until that right is lawfully extinguished, Tibet remains a legally independent State despite its decades-long occupation by the PRC.

Even if Tibet was not historically a State, and even if the PRC is legitimate as the government over the Tibetans, the Tibetan claim of self-determination should prevail over the PRC's claim of territorial integrity (which, if the PRC is legitimate, it is entitled to raise). The two most important factors in assessing the merits of granting or denying the Tibetan claim - maintenance of international peace and security, and promoting respect for human rights and fundamental freedoms - both favour granting that claim. No articulable factor favours denying that claim. The Tibetans are entitled to exercise their right of self-determination, and they should be permitted and assisted to do so.

The Declaration on Friendly Relations provides that the principles of self-determination and territorial integrity should be construed in the context of the other principles embodied in the Declaration, and there was no subordination of one principle to another. Under the Declaration, except for the special cases of colonial and dependent territories, a group within a larger State should respect the right of the 'mother' State to territorial integrity and national political unity. The mother State had a reciprocal obligation to respect the right of self-determination of peoples within its territory. He suggested that, rather than first defining the principles and then attempting to balance them, they should be construed together in the process of defining them. Such a process would be admittedly complex, because not only would every assertion about self-determination need to be examined in terms of its impact on the principle of territorial integrity, and vice versa, but the same process would need to be applied to all seven basic principles in the Declaration.

The idea of governmental legitimacy could be a unifying principle, in that a legitimate government was one which both originates in and retains a governed people's acts of self-determination, in contrast to Dr Partsch's view, in which one principle overrides. In practical terms, a State which denies a peoples' right of self-determination thereby forfeited its right to territorial integrity; conversely, when the territorial integrity of a State that represented all of its peoples was infringed, the right of self-determination of a particular people was necessarily infringed. Alternatively, if this analysis was incorrect, and if one principle had to be elevated, the right of self-determination should be elevated over territorial integrity.

However, in relation to Tibet, the problem may not even arise for two reasons. First, it was arguable that Tibet itself had a claim of territorial integrity, based on its claim to Statehood. On that basis, Tibet's claim was set against the China's claim to territorial integrity, and accordingly the question of Tibetan self-determination did not arise. The resolution of the problem was simple: the Tibetan State's right of territorial integrity had been infringed and ought to be remedied.

Second, Tibet fell within the exception for colonial and dependent territories. While accepting that neither China nor Tibet itself considered Tibet to be a colony of China in

strict legal terms, if the relationship between China and Tibet was considered in the light of the experiences of colonialism elsewhere, and in the light of evidence heard by this Conference, China's treatment of Tibet was indistinguishable from 17th Century mercantilism, which was probably the most obvious example of colonialism available. Issuing passports or currency or establishing a postal service were not, taken alone, dispositive of Statehood, but those indicia of statehood or sovereignty should be considered together to ascertain whether in aggregate such practices were sufficient to amount to sovereignty.

This was not to say that the analysis based on Tibetan self-determination was redundant. Even if Tibet's claim to territorial integrity did not prevail, either because of the greater strength of China's claim in that regard or because the claims were equally balanced; the Chinese claim to territorial integrity could not prevail against the Tibetans' claim to self-determination. On the basis of the evidence considered, China had not originated and had not upheld Tibetan acts of self-determination and accordingly was not a legitimate government over the territory of Tibet. It followed that China had no claim over Tibetan territory and that Tibet's claim, whether based on territorial integrity, self-determination or a combination of both, must prevail.

The right of self-determination was the right freely to determine political status and to pursue economic, social and cultural development. The evidence in the Committees on Evidence indicated that China was impeding all these objectives and, although economic development was taking place, it was not under Tibetan control. In relation to the Tibetan's rights to express their views in these matters, there is a distinction between the right of freedom expression and the recognition of that right by China. The right of freedom expression was enshrined in international law, for example, in Article 19 of the Universal Declaration of Human Rights and in the second paragraph of Article 19 of the International Covenant on Civil and Political Rights. The evidence indicated clearly that China did not recognise that right and has made substantial efforts to ensure that Tibetans (and indeed others within China) did not exercise it.

According to the Dalai Lama the Tibetan constitution would not take effect in Tibet until approved by Tibetans in a popular referendum. This was an entirely adequate way of determining the Tibetan people's wishes. He thought there should be a distinction between Chinese or other settlers who went to Tibet either for self-enrichment or under orders, who should not be included in this referendum process and non-Tibetans born in Tibet under Chinese control who, by analogy with the position in the USA where citizenship is conferred on the basis of the place of birth, should be included.

Discussion

Denial of the Right of Self-Determination to the Tibetan People

Chairperson: Professor Hurst Hannum

Discussion Leaders: Andrew Dulaney

Dr Karl Josef Partsch

HANNUM: Summarised the papers as having revolved around at least two different issues. The first was whether, as a matter of fact and law, Tibet had been a separate legal State before 1950. If opinion was unanimous that Tibet had been a State, and it appeared that the vast majority of the Conference would so conclude, then one could simply conclude that the invasion of one State by another was illegal under international law, whether the invasion was by Iraq into Kuwait, by Vietnam into Cambodia or by China into Tibet. If the international community could not be persuaded of this, then the second question would arise: whether the Tibetan people had a right to self-determination and, if so, in what circumstances. A further question would be if Tibet's right to self-determination did not depend on pre-existing Statehood, what was the relevance, if any, of human rights violations in Tibet?

RINPOCHE: Mentioned that political and academic discussions over many years had neglected to address the interpretation of the 'priest-patron' relationship or 'cho-yon'. The Tibetan understanding of this term had never been properly ascertained by Western academic commentators, so a confusion still exists. In Tibetan, the word 'cho' derives from 'chonan' (or 'chuba'), which in turn is a translation of the Sanskrit 'puja', which includes all kinds of offerings, 'nan' indicating the place where the offering is to be made. 'Yon' refers to the honour of the offering, and derives from the Tibetan 'yunda'. This relationship of 'chonan' and 'yunda' was established when the Mongols invaded and occupied Tibet in the 13th Century and thereafter became followers of 'Sakya Pandita' (the founder of the Sakya school of Tibetan Buddhism) and subsequently of the Sakyapa patriarchs. Even before establishing their rule in China, the Mongols decided to dedicate the sovereignty, administration and entire territory of Tibet as an offering to the Sakyapa as thanks for the religious teachings received from Sakya Pandita and the Sakyapa (see Snelling, *The Buddhist Handbook*, Century, 1987). This was the source of Chinese misunderstanding. The appointment of a governor (or a Vice-Regent) and making a territory the subject of an offering are entirely different. China's interpretation is that Sakya Pandita was appointed as a governor, but the reality, as understood by the Tibetans and the Mongols, was quite different.

BELLO: Thought that greater attention should be given to geopolitical factors in the region, in particular, why other governments in the region had not recognised Tibet. Consideration of this issue must recognise the historical role played by the UK and the Netherlands in the region, the mutual fear and antagonism between the former USSR and China and the role of India. Given such rival interests, the desire of countries in the region to avoid antagonising a superpower neighbour was understandable. There existed no institution equivalent to the EC in Asia as a means of transcending the fears and attitudes of individual governments. Also, since the demise of the USSR as a superpower, it was no longer possible for the US and USSR to have a common understanding and exert pressure on Tibet's neighbours to change their attitude.

GROGAN: Sought Dr Partsch's clarification on a number of points: (i) whether, as Dr Partsch seemed to assert, the fact that China treated Tibet as a colony in its law (in force or a practice?) was the sole criterion for determining whether Tibet was in fact a colony of China; (ii) whether the proof of self-determination lay in one objective test, such as the proportion of members of a minority group in a legislature in relation to the proportion that group bore to the total population (in which case, it was not certain how the claims of, e.g., Australian Aborigines or the East Timorese might be resolved); (iii) whether Tibet was subjected to colonial or alien domination, and if so, whether that was of significance in terms of the Declaration on Friendly Relations and the Declaration on the Granting of Independence; (iv) would only the objective criterion (ie. relating to the proportion of minority members in a legislature) be of relevance, or should the subjective views of the people themselves be taken into account?; and (v) was the illegal incorporation of an 'associated' country somehow less serious a matter than that of a 'foreign' country and, whether, as a matter of generally accepted legal principle, illegality of the first kind could be more easily legitimised by a sufficiently lengthy period of exercise of sovereignty.

PARTSCH: Concerning his disagreement with Mr Dulaney regarding the right to self-determination on the one hand, and national unity and territorial integrity on the other, he had kept close to the Declaration on Friendly Relations which provided evidence of the consensus among member States on the meaning and elaboration of the principles of the Charter.

First, it was unnecessary to define which 'peoples' were entitled to claim a right to self-determination. In the Human Rights Commission and the Third Committee of the General Assembly the difficulties involved in reaching agreement on a definition of 'people' had been discussed. It had even been doubted 'whether it would ever be possible to arrive at a definition . . . that would be universally applicable and acceptable' (UN Doc. A/2929 of 1955, para 4). Although the term 'people' should be understood in its most general sense, it had been stated that 'the right of minorities was a separate problem of great complexity' (para 9) and that it was dealt with elsewhere in the Covenant (para 27), not as a collective, but as an individual right of persons belonging to a minority. This concept had been maintained in the recently adopted Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (UN Doc. CN5/1992/48 annex 1) in which this negative definition of the concept of 'peoples' had been restated.

Second, among the seven principles elaborated in the Declaration, three of them - namely, self-determination, territorial integrity of States and non-intervention - were the most relevant to the subject of the Conference. As the Declaration itself required these three principles were interrelated and should be construed in the light of the other principles, but clearly the main task was to bring into balance the principles of self-determination and of territorial integrity. In his opinion there was no divergence of views on these issues by most learned authors so, while he was impressed by Mr. Dulaney's paper, in certain regards he could not agree with him.

Third, the Declaration itself required the establishment of a balance between the two principles of self-determination and of territorial integrity. In general, priority was accorded to the protection and maintenance of territorial integrity. Only two exceptions

were admitted: in relation to colonies and to other non-self-governing territories which themselves enjoyed territorial integrity under their separate and distinct status. A further carefully defined case was added in the 7th paragraph of the relevant section on self-determination, and was rather similar to a colonial situation. Two elements were required: first, illegal conduct on the part of the relevant State which had the consequence - and the second and absolutely necessary requirement - that the whole people belonging to the territory was not represented in the central legal organs of the State. Thus, an element of 'democratic legitimacy' was introduced into a legal order otherwise dominated by the principle of freedom to choose and develop its political, social, economic and cultural systems and which was otherwise neutral concerning the constitutional structure of the State. The Declaration identified two cases where territorial integrity could be impugned, namely dependent territories and certain other territories under special conditions, notably South Africa. There was clearly a colonial dimension to these two examples although in a technical sense the majority of the population of South Africa could not be said to be a 'colony' of the white minority. Nevertheless, the common link between South Africa and dependent territories under Chapter 11 of the UN Charter was the lack of a right to vote in national elections.

Fourth, the right to vote was also the reason for the reference in his paper to the practice of the Committee of 24 in deciding whether a people came within its jurisdiction. In order to avoid the Committee's jurisdiction, Portugal had altered its Constitution to the effect that its overseas territories were indivisible parts of the motherland. The Committee's view was that a mere declaration was not sufficient to alter the facts. In contrast, the position of the inhabitants of French overseas departments ('les départements d'outre mer') was quite different since they had the right to participate, and in practice did participate, in French national elections. Actual participation in national elections was therefore a practical criterion for distinguishing dependent territories from those integrated into the mother State itself.

While it was possible to interpret the Declaration freely, it appeared that the right of self-determination overrode a State's right to territorial integrity only in a certain number of cases, although other cases which were similar to the two instances mentioned in the Declaration should also be included. The extension of the right of self-determination to other cases was a legitimate consideration for a politician, but not for a lawyer, since the latter was obliged to accept as binding the views of the members of the UN as expressed in the Declaration on Friendly Relations. Mr Dulaney, however, had developed the thesis whereby a balance between self-determination and territorial integrity would in general be established by the application of the principle of democratic legitimacy, such that wherever this principle was not respected, the principle of territorial integrity had to give way to any claim of self-determination. His principle of democratic legitimacy was determined by the vision of an ideal democracy which is not enshrined in the UN Charter. The criteria for membership of the UN in Art 4 para 1, does not require in specific form a certain system of government. His disagreement with Mr Dulaney remained, because while the exclusion of dependent territories from the obligation to respect territorial integrity may be one instance of the principle of democratic legitimacy which Mr Dulaney identified, there were no grounds for saying that just because that principle had been recognised and applied in one particular circumstance, it should be applied in all other circumstances.

For these reasons, he doubted whether Tibet had enjoyed absolute independence during the critical years of 1912 to 1949. However, he thought that Professor Rinpoche's explanation of the 'cho-yon' relationship was a valuable contribution to existing commentaries since he had been uncertain as to how to translate the relationship between 'religious leader' and 'temporal leader'.

As to Bello's question about the silence of other States regarding Tibet's status, he considered that the issue had been solely a matter for those States directly concerned - the UK and later India - and not other States.

Regarding Grogan's doubts on the emphasis on elections, Dr Partsch had based his view on the practice of the Committee of 24. The enormous divergence between different kinds of colonial relationships made it impossible to define a colony under international law. In the process of de-colonisation, there were frequently left behind certain remnants of the colonising state's culture which were of significance to the de-colonised territory since they influenced that territory's freedom to determine its own values and social structure. The Committee of 24 had adopted quite a formal test: while it may not have covered all the important points, it had introduced certain binding criteria. By presenting his arguments in this way, Dr Partsch wished to contribute to the spirit of the Conference, whose task was to discuss problems objectively and to define, but not prescribe, particular approaches, the choice of which lay with those who would be personally concerned in the outcome.

HANNUM: Summarised the discussion so far as having addressed a number of technical questions. There were larger political questions to be addressed, such as the reluctance of States to recognise Tibet for fear of having to recognise similar claims in their own State. Further discussion might address how the situation in Tibet could be distinguished from that in the Punjab, Kashmir, East Timor, Quebec, and those confronting the Kurds, the Tamils and the Basques, to name but a few. He wondered whether it was possible to identify a universal view of self-determination applicable equally to Tibetans, Basques or Quebecois, and whether there were any particular distinguishing features about the Tibet situation which might make other States more comfortable about supporting Tibet without creating worrisome precedents for their own domestic situation.

DOWD: Gave a series of examples to contrast with Tibet. First - Papua New Guinea: here Queensland, then one of the Australian colonies, colonised Papua in 1896 without the approval of the government that held suzerainty over Queensland, namely the UK government. After World War One, Australia (then independent) acquired the former German territory, New Guinea and administered it and Papua New Guinea as one entity without any legal authority. When Papua New Guinea became independent as one nation in 1976, there was in reality no nexus between New Guinea and Papua because they were constituted by two significantly different peoples on an entirely different legal basis. The international community by and large was indifferent to this.

Second - Irian Jaya (West Papua): in 1968 Australia, Papua (treated as Papua New Guinea) disgracefully stood by while the world acquiesced on West Papua being 'handed over' on one basis alone. There was no religious, ethnic or any historical connection between the people of West Papua and Indonesia. They had previously been a colony of the Netherlands. The world acquiesced in this 'hand-over' and the Indone-

sians created the fiction that the West Papuans wished to become part of Indonesia Third - East Timor: this Portugese colony was invaded by Indonesia and there have been gross breaches of human rights. The Committee of 24 treats East Timor as a colony, quite correctly, and is therefore firmly back on the international agenda. However he urged the Conference not to be too concerned about the decisions of the Committee of 24 which are taken for political convenience.

Fourth - Aceh: these people are as distinct from the Indonesians as the Tibetans are from the Chinese. They were never conquered by the Dutch although the Dutch had suzerainty over them, which in the 18th, 19th and early 20th Century, simply meant that they had the capacity to send in gun boats or an army. When Indonesia was formed, neither the Indonesians nor the Javanese conquered Aceh; it was simply thrown into Indonesia without any expression of opinion at all. The world was, and remains, indifferent, largely because Aceh was largely unheard of. Their struggle for independence is just as strong but not as cruel. They vote in the Indonesian process but they are a very distinct and different people.

The conclusion from these examples is to ignore what other States say, particularly in the UN. The Conference should ignore the lack of interest on the part of States or by the Committee of 24 in an issue. Therefore the reaction of the international community should not necessarily be taken as an overwhelming indication of legal foundations. For example, he felt it was a disgrace that Hong Kong was not under the Committee of 24's agenda because of a private deal between the UK and China. He urged the Conference not to take too much notice of any one factor, particularly recognition which is purely based on self-interest and politics.

HANNUM: If John Dowd's proposition is accepted, that legal and political conclusions should not be guided by other States actions, then how does one acquire the support of those other States as will be necessary to resolve the situation in Tibet.

BENEDEK: Emphasized that self-determination is an overriding and inalienable right having a *jus cogens* character. He referred to a recent article in a German journal which deals with self-determination The author states that precedence should be given to self-determination rather than to historical titles. For example, even if a people had once accepted integration within a federal context, or on the basis of far-reaching autonomy, it would be free to reconsider this decision if the federation or the autonomy is undermined or arbitrarily removed. This is an interesting question for Tibet. The 1951 agreement, which was imposed under pressure, had a number of guarantees and a far more wide-reaching autonomy than that provided under the 1965 solution. The issue therefore is to what extent can it take back such autonomy. These historical arguments should be considered in the light of subsequent developments. Dr Partsch had referred to the former German ambassador to China's remarks that Tibet was an integral part of China. It is interesting to note that the ambassador had said that it was as integral as Georgia was an integral part of the USSR!

VAN WALT: Wished to make the general observation, often forgotten, that sources of international law, as officially stated in the statutes of the International Court of Justice, do include the opinions of international lawyers. International lawyers therefore have a responsibility not only to interpret existing positive law but also to develop it. There is, therefore, the possibility not only to reaffirm principles but also to expand on

them if there is sufficient clear thinking on the subject. He therefore urged the Conference not just to consider narrow definitions of various principles. In terms of what had been said by Professor Benedek and by Mr Dowd about East Timor, it was interesting to note that when the Chinese Prime Minister visited Portugal in 1992 shortly after the East Timor massacre, he responded to questioning from the press by saying that East Timor was just like Tibet, an internal matter.

Under international law a treaty or an agreement is invalid if it is coerced. There are two types of invalidity: (1) if the negotiating representatives are personally coerced the government has the choice to validate it by subsequent ratification; and (2) if a State or a government itself is coerced into signing an agreement or a treaty then it is invalid *ab initio* and cannot subsequently be validated. In the Tibetan situation it is very clear that under the 1951 Agreement there was not simply a question of the coercion of the individuals in Peking, but coercion of the Tibetan government or the Tibetan State. Chinese troops had already invaded Tibet at that point, they had already destroyed half the Tibetan army and they were in occupation of large parts of Tibet and threatened to move into Lhasa unless the treaty was signed on their own terms. It was coercion. Even the period from 1951 to 1959 when the Dalai Lama fled, did not give a real possibility for the Tibetan government to reject or to agree to the terms of the Agreement – in other words they continued to be in a state of coercion throughout that period because the country was occupied.

A third possible interpretation of that Agreement is the one that the Chinese prefer to use in other situations, eg. Hong Kong, which is the description of the treaty as an unequal treaty. In other words, even if for some reason one would not describe it as being invalid *ab initio*, one would at least have to recognise it as being an unequal treaty in the way that is described by the Chinese and that also would invalidate the Agreement.

SALL: Mr Dulaney referred to the balancing of the principles of self-determination and territorial integrity, while Dr Partsch emphasized the recognition by other States of China's sovereignty or suzerainty over Tibet. But the recognition of China's claim should be counterbalanced by the point of view of the affected peoples – about their status in relation to the States making the claim and their aspirations. This had more general application than just to China and Tibet. So whilst self-determination is a legal principle its implementation is political. In Africa the Organisation of African Unity resolutions provide for a counterbalance between self-determination, territorial integrity and the non-intervention in the internal affairs of a State. The solution with respect to Tibet is to reverse the process – to move the political process (at General Assembly level) to lead to a juridical position, a collective legal recognition of Tibet as a sovereign State with a population, territory and a government representative of the people. That will create the legal recognition of the right of the Tibetans to independence or to self-determination. The French constitution places great importance on the process of consultation with the départements d'outre mer. There is no great question about their status because so far the affected peoples have never expressed a clear desire to leave France. But there is disagreement about whether they should be under the Committee of 24 or not.

Strangely the 1951 Agreement is mentioned in the new edition of Oppenheim without any doubts being expressed as to its validity, even though van Walt's book is quoted in that edition.

As for the question of recognition there has been much recent discussion of this - for example in relation to the Conference on Yugoslavia. The European Community required an entity to give guarantees of observance of human rights (rights including those of minorities) before it would be given recognition as a State. There is a distinction between the legal conditions for recognition and the eventual political conditions which are added. Respect for human rights and respect for minorities are both political conditions which were added and which are not legal preconditions for recognition itself. These need to be separated. Of course, most opinion today recognises that recognition is only of declaratory importance, it does not create a State. However, the declaratory character also has a constitutional character to the extent that there is a free decision by the recognising State.

CRAWFORD: In the classification of self-governing territories it was absolutely clear this is determined by the law of the coloniser. The law of the coloniser is relevant but not decisive. That applied to the French territories, the Portuguese territories, and it was the basis on which New Caledonia was listed recently against violent French opposition as Chapter 11 territory.

On the question of the Badinter Committee one has to be rather careful in dealing with that material. There are two defensible views about the Badinter Committee; one is that it is an apology for the European intervention and the other is that it deals only in the affairs of Yugoslavia.

BELLO: Asked if the Tibetans should be able to have a dialogue with China about the preservation of culture, education and other matters considered important by Tibetans. This could be a step towards achieving full independence.

PARTSCH: Pointed out that the 1961 UN General Assembly Resolution 1723 was adopted at a time when the question of the balance between the two principles was unclear and when the scope of the right of self-determination had not yet been clarified by the Friendly Relations Declaration 1970. Therefore in later General Assembly declarations the phrase 'self-determination' was put aside with concentration being on the question of human rights.

FALK: Agreed with Dr Partsch but interpreted its significance differently. UN Resolution 1723 was important since it establishes a foundation for the present reliance on the right of self-determination by Tibet, thereby placing the international community on the defensive if it questions that right. Whilst complications can be raised as to the scope of that right, nevertheless the existence of the right, as affirmed in this Resolution, is a very important political fact and needs to be emphasized in legal analysis. There is a great deal of uncertainty as soon as one tries to deepen the analysis, so it is therefore helpful to take clear assertions that do exist. The Conference could therefore reaffirm Resolution 1723 under current international conditions. This would be a good starting point to pushing the claim of Tibet to a new stage of political and moral consciousness at this time.

HANNUM: Agreed with Professor Falk that the political significance of the 1961 Resolution is very high and that it should be reflected in attempts to revive the issue internationally.

VAN WALT: Said that it was important to note that the 1965 Resolution reaffirms both previous resolutions, thereby reaffirming the 1961 Resolution about the right of

self-determination. The reason that the 1965 Resolution made no reference to self-determination was political, and not due to a consideration of the balance between territorial integrity and self-determination. The single reason why it was not mentioned in 1965 was because India had just finished a brief armed conflict with China and was having trouble of its own with Pakistan, the Nagars and the Kashmiris. It was thought to be politically important that India vote in favour. This therefore was the only reason why the reference was taken out. It was clear from the UN debates in 1965 that many governments expressed the view that Tibet had the right of self-determination and to independence and some expressed the view that they had recognised Tibet to be independent. There is evidence therefore, whether political or legal, that there was a will to recognise Tibet by a large section of the community at that time. However, international opinion was divided on the status of Tibet, although relatively few States were actually involved in the issue. It is important to note that Nepal, a neighbouring State, implicitly recognised Tibet as independent by having an ambassador in Lhasa. When Nepal joined the UN, she was required to demonstrate that she was an independent State. Her principal given reason was that she had had independent diplomatic and treaty relations with Tibet. It was important in discussing recognition, to remember that there were opinions on both sides.

HANNUM: On the point of recognition, it must be seen that States do come and go. After all five States recognised Biafara as an independent State, though he doubted that they would maintain that position now. As had been mentioned by several participants, recognition is a quintessentially political act and while it may have historical implications it is not sufficient in and of itself to prove that Tibet was an independent State in law. The Chinese position would not be correct if it is implying that because no State has recognised Tibet, then it is not a State. In the same way, mere recognition would not make it a State.

FALK: Strongly endorsed Professor Hannum's comments. He said that it would be important for the Conference to clarify the distinction between the legal status of Tibet's claim to a right of self-determination from the highly politicized character of the practice and doctrine of recognition. There may be some tendency to view all matters discussed by international law specialists as resting on the same evidence but as has been recognised by the Conference, recognition is highly politicised in practice and in concept and it strongly reflects the geopolitical mood that bears on a particular set of circumstances. One could argue that European States are engaged in premature recognition of Bosnia in order to disrupt the Yugoslavian Federation and that States often defer or deny recognition because of their geopolitical relations with the dominant economic and political forces in a given region.

This distinction is very important to emphasise. This connects with a broader point: namely how international lawyers should view self-determination in light of the fact that there is no single source of authoritative guidance. In that context, he shared the views underlining Professor Benedek's comments about the Western Sahara case; that in his view it is more helpful to consider the treatment of self-determination by the International Court of Justice in shaping an understanding of the right of self-determination, than is the Friendly Relations Declaration which may have presented political compromises and which was in its essence a Cold War document. The Declaration basi-

cally tried to bury disagreements and is by any careful analysis rather incoherent if one tries to understand the scope and meaning of self-determination and its relationship for example to territorial unity. Depending on how its language on fundamental human rights is interpreted, it could be understood as suggesting the subordination of territorial integrity to self-determination in conditions other than the decolonization context. He therefore found the Friendly Relations Declaration very ambiguous and non-authoritative in attempting to define self-determination.

He stressed that it was important in the context of Tibet to clarify clearly the extent to which the right of self-determination unambiguously applies wherever a circumstance of alien subjugation or alien domination exists and which establishes a *de facto* or quasi colonial set of relationships. In these circumstances there is a very wide international consensus that the right of self-determination should be applied and implemented. He felt that the weight of authority of this Conference would be helpful, politically, and correct, legally and analytically.

DULANEY: Supported the declaratory view of recognition, citing Article 3 of the Inter-American Convention on the Rights and Duties of States (which is not binding on China). This article succinctly states that 'the political existence of the State is independent of recognition by other States.' The logical corollary was that it was of little (if any) legal significance that no States have recognised the independence of Tibet (although he disputed this fact). Similarly the fact that some countries have recognised the PRC's authority over Tibet is of very limited, if any, legal significance.

WANGYAL: Said that China has insisted in the last couple of years that the Dalai Lama consents, on behalf of the Tibetan people, to China's rule being legitimate. Tibetans cannot give that consent unless the people have the right to express their wishes generally. It was important for Tibetans in the TAR, as well as in Kham and Amdo, to be able to express their final decision on their self-determination. The choice on whether this meant becoming a separate State or remaining a part of China should be made by Tibetans in Tibet not by Tibetans in exile. The Tibetan government-in-exile has no authority to accept Tibet as being part of China, and negotiating on that basis. Such an expression of the rights by Tibetans would surely be recognised by other peoples if not necessarily by governments and the UN, a body representative of governments and not of peoples. But a dialogue must be had in order to ensure the very survival of Tibetans.

McCORQUODALE: It is necessary to look objectively at the issue of self-determination and then consider the manner in which it can be applied to the Tibetan circumstance. The right of self-determination is protected by the International Covenant on Civil and Political Rights, and of course the International Covenant on Economic, Social and Cultural Rights, as a human right. There are very few human rights which are without any restriction or limitation at all, one obvious exception being the freedom from torture. Therefore, the right of self-determination should be looked at as a human right and is a right for which we should consider there are limitations on its exercise. Limitations of human rights are concerned to protect the rights and freedoms of others and to protect society's general interests. For example the right of freedom of expression is limited by issues like rights of fair trial and to maintain public order. If these limitations are applied in a self-determination context, we can take into account matters like

the rights of others, including the rights of self-determination of others, as was considered by the Badinter Committee on the rights of the Serbian minorities in Bosnia. We can also consider the broader society's, including the international community's, interests such as peace and security and territorial integrity.

When those principles are applied to the Tibetan circumstance, there is the question of the rights of the Chinese who have been transferred as a result of the population transfer policy. However, the rights of any kind of belligerent occupier ought not to outweigh the rights of the inhabitants. In considering issues like international peace and security, clearly the presumption has to be in favour of the right of self-determination, not in favour of the assertion of territorial integrity as the right of peoples should count for more than the sovereign interests of States. Here, there would be a very clear answer in favour of some form of self-determination of Tibetans. That of course does not necessarily mean independence as there are various forms of the exercise of that right.

HANNUM: Agreed entirely with Robert McCorquodale. His impression is that it is the denial of the Tibetans right to self-determination that is threatening international peace and security and that, therefore, international peace and security should not in this case be a countervailing weight to self-determination. Rather, international peace and security is a consideration to be adduced in support of the Tibetans' right of self-determination and in opposition to the Chinese claim of territorial integrity, although in other situations it is generally raised on the State's side.

EINFELD: Agreed completely with Professor Falk. He stressed that we are outside the traditional time capsule here as China is creating, by population transfer, a situation which, as a practical matter, will be almost impossible to reverse in cultural and self-expression terms if action is not taken within a reasonably short time.

The problems of New Caledonia are relevant, because there the French have said, or did say, that they are willing to engage in some sort of self-expression of the New Caledonian people by way of a referendum. The only problem being that the French have so invaded New Caledonia that the result of the referendum will not reflect the opinions of the indigenous people but of the white French settlers who have come there with the consent of the French government. Now the consequence of such a thing in Tibet could put at threat the so-called self-expression of the Tibetan people because if, as Mr Dulaney said earlier, there is doubt about whether people participating in a referendum could include the Chinese residents or some of them, then the Chinese could offer a referendum in Tibet which would not deliver independence or self-determination to the Tibetan people.

We said that the Conference must determine some basic concepts of what is achievable in the interests of the Tibetan people, 'peoplehood' for example: their self-dignity is certainly being imposed upon; they are not in control over their civilisation; the self-expression of their ethnicity is gradually being removed and is now being concentrated in fewer and fewer hands. If we are to wait, therefore, or to depend upon the attitudes of political leadership in the West or in States outside the Chinese area, to bring about this change, we are expecting the impossible. The likelihood that governments will take the lead and tell their people what they ought to be doing in the moral interests, rather than the narrow political interests of their States, is very remote indeed. My own country (Australia), for example, which has had in the past a good record in relation to refugees,

is today imposing some of its views on the European States in relation to the problem in Yugoslavia lest it might be called upon to receive large numbers of Yugoslav refugees under its legal obligation in treaties.

Gorbachev is travelling the world at the moment, saying that in his view it is as inevitable that the Chinese people will come to democracy as did the Soviet Union. Whatever the motivations of Gorbachev are, the fact is that if we had looked ten years ago, even five years ago, and predicted that the Soviet Union would have collapsed, we would have said it was a nonsense. So I think it is wrong for us to take the view that nothing is possible or that unless we take the purest view of legal principles we are in effect being unscientific and irresponsible to the charter which we have as lawyers. Lawyers understand very well that they must translate their clients' instructions into a winnable case and not argue it from the standpoint that the case should only be won if the purest legal principles are applied but will be lost if they are not applied. Perhaps our clients are the Tibetan people. The Tibetan people's cries for self-determination, for the expression of their own dignity, for the control over the development of their own civilisation, for the passing on to future generations of their teaching, of their learning, of their faith, of the history of their fathers, demands of us that we discuss the opportunities for the advancement of those interests consistent with international law - hopefully blessed by international law. We should use all the frameworks which international law provides for the resolution of such conflicts and the achievement of such goals, but not to be deflected by the finer points of whether we are consistent with every pronouncement of international law.

He is often amused by the fact we international lawyers tend to quote statements by politicians (usually of the past where they may be dignified by the distance of mythical history into some type of 'affection') as a ground for believing that there had been established some significant principle which ought to be adopted. Most politicians would be amazed with the weight placed on any of their statements. We must rise above this tendency to bless periodic political expression which is often dictated by instant and emergent political problems and by self-interest and we must get on with our charter, which is the saving of the Tibetan people.

MEINDERSMA: One of the issues which has been brought forward by the Tibetans is the so-called 'final solution' to what is happening there, and called by Professor Berman a 'political time bomb': the issue of population transfer. This transfer clearly prevents the exercise of the right to self-determination. There is a policy by the Chinese government of encouraging Chinese to move to Tibet. It has harsh consequences for the human rights of the Tibetans involved. Of course, we could argue about whether it is a deliberate policy as was seen in the Committees of Evidence.

For indigenous peoples the question of land, access to resources, the economic, social and cultural consequences of being moved, being forced to be moved, has great consequence to their survival. This Conference could make a statement, for instance to support international processes which are taking place now in international bodies (eg in the UN Sub-Commission on Prevention of Discrimination), to bring up the issues of the human rights dimensions of population transfer. A few resolutions have been adopted on this subject. Last summer two Special Rapporteurs were appointed on this subject and maybe the views of the experts here could contribute to where these proc-

esses are leading and give some encouragement to the processes. For instance the resolution of the Sub-Commission was that 'issues of population transfer constitute a violation of fundamental human rights'. The resolution links the practices of population transfer immediately to self-determination without mentioning the word self-determination, but the whole definition of self-determination is actually in the resolution. She suggested that some kind of supporting note be included in the final document of this Conference to put the weight of the people present here behind the international developments which are going on on this very important issue.

BERMAN: Added voice to the emerging chorus. It is not sufficient to prepare a legal brief that attempts to mobilize some existing concepts, although it is certainly useful to explore the possible benefit of employing those concepts. At the same time we cannot rely only on textual analysis of texts generated back in the 1940s and 1950s, although that exercise is also useful in terms of assessing and fully understanding the legal background and the political context of that legal background. He believed that it is extremely important to move forward on the issues that we have been discussing and develop the rights of non-State peoples in international law and in practice and it is necessary to develop a deeper understanding between the concepts of alien subjugation and occupation, and the right of self-determination. It not only advances international law on the question but also allows the Tibetan people to explain the specificity of their situation within that overall concept and that overall advancement of understanding and development of law.

It is also important to move forward on the issue of population transfer. It is inappropriately invisible at this stage. It is true that the International Law Commission has done some preliminary work on some aspects of the question and that the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities has appointed a Special Rapporteur for preliminary study on the question. However, the comprehensive understanding of population transfer and its impact on self-determination and on the cultural reality of distinct peoples is as yet poorly understood and needs to be expanded. This Conference could take the debate a long way by emphasising these two points: a deeper understanding of the connection between alien subjugation and self-determination and a deeper, and perhaps also broader and more comprehensive, understanding of the implications of population transfer on self-determination and also on other human rights.

MORRIS: She considered that we not only have to consider the concept of population transfer but also how money is being spent to encourage population transfer and what is called a 'sustainable development' or other developments on the Tibetan plateau and the danger that it is posing for the survival of the Tibetan people. There are environmental questions, human rights questions, population transfer issues and the like that require us to call upon the financial institutions of the world that are funding China's projects and on governments that are engaging in activities on Tibetan territory, to consider the ramifications of their efforts.

FALK: One is not only interested in characterising the concept of self-determination in the very appropriate ways that Professor Berman mentioned, but even more crucial is to show the application to the situation of Tibet and both to confirm the right of self-determination that the Tibetan people possess under these conditions and to make clear

that the exercise of this right does not really draw upon questionable applications of the right of self-determination. One can also acknowledge those questionable applications of the right of self-determination and still make a very clear, factually informed endorsement of the right of self-determination on behalf of the Tibetan people.

DULANEY: Agreed with Justice Einfeld. When putting his paper together he found himself alternating primarily between grief and rage but, recalling our Conference Chairman's homily on neutrality, it seems that perhaps it goes too far to say that our clients in this Conference are the Tibetan people. Conferences like this are among the sources of substantive international law, so that neutrality to which we have been enjoined might be better accomplished by viewing our task to be the substantive development of international law. The Conference is not a Tibet Support Group but a conference of lawyers devoted to a neutral examination of the principles as well as their application to the Tibetan situation. He did not mean that we should not come down very strongly on one side of the issue if we so decide but we ought to be quite careful to make sure that we have addressed the strongest arguments raised by China which are available.

CHAPTER 9

THE DENIAL OF OTHER HUMAN RIGHTS IN TIBET

**Paper delivered by Wolfgang Benedek:
Legal Consequences of the Denial of other Human Rights in Tibet**

Introduction

There are consistent and well-documented allegations of ongoing violations of human rights in Tibet although their nature seems to have changed over time. Reacting to the international criticism of the human rights situation in China after 1989 in general and in Tibet in particular, as indicated by Res. 1991/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted on 23 August 1991 on the 'Situation in Tibet' and the following discussion under agenda item 12 in the UN Commission on Human Rights in spring 1992, the Chinese government has produced a series of 'white books', ie on 'Human Rights in China', 'Criminal Reform in China' and 'Tibet - Its Ownership and Human Rights Situation'. These publications, written to address the international concern, have left many questions unanswered and are in strong contradiction with the findings of independent international organisations and experts. Much of this evidence has been considered by this Conference's Committees on Evidence. As the right of self-determination and minority rights are being covered by other papers, this paper is mainly concerned with 'other human rights'.

1. What are the main human rights violated?

For systematic reasons it has been suggested to divide the rights violated into collective and individual rights. Among the collective rights, the main rights at stake are genocide, right to development and right to environment. Among the individual rights, freedom of expression, freedom of thought, conscience and religion and freedom from torture can be distinguished together with the rights to fair trial, to education and political rights.

It is not possible to analyse and evaluate the large mass of information from a variety of sources regarding violations of human rights in this short paper in any detail. However a brief evaluation of the main rights violated in Tibet will be attempted, largely based on findings of facts as a member of an Austrian expert mission to Tibet in summer 1992. From the experience of this mission and on the basis of various suggestions received, I have produced a set of guidelines for (legal) delegations to China, including Tibet (see the conclusions and recommendations of the mission as well as the guidelines in The Review, No. 49, ICJ, 1993). These guidelines form Annex 1 to this paper.

The active policy by China of economic opening up of Tibet largely increases the danger of demographic outnumbering of Tibetans in the main cities, in particular by the so-called 'floating population'. The Tibetan regional government is not prepared to make use of its powers under the 'Law on Regional Autonomy' of 1984 to restrict the inflow of Chinese traders etc attracted by special opportunities in Tibet. However, no

sufficient evidence could be found to identify a systematic policy of genocide as defined in the pertinent UN Convention. The Chinese measures taken together, do, however, create a danger of 'ethnocide', ie the destruction of the Tibetans as a distinct people and culture.

The economic policies of the Central, as well as the Tibetan, government violate the right to development of Tibetans, who do not participate in the development on an equal level. In spite of the existing regional autonomy all major decisions are taken by the Central government. According to the UN Declaration on the right to Development of 1986, the right to development is defined, *inter alia*, by the existence of all human rights and fundamental freedoms which obviously is not the case in Tibet.

The right to environment as defined in the Helsinki and Rio Declarations, is linked with the peoples' right to permanent sovereignty over natural resources (GA Res. 1803 (1962)). There are alarming reports on violations of that right which are difficult to assess. In any case, the exploitation of the natural resources, which is the main reason for concern with environmental degradation, again is mainly decided by the Central Government and undertaken by Chinese enterprises.

Regarding freedom of opinion and expression (Art. 19 UDHR), this right does not exist when it comes to political opinions sensitive to the government. There is a general climate of fear regarding dissenting opinions. Political expressions of a wish for Tibetan independence are severely punished even in their minor forms. There is obviously no freedom to receive and impart politically sensitive information. The media are strictly controlled. New technological means like satellite TV receivers are used to transmit Chinese TV programmes in full whereas programmes in Tibetan (although increasing) remain limited.

The right of thought, conscience and religion (Art. 18 UDHR), including the right to manifest one's religion in teaching, practice and worship is of major relevance for the deeply religious Tibetans. Although there have been considerable improvements since the Cultural Revolution, this right is granted only within certain limits. For example, monasteries and nunneries are kept under close surveillance by different methods, there is a lack of teachers, limitations on entrance for novices, etc.

Political rights (ie Art. 21) are generally limited by the all-encompassing party system which leaves no room for a pluralistic representation of political forces.

Regarding the freedom from torture or cruel, inhuman or degrading treatment or punishment (Art. 5 UDHR), the few cases admitted (20 cases in 1990/91) stand in sharp contrast to the evidence produced by international human rights NGOs on the widespread practice of torture as a means for the extraction of confessions and punishment. There is a need to have an independent inquiry into the situation, preferably by delegates of the ICRC. The right to a fair and public trial (Art. 10 and 11 UDHR) is a general problem of the Chinese judicial system, which leaves the legal power mainly to the executive. Regarding criminal reform, the existence of camps for education through labour (Lao Jiao) where persons can be held for up to 3 (4) years without any judicial procedure is a cause of major concern as is the refusal of the Chinese and Tibetan authorities to allow foreign delegations to visit any of these places of detention in Tibet.

The right to education (Art. 26 UDHR), which is also part of the special measures due to a national minority, in spite of impressive measures cited by the Chinese is far from

being realised. Tibetans have the choice between inferior education in Tibetan or limited access to education in Chinese. Many students are still educated in China, which creates a problem of alienation. Chinese students have much better chances to be admitted to universities. In 1992, only two cases of Tibetans were known who had been allowed to study abroad.

The presence of large forces and installations of the military in and around Lhasa gives the impression of Tibet as an occupied country.

2. International legal responsibility of China for human rights violation in Tibet

China, in its constitution and in certain laws, has granted a number of rights to its citizens, which, however, are generally not enforceable because of the lack of a constitutional court and the existence of wide and undetermined claw-back clauses, which leave it practically to the discretion of the administration whether to enforce these rights or not. Therefore, claims by China that all relevant international rights are already incorporated into national law have to be understood in the framework of Chinese legal conditions.

Regarding its international obligations, China has not yet ratified the United Nations Covenants although it claims that this is under consideration. However, China has ratified 7 UN Conventions in the field of human rights and refugee law, among them the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. In addition, China has been actively involved in the drafting and implementation process of the Declaration on the Right of Development. It can be considered to be bound by the Universal Declaration on Human Rights of 1948 as far as it has evolved into universal customary international law. Therefore, China cannot legitimately invoke the principle of domestic jurisdiction or non-interference in internal affairs in these matters. The Chinese 'White Book on Human Rights in China', in spite of its shortcomings, is a proof of China's feeling of accountability. In any case, China does not refuse to recognise the rights guaranteed under the International Bill of Rights; it rather argues that these rights are already well protected by national standards which are consistent with the universal standard, although there is a different emphasis regarding certain rights. Therefore, the human rights performance of China can be judged on the bases of these international standards.

Regarding the implementation of the universal standard as contained in Conventions ratified by China, one problem is the weak implementation machinery of the Conventions. The consideration of reports submitted by China can only have limited impact given the amount of inaccurate or misleading information usually contained in such reports, as can be seen from the white books published or the briefings given to visiting foreign delegations. In the absence of legal remedies, the major sanction is international public opinion. In this respect, it makes little difference whether China is also legally or only morally bound to guarantee certain rights. However, as a signatory to some Covenants, China's human rights performance could certainly be better monitored.

Another possible way of monitoring China's human rights performance, in particular regarding the situation in Tibet, would be to have a Special Rapporteur on the situation of human rights in China and Tibet, similar to the Special Rapporteur on Iran. In any case, a stronger focus on Tibet by thematic rapporteurs like the Rapporteur on Torture, and the proposed Rapporteur on Population Transfer could be of use. The UN Sub-Commission on Human Rights (consisting of experts) has recommended UN action to deal with violations of human rights in Tibet. However, so far, with the support of a number of Third World states, China has succeeded in preventing the UN Commission on Human Rights (consisting of State delegations) deciding on that issue, claiming that behind the human rights argument was really the claim of independence for Tibet.

This raises the question of how the right to external self-determination, as a claim for independence, and the issue of Tibet in terms of other human rights may be pursued in political practice.

3. Consistent Gross Violations of Human Rights and Self-Determination

There is a double relationship between human rights and the right to self-determination. On the one hand the right to self-determination is considered to be a precondition for the full enjoyment of human rights. On the other hand, the denial of human rights may justify the exercise of the right to self-determination.

The systematic violations of human rights in Tibet have to be considered as a case of consistent gross violations of human rights. Although the violations are less visible today, and the Chinese government has acknowledged abuses during the Cultural Revolution, there is still a 'consistent pattern of gross and reliably attested violations of the human rights and fundamental freedoms' (comp. ECOSOC-Res. 1503 (1970)) of Tibetans. There are two main aspects to these violations; on the one hand they do reflect the general human rights situation in China, where the legal system cannot as yet be considered to be based on the rule of law, the independence of the judiciary is not guaranteed in practice and pluralist democracy does not exist. On the other hand, the human rights of Tibetans are grossly violated as a result of systematic repression to assure the domination of the Chinese.

According to UNGA-Resolution 2625 (XXV) of 24 October 1970 (Friendly Relations Declaration) the principle of equal rights and self-determination of peoples includes the duty of every State to promote and observe human rights and fundamental freedoms. Where this duty is not being observed in regard to a distinct people on a large scale, this fact constitutes a separate ground for the people to claim exercise of its right to self-determination. In addition, where the protection of the Tibetan people as a minority nationality in China is not adequate to preserve its existence and identity and where internal self-determination or autonomy as one form of implementing the right of self-determination is not granted in good faith, the people concerned may legitimately request the right of external self-determination, ie independence.

In this context, it is observed that regional authorities appear to be tougher with Tibetans than the central authorities. The autonomous powers to restrict or adjust certain rights (Arts. 19 and 20 of the Autonomy Law of 1984) may in practice be used to curtail those rights. Therefore, as long as there are no effective political rights, internal self-determination in the form of autonomy may not be a viable alternative. The right to

self-determination, besides being an independent right, also serves the purpose of preserving human rights and dignity, as spelt out in the preamble of the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960.

4. Proposal for an Independent and Comprehensive Assessment of the Situation of Human Rights in Tibet

In view of the often diametrically opposed positions of the Chinese government and the Tibetan government-in-exile as well as human rights groups on the situation of human rights in Tibet, there is a need for an inquiry by an independent group of experts into the situation of human rights in Tibet. This mission should preferably be accepted by all sides and should examine the evidence and arguments in a comprehensive report. For this purpose, a delegation of experts would have to be allowed into Tibet for several weeks and be granted access to all places of detention as well as an opportunity to have private contacts. It should comprise members of the International Committee of the Red Cross (ICRC) and preferably be arranged by the United Nations. It could also include Tibetan and Chinese participants as well as experts from human rights NGOs. It could report to the Chinese government and the Tibetan government-in-exile first and take account of their reactions before publishing its report.

The diplomatic, parliamentary and expert missions allowed into Tibet so far were hampered by insufficient time and many restrictions which did not allow any in-depth study of the situation of human rights in Tibet. The white books published by China are little more than propaganda pamphlets which cannot impress an informed public. The distortion of facts there raises suspicions regarding the value of any information made public. There are obviously also considerable discrepancies in the assessment of the situation between the authorities in Peking and Lhasa. It should also be in the interest of China to have a common objective assessment.

Given the fact that China has adopted a new policy of allowing visits and publishing information, China has practically entered into an international public dialogue. However, the half-hearted approach so far has been rather counter-productive. China should be given to understand that it will have to accept full scrutiny if it attempts to explain its position. Furthermore, it is impossible to open Tibet economically but keep it closed politically for a longer period. As the Chinese government has opened up to some discussion on human rights in the past, its preparedness for a proper dialogue on the situation of human rights in Tibet should be further investigated particularly in view of the 1993 World Conference on Human Rights in Vienna.

ANNEX 1

Guidelines for (Legal) Delegations to China, including Tibet

Some considerations from the experience of the Austrian legal fact-finding delegation to China and Tibet in July 1992

1. Delegations or embassies facilitating their visit should try to collect all relevant information available before the visit, both from governmental and non-governmental sources. To remain on safe ground the hosts have a tendency to keep existing written information for themselves or read it out and make it available, if at all, only after the

visit or on request which is a loss of time and effort. The Chinese hosts may be very reluctant to make certain laws and regulations available. Therefore, those should be collected or at least requested in advance of actual visits.

2. Often the Chinese hosts will assemble a number of officials, each of whom wants to give an introductory statement which may contain nothing more than what can be found in publications available and is a waste of time. Therefore, it is better to ask at the outset to devote all or at least adequate time for discussion, which in most cases will be accepted.

3. As time is always too short it is important to have a focus as precise as possible on particular areas of interest. As the hosts tend to start with generalities or will sometimes try to avoid the real issues, it may be necessary to repeat questions from a different angle which can be time-consuming. This cannot be considered as impolite although Chinese officials will look less happy if they have to answer delicate questions. Therefore, questions should be put as precisely as possible and in writing and handed to the authorities in advance.

4. NGOs working in the field could be helpful in preparing lists of pertinent questions plus background information on the questions which can be used in case the hosts pretend not to understand the issue. In doing so, NGOs should be as clear as possible and prioritise their concerns.

5. To avoid misunderstandings, which might be a result of translation or be intentional, proper use of Chinese terms of art is important. If the interpreters are not trained lawyers they may not be aware of all the subtleties involved. Wherever possible, delegations should insist on bringing their own interpreters but not exclude the use of the hosts' interpreters.

6. As in all developing countries there might be a large discrepancy between laws or regulations and practice. The answers received are often only based on the legal prescriptions. Therefore, it is always necessary to ask questions on the actual implementation in practice, difficulties incurred etc. Furthermore, the speakers will usually concentrate on the rules, neglecting the exceptions which nearly always exist and which may be of greater interest than the rules themselves.

7. It is important always to remain polite so that the Chinese side does not lose its face although it may not tell the 'full truth'. However, delegations should resist the pressure of not asking too tough questions for the sake of maintaining a good atmosphere. The hosts will do everything in terms of sightseeing and social events to keep visitors busy and happy with the danger of losing time to address the real issues.

8. Whatever is left to the discretion of the hosts, they might use it for their purpose. This may start with negotiating the programme and continue in every detail so that constant vigilance and insistence is necessary. The delegations will have to convey the message that for a proper understanding they have to go into detail and put requests for pro-

gramme items as detailed as possible. For example, a visit to a monastery will not automatically include a talk with the monks, a visit to the university might not include any contact with students. These have to be asked for and agreed to, although there might be some flexibility for requests expressed after arrival or on the spot.

9. Only in exceptional cases do the hosts ask questions of visiting delegations. It might be welcome in the spirit of dialogue if delegations come with presentations and materials on their own systems and are able to invite the Chinese/Tibetan side to study the systems of the country of origin of the delegation. This would create an opportunity to follow certain issues up or to allow the Chinese/Tibetan side to understand better the concerns of the delegation. The same holds true for further visits. Also, a discussion on possible solutions to problems observed can more easily take place in the context of a return visit.

10. There is always a danger that the fact of the visit as such or certain statements of the delegation may be misused for propaganda purposes. Accordingly, delegations should refrain from courtesy statements involving political issues and be careful with interviews they give. For example, when visiting the prison (Drapchi), the Austrian delegation was told not to take any pictures but was confronted with photographers who started to take pictures of the delegation until the delegation asked them to stop. The delegation was also asked to give an interview on its findings on prison conditions, but refrained from doing so with the argument that it had not been able to speak to prisoners. The day the delegation left China, an Australian MP, who was said to have visited Tibet at the same time, was quoted in China Daily with a statement confirming almost all of the Chinese positions. Therefore, attention should be given to the composition of delegations with the need to have a strong expert element.

11. Reports of visits of delegations should be published in full or at least circulated in a summarized form to allow other delegations and NGOs active in the field to benefit from the experience and information obtained. At least, this should be done on an informal basis.

12. Do visits to China/Tibet under the restrictive conditions still make sense? Given the fact that no independent talks with Tibetans, in particular with monks or nuns, are possible during such visits and, if the delegation receives information in private, it could not disclose its source without creating a danger of persecution to its author, there is a problem of one-sidedness of information. Therefore, information obtained has to be balanced by information from outside sources, which may also play an important role in assisting preparation for such visits. Certainly, the Chinese side will benefit from such visits as delegations are not usually able to find much confirmation of severe allegations. However, visits may also show the Tibetan people that Tibet is an issue of international concern. Tibet gets some exposure which will not easily be prevented. The questions can also give an important message to the Chinese as to the areas of international concern. Foreign visitors may learn how to deal with Chinese counterparts.

Keeping in mind the limitations of such visits, all in all they can be considered as having a positive effect.

Discussion
The Denial Of Other Human Rights in Tibet

Chairperson: Ms Kim Morris
Discussion Leader: Professor Wolfgang Benedek

MORRIS: The biggest problem in monitoring the human rights situation in Tibet is the lack of access to information. This extends from monitoring prisoners to obtaining access for journalists. There is an increasing tendency on the part of the Chinese government to try to deflect the issue of the human rights abuses from the nationalist aspirations of the Tibetan people to an issue of ethnic conflict. When Asia Watch submitted its report to the UN Human Rights Sub-Commission, in its conclusion it stated that every documented case of human rights abuses was linked with the independence struggle. She also noted the tendency of the UN to settle for resolutions relating to individual human rights cases without actually addressing the underlying cause.

BENEDEK: He welcomed opening the debate up to cover the political, economic, social and cultural aspects of human rights which he had only briefly dealt with in his paper. Indeed if one takes the Universal Declaration, there is hardly any right in that document which is not infringed in the Tibetan situation. He concluded, in addition to the points made in his paper, that, given the weak implementation machinery of the Covenants, the best remedy for breaches of these human rights is international opinion. It did not make much difference if China is legally or morally bound to guarantee certain rights, because if China is simply reacting to international opinion, then it is also thereby reacting to its legal obligations.

WANGYAL: It is understandable that people have reservations about relying on the information provided by Tibetans (or the Chinese government). It is imperative that there be an independent fact-finding expedition to Tibet, not just to meet handpicked people, but actually to have free access and to be able to monitor the fact that people providing information will not be punished. Without such guarantees Tibetans will not speak.

BENEDEK: Reminded the Conference that the International Commission of Jurists found that 'genocide' had occurred in Tibet in the 1950s. Today the situation cannot be characterised as genocide in the sense of the UN Convention on Genocide. If one gives the term a wider meaning, including the elements leading to genocide, then it is certainly debatable that genocide is occurring in Tibet today. That was why he had offered the rather novel concept of 'ethnocide' to cover the situation where people are being culturally wiped out.

BELLO: Asked whether the International Committee of the Red Cross might have access to Tibet. Their particular style allows them to work in a quiet, isolated manner building trust with the authorities. Furthermore, did the Chinese know about these international conventions and the legal obligations placed on the Chinese upon ratification?

TAY: Replied that almost all dissidents have unofficial information and knowledge of these covenants and international documents. Discussions about them almost certainly contributed to the massive demonstrations in the period April to June 1989, if not

also at the end of 1986 and early 1987. In 1992-3 a number of publications containing these documents have come out in China. One volume has just been published in 1992 which includes all the major human rights documents of the 20th century. This had been compiled by a small team of young scholars working in the State Information Office of the State Council which also published the three white papers, with the knowledge of their superiors. The young editor spoke to her about the project and about the dissemination of this information within China and was pleased to give her a copy (surreptitiously), unlike his superiors who had been obstructive. She had concluded that publication will not be easily accessible to the general public, though she was able to find the book in one of the state bookstores. The experience of Professor Kamenka and her in both the Soviet Union and China was that it is less easy to find sensitive materials which are generally unavailable to the public in bigger cities than in provincial bookshops. In the last two years, China had been holding seminars and regional conferences discussing human rights. This was certainly a good sign but whether or not this would have any immediate effect is quite another matter.

BENEDEK: Referred to the evidence which had taken one and a half days to consider in the Committees on Evidence. The International Committee of the Red Cross have been severely criticised about their secrecy in Yugoslavia, where they had information about the terrible situation in the camps and did not disclose it to the public. Nevertheless they could help monitor the position in the prisons and in the camps if they would be admitted, but they need to make a request for admission.

As for NGO access, it seems that representatives have only been able to go to Tibet unofficially so there is very little access to direct information. However, there is an enormous amount of information coming from interviews with people coming out of Tibet. The relevant material from Amnesty International, Asia Watch and Tibet Information Network is very impressive. The scale of violations is well documented. There is sufficient information about the existence of the prisons and detention camps but there is no independent assessment of the number of people being held there. As for the accessibility of human rights documents, he very much doubted that there was any general awareness of them. For example, when he asked officials whether they knew about the UN standard minimum rules for the treatment of prisoners, they all said that they knew about them. However, he doubted this very much, suspecting that they were all simply pretending.

MORRIS: Pointed out that in 1992 the UN Secretary-General had received documents as a result of the resolution passed by the Sub-Commission on the situation in Tibet. She felt that Document 37 in the 1992 Commission documents was one of the best overall compilations on the detentions and executions.

EINFELD: Strongly supported Professor Benedek's proposal for a fact-finding expedition. In making any findings on fact here, the Conference would obviously need to be very careful to be correct. He recommended that the Conference itself should seek to send a fact finding delegation rather than go down the ICRC/Amnesty International path. Lawyers can state proudly that they had received facts from the Chinese which are in conflict with information tabled at the Conference. It should not frighten the Conference that this request may be refused. This in itself could be useful.

He recommended that the Conference not conclude formally the next day, as there

was no point in the Conference report gathering dust on the shelves of foreign ministries and international organisations around the world. He recommended that a date be set to reconvene the Conference in an Asian capital where the Chinese will be less likely to want to cause offence so as to ensure maximum pressure is placed on China, bearing in mind the increasing Chinese sensitivity to international pressure.

The Conference should certainly state, if it be the fact, that there is inadequate evidence to suggest that there has been genocide committed in accordance with the definition of the Genocide Convention, and it should not be hesitant to say, if indeed it be the fact, that there is evidence that many Tibetans have died because of their ethnicity, not as a result of any offence against Chinese law. Whether or not use is made of Professor Benedek's term 'ethnocide' or not, the Conference should nevertheless assert that offences akin to genocide – if it is the fact – have been committed against the Tibetan people. He used as an example the issue that governments today escape responsibility in respect of what ordinary people would call 'refugees' on the basis that the 1951 Convention on Refugees does not expressly cover them. This does very little to help in the Yugoslav and other conflicts around the world. In his capacity as an Ambassador for Refugees for a large number of NGOs, he is sickened to tell some of these people suffering in small camps, often without shelter or food, that they are not legally defined as 'refugees' and that they are in fact only 'economic refugees'. What they want quite simply is to go home and raise their children in their own societies.

As for the teaching of human rights, he suggested that not many countries can hold their heads up here. Most law schools ignore the subject. This problem is not limited to Third World countries under oppression.

BELLO: Drew Justice Einfeld's attention to the fact that those who do not always fit into the 1951 Convention on Refugees usually do fit into the 1967 Convention which covers refugees under the United Nations High Commission For Refugees (UNHCR). There is a big distinction between those suffering economic deprivation as a consequence of internal conflict and those who are forced out at the point of a gun.

KELLER: From his experiences in Hong Kong whilst the Chinese are often not so worried about legal niceties, they are however very skilful in legal matters when it comes to diplomatic activities.

VAN WALT: Cautioned the Conference with regard to Justice Enfield's comments on the number of deaths because of Tibetan ethnicity. The Chinese authorities would say that these Tibetans died because they did offend the laws of China, as 'counter-revolutionary activities' are an offence under Chinese law. It was hard to be precise about numbers. But those talking to Tibetans either inside or outside Tibet will agree that there is a tremendous amount of evidence that almost every family in Tibet has lost at least one, and often several, members as a result of the invasion. On any basis this would be at least 1.2 million. Obviously a very large proportion of the Tibetan population has died as a result of the invasion and occupation of Tibet.

CLOSING REMARKS

ENNALS: This brings to a close this Conference. We go out now into the cold and rain of a wet London. As we go out stimulated by the environment and by the friend-

ships that we have made in this room, we should take our minds by the magic of that great gift - our intellects - to a cold plateau a way distant. We should think of the people there who have been quite unaware of our meeting here in London. We should think of them with our hearts as well as our minds. We should think of freedom and of our obligation as free people to make our contributions in our own short journeys through life. We can faithfully say to ourselves, to our conscience and to each other that this is something which we have done in the last five days and in the time of preparation for the Conference. Not in any hatred or animosity to the great Chinese people but with our feeling of affection, respect and goodwill for the people of Tibet.

At the end of the church service, had we gone to St Paul's this morning, we would have reached the point where the bishop at the end of all of his homilies would say, 'Go in peace'. So I say to you, 'Go in peace'.

PART IV - CONCLUSIONS

CHAPTER 10

CONCLUDING STATEMENT BY THE CONFERENCE OF INTERNATIONAL LAWYERS ON ISSUES RELATING TO SELF-DETERMINATION AND INDEPENDENCE FOR TIBET 'THE LONDON STATEMENT ON TIBET'

London Conference

1.1 Between 6 and 10 January 1993, in London, a number of lawyers from many countries, with expertise in international law, met to consider issues relating to the exercise of the right to self-determination by the people of Tibet. Also present during the conference were a number of officials and observers. The conference was preceded and accompanied by the distribution of papers written by the participants. It was conducted with a high measure of dialogue and a full and free exchange of views designed to elucidate the matters under consideration. Chief among these was the right of self-determination for the people of Tibet under international law, the status of Tibet, population transfer to and from Tibet as affecting the exercise of the right to self-determination of the people of Tibet and various issues concerning departures from basic human rights, including cultural and social rights, affecting the people of Tibet as a whole and individual Tibetans.

1.2 The participants in the conference are set out in Part I of the Report.

1.3 The programme of the conference is set out in Appendix A of the Report.

Invitation to The People's Republic of China

2.1 Prior to the conference, the chairman (Justice Michael Kirby, Australia) wrote to the Ambassador of the People's Republic of China (PRC) in London inviting his participation in the conference or the attendance of a representative or expert nominated by the PRC able to express the Chinese viewpoint on the matters to be discussed, which were described to the Ambassador.

2.2 The Ambassador, by letter, declined this invitation. His letter is set out in Appendix B of the Report. As appears, he insisted that the conference was an interference in the domestic affairs of the PRC and should be cancelled. A representative of the Chinese Embassy in Canberra, Australia, called on the chairman to press this request. However, it was declined and, to the contrary, the chairman urged again the participation of a nominated expert able to express the Chinese viewpoint.

2.3 Notwithstanding the refusal of the PRC to participate in the conference, the Chinese Embassy in Australia provided to the conference a number of booklets and a statement setting out the PRC's position on Tibetan questions. These booklets were tabled at the

conference. They were all available to participants and were referred to from time to time. A list of the booklets is set out in Chapter 2 of the Report.

2.4 Amongst the booklets in Chapter 2 of the Report is the White Paper 'Tibet - Its Ownership and Human Rights Situation', published by the Information Office of the State Council of the People's Republic of China. Copies of that White Paper were provided to participants in advance of the conference. Also provided to all participants was the statement summarizing the position of the PRC, made available to the chairman.

2.5 The participants welcomed the involvement of Tibetans in the conference. They also welcomed the provision of the White Paper, the statement and other documents in Chapter 2 of the Report as an indication of the increasing sensitivity of the PRC to international opinion about the right of peoples to self-determination and about departures from human rights norms established by international law. In particular, the participants noted an increased willingness on the part of the PRC to express and defend its position. Although this would be better achieved by face to face contact between experts and representatives of the PRC and the Tibetan people, the provision of a written argument was seen by the participants in this conference as a distinct step in the right direction. It was therefore welcomed. Out of dialogue may emerge an understanding of competing and different points of view. It may lead in time to reconciliation based upon international law and respect for the friendly relations between states and peoples.

2.6 In the course of their deliberations and in reaching the conclusions stated below, the participants have taken into account the expressions of the Chinese viewpoints and distributed documentation. The participants approached the issues under consideration rigorously, with neutrality and professionalism, basing their conclusions only upon clearly established evidence of facts and clearly established principles of international law.

Evidentiary Committees

3.1 Before the conference, planning was undertaken in various countries to permit the gathering and synthesis of evidentiary material which could be placed before the participants upon the basis of which they could express their conclusions.

3.2 The first two days of the conference were devoted to the work of committees dealing with evidence relevant to what may generically be described as self-determination issues (Committee A) and human rights issues (Committee B). On each subject discussed within the committees the participants had papers setting out the position and arguments of the PRC and the opposing views, which included in many cases the views of Tibetans.

3.3 At the outset of the plenary sessions of the conference the respective chairman of each committee (Judge Grogan (A) and Justice Einfeld (B)) presented reports on the principal conclusions reached by each committee. During the plenary sessions which followed, frequent reference was made to the respective conclusions of the two committees. Those conclusions form part of the record of the conference and are set out in Chapter 3 of the Report.

3.4 In addition to statements from Tibetan participants and observers, the participants had available to them a vast collection of literature which has earlier examined self-determination and human rights issues relevant to Tibet. This has been taken into

account by the participants in reaching their conclusions. This literature is listed in Chapter 2 of the Report.

3.5 The conclusions of the conference were reached by consensus of the participants.

Tibetans as a people entitled to the peoples' right to self-determination

4.1 In international law there has been a controversy about 'peoples' rights' and about who constitute a 'people' for the exercise of such rights in international law, which binds all states and peoples.

4.2 Nevertheless it is clear that international law recognises the peoples' right to self-determination. The principle of self-determination of peoples is expressly recognised in the United Nations Charter. The 'right of all peoples to self-determination' is also recognised in the International Covenants on Human Rights and in numerous other international instruments and writings.

Manifestations of the exercise of the peoples' right to self-determination - peaceful and non-peaceful - can be seen in all parts of the world at this time. Accordingly, if the Tibetan people are a 'people' for the purposes of the peoples' right to self-determination, then, within the context of that right, they are entitled, by international law, to exercise the right to self-determination, which belongs to them.

4.3 There is no universally accepted definition of who are a 'people' entitled by international law to enjoy the peoples' right to self-determination recognised by that law. However, a useful description of the criteria commonly taken into account in deciding that a group of individuals is a 'people' for this purpose is contained in the conclusion of the UNESCO meeting of Experts on Further Study of the Rights of Peoples (Paris February 1990). The conclusions referred to the following characteristics:

'A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

1. A group of individual human beings who enjoy some or all of the following common features:

- (a) A common historical tradition;
- (b) Racial or ethnic identity;
- (c) Cultural homogeneity;
- (d) Linguistic unity;
- (e) Religious or ideological affinity;
- (f) Territorial connection;
- (g) Common economic life.

2. The group must be of a certain number who need not be large (eg the people of micro States) but must be more than a mere association of individuals within a State;

3. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness; and

4. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.'

4.4 Various other criteria have been suggested from time to time, and were discussed during the conference. These include economic viability, a measure of international

recognition, willingness to submit to a referendum to ascertain the will of the 'people' involved and willingness to respect fundamental human rights and peoples' rights. However, for the purposes of these conclusions, the participants accepted the UNESCO Committee's description.

4.5 By the application of those criteria, the participants concluded that the Tibetan people satisfied the requirements and are a 'people' for international law purposes. Indeed, it was noted that, to some extent at least, by the constitution, legislation and practice of the PRC, the Tibetan people have been treated as separate and distinct within the Chinese state. Under the law of the PRC the 'autonomy' of the 'Tibet Autonomous Region' is based upon the distinct nationality of the Tibetan people.

4.6 Furthermore, three Resolutions of the United Nations General Assembly (Nos. 1353, 1723 and 2079) have recognised the status of Tibetans as a 'people'. Resolution No. 1723 (reaffirmed by Resolution No. 2079) expressly refers to the right of the Tibetan people to self-determination.

4.7 The PRC and its organs of state power which exercise *de facto* control over the territory of Tibet deny the people of Tibet the exercise of their right to self-determination.

4.8 The PRC, by its publications and statements, denies both the entitlement to and claim for self-determination by the people of Tibet. These denials are unconvincing. So far as the *entitlement* is concerned, this rests upon international law once it is established that the Tibetans are a 'people' for international law purposes. It is not for the state apparatus of the PRC, or any other nation or state, to deny the Tibetan people's right to self-determination. This belongs to the Tibetan people, not to a nation or state.

4.9 So far as the denial of the *claim* to self-determination is concerned, the PRC's assertion that 'separatism' is the wish of no more than a handful of Tibetans, members of the Dalai Lama's 'clique', would be more credible if it were submitted to the freely expressed wishes of the Tibetan people – by referendum or other appropriate process. According to the evidence, there is no such facility of free expression on the part of the Tibetan people.

4.10 The preponderance of evidence suggests the abiding desire of the Tibetan people for:

- * the free return from exile of the Dalai Lama;
- * the end of Chinese control;
- * the cessation of human rights abuses;
- * the establishment of an independent Tibetan state.

4.11 The participants analysed various legal means and alternative structures by which these desires could legitimately be achieved. The participants considered the principles of national unity and territorial integrity of states. However, they concluded that these principles are compatible, in the particular case of Tibet and having regard to its long history of separate existence, with their exercise of the right to self-determination. They therefore concluded that the Tibetan people are entitled, in the manner and to the extent allowed by international law, to the exercise of the right to self-determination.

Tibet as an independent state under occupation

5.1 It is important for the issue of self-determination and also for other purposes of international law to consider the status of Tibet prior to 1949-50 when it was entered by forces of the People's Liberation Army (PLA) of the PRC.

5.2 According to the PRC, the PLA in 1949-50 'peacefully liberated' Tibet, with the concurrence of its people and institutions restoring them to the fully integrated status which the PRC claims had existed for centuries prior to the temporary weakness of China during the period 1911-1950 before the establishment of the PRC.

5.3 According to the Tibetan Government in Exile, the PLA is an army of occupation. They entered Tibet which was then an independent state for the purposes of international law. They thereby committed an act of aggression. They have remained ever since in occupation of Tibet against the wishes of its people. They have thereby breached international law and, as one consequence, have continued to deny to the people of the sovereign state of Tibet the right to self-determination formerly enjoyed by Tibet prior to the act of aggression. Much material and evidence placed before the participants supported this view.

5.4 As has recently been acknowledged by the *Verdict* of the Permanent Tribunal of Peoples (Session on Tibet, Strasbourg, November 1992) there are indications which support - and some which cast doubt upon - the claim that Tibet was, before 1949-50 an independent state for the purposes of international law.

5.5 By consensus, the participants of this conference reached the conclusion that the attributes of sovereignty were sufficiently present at that time, in the context of a nation such as Tibet and given its history, to sustain the Tibetan argument as the preferable one. In doing so they took fully into account the arguments of the PRC concerning the historical relationship between China and Tibet.

5.6 Two considerations of particular importance reinforce the foregoing conclusions:

- * The relationship of a tributary - sometimes contended for by China - necessarily implies the separate identities of the tributary and the dominant state. It is therefore inconsistent with a claim that Tibet was an integral part of China in the period prior to 1911; and

- * The fact that, upon the establishment of the Republic of China, Tibet was invited to 'join' the new republic. It was not asserted - at least until the military action of 1949-50 and the later military action of 1959 - that Tibet was already part of the Republic. The invitation to join the Republic was an acknowledgement by the Republic of China that Tibet was not, as such, a part of the Republic and would need an act of self-determination to join it.

5.7 No such act of self-determination has ever occurred. On the contrary, by reason of the act of aggression and military occupation the Tibetan people's right to the exercise of self-determination has been denied. Since the military action of 1949-50, Tibet has been under the alien occupation and domination of the PRC and has been administered with the characteristics of an oppressive colonial administration.

Tibetan territory and population transfer

6.1 The participants concluded that part of the traditional territory of Tibet has been purportedly included in neighbouring provinces of China. The map of Tibet has been redrawn by the PRC. The boundaries of Tibet certainly extend beyond the 'Tibetan Autonomous Region'. Without an act of self-determination on the part of the Tibetan people involved, this alteration of their traditional territory does not conform to international law.

6.2 Following the PRC's military action of 1949-50 significant settlements of non-Tibetans from China have occurred in the traditional territory of Tibet without the free consent of the Tibetan people. These settlements have been actively encouraged by the policies of the PRC. According to the evidence, this has had, and is having, serious consequences for Tibetan culture, religion, institutions and national identity. It poses a serious threat to the survival of the Tibetan people. There are other serious consequences for the environment.

6.3 To the extent at least that such population transfers have occurred for the purpose, or with the effect, of diminishing the exercise by the Tibetan people of their right to self-determination and of other basic rights belonging to them by international law, such population transfers do not conform to international law. They should cease at once. Peaceful and lawful steps should be taken to reverse them with due regard to the wishes and needs of all the peoples concerned.

Abuses of individual human rights

7.1 The evidence before the participants demonstrates that there is a consistent pattern of serious violations of universally recognised human rights in Tibet.

7.2 The serious abuses include the following;

- (1) Interference in the practice and teaching of Tibetan Buddhism and restrictions on freedom of religion;
- (2) A lack of due process of law;
- (3) A lack of an independent judiciary;
- (4) Loosely defined and oppressively enforced criminal and security laws - including punishment for such offences as:
 - (i) The writing of letters to the United Nations;
 - (ii) The collection of the names of detainees;
 - (iii) Publication of documents including the translation into the Tibetan language of the *Universal Declaration of Human Rights*;
 - (iv) Teaching 'reactionary' songs;
 - (v) Possession of a Tibetan flag;
- (5) Denial of the rights of freedom of association and freedom of assembly;
- (6) Torture of detainees and prisoners and the practice of cruel punishments in a harsh penal system;
- (7) Oppressive censorship, obstruction of the free flow of information and undue limitations on freedom of expression;
- (8) Limitations upon free movement both within and outside Tibet;
- (9) Forced sterilizations and unconsensual abortions; and
- (10) Unequal access to, and discrimination in, housing, education, health, employment, political office and cultural rights.

7.3 Such violations of fundamental human rights are contrary to international law. The PRC is the state responsible for such violations. The violations should cease forthwith.

7.4 Harsh violations of fundamental human rights typically accompany attempts to deny a people the exercise of their right to self-determination. Such is the case in Tibet. In this way, the denial of basic human rights is indissolubly linked to the denial of the right to self-determination. Only by the establishment of conditions in which the latter right may be freely exercised will the fundamental causes of grave human rights violations be removed.

7.5 The PRC is required by international law to ensure the respect of the fundamental human rights of the Tibetan people. It cannot evade that legal requirement by an appeal to its domestic jurisdiction. On the contrary, the violation of fundamental human rights is an additional justification for the demand by the Tibetan people for the exercise of their right to self-determination.

(The Recommendations, which formed part of the London Statement on Tibet are set out in Chapter 11 of the Report)

CHAPTER 11

RECOMMENDATIONS

This Conference:

- 1 Urgently invites the United Nations General Assembly to pass a resolution renewing its call for the respect for human rights in Tibet, in particular, renewing its call for the implementation of the right to self-determination of the Tibetan people as contained in its Resolutions numbered 1723 and 2079;
- 2 Recalling Resolution 1991/10 of the Subcommission on Prevention of Discrimination and Protection of Minorities, urges the United Nations Commission on Human Rights to appoint a Special Rapporteur on Tibet as a matter of urgent priority;
- 3 With full realisation of the unique position of the Tibetan people and drawing on its experience from a study of the case of Tibet:
 - a Calls on the United Nations General Assembly to expand the mandate of the Special Committee on Decolonization to include Tibet in its mandate and to include the regular review of the situations of distinct peoples within existing states;
 - b Requests the International Law Commission to continue its work on a draft code of crimes against peace and security of mankind;
 - c Urges the International Bank for Reconstruction and Development (World Bank) and other multilateral and bilateral financial institutions not to fund projects supporting population transfer of peoples;
 - d Suggests the study of an enlarged jurisdiction of the International Court of Justice relevant to the right to self-determination;
- 4 Requests the relevant organs of the United Nations and those participating in the World Conference on Human Rights to ensure that the issue of the rights of peoples is included on the agenda of the World Conference on Human Rights in Vienna in June 1993;
- 5 Requests the United Nations Sustainable Development Commission at its first session to consider the problem of deforestation having regard to evidence of the special problem of deforestation in Tibet;
- 6 Requests the International Commission of Jurists to conduct a new high level mission to Tibet by independent experts of unquestioned integrity. The Conference

requests the Government of the People's Republic of China to receive and cooperate with such a mission;

7 Endorses the proposals for investigation and dialogue proposed by the Permanent Tribunal of Peoples in its *Verdict* (1992) including the proposal for an international conference on Tibet to be convened in 1993-1994;

8 Requests the Government of the People's Republic of China, at the earliest possible time, to extend an invitation to the International Committee of the Red Cross for the purpose of inspecting places in which Tibetan persons are held under detention;

9 Calls upon the Government of the People's Republic of China and the Tibetan Government in Exile, without further delay and without conditions, to commence genuine negotiations to facilitate the exercise of the Tibetan people's right to self-determination;

10 Calls on governments, in their bilateral relations with the People's Republic of China and in multilateral fora, to take up the question of Tibet, in particular the implementation of the Tibetan people's right to self-determination;

11 Directs that these conclusions and recommendations be drawn to the attention of

- * the Secretary-General of the United Nations;
- * the Government of the People's Republic of China;
- * the Tibetan Government in Exile;
- * other governments; and
- * relevant inter-governmental and non-governmental organisations;

so that the findings and recommendations of this Conference can be acted upon without delay.

PART V - APPENDICES

APPENDIX A

CONFERENCE PROGRAMME

Wednesday 6 January

- 1430 Committee on Evidence meeting in plenary session to consider evidence
Chairperson: Judge Peter Grogan
Oral statements from experts, special advisers and Tibetan participants
- 1900 Dinner
- 2030 Additional time for Participants to read all papers on evidence written for the Conference

Thursday 7 January

- 0845 Committees on Evidence meeting in two committees to consider all evidence
Committee A - Chairperson: Judge Peter Grogan
- considering issues of the history, territory and status of Tibet; Tibetans as a distinct people; population transfer and its effects
Committee B - Chairperson: Justice Marcus Einfeld
- considering political, economic, social and cultural questions affecting the right of self-determination for the Tibetan people; issues of individual human rights in Tibet
- 1300 Lunch
- 1415 Committees on Evidence reconvene
- 1915 Dinner
- 2100 Committees on Evidence reconvene

Friday 8 January

- 0845 Conference commences
Opening remarks: Justice Michael Kirby
Summary of Conclusions of the Committees on Evidence: Judge Peter Grogan and Justice Marcus Einfeld
- 0945 Topic 1: Tibetans as a Distinct People
Chairperson: Justice Michael Kirby
Speaker: Professor Emmanuel Bello
Discussion
- 1100 Topic 2: The Extent of International Human Rights Law
Chairperson: Professor James Crawford
Speaker: Professor Gerhard Erasmus
Discussion
- 1300 Lunch
- 1415 Topic 3: Human Rights within the National Law of the PRC
Chairperson: Professor Alice Tay
Speaker: Perry Keller
Discussion
- 1600 Topic 4: Content of the Right of Self-Determination
Chairperson: Dr Carlson Anyangwe
Speakers: Professor Howard Berman, Professor Richard Falk
Discussion
- 1900 Dinner

Saturday 9 January

- 0845 Topic 5: Denial of the Right of Self-Determination to the Tibetan People
Chairperson: Professor Hurst Hannum
Speakers: Andrew Dulaney, Dr Karl Josef Partsch
Discussion
- 1300 Lunch
- 1415 Topic 6: Denial of Other Human Rights
Chairperson: Katrina Morris
Speaker: Professor Wolfgang Benedek
Discussion
- 1600 Topic 7: The Way Forward concerning Self-Determination and Independence for the Tibetan People
Chairperson: Justice Michael Kirby
Discussion
- 1930 Dinner

Sunday 10 January

- 0845 Topic 7 continued
Chairpersons: Justice Michael Kirby
Professor Howard Berman
- 1200 Concluding comments
Chairperson: Justice Michael Kirby
- 1300 Lunch

APPENDIX B

COMMUNICATION BETWEEN THE CHAIRPERSON OF THE CONFERENCE AND THE CHINESE GOVERNMENT



26 November 1992

His Excellency Ma Yuizhen
Ambassador
Embassy of the Peoples' Republic of China
49-51 Portland Place
London W1N 3AH
UNITED KINGDOM

Your Excellency

CONFERENCE OF INTERNATIONAL LAWYERS ON ISSUES RELATING TO SELF-DETERMINATION AND INDEPENDENCE FOR THE TIBETAN PEOPLE

As Chairman of the International Commission of Jurists, we are co-sponsoring (with the All Party Parliamentary Group for Tibet) the above conference which is due to take place in London on 8-10 January 1993.

The aim of this conference is to examine the various issues relating to the Tibetan people in the light of international law. We have acceptances from thirty-one international lawyers from Africa, Asia, Australia, the United States, Europe and the United Kingdom, who have agreed to participate.

This letter is to invite your Excellency's participation in the above conference. If it is not possible for you to attend, perhaps you could nominate another diplomat to participate. As the meeting is one of international lawyers, it is very important that a number of points of view be presented for assessment. For this reason we would also like to use your 'White Paper' on Tibet as evidence to be assessed during the conference. Would you, therefore, be able to send us thirty copies of the White Paper in English, and one in Chinese to:

Professor John Heath
27 Chalcot Square
London NW1

I look forward to your early response and will be happy to send you further information if required. For convenience I would suggest that your response to this letter should be sent to me c/- Professor Heath.

Yours sincerely

MICHAEL KIRBY

The Hon Justice Michael Kirby AC CMG
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中华人民共和国驻英国大使馆
Embassy of the People's Republic of China

49-51 Portland Place, London W1N 3AH
Telephone: 071-6365726

Mr. Michael Kirby
Chairman of International
Commission of Jurists
GPO Box 3 Sydney
NSW 20001
Australia DX 829 Sydney

14 December, 1992

Dear Sir,

In response to your letter dated 26 November 1992, the Embassy would like to state as follows:

As is known to all, Tibet has been an inalienable part of China's sacred territory since the 13th century. The Tibetan people are a member of the big family of the Chinese nation. This is a fact recognized by governments the world over. The so called "Tibetan Question" has been fabricated by a very small number of separatists in an attempt to split Tibet from China. Some people, in disregard of the history and reality that Tibet has been a part of China, raise the issue of "self-determination for the Tibetan people" and preach "the independence of Tibet" with the ulterior motives of interfering in China's internal affairs. This can by no means be tolerated by the Chinese Government and the whole Chinese people including the people of Tibet. China will not be represented at the Conference of International Lawyers on Issues Relating to Self-Determination and Independence for the Tibetan People, as the theme of the conference violates the universally-acknowledged basic norms governing international relations, namely, respect for the sovereignty and territorial integrity of other countries. And we strongly insist that arrangements for this conference be cancelled.

Embassy of the People's Republic
of China in the U.K.



Enclosures: "Tibet-Its Ownership and
Human Rights Situation" (one copy)
"Human Rights in China " (one copy)



Court of Appeal
Supreme Court
London

13 January 1993

His Excellency Ma Yuizhen
Ambassador
Embassy of the People's Republic of China
49-51 Portland Place
London W1N 3AE
United Kingdom

Your Excellency

**CONFERENCE OF INTERNATIONAL LAWYERS ON ISSUES
RELATING TO SELF-DETERMINATION AND INDEPENDENCE FOR
TIBET 6-10 January 1993**

Thank you for the letter from your Embassy dated 14 December. It was carefully considered by the Organising Committee and it was decided not to accede to your request.

All of those who attended the conference were very disappointed that no representative from the People's Republic of China was present, to assist with the evidence and to participate in the rigorous consideration of the issues involved, which were undertaken with neutrality and professionalism. However, all the documents received from the PRC were made available to participants, and in all the principal papers submitted as evidence there were extensive references and citations of 'China's position' on the matters being considered.

His Honour Judge Peter Grogan was Chairman of one Committee to examine the evidence and to hear witnesses, and the Hon Justice Marcus Einfeld was Chairman of a second Committee.

The submitted papers and the discussion of international law considered all relevant aspects of the law and its practical application, with specific reference to Tibet.

At the end of the conference there was a strongly expressed desire that a small number of those present should meet in Beijing with a similar representation from the People's Republic of China to consider these matters professionally in an atmosphere of friendship and good faith. We think that such a meeting would help to clarify issues and prevent any misunderstanding. We would ask only for a place where we could meet with such representatives, and for your goodwill and cooperation in making this possible. The visiting lawyers would of course meet their own expenses.

We do hope that you will respond positively to this letter.

Yours sincerely

MICHAEL KIRBY

APPENDIX C

REPORTS ON EVIDENCE CONSIDERED BY THE COMMITTEES ON EVIDENCE

- 1 *Self-Determination and the Tibetan People*
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REPORT ON EVIDENCE

1 Self-Determination and the Tibetan People

Eugene Kamenka and Alice E. S. Tay

1 Personal Introduction, Mostly Philosophical

The distinction or relationship between a ruler, a nation, a religion, a people and actual people has a long, complex and varied history. Past and present states have been forged by force and fraud as much as by ethnic origin, language, national sentiment, religious division and common aspirations. What has been decisive in one case, or one time, has been unimportant in another. Historically, Jews, Vietnamese, Tibetans, Kurds, Cathars, Scots, Irish and many others have resisted - sometimes successfully, sometimes unsuccessfully - foreign domination and attempted colonisation or 'integration' into a wider whole. The notion of self-determination thus faces an initial difficulty - the definition of the 'self' which is the bearer of a so-called collective right is neither self-evident nor uncontested. It is not immune from historical change or from remarkable revivals - as in Israel - of earlier and remembered nationhood.

The political notions of a nation, of national self-determination and of inalienable human and national rights, reached their most coherent and most convincing form when tied to the existence of physical individuals, to the changeover in political life and organisation from the sovereignty of a ruler to the sovereignty of the people or just people, from the concept of subject to that of citizen. Even then, 'nation' as to the people that constituted it was not a primeval, unchanging racial and historical concept. A nation, the 19th century quip has it, is a group of people held together by a common error about their ancestry and a common dislike of their neighbours. Or, as Renan put it, the existence of a nation is a daily plebiscite. Nationalists in the late 19th century and in the early 20th often thought that nations were given, as a biological fact. As a result, nationalism came to take on some markedly illiberal, chauvinistic, anti-human and anti-democratic forms that would have horrified Herder, Michelet, Mazzini. In some countries it is doing so again.

In considering the perfectly justified demand of many people and peoples in the former Soviet Union, in the People's Republic of China, in Yugoslavia, Africa and elsewhere for self-determination culturally, economically and ultimately politically, we should not link this with the suspect and in many ways dangerous concept of group or collective rights, of racial memory, of ethnic solidarity, as that from which all outlooks and claims spring. Such concepts have brought and will bring more evil than good into the world, even if they have often also been a necessary step in the development of culture and civilisation and of the development of human dignity and (limited) fellow-feeling. A nation is not an end in itself; a human being is.

We are, however, witnessing a growing consensus that colonial domination and imperial rule represent a historical past no longer suited to the dignity and welfare of the varied populations that have had this forced upon them. The Soviet Union, even within its own borders, was clearly the heir of a Russian Empire expanded at a remarkable rate absorbing non-Russian populations of all kinds, by continued force and repression whenever necessary. That empire has now collapsed together with, or soon after, the collapse of other great empires: the British, the Dutch, the French, the Ottoman, the Austro-Hungarian and its predecessors the Holy Roman, etc etc. Is China an empire rather than a nation-state? The question is a difficult one and the Chinese continue to beg the question by describing the non-Han nationalities as 'minority nationalities'. The problem is made even more difficult by the fact that China sees itself as a culture even more than as a nation-state, even if it no longer claims a senior role as a liberator of oppressed peoples (except in Tibet).

Against the elevation of group or collective rights as a special and independent form of human rights - some have said a third generation of rights - let us say, rather, that all right-claims are to be justified by and grounded in the proposition that the condition claimed is a necessary, vital and integral part of the dignity, development and wellbeing of individual human-beings in a given context.

Human rights proper, such as the right not to be tortured, not to have one's language or culture forbidden or suppressed, not to be discriminated against on grounds irrelevant to the wider human goals sought, are indefeasible. Other rights, such as welfare rights or political autonomy, though highly desirable, are context-dependent in scale and in scope. Rousseau, who was no nationalist, believed that a political community could not function democratically if it did not share a common language - in the wider, not the purely lin-

guistic sense - in which it was able to appeal to common traditions, aspirations and concerns. This rightly sees language, as Vico saw it, as more than a neutral tool. It sees it as a repository of culture, as a basis for the fellow-feeling that creates a community. The Swiss deal with their common political concerns in four languages, but most of them learn each other's as well. Rousseau advised Poland, in the interests of political harmony and secure democratic development, to shorten its borders. On the plane from Urumqi to Kashgar, the Uygur member of our Australian Human Rights in China Delegation, making its second visit, spoke to a Han Chinese who had worked and done business in Urumqi for 30 years. 'Ah,' said our (Australian) Uygur, 'then you speak Uygur.' 'Not a word,' came the unembarrassed reply. There were no Uygur stewards and hostesses on the flight, very few Uygur passengers, and all announcements were in Mandarin and English only. Signs in the aircraft were in Russian and Chinese - not in Arabic.

The Chinese of the PRC have learnt, in recent years, to make reasonable neighbours to established powers. They are still bad masters: arrogant, chauvinist, convinced of the superiority not so much of Communism as of Chinese civilisation, Chinese work habits, Chinese culture. Chinese officials have long seen themselves as holding China together and the educated are all too well aware of the fact that China has not been a single or unitary state for more than half of its history - not unitary in spoken language, in ethnic origin, in local religion and traditions.

The honourable Chinese exceptions to this cultural chauvinism only highlight the strength of the long-standing dominant trend. Individuals and the people constituted by those individuals are not free if they are treated with contempt by those who have the effective power over their lives. This we can say from personal observation is true in Xinjiang and even more in Tibet. The Chinese themselves came to hate the Qing Dynasty because it treated Han people as subject and the Manchus and allied tribes such as the Mongols, as masters. All this is more than a denial of group or collective rights; it is a most fundamental denial of human dignity. The denial has to be maintained, constantly, against rebellions and uprisings, by force, by discrimination, today by importing Han Chinese to do the ruling and policing and by discriminating in a host of economic and political ways against 'natives' who do not show loyalty. If they do, they thereby earn the hostility and contempt of the vast majority of their fellows. It is a situation perfectly familiar to students of both Indian and African and political development in the modern world. It made Assyrian rulers and the Assyrian Empire reviled in the Ancient World, as they ruthlessly transported captive populations and destroyed whole nationalities. It is not, or not just, a denial of so-called group rights; it is a denial of human dignity and individuality. It can verge into genocide - as it also did with the European conquests of Australia and North and South America.

The Russian liberal philosopher Vladimir Soloviev - a Great Russian (as the language of the time had it, meaning he was no Ukrainian, Byelorussian or Balt, no member of an ethnic minority or colonial nation) saw this clearly. Himself no radical, he included in his work 'The Justification of the Good: An Essay in Moral Philosophy' (St Petersburg, 1897) a chapter on 'The National Question from the Moral Point of View'. There he wrote:

"Let it be granted that the immediate object of the moral relation is the individual person. But one of the essential peculiarities of that person - the direct continuation and expansion of his individual character - is his nationality (in the positive sense of character, type and creative power). This is not merely a physical but also a psychological and moral fact. At the stage of development that humanity has now reached, the fact of belonging to a given nationality is to a certain extent confirmed by the individual's self-conscious will. Thus nationality is an inner, inseparable property of the person - something very dear and close to him. It is impossible to stand in a moral relation to this person without recognising the existence of what is so important. The moral principle does not allow us to transform a concrete person, a living man [or woman] with his [or her] inseparable and essential national characteristics, into an empty abstract subject with all his determining peculiarities left out. If we are to recognise the inner dignity of the particular man, this obligation extends to all positive characteristics with which he connects his dignity; if we love a man we must love his nation, which he loves and from which he does not separate himself".

When the Great Powers, in exchange for guaranteeing Romania's independence from the Ottoman Divan, insisted that the rights of all minorities in that new state be respected by its future government, they were agreeing with Soloviev and expressing a growing international concern with human rights as the proper foundation for citizenship and a self-determined policy. [We are proud to say that the first Professor of Jurisprudence and International Law in the University of Sydney, Professor Julius Stone - Professor Crawford's predecessor and Professor Tay's, since Stone's chair was divided into two chairs on his retirement - wrote his first book, based on his D Phil thesis in Oxford, on that topic.] The Chinese in very recent years, since the events of Tienanmen Square, have come to recognise that there is a genuine international concern with human rights which does not represent mere meddling into the internal affairs of other nations. The dia-

logue between Australia and China on this question, initiated by the Australian Minister of Foreign Affairs and Trade and the Foreign Ministry of the People's Republic of China, and strengthened by the two visits paid by the Australian Delegation on Human Rights in China in 1991 and 1992, bears witness to that. There have been similar visits from other countries. But those who were on the Australian Delegation report more concern on the Chinese side with how things look to the foreigner than with the actual dignity and autonomy of non-Han nationalities within the PRC or of Han dissidents. This is especially so in the case of Tibet, though the situation in what used to be known as [Chinese] East Turkestan is equally explosive. The extraordinary sensitivity the Chinese initially displayed to any querying of their role in Tibet, to any attempt to cite accounts of Tibetan aspirations not gathered from them or their puppets, to any suggestion that the Dalai Lama had support among the Tibetan people or that a plebiscite in Tibet might be a desirable development, bears witness to Chinese consciousness of weakness in their position that Tibet is a genuinely autonomous region that prefers Chinese rule to its past 'feudal' traditions - as though those were exclusive alternatives.

2 The Relevance of History

There are many present at these 1993 hearings in London sponsored by the International Commission of Jurists and the All Party Parliamentary Group for Tibet who are much better equipped to put before you the history, the culture and the legal status of Tibet through the centuries. Many of you will be aware of the detailed and to us convincing study by Michael C. van Walt van Praag 'The Status of Tibet - History, Rights and Prospects in International Law' published in London in 1987. Even though the author often seeks to present Tibetan conditions and its past political system in the most favourable light, it is obvious to anyone who looks at that history that Tibetans are as much a people as the English or the French or the Germans - whose borders, ethnic composition and form and status of sovereignty have varied even more than Tibet's, over the centuries. Michael van Praag argues that throughout its history Tibet possessed the essential attributes of statehood, never ceased to be a separate entity, was never an integral part of any other state and though subjected to invasion by outsiders and to claims of tribute and overlordship, always maintained its integrity. The Chinese, most recently through the Information Office of the State Council of the PRC in the form of a White Paper entitled 'Tibet - Its Ownership and the Human Rights Situation', published in September 1992, argue the opposite. They stress kinship alliances between the royal families in the two countries since the Tang Dynasty - a proposition that would make England essentially French and then German. More seriously, they emphasise the invasion of both China and Tibet by the Mongols in the 13th century and claim that this brought Tibet into the Empire of the Yuan Dynasty. The Ming and Qing, it is claimed, inherited the right to rule Tibet and exercised it. The Nationalist Government formed after the Chinese Revolution of 1911 continued to claim Tibet as part of China and important Tibetan leaders admittedly preferred status in China to British or Indian intervention. But these, let us say frankly, are not bases on which serious persons claim one people's right to rule another or justify the expanded boundaries of states. When the Chinese People's Liberation Army marched into Tibet in 1950 to exercise quite unprecedented control, there was massive resistance to the attempt to 'liberate' Tibet from 'mediaeval feudalism' and slavery. It took only 10 years for the General Assembly of the United Nations to note the violation of the fundamental human rights of the Tibetan people and the suppression of their distinctive cultural and religious life and to speak of the deprivation of fundamental human rights and freedoms, including the right to self determination in Tibet. The International Commission of Jurists in the same year found, after 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 were acts of genocide independently of any convention obligation. The Commission also came to the conclusion that Chinese authorities in Tibet had violated 16 articles of the Universal Declaration of Human Rights.

Both in China and in relation to the Tibet Autonomous Region (TAR), the situation regarding human rights has become less openly brutal and the propaganda less chauvinist since the fall of the Gang of Four. There was great suffering and wanton destruction in the period of the Great Proletarian Cultural Revolution - a cataclysmic event that had no roots in the history and culture of Tibet but arose directly out of the habits, manners and power struggles elevated in China under Mao. Both sides have claimed title to Tibet or to sovereignty over it in a history that goes back to the 9th century. In so far as this involves on the Chinese side unequal treaties, agreements between colonial and imperial powers and Tibetan aristocrats, the PRC claim to have 'inherited' sovereignty over Tibet seems remarkably weak. It has been propounded, but not by Chinese authorities who do not base their claims to Tibet on their own more recent invasion and annexation of Tibet, that the situation changed in 1950 when the Government of the PRC came fairly effectively to rule Tibet by military force. That the Government of the PRC, despite the existence of a subordinate Govern-

ment of the TAR, is doing everything it can to exploit Tibet for Chinese purposes and to suppress any opposition to Chinese rule and to those willing to go along with Chinese dominance and to profit from it, there is no doubt. Uncertainty about the present situation, it must be said, is the result of censorship, of the repression of political freedoms to organise political parties, to edit independent newspapers, to criticise Chinese authorities and of refusal to countenance a plebiscite. It is not open to Tibetans living in Tibet to query to what extent the government of the TAR is itself autonomous. In that sense, the struggle for political, cultural and national autonomy in Tibet is inseparable from the struggle for democracy and civil and political rights both in Tibet and in China. Over centuries, that was how nations won or regained their independence in Europe. Asia is not exempt from that historical trend, with all its complexities, its capacity to produce suffering as well as hope, ethnic hatred as well as national liberation. And it would be amusing, if it were not so tragic, to note the close parallel between Chinese claims that they are bringing Tibetans out of slavery and feudalism and the earlier Western illusion that Europeans had a civilising mission throughout the world. People emancipate themselves best as a result of their own efforts and colonial masters faced with opposition rarely remain civilised. Unless they abdicate.

3 The Present Situation

In its Report on its first visit to China on 14-26 July 1991, including a four-day stay in Tibet, the Australian Human Rights Delegation said:-

{The visit to Tibet} was limited to Lhasa and its environs, though field trips into the countryside around Lhasa did take place.

'The Delegation was hosted by the Foreign Affairs Office of the People's Government of the Tibetan Autonomous Region of the PRC.

'The Delegation entered Tibet well aware of the continuing clash between the massive, technologically advanced society of China and the comparatively small yet ancient and deeply religious culture of Tibet. Members were particularly interested in the effects of the Cultural Revolution and, more recently, martial law on the preservation of Tibet's unique cultural identity and values. At all times the Delegation sought to verify persistent reports of human rights abuses relating to political and cultural repression in Tibet, especially since 1987. These concerned:-

- large-scale arrests of pro-independence demonstrators in Lhasa and elsewhere;
- mistreatment and possible torture of political prisoners and detainees, particularly those held for engaging in 'counter-revolutionary' activities;
- repression of religious activities; and
- educational and other social discrimination.

'The Delegation constantly emphasised to the authorities concerned, the Australian Government's view on the need for constructive dialogue between the Chinese Government and the people of Tibet, including the Dalai Lama and his representatives, as set out in the resolutions on Tibet unanimously passed by both Houses of the Australian Parliament in 1990-91. In the Delegation's view, only such a course can promote peace, stability and progress in Tibet.

'The Delegation noted, with regret, that the Australian media were not allowed to accompany it to Tibet; although the Delegation pressed the authorities for an explanation of this decision, none was forthcoming.'

General Impressions

'From the start of the visit, the Delegation felt that it was being insulated from the general populace through a well-planned yet very hectic schedule. It was found necessary to revise this at the outset to ensure a focus on human rights issues.

'The Delegation was not readily able to have open conversations with Tibetans since, collectively or individually, members were almost constantly accompanied by one or more government officials. This was taken to extreme lengths in the case of the Delegation's Tibetan linguist (Mr Keven Garratt) and certainly inhibited free movement and discussion. Nevertheless, the linguistic skills available to the Delegation enabled it to break into smaller self-reliant groups, as opportunities arose, and some members were able to talk privately with a number of ordinary Tibetans.

'Clear signs of anti-Chinese feelings emerged from these contacts. Tibetans unconnected with the government overwhelmingly opposed Chinese control of Tibet, sought independence and the return of the Dalai Lama, were unequivocal about lack of religious freedom and civil and political rights and talked of a lack of justice, education, employment and freedom of expression, as well as restrictions on movement.

They asserted that Tibetan culture and religion were gradually being submerged by the sheer weight of Chinese influences. The Delegation was told of their fear of arrest, interrogation and detention for merely being seen to converse with foreigners. Monks often spoke of close surveillance, yet the authorities insisted that security personnel were only stationed inside the major monasteries to protect property.

'Especially in Lhasa, it was impossible to ignore the large presence of uniformed and civilian Chinese; such numbers, especially truckloads of troops, seemed to belie official explanations of the Han Chinese presence being composed mainly of technicians and specialists.'

Justice and Prisons

'The Delegation met senior Tibetan and Chinese officials including Vice-Chairman Gyamtso of the TAR and Vice-President Yisang of the TAR Higher People's Court. Detailed briefings were provided on the legal system and the administration of justice in the TAR People's Courts, the TAR Procuratorate, the TAR Public Security Bureau and the TAR prison administration. During long, robust and sometimes blunt exchanges on reports of human rights violations in Tibet, the Delegation was nevertheless pleased to note the willingness of senior officials to provide detailed information on a variety of topics.

'In response to specific questioning, the Delegation received details on the whereabouts and condition of eleven 'Tibetan prisoners of conscience'. It was also informed only two executions had been carried out in the TAR in 1990, with a further three sentences suspended for two years. Officials advised that since 1987, fifty persons had been sentenced for so-called 'counter-revolutionary' crimes. The Delegation concluded a fruitful exchange by presenting a list over 100 names of prisoners of conscience, about whom scant information was held, with a request for details of the charges, sentencing, whereabouts and state of health of these prisoners. The officials undertook to provide further information through the Australian Embassy in Beijing. (At the request of our interlocutors, those names were also provided in Tibetan script).

'Officials were not prepared to divulge information on the numbers of Tibetans held in custody or detention for political reasons. Informal sources, however, indicated over one thousand prisoners were held in five jails in the Lhasa area, half of whom were said to have been sentenced for political reasons. The Delegation persistently made very strong representations, both in Beijing and Lhasa, on access to prisons and penal institutions on the TAR. Such requests met with a negative response, on the grounds that Chinese law permitted visits to prisoners by relatives only.

'Wide-ranging discussions were also held with officials of the TAR Committee of Religious and Nationality Affairs which provided statistical information on a variety of economic and social indicators. This contemplated material on the TAR and the autonomous Tibetan prefectures in Qinghai, Gansu, Sichuan and Yunnan obtained by the Delegation in Beijing in discussions with the United Front Department of the CPC Central Committee, particularly its Deputy Secretary General, Mr Lee Zuomin (who had spent some 28 years in Tibet), the Religious Affairs Bureau and the State Nationalities Commission. The picture conveyed by these discussions, of gradual economic and social progress handicapped by the militant activities of 'split-tists' acting under foreign influence, did not rest easily with the Delegation's own field observations of the life in the Lhasa area.

'Chinese energies were clearly directed toward military security and economic development of the region through infrastructural development and public works, such as the Taktse Zamchen suspension bridge of the Kyichu river, some 20 kilometres upstream from Lhasa. Being restricted to the Lhasa area, the Delegation could not verify reports of over-exploitation of the natural resources of Tibet for the benefit of the Chinese state. The Delegation was also told that China is making efforts to moderate the impact of modernisation in Tibet's unique culture; so, for example, it continues to provide some funds for repairs to temples and monasteries damaged during the Cultural Revolution; however, other resources or information are at variance with these official pronouncements.'

Religion

'In the absence of access to places of detention, the Delegation devoted more time to contact with religious institutions, given their reputation as barometers of Tibetan opinion (with monks and nuns prominent in protests over the last 40 years). The Delegation regrets that it was not able to visit a nunnery.

'Freedom of religion as defined by the Chinese Constitution (Art.36) stipulates freedom of belief; officials also emphasised that religious practice itself is not to interfere with the unity of the State, public order or be to the detriment of other people. The Delegation was assured that permits were not required for the performance of religious ceremonies by any number of people and that there were no restrictions on Tibetans seeking ordination. There appeared to be no restriction on the wearing of the distinctive maroon robes by monks and nuns.

'The Delegation noted with satisfaction the observance of many religious rituals at sites visited; this, however, appeared mainly limited to outward manifestations such as circumambulation, prostration and the like. Further inquiries revealed that the numbers of teachers able to impart the doctrine to the next generation was very small and declining. At Ganden monastery, a part of the majority Gelugpa order, for example, only two aged teachers of a population of some 400 monks were qualified at the highest academic level of Geshe Lharampa. Scholars with whom the Delegation met attested to the difficulty of attaining those standards nowadays. The Delegation was further advised that by contrast with the vigorous, living tradition of scholarship in Tibetan communities in India, the teaching tradition lying at the heart of Tibetan Buddhism appeared moribund in Tibet. Yet, in spite of all apparent constraints, the Buddhist faith clearly still poses an ideological challenge to the orthodoxy on which Marxist-Leninist-Mao Zedong thought is based and a cultural and political challenge to Tibet being a part of China.

'The Delegation was struck by the overwhelming support it encountered for the Dalai Lama. This appeared to be persuasive in Lhasa and its environs, at least.

Every temple boasted a host of photographs of the Dalai Lama (far exceeding those of the Panchen Lama); special quarters, impeccably maintained, were set aside for him in monasteries; at every turn, people of all ages, both ordained and laity, would request, almost beg for, photos of him. The public display of this support, and Chinese tolerance of that display, greatly surprised the Delegation. On the vexed question of the reincarnation of the Panchen Lama, religious officials were prepared to concede, albeit informally, that it could occur outside the boundaries of the PRC, in spite of a Beijing regulation which prescribes that the reincarnation can only occur within the PRC, in response to devotees' entreaties elsewhere.

'The Delegation was disappointed at the state of much of the Tibetan cultural heritage in the Lhasa area - which is undoubtedly of outstanding universal value. Decay and derelict buildings were all too evident at Drepung monastery and the total destruction of Ganden bore testimony to the worst excesses of the Cultural Revolution. Repairs were, however, under way to both the fabric and interior of the Potala palace and the Jokhang temple.' Members of the Delegation were told that Chinese 'rebuilding' was based on Chinese techniques that sat well neither with Tibetan tradition nor with the climate.

Education and Labour

'Though the Delegation noted an official determination to raise educational standards for Tibetans, many Tibetan children appear to still go without formal education. Tibetan children in the Lhasa area seemingly have access to a very limited syllabus at both primary and secondary levels. Some testified to never having been at school, or having to leave for economic reasons as early as 10 years old.

'The Delegation noted with misgiving the widespread use in the media as well as on signs and billboards of transliterated Chinese words instead of their obvious Tibetan equivalents and a tendency to run the Tibetan script vertically instead of in the traditional horizontal manner. The Delegation was also made unable to verify official assurances that Tibetans were totally free to listen to Tibetan language broadcasts from the Voice of America and All India Radio.

'Conversations with people engaged in various menial jobs raised considerable doubts whether the rights guaranteed under the International Labour Organisation conventions were being, or indeed could be, fully met under prevailing conditions in the Lhasa area. The Delegation was informed that jobs were scarce for [Tibetans] at least, and so to lose one was a serious matter. The Delegation met Tibetans, including teenagers of school age, working long hours - nine seems the norm. Pay was as little as four yuan (A\$1) per day. Employees' rights to holiday seemed virtually non-existent and sick leave appeared to be unknown. Some informants stated that they had to work 364 days a year, the one day off being for Losar, Tibetan New Year. Others stated that the fatiguing work made self-advancement through part-time studies an impossibility. Young people, while speaking of their desire for education, saw their only choice being to attempt to reach the Tibetan communities in India where, they said, at least education was freely available irrespective of all the other hardships.'

Other Social Issues

'The Delegation was repeatedly assured that China's one child policy does not apply to [the so-called] minorities, including both the TAR and the autonomous Tibetan prefectures in other provinces, and that three and four child families were common amongst Tibetans. Verification was virtually impossible but, compared with Tibetan communities in India, the Delegation did notice, in the Lhasa area at least, a lack of Tibetan women with small children or babies. An informal tour of the clean yet sparsely equipped Tibetan Medical Centre revealed the traditional Tibetan system of medicine in operation with long queues of Tibetans at outpatient and dispensary facilities.

'The wearing of traditional Tibetan dress was somewhat evident only in Lhasa, while in the countryside people's shabby clothing spoke of poverty. Quantities of curios and artifacts in the Barkhor market suggested labour-intensive cottage industry, yet large quantities of Chinese and Indian consumer goods indicated heavy economic dependence elsewhere. Intensive cultivation of grains, oilseeds and vegetables was evident in the valley flats, yet the Delegation was informed that the region could only supply one-third of its goods requirements. Housing in the Tibetan quarter of Lhasa appeared to be badly maintained, whereas extensive new housing and construction was conspicuous in Chinese-populated areas. The insanitary state of Tibetan buildings - even large ponds of waste matter on the plaza in front of the Jokhang - lent such areas a squalid appearance. The rationale behind the demolition of traditional Tibetan housing between the Potala and the Lhasa Museum to make way for a park remained unclear. The poor appearance of Tibetan villages and settlements, such as Taktse Dzong on the way to Ganden and around Gongkar Dzong near the airport, naturally raised questions of community health and hygiene. Energy development through solar panels in the vicinity of Lhasa was encouraging as were reports of small-scale hydro-electric projects; however questions on environmental matters relating to the Tibetan plateaus were not readily comprehended by officials. Regarding the alleged massive deforestation of eastern Tibet, principally in Sichuan Province, the Delegation whilst in Chengdu did note large numbers of sawn logs both on trucks moving east and in the fast flowing Min river issuing from the Himalayas to the west of the city.'

The Delegation's Conclusions

'It became clear to the Delegation that a serious human rights problem exists in Tibet. The impression gained tended to confirm fears of the existence of fetters on the religion, culture, education and language of Tibet. Furthermore, population figures did not take account of what may be a very sizeable Chinese military presence. The Delegation was led to conclude that though martial law had indeed been lifted on 1 May 1990, it continues to exist in all but name.

'It is also clear that China continues not to tolerate political opposition and dissent in Tibet. Nevertheless, given the sensitive nature of the Sino-Tibetan relationship and the strategic value of Tibet to China, the Delegation has no doubt that China is very aware of increasing world attention on the way it treats its minorities, and the Delegation considers therefore that dialogue with the Chinese central and regional authorities concerning human rights in Tibet will bring about a greater understanding by those authorities of the importance of applying humane and fair treatment. Given the interdependence of the issues of religious freedom, cultural and social growth, such understanding should lead to improvements in all these issues.

'The Delegation was satisfied that during the visit limited but definite progress was made with the TAR authorities in furthering a human rights dialogue. The Delegation was particularly pleased to obtain information on human rights cases of concern to the Australian Government and looks forward to the further detailed responses on which undertakings were given when it was in Lhasa. The Delegation believes that the provision of such information can go a long way in dispelling misunderstandings on events and issues, as well as demonstrating the good faith of the Chinese Government in responding to legitimate international interest.'

The Delegation's Second Visit

On its second visit to China in November 1992, which was planned to include Tibet, permission to visit Tibet was cancelled - it must be said that in our opinion this was a result of a bureaucratic gaffe on the Australian side rather than a purely punitive or preventive measure on the Chinese side, though the PRC and TAR authorities claimed to have many complaints about the Delegation's irresponsible comments on Tibet in its first Report and its behaviour - i.e., its unauthorised trips and conversations. The meetings of the Prime Minister of Australia, the Minister of Foreign Affairs and Trade and other members of the Australian Parliament with the Dalai Lama in 1992 drew stern criticisms from the Chinese officials during the second visit, as did Australia's co-sponsoring of a draft resolution at the UN Committee on Human Rights concerning human rights in China which specifically referred to Tibet. During this second visit, Chinese officials asserted that there was widespread misunderstanding overseas of China's human rights position. An example of such a misunderstanding was a rumour (possibly spread by the Dalai Lama, it was said) that China had killed 1.2 million Tibetans since 'Liberation'. Careful Chinese research based on historical documents and records had revealed that the population of Tibet prior to the 'democratic reforms' of 1959 had been 'very small': less than 1 million. Thus, officials argued, it could never have reached 2.19 million by the time of the 1990 census if such slaughter had occurred. On the possibility of a dialogue between Beijing and the Dalai Lama, officials were adamant that no Tibetan wanted a return to feudalism. The people of Tibet, it was said,

enjoyed both a high level of democracy under the People's Congress system and rising standards of living; they had clearly chosen to participate in the work of socialist construction and opposed separatism, despite the activities of a tiny handful of people who supported such a course. Constant official recourse to this theme led the Delegation to note the apparent underlying Chinese assumption that the very mention of human rights in Tibet necessarily implied support for Tibetan independence which in turn meant an inevitable return to the political life of Tibet prior to 1949.

Other claims and impression recorded by the Delegation in a draft report include the following:

Justice and Prisons: The question of a floating population in the TAR was raised with the Ministry of Public Security in Beijing. The Delegation, while accepting the view of writers in Chinese policing journals, that the flow of population to the cities could present particular policing problems, noted a May 12, 1992 announcement that the TAR was to gain a 'special economic and technological zone' and also a proposal to drain the wetlands in the middle reaches of the Yarlung Tsangpo river. Officials did not accept that there was a floating Han settler population in the Lhasa area and the Delegation was advised that China did not have a policy of moving Han settlers to the TAR - something the Delegation found hard to believe. While it was admitted that some Han people were sent there to support construction work, that was said to be on a temporary basis only; it was emphasised that unless Han were willing to settle in Tibet, they were not forced to go there. Also, although some Han did go there for business reasons, life was very different for them because of the high altitude. The occurrences of a population influx into Tibet was denied. The authorities stressed that such a problem would be dealt with should it occur and noted the precedent of Shenzhen, on Hong Kong's border, where the policy had had considerable success in controlling an excessive influx.

In Chengdu, Sichuan, the Delegation discussed the provincial lao jiao (re-education through labour) system, in its application to Tibetans, with representatives of the Public Security Bureau and the Ministry of Justice. Officials assured the Delegation that there were no Tibetans detained in the three lao jiao centres in Sichuan (two for males in Chengdu and Chongqing and one for females) nor had any been transferred to them from any of the Tibetan autonomous prefectures within Sichuan.

It was asserted that in Tibetan areas the local authorities were at liberty to make their own flexible arrangements under the lao jiao regulations; Tibetans confined for lao jiao reasons would be subject to local administrative control, which would accord with prevailing local customs. Officials also claimed that Chinese lao jiao detainees were not kept in lao jiao camps in those areas.

Chinese White Papers: Tibet featured strongly in discussion with the Information Office of the State Council, two of whose White Papers covered Tibetan issues. The Delegation was also able to discuss aspects of those White Papers dealing with Tibetan issues with academics in Beijing. According to the Information Office of the State Council, the White Paper on Tibet had been published in Tibetan and was available at the same price - RMB1. - as that of editions in other languages. Although these Tibetan language copies were allegedly available through bookshops, the Delegation was unable to obtain a copy in the Tibetan language edition. The Information Office did provide the Delegation with copies of a new high quality set of 8 pictorial brochures in English on aspects of human rights in Tibet. These were in marked contrast to the simple information leaflets on Tibetan issues displayed in hotels and public places during the 1991 visit. Thematically, they set out to highlight a disparity - in political, economic, social and cultural terms - between present and pre-1959 Tibet. The Delegation was assured that a Tibetan language edition of the set was still in preparation and would be made generally available upon publication. This effort, too, appeared to be part of a conscious Chinese drive to influence international opinion on Tibet rather than to inform Tibetans or convince them. The Delegation was informed that the researchers involved in preparation of these two White Papers had been the same scholars, professionals and lawyers who were said to be expert in their respective fields, some of them having visited Tibet a number of times. Despite claimed involvement by 'some' Tibetans in those projects, the Delegation noted that details were not forthcoming on their background or presumed expertise. The expertise of the Chinese taking part was described.

'Today,' one of the Chinese White Papers says, 'the minority nationalities, as equals with the Han nationality, enjoy all the civil rights which are set down in the Constitution and the law. In addition, the minority nationalities enjoy some special rights accorded to them by law.'

These 'special rights' were discussed with legal academics in Beijing. Although they had not participated in the drafting of the White Papers, one of them at least had been part of a research group involved in the project. The rights accorded to minority nationalities were seen to be generally the same as those accorded to the rest of the population under the Constitution and in Chinese law generally. Disequilibria in economic, cultural and political developments in such areas, however, had led to preferential treatment for minority people, in areas such as job promotion or family planning. This was seen as controversial since the practical result of such special prerogatives was to advantage minorities at the expense of the majority. Some

Han officials, it was claimed, apparently felt they had little hope of job promotion in view of such policies; likewise, the Han saw imbalance in the implementation of family planning policies, which in remote minority areas was regarded flexibly at worst or, where minority numbers were small, not carried out at all. From a jurisprudential viewpoint, these Chinese academics said, the theory of equality for specially disadvantaged groups such as minorities, indigenous people and women were difficult to translate into practical equality - a gap always remained between the rights on the statute book and those accorded in practice. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were frequently cited by academics as instruments which clearly provided special rights for such disadvantaged groups; however, ratification of those instruments by China did not agree with some of their provisions, notably the rights to free movement and migration.

Researchers from the Law Institute of the Chinese Academy of Social Sciences, which had participated in drafting the White Papers, were active in a variety of human rights related projects, such as the preparation of a human rights encyclopedia in Chinese and translation of international human rights instruments into Chinese. The Delegation noted with disappointment that there were no plans to translate any of those materials into minority languages such as Tibetan, even though the Academy did maintain links with equivalent institutions in Lhasa, Urumqi and Hohhot (Inner Mongolia).

4 Our Conclusions

While Chinese responses on questions of human rights are now much less brusque, better informed on international and regional provisions and procedures and in manner more tolerant, they are still primarily cosmetic and propagandist at the top levels and in official pronouncements. They rely on formalism: the rights of Chinese and of Tibetans and of others are those guaranteed by the Constitution and by law. The primary problem for any defender of human rights in China or in Tibet - the treatment of any fundamental opposition to government policy and government claims as criminal counter-revolutionary activity - is ignored or played down. That situation will not be greatly improved in the short term by current proposals to change the name of the crime of counter-revolutionary activity to 'treason'. In other societies, or at least in some other societies there is a complex and important legal history that seeks to limit the concept of treason and in which jurors have refused to treat opposition to government decrees as criminal. Chinese dissidents and 'progressives' may gradually be able to make cautious use of such foreign interpretation. Younger lawyers in the more independent co-operative law firms hope so - at least while they are young. Counter-revolutionary activity or treason constitutes only one example of the extent to which Chinese law, especially in political matters, is still deliberately vague, not subject to scrutiny by independent courts and an independent profession willing to resist the government on issues that matter and on which the government does not want to be resisted. To put it simply, to say, not always falsely, that Tibetans have the same formal civil and political rights as all people of the territory of the PRC and especially the Han Chinese is not to say anything significant in terms of their right to protest, to publicise, to organise, to emigrate or to be free of vindictive government surveillance.

The right of individuals and of a people to dignity and self-expression we have treated as indefeasible. Rights clearly connected with this - rights of national or regional autonomy, for instance, or of political independence - are desirable goals but more context-dependent as one pursues them in practical politics. One needs both the spirit to resist opposition and the capacity for statesmanship. The international community can play and has played a most significant part in tilting the balance in favour of these goals, but it too can rarely, if ever, simply implement them by proclamation from outside.

The spokesmen of the Tibetan people, such as the Dalai Lama, have had a lively sense of reality as well as of the justice of their demands. The strongest case against the incorporation of a people into a wider polity is in fact that such incorporation requires a denial or suppression of civil and political freedoms, of existing religious and educational traditions, of the free expression of opinions. It is here that China needs to enter into a genuine dialogue, not just with the outside world, but with the people of Tibet themselves. It is a condition of dialogue that both sides speak freely and without fear. Is the People's Republic of China prepared for such dialogue, not only externally but internally?

REPORT ON EVIDENCE

2 Key Tibet-China Historical Events and Comparative Interpretations

- John Heath

This historical analysis attempts to focus attention on the key issues and events which determined the relationships between Tibet and China, especially those where some crucial differences of interpretation appear to exist.

The early history of the relationship between China and Tibet, as related by PRC (1) and PRC (2), begins with the marriage between Tibetan and Han royal families and the famous Tang-Tubo Alliance Monument of 823, a four-sided monolith stone pillar some 14' high. This still stands by the Jokhang Monastery in Lhasa. Carved in stone, it reads (in part) on the west side, as quoted in PRC (1) and (2) -

'The two sovereigns, uncle and nephew, having come to agreement that their territories be united as one, have signed this alliance of great peace to last for eternity! May God and humanity bear witness thereto so that it may be praised from generation to generation'

The west inscription, as translated and promulgated by the Tibetan administration in Dharamsala, does not however contain this paragraph or anything like it. Reference to Bell (1), Appendix I shows that a translation 'with the assistance of learned Tibetans', does begin with a paragraph which accords with the sense of the PRC documents. '[The two sovereigns] Nephew and Maternal Uncle, have agreed to unite their kingdoms...' and *'Nephew and Uncle united their kingdoms....'* (the italics indicate, as in Bell's book, the meaning which the Tibetan authorities assigned to the blanks in the inscription).

The inscription taken as a whole however appears to be a treaty of friendship and understanding between two sovereign states, not the formation of a single unified state, territory or kingdom. The remainder reads (in part)

'All to the east of the present boundary is the domain of Great China. All to the west is totally the domain of Great Tibet. Henceforth there shall be no looting or ambushing and no making of war... Even the border security personnel shall, without any disquietitude or terror, relax comfortably in their own territory... Having come to a cordial agreement and made this great treaty... envoys will be sent in the old tradition... Tibetans shall be happy in the land of Tibet, Chinese shall be happy in the land of China, and the solemn agreement now made shall never be changed.'

The context of the above inscription may be conveyed in the south inscription of another, earlier and taller, stone pillar dated about 763. By the eighth century Tibet had become the most powerful nation in Asia and was engaged in frequent wars with China. The pillar records a particular conquest of the Chinese by the Tibetans -

'... the two great commanders were ordered to carry war to Keng-shi (where the Chinese King's Palace was situated, 'in the very heart of China'). On the bank by the ford of Chi-hu Chir a great battle was fought with the Chinese. Tibet put them to flight... many Chinese were killed. The Chinese King, Kwang Peng Wang also fled from the fort... Keng-shi was captured....' [Bell (1) p.274]

This background of conflict to the treaty of 823 neither PRC (1) and (2) mentions.

PRC (1) and (2) continue -

'In the mid-13th century Tibet was officially incorporated into the territory of China's Yuan Dynasty. Since then, although China experienced several dynastic changes, Tibet has remained under the jurisdiction of the central government of China.' [pp.1 and 3 respectively]

In 1207, when Chingis (Genghis) Khan was on his way from Mongolia to invade the Tangut state of Si-hia, the leaders of Tibet sent a delegation to him with an offer of submission. This formal acknowledgement satisfied Chingis. While he lived, there was no Mongol interference in Tibet.

In 1240 however Prince Godan, the grandson of Chingis, sent a raiding force which almost reached Lhasa. The Mongol overlordship was put on a regular basis in 1249 when Godan made the eminent Tibetan

Lama, Kunga Gyaltzen from the Sakya Monastery, Viceregent in Tibet. This began the *cho-yon* or 'priest-patron' relationship (there is no counterpart in the West) in which the priest's commitment is to fulfill his patron's spiritual needs, and the patron's commitment is in return to protect his priest. It inaugurated essentially a series of personal relationships, not involving treaties, formal alliances or administrative control.

In 1254 Kublai (Khan) gave Gyaltzen's nephew Phagpa personal authority over all Tibet, and subsequently other Lamas from Sakya were appointed to that position. 'Tibet was a part of the Mongol empire in a very peculiar way. It was definitely not a part of China, nor one of its provinces.' [H Franke p.313, quoted in Phuntsog Wangyal p.15]

Thus the Mongols were already effective overlords of Tibet before their conquest of the whole of China by Kublai Khan in 1280. (He had already taken the title Emperor of China, and in 1271 [or 1272] changed this to Yuan.) His successors of the Mongol Yuan Dynasty continued to conduct their relations with Tibet through the Tibetan Lamas. [From Richardson pp.33,34 and Shakabpa pp.61-72]

After the death of Kublai Khan in 1295 the power of the Mongols began to decline. Tibet gained its independence from the Mongols in 1354 under Chang-chub Gyaltzen, a Buddhist monk and outstanding leader who lived some 75 miles southeast of Lhasa, by the exercise of his will and determination (a description of how he achieved this is in Shakabpa pp.74-82.) The Mongol Khan granted him the title Tai Situ. Now that the influence of the Mongols in Tibet was over (for the time being only), Situ Chang-chub Gyaltzen reorganised the administration in that country.

Some 14 years later, in 1368, China too gained its independence from the Mongols under Chu Yuan-chang (who became the first Ming Emperor). Following that, according to PRC (1) and (2) -

'In 1368 the Ming Dynasty (1368-1644) replaced the Yuan Dynasty in China and inherited the right to rule Tibet.'

The following points are significant.

1 PRC (1) and (2) make no mention of the success of Chang-chub Gyaltzen in breaking Tibet away from the Mongols in 1354.

2 The PRC history does not mention that the Mongols in China were not overthrown until 1368, by Chu Yuan-chang.

3 The two PRC texts refer 10 times to 'China's Yuan Dynasty', the 'Yuan Dynasty' and the 'Yuan Emperor' and mention only twice to the effect that 'The regime of the Mongol Khanate changed its title to Yuan in 1271 and unified the whole of China in 1279, establishing a central government ...' The leadership of this government was not of Chinese origin but Mongol, and it remained so until 1368. The Chinese do not accept that the Yuan Dynasty was in fact foreign.

According to PRC (1) and (2) the Chinese 'central government' during the Ming Dynasty (1368-1644) held control over Tibet -

'In Ngari in west Tibet [likewise in the central and eastern parts of Tibet] the E-Li-Si Army-Civilian Marshal Office was instituted. Leading officials of these organs were all appointed by the central government ... Any official of the Tibetan local government who offended the law was punished by the central government.' [PRC (1) p.2, PRC (2) pp.5,6]

Shakabpa considers events in Tibet during the Ming Dynasty [pp.71-99] and relationships with China, and concludes -

'During this period [to about 1576], the Ming court in China maintained little contact with Tibetan leaders. The Chinese had their hands full dealing with the Mongol tribes, which had penetrated into eastern Turkestan, the Kokonor region in northeastern Tibet, and even south Russia ...' [p.90]

And up to about 1616 -

'There was considerable intercourse between the Tibetans and the Mongols ... On the other hand, Tibet had little contact with China during the Ming Dynasty. The Ming Emperors showed little interest in Tibet, except for those regions that bordered on China.' [p.99]

Richardson comes to the same conclusion -

'Over the lay rulers of Tibet the Ming Dynasty exercised neither authority nor influence.' [p.38]

The Ming Dynasty of 16 Chinese Emperors (1368-1644) was followed by the Manchu Qing Dynasty (1644-1911). Neither PRC (1) nor PRC (2) mentions that China had been conquered by the Manchus from the north (Manchuria) in 1644.

'When the Qing Dynasty replaced the Ming Dynasty in 1644, it further strengthened administration over Tibet. In 1653 and 1713, the Qing emperors granted honorific titles to the 5th Dalai Lama and the 5th Bainqen Lama, henceforth officially establishing the titles of the Dalai Lama and the Bainqen Lama and

their political and religious status in Tibet.' [PRC (1) p.2, PRC (2) p.6]

However, as Shakabpa points out [p.114],

'The 4th Dalai Lama was a Mongol, and this had brought the two peoples even closer together. By inviting the 5th Dalai Lama to China, the Manchu Emperor hoped to persuade him to use his religious influence with the Mongols to deter them from invading Chinese territory.'

In any event, by 1653 the titles and powers of 'Dalai Lama' and 'Bainqen Lama' had already been well established in Tibet, and the exchanges of gifts and honorific titles was normal diplomatic practice between sovereign leaders. (In 1578 the Mongol Altan Khan had given Sonam Gyatso the title of 'Dalai Lama' in return for his Buddhist teachings, Dalai being Mongolian for 'ocean', and meant that Sonam Gyatso's teachings were 'as deep and as broad as the ocean' and expressed an 'ocean of wisdom'. [Op cit p.95])

PRC (1) and (2) continue -

'... From 1727, high commissioners were stationed in Tibet to supervise local administration on behalf of the central authorities ... In order to perfect Tibet's administrative organisations, the Qing Dynasty on many occasions enacted 'regulations' to rectify and reform old systems and establish new ones ... Between 1727, when the high commissionership was first established, and 1911, the year the Qing Dynasty was overthrown, the central government of the Qing Dynasty stationed more than 100 high commissioners in Tibet.' [Op cit pp.2,3 and pp.6-8 respectively]

The 6th Dalai Lama, preferring drinking and women to priestly practices, had caused dissention and conflict in Tibet, and the Mongol Lhazang Khan, who had become an ally of the Manchus, took the initiative to depose and exile him. After the Dalai Lama's early death and the discovery of his reincarnation -

'... the boy was escorted from Derge to the Kokonor region, where he was warmly received by the Mongols. The Manchus saw this as an opportunity to extend their influence in Tibet ... In 1718 an imperial army of several thousand men, led by a Manchu officer, advanced to Nagchukka. There they were attacked by the Dzungar Mongols and Tibetan troops and were defeated. Large numbers of Chinese were massacred: few returned to China ... The Manchus sent a further army into Tibet and the Dzungar Mongols, defeated now by the Tibetans, fled to the north ... The Manchu Emperor did not send his armies to 'conquer' Tibet but to avenge the death of his ally, Lhazang Khan and to restore the 7th Dalai Lama to his throne.' [Shakabpa pp.137-139]

However, 'the Manchus built a garrison in Lhasa and stationed troops there to maintain peace and order. Tsewang Norbu, the Mongol officer under General Yansin, was given the seal of a Manchu General and appointed commander of the garrison ... [But then the new Manchu Emperor in 1723] began a policy of retrenchment. He withdrew the garrison from Lhasa, leaving the administration of Tibet entirely in the hands of Tibetan officials, without any military support from the Manchus.' [Op cit p.141]

What seems clear from this involved piece of Tibetan history is that, in contrast to the situation portrayed in PRC (1) and (2), it was not the Han who had influence over Tibet during the Qing Dynasty. If it was anyone other than the Tibetans it was, for varying periods, first the Mongols and then the Manchus. The latter gained further influence in Tibet when a Manchu army again invaded the country and reestablished a garrison in Lhasa. These officials, known as Ambans (what PRC [1] and [2] call 'high commissioners'), were the direct representatives of the Manchu Emperor (the position was always filled by a Manchu, not a Han), and there were such representatives in Tibet until the fall of the Manchus in 1911. [Op cit p.144] However they were not without some potential influence -

'From 1750 the Dalai Lama ruled in temporal as well as spiritual matters ... The Ambans and their assistants were stationed in Lhasa to make sure that the Tibetans kept in line with Chinese policy ... The Dalai Lama was by no means an unrestrained autocrat. The Amban and Assistant Amban watched his actions ... [Lamb (4) p.2]

But in 1750 the Ambans murdered the Tibetan Regent (actually the Tibetan King), and the people in their turn massacred the Chinese at Lhasa. The Manchu Emperor despatched an army to restore Chinese ascendancy, and the general influence of the Chinese increased. [Bell (1) p.40] Evidently this was one of only three occasions when the Ambans intervened officially in Tibetan affairs (the others were in 1729 and 1792).

Another view of the role of the Ambans is given in Premen Addy [pp.46,47] -

'The Chinese, desperate to get their shadowy control over Tibet recognised internationally, sent their Amban in December 1888 to negotiate with Mortimer Durand, the Indian Foreign Secretary ... In view of China's lack of political or military strength, her representative was playing from a weak hand. Durand explained 'The Amban evidently does not give way about the 'rights' of Tibet. He was', he said 'only a guest at Lhasa - not a master - and he could not put aside the real masters. He has no force to speak of, and he knows the Tibetans have turned upon a Chinese Resident before now ...'

Also Lamb found ambiguity in the role of the Ambans in the 1880s -

'It was known that there were Chinese representatives in Lhasa, the Amban and his Deputy, who exercised some kind of authority; but it was not clear exactly what their powers were' [Lamb (5) p.3]

It is alleged that generally the Ambans appear not to have been high level people, and that, except on very infrequent occasions, any authority which they might have had were stymied by the Tibetans -

'When the British arrived in Lhasa [in 1904] he [the Amban] carried little weight with the Tibetans in his official capacity, and his personal standing was low ... 'We found him' wrote Younghusband 'to be practically a prisoner and almost without enough to eat, as the Tibetans had prevented supplies of money from reaching him, and he had actually to borrow money from us' ... One of the charges in Yu-t'ai's (the Amban's) impeachment is that he was always trying to borrow money from the Tibetan government' [quoted in Fleming, *Peter Bayonets to Lhasa* (Oxford University Press), 1961 p.235. See also pp.231-3]

To summarise, this period of Tibetan history during the 266 years of the Qing Dynasty was dominated principally by the ebb and flow of relationships with Mongols and Manchus, yet PRC (1) and PRC (2) mention not once that either Mongols or Manchus even existed during this whole period. [Op cit pp.2,3 and 6-8 respectively] While the influences from China appears to have increased from the middle of the 18th century, it is difficult to arrive the truth of the full extent. Historical accounts differ.

For example, Lamb says that the (second) invasion of Tibet by the Gurkhas from Nepal in 1791 was repulsed by a 'powerful Chinese force' which had been sent to Tibet [Lamb (4) p.19]. Richardson also refers to 'a vast and well organised army [despatched by the Manchu Emperor] which, with striking efficiency and success, threw the Gurkhas out of Tibet ... [Richardson p.69], and Singh says that 'the Emperor Ch'ien Lung of China sent an imperial army to drive them [the Gurkhas] out of Tibet. They were decisively beaten and obliged to come to terms with the Chinese' [Singh p.6]. Bell on the other hand believes that it was a combined force of Chinese and Tibetans, the majority being Tibetans [Bell (1) pp.42,43], while Shakabpa, in the most detailed account, says that there were separate forces, that it was the Tibetans who did the fighting and that the Chinese force, led by the aid-de-camp of the Manchu Emperor, avoided the conflict (and that the Manchu commander removed the Chinese seals from the subsequent Treaty before showing it to the Emperor, and soon after his arrival back in China with his army, committed suicide out of shame at his failure to discharge his responsibilities). [Shakabpa pp.158-162]

PRC (1) and (2) continue -

'In the autumn of 1911, revolution took place in China's interior, overthrowing the 270 year old rule of the Qing dynasty and establishing the Republic of China.'

'Upon its founding, the Republic of China declared itself a unified republic of the Han, Mongol, Hui, Tibetan and other races ... Sun Yat-sen declared 'The foundation of the country lies in the people, and in the unification of lands inhabited [by these races]'. In March 1911 ... the Republic's first Constitution ... clearly stipulated that Tibet was a part of the territory of the Republic of China'.

'As in previous Yuan, Ming and Qing dynasties, the central government of the Republic of China exercised jurisdiction over Tibet. [PRC (1) p.3, PRC (2) p.8]

'The simple reality that the installation of the 14th Dalai Lama needed the approval of the national government is sufficient proof that Tibet did not possess any independent power during that period [1911-49].' [PRC (1) p.5, PRC (2) p.14]

The history of Tibet should not however be delineated entirely by dynastic changes in China. The period 1904-14 was equally important. 'In these years the fate of Tibet was decided'. [Lamb (2) p.3]

'The Younghusband Mission to Lhasa of 1904 took place because Lord Curzon, the [British] Viceroy of India, was convinced that Tibet had become a field of play for 'The Great Game', the competition between Britain and Russia which so dominated Indian foreign policy during the nineteenth century ... The Mission shattered the power of the Dalai Lama without deciding the international status of his country' [Op cit pp.3,5]

'Perhaps the most far reaching consequence ... of the Younghusband Mission was to bring into the open the question of what exactly was Tibet, who had the final say in its affairs and what were its precise geographical limits ... From the middle of the eighteenth century the Chinese had operated in Tibet a system of the kind which the British in the late nineteenth century might have called 'indirect rule'. Day-to-day affairs were left in the hands of the traditional authorities. The Chinese Ambans at Lhasa for most of the time remained in the background. Only in moments of extreme crisis, as that which emerged from the Nepalese attacks on Tibet in the late eighteenth century, did the Chinese intervene directly in force. The Younghusband Mission, in Chinese eyes, constituted another such crisis ... [and] a policy of direct intervention culminated in the occupation of Lhasa by a Chinese army in early 1910. [Lamb (4) pp.257,258]

This occupation involved killing and looting by the Chinese forces, and the Dalai Lama fled to India. 'A Manchu was appointed commander-in-chief . . . [although] at this time the Manchu Emperor was weak and could no longer control his provinces.' [Shakabpa pp.231,232]

'The outbreak of revolution in China in late 1911 undermined her position in [Tibet], and by the end of 1912 the Chinese had been forced [by a highly effective Tibetan guerilla movement (Shakabpa pp.240- 242)] to abandon Central Tibet. The Dalai Lama . . . re-entered Lhasa in January 1913. The Chinese, however, were still present in strength in parts of eastern Tibet . . .' [Lamb (4) p.277] (In 1918 these territories were divided between China and Tibet. [Shakabpa p.262]) The Dalai Lama then declared Tibet to be independent, and Tibet and Mongolia signed a treaty to declare themselves free from Manchu rule and separate from China. [Shakabpa p.248]

Lamb also writes that -

'In 1912 Central Tibet (that is to say the region dominated by the Provinces of U and Tsang) became effectively independent of all Chinese control for the first time since the early 18th century. In 1950-51 the Chinese returned to bring this brief era to an end . . . [Lamb (5) p.1]

This period ends with the Simla Convention negotiated between Great Britain, China and Tibet in 1914, but not ratified. China refused to sign and therefore forfeited the possibility of recognition by Britain and Tibet that Tibet was under the suzerainty of China. Not in the main text, Tibet is mentioned as being 'a part of Chinese territory'. However, China's continuing refusal to sign led to the final treaty document saying that

'The powers granted to China under the Convention shall not be recognised by Great Britain and Tibet until and unless the Government of China ratifies the Convention.' This it never did.[Shakabpa pp.254, 255] These matters are not mentioned in PRC (1) or (2).

On the question 'that the installation of the 14th Dalai Lama needed the approval of the national government', on which PRC (1) and (2) place such weight, the events convey a different impression.

Tsepon W.D. Shakabpa himself, with Kalon Bonsho and a 'party of officials', accompanied the four year old Dalai Lama on his long journey from Gashi Nakha inside the Tibetan border, where he was met and proclaimed the 14th Dalai Lama, to Dogu Thang where he was received by the representatives of Britain, China, Nepal and Bhutan. The party reached Lhasa on 8 October 1939. (There is no mention in Shakabpa's account of being accompanied by any soldiers, Chinese or Tibetan, although this may have occurred during the first part of the Dalai Lama's journey. See below for another account.) The Kashag (the Cabinet of the Tibetan government) cabled the government of China, the British government of India, the King of Nepal and the Maharajas of Bhutan and Sikkim, informing them of the date of the enthronement (22 February 1940).

'The Chinese government sent as its representative Wu Chung-hsin. The Chinese claim that Wu Chung-hsin was sent to Tibet to officiate at the installation of the Dalai Lama, but in reality, Wu Chung-hsin's presence at the ceremony was of no greater significance than the presence of the representatives from the other countries.' [Shakabpa pp.285,286]

Another historical account does not contradict this description but reveals more about the Chinese participation and presence.

'The move [to bring the young Dalai Lama quickly to Lhasa] was frustrated by the Muslim Governor of Chinghai, General Ma Pufeng, who demanded that the Tibetan government should pay the sum of 100,000 Chinese dollars before he would let the child go . . . Consultation with the Chinese government in Nanking revealed that Ma Pu-feng was essentially playing his own hand, and they advised that a Tibetan official from Chungking, together with a Chinese official, should proceed to Amdo to settle matters with the General . . . The Tibetan government.. agreed to pay the Governor of Chinghai the sum of 220,000 Shanghai silver dollars in return for allowing the child to proceed to Lhasa . . . In July 1939 the child eventually set out for Lhasa with an escort of thirty Chinese soldiers and eight Chinese officials' [Singh p.118. Lamb's account is consistent with this. Lamb (5) p.284-6]

'Sir Basil Gould attended the ceremonies of Installation on behalf of India and Wu Chung-hsin represented China. Promptly after the ceremony the Chinese made tendentious claims about the part played by Wu. It was alleged that Wu had personally conducted the enthronement, and thereafter the Dalai Lama had prostrated himself in the direction of China's Imperial Abode. This report had been prepared and issued before the event took place and it may therefore have represented what the Chinese had intended should happen. In fact Wu took a minor role in the ceremonies . . . The net result of these events was that the Chinese did nothing which was not also done by representatives from Britain, Nepal and Bhutan. It did not per-

haps suit the Chinese to admit this, and Wu certainly believed that it had lowered his prestige in Lhasa. [Singh p.119. See also Lamb (5) p.286]

Richardson adds a further dimension to these events -

'According to the Chinese ... Wu professed to have satisfied himself at a private interview that the child was the true incarnation ... After that, in February 1940, the Chinese government appear to have issued a decree recognising the child as Dalai Lama. The Tibetans ... had recognised the child in August 1939 and had been treating him as Dalai Lama ever since. There must have been bad coordination in Chinese quarters, for a Chinese press notice announced in July 1939 that the child had been declared Dalai Lama with the consent of the Tibetan and Chinese authorities.' [Op cit p.154]

The Chinese government may well have considered that the installation of the 14th Dalai Lama needed its approval, but there is no historical record identified by the present writer that this approval was sought by the Tibetans or that the Tibetans were admonished or reprimanded by the Chinese authorities for failing to seek their approval.

As a postscript on the role of the Chinese high commissioners at the time of the Dalai Lama's Installation,

'Wu found the liaison office at Lhasa in a poor way. From various causes it had been reduced to one man only - a wireless operator - and although additional officials had been nominated, the Tibetans had prevented them from entering Tibet by the overland route. Before leaving Lhasa, Wu tried to persuade the Tibetan government to accept the appointment of a Chinese High Commissioner - the equivalent of the former Amban - but this was immediately refused. He therefore, without securing Tibetan agreement, simply let it be known that the Chinese liaison office would henceforth be a branch of the Commission for Mongolian and Tibetan Affairs ... [Richardson, p.155]

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Addy, Premen, *Tibet on the Imperial Chessboard: The Making of British Policy towards Lhasa, 1899-1925* (Academic Publishers, Calcutta, New Delhi), 1984, pp.364 [Premen Addy is a journalist and lives in London.]

Bell (1), Sir Charles, *Tibet: Past and Present*, (Oxford), 1924, pp.326 [Sir Charles Bell was in the Indian Civil Service before 1900 and first went to Tibet in 1904 (he was responsible for finding the route for the Younghusband Mission), became Political Officer in charge of Sikkim 1908-18, attended the Simla Convention in 1914 and continued to visit Lhasa in various official capacities until 1921]

Bell (2), Sir Charles, *The People of Tibet*, (Oxford), 1928, pp.319

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Lamb (2), Alastair, *The McMahon Line; A study in the Relations between India, China and Tibet, 1904 to 1914* Volume 1 (London, Routledge & Kegan Paul), 1966. pp.267

Lamb (3), Alastair, *The McMahon Line: A study in the Relations between India, China and Tibet, 1904 to 1914* Volume 2 (London, Routledge & Kegan Paul), 1966. pp.656

Lamb (4), Alastair, *British India and Tibet: 1766-1910*, (London, Routledge & Kegan Paul), 1986, pp.353 (This is a revised and expanded re-edition of Lamb (1) above.)

Lamb (5), Alastair, *Tibet, China & India 1914-1950* (Roxford Books) 1989 pp.594

Richardson, Hugh E, *Tibet and its History* (Shambala, Boston & London), 2nd Edition, 1984, pp.327 [Richardson served in Tibet as head of the British Mission in Lhasa 1936-50 representing the British government until 1947, and then the Indian government]

Shakabpa, Tsepon W.D, *Tibet: A Political History* (Potala Publications), 1984, pp.369 [Tsepon W.D. Shakabpa was born in Lhasa in 1907. He became Tibet's Secretary of Finance 1930-50, and was then the Dalai Lama's official representative in New Delhi until 1966]

PRC (1) *China's White Paper on Tibet*, (FE/1494 C1), 24 Sept 1992, pp.22.

PRC (2) *Tibet - Its Ownership and Human Rights Situation* (Information Office of the State Council of The People's Republic of China), September 1992, pp.65. Note that these two documents by the PRC are almost identical (the layout and paragraphing is different). It would appear that PRC (2) is the later document, with some small but important textual amendments.

Singh, Amar Kaur Jasbir, *Himalayan Triangle: A historical survey of British India's relations with Tibet, Sikkim and Bhutan, 1765-1950*, (The British Library), 1988, pp.408. [Amar Kaur Jasbir Singh was an archivist in the India Office Library and Records]

Wangyal, Phuntsog, *The Tibetans: two perspectives on Tibetan-Chinese Relations* (Minority Rights Group) Report No. 49, 1983, Part 2.

REPORT ON EVIDENCE

3 Tibetans as a Distinct People

- John Dowd

Introduction

Even if there were no claim by the People's Republic of China to have control over the people of Tibet, there would exist a difficulty in identifying the history, boundaries, and internal and external relationships of the Tibetan people.

That there has been a Tibetan people, Tibetan peoples and an identifiable Tibetan culture and variations of it, is a fact. This view obviously has to be looked at in the context of the competing claims of the People's Republic of China (PRO China) and those that contend for a separately identifiable Tibet throughout history.

The issue from PRO China is somewhat clarified by the published position of the PRO China which one can reasonably assume is their strongest position since, on the issue of a united China, the PRO China has not been prone to make public declarations against interest. The view of the Republic of China (RO China) is not radically different from PRO China on claims to Tibet.

Shortly after the fall of the Ching, or Manchurian, dynasty in 1911, Dr Sun Yat-sen, the first President of the Republic of China, asserted that the foundation of China lay in the people and the unification of lands inhabited by the Han, Manchu, Mongol, Hui and Tibetan people into one country.

One will find in Taiwan, and indeed in people wholly educated in Hong Kong and right throughout China, that the intervening period has implanted that view amongst most of the peoples occupied now by the PRO China and RO China, of whatever origin, but obviously it is more likely to be asserted by people of Han origin. The Chinese unification claims have achieved for many the status of conventional wisdom.

It, in fact, as an assertion, has less validity than to assert that the Celtic peoples of Ireland, the Germanic tribes and the Aryan peoples of northern India are unified. The Indo-Europeans in fact separated off at a much later point of time. The Celts only appeared archaeologically in about 700 BCE. The Germanic peoples only entered history at just over 200 BCE, even though it is clear that the whole of the European continent was occupied by people of similar cultural inclination from about the third to fourth millennia BCE. Assertions, if repeated enough, become very hard to dislodge, no matter how ill-founded.

An abbreviated chronology is probably desirable for this, and other sections of the Report. The modern terminology Before Common Era (BCE) and Common Era (CE) are used rather than BC and AD respectively.

CHRONOLOGY

BCE	Early
2255	Chinese reference to Tibetan highlands
c.416	Tibetan Kings establish universal sway over Tibet
c.400	Reference to Tibet by Herodotus
221 - 206 CE	Chinese Ch'in Dynasty
206 - 220	Han dynasty, which did not extend as far west as the Tibetan Plateau, except for a salient to the North of the Tibetan Plateau, which included the Hsi-Yu tribes in the late Western Han dynasty
220 - 617	A period of separation of the various Chinese Kingdoms through several dynasties. China was invaded intermittently by Huns and Turks, who established various kingdoms often with the Chinese administration
617 - 730	Tibetan Monarchy of Sron-Tsan Gampo and successors (Buddhist period)
618 - 907	China's Tang dynasty (Han)
660 - c.850	Turfan Empire of Tibet, (alternatively To Fan or Tufan)
763	Tibetan Conquests of Western China and China's capital

CHRONOLOGY CE

907 - 960	Chinese Period of the Five Dynasties
960 - 1127	Northern Sung Dynasty (Han)
1127 - 1279	Southern Sung Dynasty. Period of Tribute to the Khitan Mongols and the Hsi-Hsia State (Neither Sung Dynasties extended into the Tibetan plateau, or north of it)
1211 - 1279	Break up of Sung Empire under pressure from Mongols
1279 - 1368	Yuan (Mongol) Dynasty
1368 - 1644	Chinese Ming (Han) dynasty. The Tibetan Plateau was excluded, except the area near Lake Koko Nor during the middle of that period
1644 - 1911	Manchu dynasty --- extension of Manchu Empire to cover outer Mongolia, the whole of Tibet, and the areas north and west of Tibet, to Lake Balkash.
1792	Gurkha invasion of Tibet.
1856	Tibet-Nepal Treaty wherein the parties, inter alia, agrees to regard the Chinese Emperor with respect
1890	Convention between Britain and China concerning Sikkim and Tibet
1904	Convention between Great Britain and Tibet
1906	Convention between Great Britain and China, concerning Tibet
1914	Simla Conference
1933	Death of His Holiness XIII Dalai Lama
1935	Birth of His Holiness XIV Dalai Lama [acknowledged as Dalai Lama in 1937]
1949	Establishment of Peoples Republic of China
1950	Invasion of Tibet by China
1959	Departure of Dalai Lama from Tibet

A. PRE-YUAN DYNASTY (1179)

Summary of Competing Claims

PRO China

It is contended that the ancestors of the Tibetan race established links with the Han peoples before the Christian era, and that the tribes of the Tibetan plateau unified during the first half of the first millennium CE, to become the Tibetan people.

The Tibetans and Hans had, through marriage between royal families, and meetings and alliances, cemented political and kinship ties and friendship laying a solid foundation for the founding of a unified nation. The statute of the Tang Princess Wang Ching, who married Tubo Tsampo, King of Tibet in 641 CE, exists and the alliance between the Chinese Tang dynasty and Tibetan Tubo dynasty published on a monument erected in 823 still stands and states that the two territories be united as one (but see also below).

Tibet

Before the unification of China in 221 by the Emperor Ch'in the existence of Tibet is known from Chinese sources extending back to the late third millennium BCE.

None of the Indo-European nations had recorded dealing with the people of Tibet until the Common Era, except a brief reference by Herodotus in the fifth century BCE.

The Tibetan race are amongst the Mongolian family, a group of nations which are allied to the Turkish tribes, and inhabited the geographically elevated areas before the beginning of western recorded history. The Tibeto-Burman group of languages encompass the area from the North of India, along both sides of the Himalayan mountains, predominately on the northern and eastern sides, and extend down the Yunnan Province of China, into Burma. Within the non-Tibetan areas of China, there are numerous minorities, some with directly Tibetan language, some with Tibeto-Burmese language, and some who are ethnically Tibeto-Burman but have dialects similar to Tibetan.

Some of the people of Ladakh, in India's province of Kashmir, are culturally, linguistically, and ethnically Tibetan peoples, but have many centuries regarded themselves as not part of Tibet. Similarly in Nepal, Sikkim and Bhutan.

The period of the Tang Dynasty, until its breakdown, shows no evidence, from Tibet or China, as to any claim by one nation to have ongoing authority over the other. There is no evidence of any authority being exercised by China over the Tibetan peoples prior to the commencement of the invasion by China by the Mongols in the late thirteenth century. The claims to racial unity are without serious basis any more than the Indo-European peoples could claim to have any sort of unity. The only relationship of authority between Tibet and China prior to the Mongol invasion was the capture of Western China by the Tibetans in the eighth century. China's capital was captured in 763.

The full text of the stone column of 823 appears to be a treaty of friendship and understanding between two sovereign states, 'the Great China' and 'the Great Tibet', not a record of unity as the (partial) quotation from the PRO China would have us believe.

The Northern Sung Dynasty broke down under Mongol pressure, and the Southern Sung Dynasty only existed by paying tribute until eventually it broke down and the Han people were conquered by the Mongols.

Comment

The Tibetan people have clearly had relationships over many centuries with the people of China, but the marriage of a Chinese Princess, Hun-shin Kun-ju, which was made such an issue by PRO China, was in fact only one of four wives of the great Tibetan Emperor Sron-tsan-gampo, one of whom was Nepali, the other two Tibetan. Curiously, however, the mother of the great Emperor Thi-sron-de-tsan was a Tang Princess (the daughter of the Emperor of China - her Chinese name being Chin-Chen). Neither Chinese nor Tibetans seem to make as much play of her despite the significance of her son, perhaps the most illustrious of the Kings of Tibet.

There were relations between the Tibetans and all the adjoining peoples, some of whom were in fact more closely linked than the Han Chinese. Therefore no inference can be drawn by the contentions of some significant relationship between the Han Chinese and the Tibetans.

There does not appear to be, except in terms of rhetoric, a vast difference between the contending parties, except the simple assertion by China that these events form some sort of unifying basis.

B. THE MONGOL DYNASTY (1279)

Summary of Competing Claims

PRO China

It is stated by PRO China that, in 1247, Sagya Pandit Gonggar Gyamcam, the religious leader of Tibet, came to a separate arrangement with the Mongol Prince Godan, and decided on terms for Tibetan submission to the Mongols. A Tibetan work of 1629 directed to religious and secular leaders states that they must pledge allegiance to the Mongols and accept the regional administration prescribed for Tibet. The Mongol Khanate changed his title to Yuan in 1271. It is claimed by China that the Mongols therefore unified the whole of China in 1279, and achieved great unification of regional races within the domain of China. It is claimed that Tibet became an administrative region directly under the administration of the central government of China's Yuan dynasty.

It is then stated by PRO China that various authority was established over Tibet, and that the centralised administration from within China unified all of the conquered nations, and that there were Han Chinese troops stationed in Tibet. It is clear that during a large part of this time officials were sent into Tibet by the Yuan Dynasty. It is probable that some of these were Han Chinese as well as Mongolian.

Tibet

The Mongol Empire was the largest continuous land empire in the world. It extended into Eastern Europe across the whole of Asia, and eventually into India. Any suggestion that any of the subjugated people controlled any other is without legal or factual foundation. It is obvious that Chinese (Han) troops were used from time to time, and that some officials from some nations were used to administer others. But since both China and Tibet were conquered by the Mongols, this clearly does not give either nation a claim of sovereignty, control or suzerainty over the other.

The relationship of Mongols and Tibet was difficult to define, because when the Mongols, in 1240, invaded Tibet, they took back with them lamas who impressed the Mongolians and impressed Kubla Khan, who eventually became Emperor of China, that he was initiated into lamaism. Since Tibet was not clearly at

this stage under the control of a religious hierarchy, nor clearly under the control of any political entity. The administration of Tibet by the Mongols was different to its political and military control of China. To some extent it was a religious affiliation, but clearly a separate administration from the administration of China.

The decline of the Mongolian Empire led to various invasions of Tibet, sometimes at the invitation of Tibetans, who were conquered and brought in outside armies to assist in the struggle between the religious and temporal leaders.

Religious power grew in Tibet towards the end of the Mongol Dynasty and the beginning of the Chinese Ming Dynasty. That power grew during the whole of the Chinese Ming Dynasty.

Comment

Again, there is not a large area of dispute between the contending parties, with the exception of the rhetoric used by China to contend for unification as a result of the conquest of both nations by the Mongols.

C. THE MING DYNASTY (1368-1644)

Summary of Competing Claims

PRO China

In 1368 the Ming Dynasty replaced the Yuan Dynasty in China and inherited the right to rule Tibet. It is then contended that the titles of officials instituted during the Yuan dynasty remain during the Ming Dynasty, and that the Emperor of the Ming Dynasty conferred titles on various officials and heads of sects in Tibet. It is contended that Chinese (Han) officials were present in Tibet.

Tibet

Although there were obviously relations between Ming China and Tibet up to the end of the Ming Dynasty and the Chinese may have sent some officials to Tibet, there was no control by China over the territory of Tibet.

Factional disputes between various interests within Tibet sometimes gave obeisance or sought assistance from China.

Comment

This is obviously a complicated period in the history of Tibet. There is in fact much written about this period. Although China's assertions will find some assistance from particular events or particular characters, there is no evidence of a unified China and Tibet. There may, however, be some evidence of contact between various interests within Tibet, and China itself.

This would be a long and detailed debate on a series of separate contentions by both parties, but no clear evidence of control or suzerainty by China over Tibet is likely to evolve.

D. QING DYNASTY (1644-1911) (MANCHU)

Summary of Competing Claims

PRO China

When the Qing Dynasty replaced the Ming Dynasty and strengthened its administration over Tibet, Qing emperors granted honorary titles to the 5th Dalai Lama and other lamas, and established those titles.

In 1719 Qing government troops were sent to dispel forces which had been entrenched in Lhasa for three years in an effort to reform Tibet's administrative system.

The Qing Emperor appointed officials to administer Tibet, and brought out regulations in the late nineteenth century, including the power to appoint the Dalai Lama and other officials. Officials and military personnel were stationed in Tibet during the greater part of this period until the end of the Qing Dynasty in 1911.

Tibet

The 5th Dalai Lama is a remarkable figure in the history of Tibet, and was a founder of political and religious institutions. He sent greetings to the first emperors of the Qing Dynasty, and was proclaimed Dalai

Lama by a Chinese Imperial order, and established a new Patron-Chaplan relationship with the Qing Dynasty.

The Manchus had been invited into China with some assistance by Ming troops, the Manchus having only come into existence by the unification of tribes militarily in the late sixteenth century. China was subjugated by the Manchurians who established an official structure throughout China. The Empire extended at times into Burma and Tibet.

The most significant invasion was after a Ghurkha invasion of Tibet in 1792, when a Chinese army was formed to defeat the Ghurkhas.

During the whole of this period, Manchu influence in Tibet was extremely tenuous. Tibet was not a monolithic administration, but different interests controlled various parts of it at different times. The Manchurians stationed some officials called Ambans, with authority in religious matters as well. The predominating power was that of the successive Dalai Lamas.

The break down of the Manchurian Dynasty in the nineteenth century and the early part of the twentieth century rendered most of the apparent authority of the Chinese extremely limited. The Dalai Lama grew in authority in this period. The area controlled from the Potala in Lhasa extended considerably beyond the area of the Tibet Autonomous Region later established by the People's Republic of China, but not to the full extent of the former ancient Tibetan people who occupied the whole Tibetan plateau.

The British government, ever watchful of its interests in the Indian subcontinent, took an army into Tibet in 1903 which provoked some Chinese reaction and activity in the declining years of the Qing Dynasty. It was at this stage that there was a bilateral convention established directly between Great Britain and Tibet, while shortly afterwards a convention was established between Great Britain and China, concerning Tibet, acknowledging Chinese suzerainty.

Comment

For the greater part of this period, China had no overwhelming influence over Tibet. Any suggestion of unification with China is without foundation. There was clearly a period when a certain tribute was paid by Tibet to China as, indeed, many weaker nations pay tribute to stronger militaristic neighbours, as the Vietnamese did to China during the first century CE. The paying of tribute does not of itself unify or render one national a colony or vassal of another.

E. REPUBLIC OF CHINA (1912-1949)

Summary of Competing Claims

PRO China

The Republic of China declared itself a unified republic of the five races, and passed laws affecting all five peoples.

The XIII Dalai Lama sent representatives to participate in the National Assembly of 1931. China exercised jurisdiction over Tibet, as it had done over the previous dynasties. It established various departments to oversee and handle the administrative affairs of the Tibetans, Mongolians, and other national ethnic minorities. An office of this department was established in April 1940 in Lhasa. From time to time, various living buddhas, including the Dalai Lama, accepted honorific titles from China.

The XII Dalai Lama looked to China, at one stage, to oppose the British invasion of Tibet.

The establishment of the People's Republic of China in 1949 was followed by a decision to send delegates from Beijing to negotiate the peaceful liberation of Tibet. The Tibetan Regent and his Government declined with the support of foreign forces, and disregarded the interests of the country and the Tibetans, rejected the central Government's call for negotiation on the peaceful liberation of Tibet.

The central Government was left with no choice, and had to order the People's Liberation Army to cross into Qamdo to liberate it. China then proceeded to 'peacefully liberate' Tibet. China then contends that the XIV Dalai Lama came to Beijing to attend the first session of the National People's Congress, and that the Dalai Lama supported the achievements of the seventeen article agreement over the preceding years. The Dalai Lama and other Tibetan deputies approved the Constitution of the People's Republic of China by casting their ballots.

The Dalai Lama was elected a Vice-Chairman, and on 22 April 1956 the Dalai Lama became Chairman of the Preparatory Committee for the Tibet Autonomous Region.

In 1959 the Dalai Lama left Tibet.

Tibet

From 1911 until 1949 Tibet exercised full authority over its internal arrangements and treated directly with other nations.

Comment

The bringing together of five so-called 'races' ignores the plethora of minor races that are not included within each of the five. In the south-west of China and in the Mongolian areas, there are many races related in some cases, and unrelated in others, who are included within China.

The assertion remains just an assertion and does not of itself form a basis for the subjugation of one of those races to any other, or indeed unification of all of them.

THE NEED FOR FURTHER EVIDENCE

A complete detailed analysis of the relationship between Tibet and China over the last seven hundred years by an independent organisation would, in fact, remove some of the area of dispute between China and Tibet. The problem is that the process would be an exhaustive one, and would result in an enormously long book, or series of books, to prove its conclusions.

Unless that document were produced with the authority of an organisation such as the United Nations, the document would become subject to criticism, and the debate would be lost on the world. The nations of the world have competing interests, and are often reluctant to enter into debates affecting the so-called internal interests of those nations which enjoy voting power in the United Nations Security Council.

Tibet is not the greatest issue on the agenda of most nations of the world.

Any work done by any group of scholars will be given some authority, but will obviously be subject to discreditation by whichever side does not support a particular conclusion.

Nonetheless, it is desirable that some international body examine the competing claims and publish conclusions as a basis for public discussion of the matter. The big problem is that the Tibetan peoples are now spread predominately throughout the provinces of China which adjoin the so-called Tibet Autonomous Region, in addition to those Tibetans resident in third nations. It is unlikely that there would be agreement on the precise boundaries of where the Tibetan people are located. Like the Mongolians, they have become intermixed with the Han people of China, and with other races in the region.

A conclusion about the people of the Tibet Autonomous Region and those areas adjoining which comprise the Tibet which existed before the Chinese invasion of 1950 would create considerable logistic and political difficulties in establishing commissioners or examiners who would not be subject to attacks on the grounds of lack of independence.

REPORT ON EVIDENCE

4 Is Tibet a colony of China?

- John Dowd

Leaving aside the question of definition of what constitutes a 'colony' the facts are as follows:

1. The United Nations does not list Tibet as a colony under the Decolonization Committee of the General Assembly. It does not list Hong Kong as a colony either. On the contrary, the Decolonization Committee still lists East Timor as coming under its jurisdiction.

2. China does not contend that Tibet is a colony of China's. It contends that it is, and has always been, part of China. The establishment of an Autonomous Region has occurred within many other regions throughout China, whether from a geographic or ethnic base. All are considered by China, and recognised by almost all countries to be part of China.

3. Tibet does not consider that it is a colony of China. Tibet considers itself to be an occupied nation. The only sense in which Tibet could be contended to be a colony of China is in the de facto sense in that it has an occupying army which invaded in 1950 and 1951 and remains there today. It has an administration primarily controlled from within the People's Republic of China itself. It does not make its own laws. Instead, laws are imposed upon it by a government in which it is not represented.

An examination of the colonies which achieved nationhood during the twentieth century illustrates that some achieved that independence by military separation or by unilateral declaration, and some by more peaceful means. At what point in time the Australian colonies could have been said to have been under the suzerainty of Great Britain is a matter of speculation. They were clearly colonies until Australia was formed. But whether Great Britain could have exercised any authority if there were any unilateral declaration of independence some time prior to that is a matter of conjecture only.

The word 'suzerainty' was used by Britain and other nations to describe the relationship of China and Tibet. 'Suzerain' can be used in its ordinary English sense, since it is not a legal term of art to be 'a state or sovereign exercising some degree of dominion over a dependent state, usually controlling its foreign affairs'. Suzerainty describes that relationship.

Clearly, many nations such as New Zealand and the Cook Islands, have one nation exercising defence and foreign affairs powers for the other whilst leaving the other nation completely independent. Many nations are totally economically dependent without there existing any legal relations at all. Other nations, particularly landlocked nations, are subject to total control by adjoining neighbours who exercise suzerainty over them without it being so declared. The use of the word 'colony' or the words 'colonial status' does not add anything to the debate in relation to China and Tibet.

Tibet contends that it is occupied by the People's Republic of China. The Chinese maintain that the countries were unified.

REPORT ON EVIDENCE

5 The relevant Territory of Tibet: Population Transfer

- Peter Grogan

What is the relevant territory of Tibet? Population transfer as a deliberate policy. The right to reverse population transfer.

1. Introduction

This topic is concerned with the scale of population transfer. The effect of such transfer is dealt with later.

It is considered that the 'right to reverse population transfer' raises legal, and not evidential, issues and therefore it is not dealt with here.

A list of source materials relation to this subtopic which are quoted or referred to is contained in the Appendix. For ease of reading they are identified in this report by the short title in brackets at the end of the full reference in the Appendix.

It is emphasised that the list in the Appendix is not and is not intended to be an exhaustive list of all materials which are or may be relevant to this subtopic.

2. The relevant territory of Tibet

The PRC considers that the 'Tibet Autonomous Region' (TAR) which was proclaimed on 1 September 1965, comprises Tibet. Generally the official population statistics published by PRC refer only to TAR.

This area comprises slightly more than half of the total area traditionally claimed by Tibetans to constitute Tibet, or 'historic' Tibet. According to this claim, Tibet 'proper' included the north eastern province of Amdo and the eastern province of Kham. A map of this area is represented in Dr van Walt (1) p.xxv - compare the maps at pages 57 and 159.

(a) The Chinese view

The Chinese view is expressed in the 1992 PRC White Paper at p.56 as follows:-

'The Dalai Lama clique has also contended that geographically Tibet extends far beyond the boundaries of today, including areas inhabited by the Tibetans in Sichuan, Qinghai and other places, making a total population of 6 million. This so-called Tibet Major is merely a conspiracy hatched by imperialists in an attempt to carve up China. As a result of long historical changes, ethnic Tibetans have settled not only in Tibet but also in areas in Sichuan, Qinghai, Gansu and Yunnan provinces. But these areas were not under the jurisdiction of Tibet in the past, and the former Tibetan local government never administered any Tibetan-inhabited areas beyond Tibet. From the 13th century on, the central governments of the Yuan and Ming dynasties placed Tibet and other areas with Tibetan populations under the separate administrations. The Qing Dynasty further defined administrative divisions in Tibetan-inhabited areas. During the period of the Republic of China, Tibetan-inhabited areas beyond Tibet remained under the jurisdiction of the provinces where they were located. These administrative divisions basically remained after the founding of the People's Republic of China. In the Tibetan-inhabited areas of the four provinces of Sichuan, Qinghai, Gansu and Yunnan, ten Tibetan autonomous prefectures and two Tibetan autonomous counties were set up. The Tibetan population, including Tibetans in Tibet and Tibetan-inhabited areas of other provinces, fell short of 6 million. When China conducted the first national census in 1953, the overall Tibetan population, including those residing in Tibet, totaled 2.77 million. The 1990 national census gave a count of 4.59 million people. As in Tibet, the numbers of Tibetans in other areas had grown considerably over the period between the two censuses.'

A little earlier in the White Paper it is stated that in 1953 the population of Tibet (TAR) was 1 million. It would follow from the figures quoted that when China conducted the first national census in 1953 there were 1 million Tibetans residing 'in Tibet' and 1.77 million residing outside Tibet.

Two comments may be made from the above:

1 at all times the PRC has apparently had no difficulty in identifying and counting Tibetans as a separate and distinct people; and

2 the fact that in 1953 the number of Tibetans living outside TAR was so much greater than those living in TAR (a ratio of almost 2:1) is evidence consistent with, although not conclusive of, the fact that the area of Tibet extended beyond the borders of TAR.

(b) The Tibetan view

The Tibetan view is conveniently summarised in Dr van Walt (2) on page 2. After referring to the PLA 'invasion' in 1949-50 he states:

'Since 1951, Tibet has been divided into numerous zones for the purpose of administration. Almost half of the country is today under Chinese provincial administration: Tibet's north eastern province of Amdo which incorporates the Kokonor region, has been renamed Qinghai and is administered as a separate province of China. A small area of Amdo has been annexed by the Chinese province of Gansu and Tibet's eastern province of Kham has, for the most part, been annexed by the bordering Chinese provinces of Yunnan, Sichuan and Gansu and also the new province of Qinghai. Within these provinces, the Tibetan areas are administered as 'autonomous' prefectures and districts inhabited by over four million Tibetans. The south and west of Tibet, comprising slightly more than half the nation, is administered as the 'Tibet Autonomous Region' (TAR). This area includes the Tibetan capital, Lhasa, and the major cities of Chigatse, Gyantse, and Chamdo.

'Parts of Tibet are extremely fertile, while other parts, especially the northern plains (Chang-Tang), are largely uninhabitable. The south, the east and the northeast of the country consist for the most part of agricultural land, and the land along the numerous rivers and in the valleys is extremely fertile and includes large forests. Before 1950, Tibet was populated virtually exclusively by Tibetans.'

According to this description, Tibet covers an area of some 500,000 square miles. It extends over the Tibetan plateau and includes fertile lower regions in the east, where the majority of Tibetans live.

3. The Scale of Population Transfer

There is no dispute that since 1959 the PRC has exercised a control over Tibet which it did not exercise previously.

In the PRC Reply to UNHRC the events of 1949-51 are referred to (para. 13 p. 17) as 'Tibet's peaceful liberation'. In para. 1 on page 2 it is stated:

'After the founding of new China in October 1949, it is the Chinese Government's responsibility . . . to liberate its own territory Tibet, expel the imperialist forces, remove outside obstacles preventing the Tibetan people from enjoying rights of equality and freedom, and safeguard China's sovereignty and territorial integrity.'

A great deal of the Reply and the PRC White Paper is taken up with referring to the backwardness of the Tibetan people and their enormous economic and cultural development since 1959.

(Comment: A reader of these documents may be excused for wondering why, if Tibet had been an inalienable part of China for 700 years, its conditions were so backward and apparently untouched by any Chinese influence.)

In view of the control exercised by PRC over Tibet since 1949-59 it is not surprising that an increase in the Han population in Tibet has taken place, if only for administrative and military reasons. However there is considerable dispute over the degree of population transfer.

(a) The Chinese view

The population of Tibet (i.e. TAR) is discussed in paras. 38-43 of the PRC Reply to UNHRC. It states the following:-

'38. Tibet did not have any accurate census data when Tibet was peacefully liberated in 1951. The figure of the population provided by the local government of Tibet was 1 million. Since the founding of New China, four national population census were carried out. When the first national census was conducted in 1953, Tibet had 1 million people as reported to the census organizations by the then local government of Tibet. By the time the second census was conducted in 1964, this figure increased to 1.25 million, not including 67,000 people who escaped under the threat of the rebels during the armed rebellion in 1959. The third national census in 1982 found that the Tibetan population reached 1,892,000. The result of the fourth national census in July 1990 showed that Tibetan population was 2,196,000 of whom 2,096,000 were Tibetans. The population of Tibet increased by more than one time between the period of 1953 and 1990.'

'41. In Tibet, there are not only Tibetans, but since ancient times people of different nationalities, such as Han, Hui, Moinba and Lobas as well as people of the Dengs and Sharpas. However, Tibetans always constitute the overwhelming majority. According to the data of the national population census, the ratio of the Tibetans as against the total population in Tibet is 1,209,000, 96.63 per cent of the total population in 1964; 1,786,500, 94.4 per cent in 1982; 2,096,000, 95.46 per cent in 1990. Of the same period, the population of the Han nationality is respectively 37,000, 91,700 and 81,200 that constitute respectively, 3 per cent, 4.85 per cent and 3.75 per cent. For the other ethnic groups, the figures are respectively, 5,000, 14,200 and 18,400 and they constitute 0.37 per cent, 0.75 per cent and 0.84 per cent of the total population in Tibet.'

The figures quoted above are identical with those quoted on p.55 of the PRC White Paper.

(b) The Tibetan view

In his 1986 paper Dr van Walt (2) summarises the position then as follows:

'II. The Recent Transfer of Chinese to Tibet

To this day, the Chinese have sent a total of 6.2 million civilians into Tibet, in addition to which they maintain at least 500,000 troops in the country. Since the Tibetan population is around six million, the Chinese have already outnumbered the Tibetans on the Tibetan plateau. Recent reports from Tibet and from China show a steady and alarming increase in the transfer of Chinese into Tibet.

While few Chinese lived in the Tibetan province of Amdo, now known as Qinghai, prior to 1950, the Chinese settlers today outnumbered the Tibetans three to one. This region now has a population of 3.8 million, of which 2.5 are Chinese and only 800,000 are Tibetans. This figures does not include the inmate population of China's - indeed the world's - largest prison camps complex, the so-called 'Qinghai Gulag', which currently has several million inmates. The majority of Chinese settlers in Amdo today are released prisoners who are allowed to settle only in Amdo. A fact-finding delegation sent to parts of Amdo by the Dalai Lama in the summer of 1985, reported a 'massive influx of Chinese into Tibetan areas' which are now 'dominated by non-Tibetans'. Kham, Tibet's eastern province, is now most threatened by Chinese colonization. The number of Chinese settlers in Kham at the present time is estimated at 2 million. Currently there are 2 to 3 million Tibetans in the region. The lower altitudes of Kham's eastern valleys and their proximity to the PRC's most populous province, Sichuan, makes widespread incursion inevitable.

The Tibet Autonomous Region has the lowest concentration of Chinese civilians in Tibet, 1.7 million, and it is precisely to that region that the Chinese are now being encouraged to migrate. Virgin forests have been cleared to house exclusively Chinese communities; Chinese settlements have been constructed along side all major Tibetan cities and towns while many Tibetans are made to move to the undeveloped and arid parts of the country.'

In the same paper Dr van Walt refers to statistics compiled by the Tibetan Government-in-Exile which show 'that over 1,200,000 Tibetans, i.e. one sixth of the population, have died as a direct result of the Chinese occupation of Tibet'. In footnote (10) this number is broken down as follows: 433,000 - combat, including uprisings; 343,000 - famine; 173,000 - imprisonment; 157,000 - execution; 93,000 - torture; 9,000 - suicide. See 19 'News Tibet' 1, at 4 (Jan - Aug. 1984).

(c) Asia Watch 1990 Report

In the Asia Watch 1990 Report Chapter 8 deals with population transfer. It includes the following comments:

'The question of Chinese migration into Tibet remains a sensitive one. In our first report on Tibet we noted that the population figures given by Tibetan exiles for both Tibetans and Chinese on the Tibetan Plateau, 6 million and 7.5 million respectively, cannot be accepted. More recently at least some Tibetan exile officials have reduced that figure somewhat by taking in to include 1.2 million Tibetans who are said to have died as a result of China's annexation of the area of the TAR in 1951 and as a result of subsequent Chinese policies throughout the Tibetan Plateau; and by expanding its scope to include other nationalities living in Tibetan areas, some of whom, at least, may reasonably be considered to be Tibetan sub-groups.

The official Chinese census of 1982 put the Tibetan population of the PRC at 3.87 million, and in January 1988 the Chinese Bureau of Statistics put the number of Tibetans at 4.74 million, figures which Asia Watch broadly accepts. (We should note that the last figure can only be an estimate as no new census has been taken). As regards the size of the Chinese population, the figure of 7.5 million for the number of Chinese in Tibet given by Tibetan exile authorities includes those living in areas such as Xining, the capital of Qinghai province. This city has not been Tibetan for centuries and it lies outside the contiguous territory of Tibetan habitation formed by the various Tibetan and semi-Tibetan autonomous areas that occupy most of the Tibetan plateau. Thus, this 7.5 million figure includes small stretches of territory on the eastern edge of the

plateau that have a disproportionately high concentration of Chinese. While we still do not have an accurate figure for the number of Chinese on the Tibetan Plateau, it is undoubtedly below 7.5 million.

The Chinese authorities, on the other hand, for a long time insisted that there were only 73,000 Chinese in Tibet, a figure that would strike any visitor to Lhasa as being quite ludicrous. More recently, Chinese sources and official spokesmen commenting on the population of Tibet and Lhasa have provided certain statistics. Most strikingly, the vice-chairman of the TAR government, Mao Rubai, was quoted by an Indian wire-service dispatch as having stated that there were actually one million Chinese settlers in official source; indeed, since the imposition of martial law in Tibet, Chinese sources have again reverted to citing the earlier figure. In March 1989 an official news report stated, with regard to the TAR:

The population today is 2.07 million, of which around 2 million are Tibetan, accounting for 96 per cent or more of the region's populace. Hans number some 70,000, mostly cadres, workers, and technicians from all parts of the country supporting Tibet's constructions.'

(d) The Lawasia/TIN Report

Demographic changes in Tibet are discussed in the 1991 Lawasia/TIN Report at pp.78-82. The Report states (at p.78):

'In the border regions of eastern Tibet, where the majority of Tibetans live, the government is implementing a policy of significant urban and industrial development which involves large scale Chinese migration to the area. While it is true that Chinese and other groups lived in some Tibetan areas in Qinghai and Gansu centuries before the founding of the PRC, the post-1949 settlement has dramatically reversed demographic patterns of traditional Tibetan areas.'

Chinese statistics are then quoted to 'show the increase in the Chinese population between 1953 and 1982 in the Tibetan Autonomous Prefectures and Counties in Qinghai, Gansu, Sichuan and Yunnan'. The figures are taken from Ma Rong & Pan Naigu, 'Tibetan-inhabited areas: demographic changes', Beijing Review, 4-10/4/88, p.21-24.

'These figures indicate an overall 350% increase in the Chinese population of specifically Tibetan designated areas outside of the TAR. Over the same period, official statistics show that the Tibetan population outside the TAR increased by only 38%, from about 1,503,000 in 1953 to 2,083,456 in 1982'.

The Report then goes on to state:

'Chinese outnumber Tibetans in the autonomous areas in Gansu, and from large and increasing minorities in Tibetan areas, particularly Qinghai and Sichuan provinces. The balance of the population is made up of other ethnic groups, some of whom are traditional inhabitants while others have migrated to the regions with the Chinese. Much of the influx has been associated with exploitation of Tibet's natural resources.'

(e) PRC Population Figures - Some Comments

As PRC figures for Tibet generally relate only to TAR, this is one source of discrepancies and confusion. An example appears in the PRC White Paper. On page 56 the following statements are made: 'On the question of the size of the Tibetan population, the Dalai clique has spread many rumors. The most sensational was that more than 1.2 million people were killed after the peaceful liberation of Tibet. In 1953, the Tibetan local government under the Dalai Lama reported the population stood at 1 million people. If 1.2 million inhabitants had been massacred, it would have been a case of genocide and certainly the population in Tibet could not have increased to the present 2 million.'

The Tibetan allegation is not that 1.2 million people were 'killed' but that they died following the PLA invasion in 1949-51 and PRC acts or omissions caused or contributed to their deaths. The Tibetan figure is not limited to the TAR.

In the above quotation, however, the figures for the Tibetan population of 1 and 2 million relate only to TAR, so that the basic logic of the argument is fallacious.

The figures quoted in 3(a) above of the Tibetan proportion of the population in TAR are widely rejected.

They do not accord with the observations and video made by Vanya Kewley in 1988 in Tibet. These demonstrate a large Chinese military and police presence.

They also do not accord with the impressions formed by the Australian Human Rights Delegation to China in July 1991. In its Report it concluded (p.33) that 'population figures did not take account of what may be a very sizeable Chinese military presence'.

The following figures, with supporting references are quoted in the Lawasia Report at pp.88-81: 'In the late 1970's the US Central Intelligence Agency estimated the Chinese population of the TAR to be about 234,000. The total population of Lhasa alone, is currently estimated to be about 150,000. The majority in Lhasa, more than the 72,000 figure given for the entire region of the TAR, are undoubtedly Chinese.'

Chinese also dominate other cities and towns in the TAR such as Shigatse, Chamdo, Magchu, and Tsetang'. One issue about which it is suggested evidence be obtained at the Conference is the non-Tibetan population of TAR.

There appears to be a broad consensus between Chinese and Tibetan sources that the Tibetan population of TAR is approximately 2 million: Lawasia Report p.80.8; and 'Tibet - The Facts', Report prepared by the Scientific Buddhist Association for UNHCR, 1990, p.36.

One question is whether as is claimed by some Tibetan sources, the Tibetans are now a minority in the TAR.

The difficulty is obtaining reliable precise figures for the non-Tibetans in TAR. There are a number of reasons for this. The PRC has not to date permitted foreign observers to have free and proper access to Tibet in order to complete a detailed and comprehensive fact finding mission. The PRC figures do not include 'military personnel or private settlers' (Dr van Walt (2) p.3). There is also an unregistered floating population in TAR, especially Lhasa, of Chinese petty traders and entrepreneurs and their families: Lawasia Report p.82. Because of minimum registration requirements for Han civilians, or failure to register formally for other reasons, Chinese civilians in Tibet may not be counted in the figures.

4. Is Population Transfer a Deliberate Policy?

It is submitted that the only conclusion to be drawn from the matters referred to in Section 3 above is that a very significant population transfer of Chinese into Tibet has taken place since 1949-59.

There are many reasons for this. PRC has sought to establish an administrative, military and economic control over Tibet which it did not have prior to 1959. The whole tenor of the PRC White Paper is that Tibet is an integral part of PRC and subject to the policies and control of the PRC Government.

Tibet is obviously seen by PRC as a place of high strategic value, to be incorporated into its security, communications, military, political and economic strategies and objects.

It is therefore inevitable that Chinese military, professional and administrative personnel should transfer to Tibet to implement these objects. New military installations, developmental projects, roads, housing, schools, hospitals etc. to cater for the Chinese population are also inevitable.

In the regions of Tibet where the PRC regards conditions as harsh and inhospitable (e.g. PRC White Paper p(57) it is not surprising that PRC should offer incentives to attract the necessary personnel. In addition it is only natural that in the wake of such economic changes and opportunities an influx of Chinese settlers, traders and entrepreneurs should follow.

The question is whether population transfer is a deliberate PRC policy.

(a) The Chinese view

The PRC Government officially denies the existence of any policy of population transfer. In the PRC Reply to UNHRC it is stated:

42. The Chinese Government has never formulated and implemented the plan of emigration to Tibet. The State, in line of the need of construction of Tibet, has elected a few personnel of Han and other nationalities to serve in Tibet. Most of them are professional and technical personnel with high-level education and skills. Together with the Tibetan people, they have made contributions to the economic and cultural construction in Tibet. They are welcomed by the Tibetan people.

43. In recent years, as Tibet has implemented the economic policy of opening up and reform, some Han and Hui people have gone to Tibet to do business or as craftsmen. These people are always on the move and limited in number. They have not emigrated to Tibet.'

(b) The Tibetan view

The Tibetan view is that since the PLA invasion of Tibet in 1949-51 the PRC has undertaken a deliberate policy of population transfer in order to implement its political, economic and strategic policies.

Evidence to support this view is referred to in Dr van Walt (2). He states (p.2) that within months of the occupation of Tibet, Chairman Mao announced plans to increase dramatically the population of Tibet (see source in footnote(3) to paper). He proposed a five-fold increase which could only be achieved by means of a massive population transfer from China to Tibet.

Dr van Walt (2) gives examples (at pgs 4-5) of numerous references in China publications, such as the official Beijing Review, to government encouragement of the settlement of Chinese nationals in Tibet. The means include government promises of increased pay, holidays, home leave and pensions.

(c) Other evidence of Government involvement

From the 1950s to the 1980s the great majority of wage jobs in China were allocated through administrative assignment by the government's labour and education bureaus (Josephs p.13). Under this centrally controlled system, managers, cadres and workers were sent to Tibet which was regarded as an unfavourable placement for both economic and social reasons. Workers had virtually no right to refuse a transfer or job assignment - such refusal was accepted as one of the very few bona fide reasons for dismissal (Josephs p.119).

In 1980 the system of centralised unilateral job assignments was abandoned in favour of allowing more flexibility and control for both state enterprises and workers to choose (Josephs p.17). The development of a controlled free market in labour meant that many millions of surplus or dissatisfied workers were, and still are, willing to relocate wherever the state, or semi-autonomous state enterprises, provide sufficient incentives and bonuses (Liu p.398). Incentive packages typically include higher wages, longer vacations, better housing and medical care and preferential opportunities for education of children. Other incentives include the ability of Chinese families to have a second child (ICT, 'Long March' p.22 - see Lodi Gyari p.7, UNPO paper Estonia Conference January 1992) and a 'temporary altitude allowance' in addition to a higher salary.

In addition there are wage and pension incentives for Chinese workers to stay in Tibet - Dr van Walt (2) p.5.

(d) Asia Watch 1990 Report

In its 1990 Report Asia Watch states (pgs 77-78) that the majority of the population of Lhasa is clearly Chinese - 'a fact which doubtless accounts for the Chinese authorities' steadfast refusal to provide any reliable statistics for both Tibetans and Chinese in Lhasa.'

The Report then goes on to complete its chapter on population transfer with the following conclusions:-

'In essence, the authorities appear to be applying a discriminatory policy aimed at barring Tibetans from coming to Lhasa, while placing no restrictions whatever on Chinese migration into the city. For example, housing in the Tibetan quarter of Lhasa is very badly maintained, and it continues to deteriorate, but the Chinese government has not hesitated to construct extensive new housing for the Chinese population. And while admitting that housing in Lhasa is not in good shape and lacks amenities, the authorities also imply that the need for better housing is but one more reason why 'transients' (i.e. Tibetans) must keep out of the city. Asia Watch believes that recent moves aimed at expelling Tibetans from Lhasa are unfairly assigned to shape the ethnic and national make-up of the city in favor of the Chinese population. The formation of a professionally capable and strategically placed Chinese population seems to be the key element in the Chinese government's plans for the integrated economic and military development of Tibet - a goal pursued through sometimes romantic and idealistic appeals aimed at attracting ever-increasing numbers of Chinese settlers to Tibet. The recent round of riots in the region has underscored the profound unwillingness of at least a significant portion of the Tibetan population to go along with such plans.

'Asia Watch does not believe that the influx of Chinese into Tibet has meant that most parts of the region are swamped with newcomers. On the contrary, most of the TAR and the neighboring Tibetan areas still remain almost exclusively Tibetan-inhabited areas. The Chinese population is concentrated in urban areas, and in places of strategic interest as regards security, communications, military, and other concerns. However, to say that most of the large tracts of nomadic grasslands or isolated agricultural areas have very few Chinese in them is hardly to say that the Chinese presence in Tibet is not problematic; such areas, especially in the western part of Tibet, also have relatively few Tibetans. The problems arise from Chinese settlement and domination of those places of greatest significance for the economic, social and cultural life of Tibetans. Chinese domination of those places threatens to marginalize much of Tibetan life and culture. Asia Watch is concerned at what appears to be a deliberate policy to accomplish such marginalization, as well as at the inherently discriminatory aspects of policies that are aimed at keeping non-resident Tibetans out of Lhasa while allowing non-resident Chinese the right to settle freely in the city.'

APPENDIX - REFERENCES

The following is a list of source material. For ease of reading they are referred to in the report by the short title in brackets at the end of the reference.

1. 'Tibet - Its Ownership and Human Rights Situation' published by the Information Office of the PRC State Council, September 1992 espec. pp 55-57 (PRC White Paper)
2. Reply on 18 December 1991 of the PRC Permanent Representative to the UN Office, Geneva - Commission on Human Rights, 48th Session, Agenda item 12 - Situation in Tibet - US Doc. E/CN.4/1992/37, 5 January 1992 espec. paras 38-43 pp 23-24 (PRC Reply to UNHRC)
3. 'Labor Law in China: Choice and Responsibility' by H.K. Josephs, Butterworths 1990 (Josephs)
4. 'Economic Reform, Mobility Strategies and National Integration in China' by A.P.L. Liu Asian Survey May 1991 (Liu)
5. Report of The Australian Human Rights Delegation to China 14-26 July 1991, published 9 September 1991 (Australian H.R. Report)
6. 'Defying the Dragon - China an Human Rights in Tibet' (LAWASIA Human Rights Standing Committee and Tibet Information Network) March 1991 espec. pp 75-82 (Lawasia Report)
7. Tibet Information Network - News updates etc. (TIN)
8. 'Human Rights in Tibet' - Asia Watch Report, February 1988 espec. pp 41-45 (Asia Watch 1988 Report)
9. 'Merciless Repression' - Asia Watch Report, May 1990, espec. 73-79 (Asia Watch 1990 Report)
10. 'The Status of Tibet' by Mr Michael C. van Walt van Praag, Wisdom Publications, 1987 (Dr van Walt (1))
11. 'Population Transfer and the Survival of the Tibetan Identity' by Dr Michael C. van Walt van Praag, published by the U.S. Tibet Committee New York 1986 (Dr van Walt (2))
12. 'Tibet: Behind the Ice Curtain' by Vanya Kewley, Grafton Books 1990 (Kewley)

REPORT ON EVIDENCE

6 Impact of Population Transfer on Tibet

- Migyur Samkhar and Nangyel Tsering

Political and Economic

a. Negation of Resistance

The influx of Chinese immigrants into Tibet promises to negate the cause of Tibetan self-determination thus rendering all internal resistance as something negligible. If the present rate of Chinese migration is continued, it will reduce the efforts of the Dalai Lama and exiles to unrealistic claims by the turn of the century. Within two to five years, however, a point of no return may well be crossed in Tibet itself. The infrastructure that China is currently building will then be ready for a truly massive migration to commence, far surpassing Mao Tse Tun's 1952 projection of 10 million Chinese in Tibet.

Beijing portrays its intention as solely beneficent claiming its immigrants are 'skilled labour' sent to develop Tibet for the Tibetans, and then leave when the job is done. Contrary to this claim, the settlers instead of being 'engineers' and 'contractors', as they are termed, are young, poorly educated and encouraged to inter-marry and settle down in small business or farming. They are mainly drawn by the prevalent unemployment in China proper.

b. Unemployment in Tibet

The immediate result of this massive population transfer has been unemployment for the Tibetans. Trades like automotive repair, tailoring, carpentry and masonry which helped raise the region's living standards in the early eighties soon vanished. Even construction jobs have been lost. Almost 30,000 workers in Lhasa's 16 labour units were replaced by Chinese in 1985 alone. In the urban areas, a purely Chinese economy has sprung up including restaurants, beauty parlours and hotels. As a tightly-knit social and economic class, the Hui, or Chinese Muslims, in particular, have created a major challenge to Tibetan livelihoods. (W.P. Ledger - The Chinese & Human Rights in Tibet - p 18' J.F. Avedon - Tibet today p 13).

Ethnic Impact

a. Second Class Citizens

As a result of the massive transfer and presence of Chinese in Tibet, the Tibetans are now in real danger of becoming a minority in their country, an underclass, deprived of the opportunities available to the immigrant population.

b. Sinocization of Tibet

Sinocization of Tibet, is without a doubt, the ultimate aim of the Beijing Government. John Gittings had aptly explained this policy: 'The assumption behind sinocization is that of a superior culture, so deeply embedded in Chinese consciousness that their paternalism verging on racialism is mostly unconscious and therefore all the more resistant to reform'.

The most visible effect of this development lies in the old town/new-town look of modern Tibet. Virtually every Tibetan town is ringed by large Chinese suburbs. Typically, these consist of walled compounds containing new housing, with five to ten story apartment buildings rapidly going up in Lhasa and the larger cities. Running water and enough power for heating is supplied. Workers bike or drive to offices and shops, also in Chinese sectors, conduct all business in Mandarin, and rarely enter into the Tibetan section.

By any standards, these old towns are still slums, a decade after the Cultural Revolution. Only those areas set aside for tourists, such as the new 'Restoration Village' style square in front of the Central Cathedral in Lhasa have been refurbished. The rest, throughout the country, are comprised of weather beaten housing, riddled by leaks, generally unserviced by running water. Where electricity does exist - despite Chinese statistics of 175 million kilowatt-hours regionwide - it is rationed to Tibetans for only three or four hours each evening. On one of Tibet's most heavily travelled roads, between Lhasa and Shigatse, the point is well illustrated; though electricity runs the length of the road, it is diverted only where new towns appear; Tibetan villages, without Chinese, are passed by.

In 1984 China launched 43 projects, costing \$160 million to upgrade the Autonomous Region. Looking at the way these various projects are actually carried out, it is plain that none of these endeavours, as China claims, is for the Tibetans. Instead, they form the very cornerstone for the continuation of Beijing's massive immigration drive.

c. Segregation

(I) Because of the large presence of Chinese in Tibet, the hospitals also segregate the Tibetans and the Chinese. What happens if one gets sick in Tibet today? If one is in Lhasa, one would naturally want to go to the best facility in the country, the People's Hospital. This hospital has 262 doctors and 530 beds. However, unless you are in a cadre in Chinese employ, it is unlikely that you will be admitted. This hospital is primarily for Chinese. Your hospital as a non-Chinese or say a Tibetan is the First Worker's Hospital. It has 150 beds, no out-patient clinic and only 17 doctors. In Shigatse and Gyantse for instance, you would be admitted to the local hospital, but first, which of the light odd class designations you possess will be checked and only then will your treatment, what ward you are placed in, and what medicines you received - be decided.

(II) In the schools too, Chinese and Tibetan children are segregated. The Tibetan child studies Mandarin, Marxism, maths and physical education. Within this system, the recently granted permission to study Tibetan language has, practically speaking, proved useless. As a Tibetan student's second language, it eliminates the all important study of English. That is taught exclusively to Chinese who can then go on to higher technical training dependent upon it at the university level. In addition, textbooks, exams and future employment are based not on knowledge of Tibetan but on reading and writing in Chinese.

The Chinese language is positively encouraged as being dynamic and modern, while Tibetan is derided as backward and useless. Chinese contempt for the indigenous culture is blatant and very few Chinese speak Tibetan. The Chinese themselves admit that many Han cadres do not speak Tibetan and now publicly encourage officials to do so. However, with the increase of Chinese immigration, this situation only deteriorates, leaving the Tibetans in a similar position to North American Indians and Australian Aborigines.

Religion and Culture

Making a business of belief is, in fact, the highest aim of religious 'freedom' in Tibet. Not only do the admission and photo-fees charged commercialise faith, they intentionally demean the monks and nuns, particularly in the eyes of Tibet's younger generation who cannot help but view them as parasitical. The phenomenon is exemplified at Kum Bum, Amdo's largest monastery. There, visitors are required to buy six tickets, after which they join hundreds of Chinese tourists who are smoking, playing radios and gaily following the large painted numbers over the six Lhakhangs, or temples, that are on display. Tibetan robes have become the emblem of Chinese tourists in Tibet. You can pose for a photo with an old monk or dress up first in one of the ubiquitous, imitation Tibetan robes that can be obtained on rent. Buddhist teachings and initiations are proscribed, prostrations and reciting mantras are permitted. As a result, a nation wide facade, like that in the monasteries and nunneries, has been created. The symbols survive, but the substance is gone. The effect is to make Tibetans look like a backward, superstitious race, bowing down in blind faith before demonic idols - exactly what the Chinese Communist Party wants, for both internal and external consumption. Only the Tibetan Buddhist Association, dependent for its effectiveness on constant intervention by the late Panchen Lama, is engaged in reprinting Scriptures.

The Dalai Lama has pointed out that for the Tibetans to survive as a people, it is imperative that the transfer of Chinese into Tibet is stopped and the Chinese settlers be allowed to return to China as they too apparently have no desire to remain in Tibet. Otherwise, Tibetans will soon be no more than a tourist attraction and a relic of a noble past.

Tibetan Nationalism

As a result of continued persecution and atrocities suffered under the Chinese, the Tibetans naturally resent the Chinese and are becoming increasingly conscious and aware of their sense of nationalism. The greater the number of Chinese settlers in Tibet, the greater the Tibetan resistance. In spite of being a minority in their own country and totally overpowered by the presence of a strong foreign troop, the Tibetans continue to resist the Chinese. Although organising a secret society is an offence punishable by death in China, such societies reportedly do meet and distribute cassettes of the Dalai Lama's speeches, political pamphlets and photographs of the Dalai Lama.

REPORT ON EVIDENCE

7 Political Self-Determination

- John Heath

1 The status of Tibet

The Chinese position

After rehearsing the history of Tibet and China since the Tang Dynasty (618-907), *China's White Paper on Tibet*, 24 September 1992, concludes:

'For more than 700 years the central government of China has continuously exercised sovereignty over Tibet, and Tibet has never been an independent state . . . No government of any country in the world has ever recognised Tibet as an independent state. British Foreign Secretary Lord Lansdowne, in a formal instruction he sent out in 1904, called Tibet 'a province of the Chinese Empire'. In his speech at Lok Sabha in 1954, Indian Prime Minister Jawaharlal Nehru said 'over the past several hundred years, so far as I know, at no time has any foreign country denied China's sovereignty over Tibet'.

'The Dalai clique and overseas anti-China forces used to claim that between the 1911 Revolution and the founding of the People's Republic of China in 1949, Tibet became a country 'exercising full authority'. Historical facts refute such a fallacy. The simple reality that the installation of the 14th Dalai Lama needed approval of the national government is sufficient proof that Tibet did not possess any independent power during that period. Therefore the so-called 'Tibetan Independence' which the Dalai clique and overseas anti-Chinese forces fervently propagate is nothing but a fiction of the imperialists who committed aggression against China in modern history. [Op cit, p. 5]

'In March 1959 the reactionary clique of the upper Tibetan strata launched an armed rebellion aimed at separating Tibet from China' [Spokesman of the Chinese Foreign Ministry, Annex I *Situation in Tibet* Economic and Social Council E/CN.4/1992/37 5 January 1992]

At a conference in Beijing, reported in the 'Legal Daily' 15 January 1992, Jiang Zemin (Chinese Communist Party General Secretary) said 'China is historically a multi-ethnic country; in its extended historical development, it has been shaped over a long period into a strongly cohesive Chinese nation. In order to reinforce the great union of all nationalities, ethnic chauvinism as well as local nationalism must be opposed. In order to preserve the homeland's unity, we must wage a determined struggle against a tiny number of separatists' [Reported in *People's Republic of China: Repression in Tibet, 1987-1992*, Amnesty International, May 1992 p.5]

The Tibet Autonomous Region (TAR) was established in September 1965. The rights in principle accorded to the TAR, as explained and developed by a Chinese Foreign Ministry spokesman, are given below in Annex 1.

Other evidence

(1) The International Commission of Jurists. The Legal Enquiry Committee of the ICJ published a *Report Tibet and the Chinese People's Republic* (Geneva, 1960). For present purposes the relevant part of that Report is Chapter 3 'The Status of Tibet'. It is tabled in full as a separate document for this conference.

In the summary it states that 'the view of the Committee was that Tibet was at the very least a *de facto* independent State when the Agreement on Peaceful Measures in Tibet was signed in 1951 . . . In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from outside authority. From 1913-50 foreign relations in Tibet were conducted exclusively by the government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent State. [Op cit, pp.5,6]

(2) The United Nations General Assembly In Resolution 1723 (XIV) 1961 the General Assembly reaffirmed their 1959 Resolution calling for 'respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life' and in paragraph 2) -

'Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination.'

In Resolution 2079 (XX) 1965 the General Assembly re-affirmed the two previous resolutions, 'solemnly renewed its call for the cessation of all practices which deprive the Tibetan people of the human rights and fundamental freedoms which they have always enjoyed, and appealed to all states to use their best endeavours to achieve the purposes of the present resolution.'

(3) **The Senate of the USA** on 23 May 1992 passed Concurrent Resolution 41, which declared that 'Tibet is an occupied country under established principles of international law whose true representatives are His Holiness the Dalai Lama and the Tibetan government-in-exile as recognised by the Tibetan people'.

(4) **The Permanent Peoples' Tribunal**, meeting in Strasbourg, receiving evidence and hearing witnesses for three days, on 20 November 1992 decided -

1 That the Tibetan people have, from 1950, been continuously deprived of their right of self-determination;

2 That this breach of a basic right of the Tibetan people has been achieved through the violation of other basic rights of the Tibetan people, among others by depriving them of the right of the exercise of freedom of religion and expression, by arbitrary arrests and punishments without trial, the destruction of religious and cultural monuments and by resorting to torture.

3 That the population transfers from the People's Republic of China into the territory of Tibet of non-Tibetan people is directed towards undermining the ethnic and cultural unity of Tibet;

4 That the division of the territory into two parts, one called the 'Autonomous Region of Tibet' and the other made up administratively of parts of various Chinese provinces, is also directed towards destroying the unity and the identity of the Tibetan people; and

5 That the Tibetan people were autonomously governed for many centuries; achieved a specific state structure after 1911; and the basic Tibetan institutions are now represented by the Tibetan Government in Exile.

(5) **Hugh E Richardson** served in Tibet 1936-50 representing the British government until 1947, and then the Indian government, and is a respected authority on the country. He wrote 'Chinese claims that Tibet is part of China conflict radically with the facts and with Tibetan feelings. [*Tibet and its History*, 1962, p.185] 'The situation I saw stemmed from 1912 when the Tibetans expelled all Chinese and the Dalai Lama declared Tibet independent. Since 1912 no Chinese were in Tibet except for a few traders and some Muslim butchers in Lhasa. The government at Lhasa with which I dealt was beyond question in complete control of its own affairs, dealing directly with the government of India in such matters as frontier disputes, trade questions, supply of arms and ammunition and so on. There was no Chinese participation whatever in such matters and no reference to them, nor were they informed. [*My direct experience of independent Tibet 1936-49*, Hugh Richardson, 29 November 1990, p.4 in 'Tibet: the truth about independence' UK All-Party Parliamentary Group for Tibet, May 1991]

(6) **Tsepon W D Shakabpa** (who was Tibet's Secretary of Finance 1930-50) points out that 'during World War 2 Tibet remained neutral in spite of the combined pressure brought to bear by the governments of Great Britain, China and the United States for permission to transport war materials and supplies to China through Tibet.' [*Tibet: a Political History*, 1984, p.323]

(7) **Alastair Lamb**, the most respected independent historian on Tibet (with five books published on the subject of Tibetan history) has written that 'In 1912 Central Tibet (that is to say the region dominated by the Provinces of U and Tsang) became effectively independent of all Chinese control for the first time since the early 18th century. In 1950-1951 the Chinese returned to bring this brief era to an end . . . [*Tibet, China & India 1914-1950: A History of Imperial Diplomacy* (Roxford Books) 1989, p.1]

At times before 1950 Tibet also negotiated treaties, issued its own passports, visas, currency and stamps, and had its own army (for details see Annex 1).

2 Evidence of the highest levels of political control which can be exercised today by Tibetans

The Chinese position

'The Law of the People's Republic of China Governing Regional National Autonomy stipulates: 'People's congresses in the areas of national autonomy have the right to formulate regulations on the exercise of

autonomy or specific regulations in accordance with the political, economic and cultural characteristics of the local nationalities.' In accordance with the rights bestowed by the Law Governing Regional National autonomy, the People's Congress of the Tibet Autonomous Region has since 1965 formulated more than 60 local rules and regulations, decrees, decisions and resolutions, involving political, economic, cultural and educational aspects, which conform to the reality of Tibet and maintain the interests of Tibetan people.'

They include (as selected and listed by the Chinese in the same paragraph) -

- Rules of Procedures of the People's Congress of the TAR
- Provisions (for Trial Implementation) on Formulating Local Laws and Regulations for the TAR
- Measures for the Management of Mining by Collective Mining Enterprises and Individuals in the TAR
- Resolutions on Study, Use and Development of the Tibetan Language in the TAR
- Regulations of the TAR on the Protection and Management of Cultural Relics
- Accommodation Rules for the Implementation of the Marriage Law of the People's Republic of China

China's White Paper also states that

'all the main leading posts in the people's congresses, governments and people's political consultative conferences at various levels are filled by Tibetans and ... currently there are 37,000 cadres of Tibetan nationality'

[All of the above are from *China's White Paper on Tibet*, People's Republic of China, 24 September 1992, page 13].

The present political structure in Tibet According to *TIN News Update* 5 December 1992, the deputy Communist Party Secretary for the past nine months, the Chinese Chen Kuiyuan, has been appointed First Party Secretary (according to the China News Agency, 1 December 1992). His immediate predecessor was Hu Jintao, another Chinese, who has been in Beijing since October 1990 and has now been appointed to the standing committee of the Politbureau, the highest organ in the Chinese system.

Historically, unlike Inner Mongolia and Xinjiang, Tibet has never been ruled by a member of the local nationality. All Party chiefs in Tibet have been Chinese (except for Wu Jinghua, 1985-88, who was a member of the Yi nationality).

Executive Deputy Secretary Rakti (Raidi), a Tibetan, held the post of Acting Party Secretary for a few weeks (July-August 1991) until he was replaced.

Although Chinese law requires that a Tibetan be in the top position in the regional government, the Communist Party is not subject to this ruling. A Tibetan, Gyaltzen Norbu, was appointed Governor of the Region in May 1990, and has been Deputy Party Secretary since 1985. He is ranked beneath the Chinese First Party Secretary and was also beneath Rakti. From August 1991 however the Chinese Zhang Xuezhong seems to have replaced Rakti, and all important public statements (as monitored by the BBC) have been made by Zhang.

The leading person in Tibet holding the effective power is clearly now Chen Kuiyuan.

Five months after Chen's arrival, in August 1992, Loga, the Mayor of Lhasa, who was very popular with the Tibetans, was demoted to a research position at the Academy of Social Sciences in Lhasa, and has been replaced by another (unelected) Tibetan named Lobsang Dondrup.

Chen's previous position was vice Governor of the Inner Mongolian Autonomous Region (now inhabited some 80%-90% by Chinese) where, in 1964, he graduated in Political Education. He is aged 52. [All from *TIN News Compilation*, 2 October 1992 p.21 and *News Update* 5 December 1992.]

3 The Panchen Lama

The Panchen Lamas were the second highest in the spiritual hierarchy in Tibet, next only to the Dalai Lamas. After the flight of the Dalai Lama from Tibet in 1959 the Chinese appointed the Panchen Lama acting head of Tibet, and in 1960 he became vice-chairman of the National People's Congress in Beijing. (The NPC is China's parliament which in principle has the power to reject and amend new laws.) He was imprisoned and tortured 1965-75 and in 1980 was then reinstated.

He became an increasingly outspoken critic of the Chinese behaviour in Tibet. In March 1987 he wrote 'Tibetans are the legitimate masters of Tibet. The wishes and feelings of the people of Tibet must be respected'. At the People's National Congress in Peking he strongly criticised the environmental destruction of Tibet, the transfer of Chinese into his homeland, the atrocities committed during and after the Chinese invasion, and the educational policies implemented by the Chinese. He championed the official resurrection of the Tibetan language. He prevented the development of the Yamdrok Yumtso power project (the

lake is sacred to Tibetans) from its inception in 1980, which did however receive the go-ahead immediately after his death nine years later.

While in Shigatse, where he was concerned with renovating and rebuilding the Tashilhunpo monastery, he said that 'the Chinese rule in Tibet has brought more destruction than benefit to the Tibetan people', and shortly afterwards, in January 1989, he died, at the age of 50. Direct Tibetan influence in the Chinese National People's Congress, just at the time when the Congress itself was asserting more authority, then greatly diminished. [*Tibetan Bulletin* November-December 1991, p.2, and March-April 1992 pp.17-20]

4 Evidence relating to the role of Tibetan cadres

Testimony from G - (Interviewed by a British lawyer in Dharamsala 27/8/92 specially for this report.) G - worked in the District Office in Lhasa for over a decade before his recent escape.

The head of the District Office in Lhasa during G -'s time there, the person 'who had the real political power', was a Chinese addressed as Rhuchi (Zhuhsi). Since G - has been in exile the position has become occupied by a Tibetan. He is known as a 'diehard Maoist' and has '100% faith in communism'. He is reported to have said that 'without the Chinese, Tibet will not be able to survive'. Due to a disability he is unable to attend at the office. G - believed that the Chinese chose him for this high ranking position because of his political views.

There were four administrative officers (Ching Li) in the District Office, the highest ranking of whom was a Tibetan. The others were Chinese, but 'such power as there was in such a position lay with the Chinese officers'.

Ranking below these administrators were the Section Leaders. These were Tibetan, and they gave G - his day-to-day instructions.

The opportunity for Tibetans to make proposals can be divided into two categories.

1 Proposals to help bring out products of a better technical quality, or to maximise the distribution of these products in the shortest time, were acceptable.

2 Suggestions about whether Tibetans will like them or their content (the products have a strong propaganda value) will not be accepted under any circumstances, whatever the rank of the person. 'Orders concerning their content come direct from Beijing and cannot be questioned'. Discipline has two categories.

(1) **Mistakes in day-to-day work**, such as failing to switch off a light at the end of the day, or poor standard of work, may be punished by a cut in pay. Persons making a mistake will be named and humiliated in work meetings. There will also be monthly awards for the best worker.

(2) **Political mistakes** are more serious. For example, supporting a Tibetan in an argument with a Chinese could result in being handed over to the police and, even if the offence took place outside of the office, the office will take no responsibility for him. His punishment may be re-education or a fine. He will be 'black-listed' in the office (in spite of Chinese denials that 'black-listing' exists). If it was a serious political mistake he would be put under surveillance at all times, including while at work. For a very serious political mistake he will be expelled from the office and he will be handed over to the police.

Testimony from Tsering Wangchuk (Interviewed in Dharamsala 28/8/92 by a British lawyer specially for this report.)

Tsering Wangchuk was a reporter with *Radio Lhasa* from 1978-83, accountable directly to the Chief Editor. He was also writing for the *Lhasa Daily News* on a freelance basis.

The Chinese have realised the importance of radio (newspapers require literacy, and television a certain level of wealth). This is why Wangchuk was sent to Beijing for training, with two other Tibetans and one Chinese. 'A few thousand' people are employed by *Radio Lhasa*, with about 60 Tibetans working as translators, reporters and announcers (the number has recently been increased). At Wangchuk's level perhaps about 10 Tibetans were there for their skill, and another 5-10 by virtue of length of service.

There were three Chief Editors of *Radio Lhasa*, all of whom were Chinese 'which was where the real power lay'. There were also some assistant editors who were Tibetan.

Tsering Wangchuk was allocated a geographical area to cover. He had explicit written instructions of 'do's and don'ts'. Reports 'must not contain anything insulting to communism . . . and must depict the Chinese as having brought wealth and happiness to Tibet'. He should not write about unpleasant things, crimes, demonstrations, fires etc reports of which would be regarded as 'mistakes'. There are two kinds of 'mistakes'.

(1) If it is claimed that a false report had been compiled then an investigation would be held and if found guilty the offender would be disgraced at a work meeting.

(2) Political mistakes include writing a report which carries overtones of independence. Such a report would never reach the stage of publication because there are many points at which the material he submitted would be checked and screened. The filter through which reports must pass is very fine. If a report is produced containing a political mistake then the reporter would be expelled from the office and would face prison. It was a rare occurrence for such a political mistake to be made as reporters are constantly monitored by the Chinese while at work'.

A Chinese reporter wrote about the suppression of Tibetans in Lhokha caused by 'collaboration between the police and Chinese communists'. He reported that many had died as a result. He was expelled from being a reporter in that area, and the Editor in the alternative area to which he was appointed would not accept him. He took the matter to the Communist Party and there was a full investigation. The reporter's version of events was proved to be true but he was nevertheless forced from his job. All his fellow reporters felt that a great injustice had been done but none was willing to support him openly.

Testimony from -- (a senior Tibetan cadre interviewed in Tibet mid-1992 by a European who speaks Tibetan) The Tibetan was a senior official concerned with tourist development in his part of Tibet. He was a member of the Communist Party. He was accountable to a more senior Tibetan for his work (who is a 'fanatical Communist' and 'extremely strict to other Tibetans, as bad as the Chinese'). The senior officer responsible for tourism had the restoration of Buddhist temples in his area within his authority and cash and vehicles were allocated to him for this work.

As well as Tibetans in his department there are also Chinese 'watchers' called 'liaison officers' whose role is to scrutinise and to authorise all of his decisions. All decisions of any significance, including all funding decisions, the use of all resources and all matters with a political content, significance or connection, are made by the Chinese.

Many Chinese cadres who had lived in the region for many years had become quite sympathetic to Tibetans and friendships had developed. But within the very recent past there has been a massive turnaround in Chinese personnel. All of the 'long stay' Chinese whom he knows have been sent back to China and their replacements are Chinese 'young zealots', including a large number of ex-officers from the People's Liberation Army placed now in managerial positions. Some are more senior to the Tibetans and others more junior.

Tibetans have been told by the Chinese that if the Dalai Lama returned to Tibet all Tibetan cadres would become unemployed. On 10 March 1992 the Dalai Lama announced that 'because of their experience, the Tibetan officials of the existing administration in Tibet should shoulder the main responsibility (for administering a fully democratic Tibet in the future)'. Tibetans in Tibet were not told of this.

5 The Chinese military and police presence in Tibet

A secret Chinese report, mentioned in TIN News Update 17 September 1992, said that there are just over 40,000 Chinese troops in the Tibet Autonomous Region. This is considerably fewer than the 150-250,000 which a few years ago were thought to be in that territory. Of these 40,000 the report says that there are 7,500 Chinese officers and 600 Tibetan officers. The military lists amongst its main objectives 'concentrating the struggle against splittism and protecting the stability of the situation in Tibet'.

The Chinese source also claims that there are some 240,000 combat-ready forces on the Indian side of the border with Tibet, and that there are frequent skirmishes across the border (the Chinese say 42 incursions by the Indians 1986-90 on land and over 100 by air). Before 1950, India had few troops on the Tibetan border (and the Tibetan army was only about 10,000 men, and concentrated in the east of the country not the south - see Annex below), but when Tibet was occupied by the Chinese the Indians built access roads to the border area and sharply increased their military presence. In 1987 there was a major border clash in which the Chinese gained some territory. [TIN News Update, op cit] Chinese maps show parts of India as Chinese (especially Tchona County in Arunachal Pradesh, India).

Supporting the army in its work in Tibet is the People's Armed Police and public security cadres. The leadership is in the Public Security Department and the Regional Office of Public Security. After the period of 'martial law' in Lhasa, when some 30,000 troops were in the city and about the same number of Armed Police (March 1989 - May 1990), the military presence in the city fell but the number of Armed Police was increased (and new restrictions on the movement of Tibetans were introduced). [TIN News Update Op cit]

There have been many recent eyewitness reports of a giant building project of nearly 40 3-story buildings, each building with about 40 rooms, stretching for over 1 km on the main road running towards Tibet's main

airport at Gonkar, 10 km southwest of Lhasa. It now appears (according to unofficial reports from Lhasa, reported in *TIN News Update* 3 December 1992) that this is to become part of the military command headquarters for south-western China, and for the Tibet military district (presently based in Chengdu, 1,300 km to the east).

Analysts are divided over whether this development heralds Chinese concern over its southern border with India or whether the move is more connected to internal security in Tibet. The reduction in the number of troops stationed in Tibet and the major extension of Lhasa's airport may be connected with the further development of the 'rapid response force' concept, first used in March 1989 when the 149th Airborne Division was able to move its base with 14,000 troops from Sichuan to Lhasa in 36 hours (at the start of martial law in Tibet). [*TIN News Update*, Op cit]

6 Official policy on internal security

In November 1990, Gyaltzen Norbu, the Tibetan Governor of the Tibet Autonomous Region, made a 14 page speech (written in Chinese) on security policy at the 'Regional Conference on Basic Work on Public Security in Grassroots Units'. 1,510 numbered copies marked 'Confidential' were issued. [see *TIN News Compilation*, 22 October 1992, pp.54-56] The general tone is indicated below and refers to -

'the struggle between two social systems, socialism and capitalism. The establishment of socialism is definitely an attack and threat to capitalism. It predicts the decay and elimination of capitalism. The conflict and struggle between the two social systems inevitably meant that imperialist forces would make a great effort to try to destroy the socialist system ... In the elementary stage of socialism the class struggle exists in certain areas ...'

Norbu's view of the Tibetan government-in-exile is expressed in a similar manner -

'The Dalai clique knows that there is no way they can compare with us in the political, economic and military spheres. His only superiority is religion. Hence religion has become an important tool for them to undertake splittist activities ... Changes in the international situation have made the activities of the Dalai Clique more aggressive'.

There is also an important policy shift described by Gyaltzen Norbu. It is -

'to change from responding passively to the situation when disturbances and riots had occurred to an active role. The situation now is that if someone is thinking of causing trouble we do not allow the disturbance to happen. Recently we took more and more initiative to carry out preventive work ... one of the most essential points in order to achieve this is to strengthen work in grassroots units. We have hit back at some key splittist elements. In the last two years we have caught some underground counter-revolutionary organisations and underground printing outfits ... As long as we carry out the work of the grassroots units well and organise and mobilise the masses, the anti-splittist struggle will be sure to achieve greater success.'

Gyaltzen Norbu also said that security policy has been extended into the monasteries.

'Right now, local police stations are being established in some major monasteries, and management offices are also being established in some monasteries by the relevant departments. It is hoped that the management of the monasteries will be carried out according to the monasteries' management democratic regulations and according to the requirements for the management and rectification of monasteries formulated by the Autonomous Region's "Leading Group for the Stabilisation of the Situation".

'The many disturbances in the past show that there are weak points in our management and control of monasteries. Controlling monasteries actually means solving the following two problems. The first is that, no matter how, we must ensure that the People's [Democratic] Management Committees are in the hands of people who support the leadership of the Communist Party, the socialist system, and the preservation of the unity of the Motherland. This is the question of leadership.

'The second problem is that we must fully use, discover and educate activists amongst the monks and nuns. This is the question of unifying, educating and winning over the majority. When we win over these two forces and set up a perfect management system and rules, then the management and control of monasteries should be no problem. Even if a problem arises we will still be able to keep the general situation under control.'

And on 22 September 1991 Gyaltzen Norbu said with the small number of separatists at home and abroad swollen with arrogance, at no time can national defence awareness be weakened ... If we want stability, we must strengthen national defence'. [*TIN News Update* 3 December 1992]

7 Evidence relating to the Tibetans' preferred form of government organisation

The Chinese government's view of the Tibetan political system pre-1950 and the changes it brought about are that -

'The Chinese government succeeded in abolishing the feudal system of serfdom and establishing a socialist democratic system, making a great historical contribution to ensuring for the Tibetan people human rights and fundamental freedoms. During several hundred years when Tibet was governed by the local government of Tibet led by successive Dalai Lama, a feudal system of serfdom which integrates religion with politics was practised there ...'

'In 1959, the democratic reform was successfully carried out in Tibet by the government of China and the dark feudal system of serfdom abolished, and the Tibetan people thus completely freed themselves from their untold sufferings under the slave owners, attained for the first time their human rights and fundamental freedoms, and started to enjoy their citizen's and political rights guaranteed by the Constitution of China and all the economic, social and cultural rights'.

'In the face of all this, a small number of self-exiled Tibetan separatists and certain supporting foreign political forces have called the abolishment of the feudal system of serfdom in Tibet deprivation of the Tibetan people's basic human rights and freedoms. This is nothing but confusing the rights and wrongs.' [UN Economic and Social Council, Commission on Human Rights *Situation in Tibet*, Reply by the Permanent Representative of China to the United Nations office in Geneva, E/CN.4/1992/37, 5 January 1992, p.3]

The Tibetan government-in-exile does not accept the Chinese version of their history. Left free from the influence of the Chinese government and all other nations, the government-in-exile has developed its own Constitution with a freely elected system of representation for all Tibetans in exile. It is intended that this Constitution should be the basis of a new Constitution which would be put to all the people of Tibet as soon as the opportunity arises.

'Immediately upon my arrival in India (in 1959), as per my earlier desire, I took it as a matter of high priority to transform Tibet's political system into a democracy' (His Holiness the Dalai Lama, in *Introduction to Guidelines for Future Tibet's Policy and the Basic Features of its Constitution*, January 1992). A Draft Constitution was promulgated in 1963 aimed at implementing democratic principles within the exile Tibetan Administration as far as possible.

Following the work of an Election Commission, the most recent fully democratic elections for membership of the Assembly of the Tibetan People's Deputies, the legislative organ of the Tibetan Administration, was held in February 1991. 32,880 Tibetan exiles went to the polls and 43 Members were duly elected, on a world-wide basis. At the resulting 11th Assembly (May 1991) the Press were present. Deputies voted under the Charter to form the Kashag (the Cabinet) and two were elected. Subsequently three more Kalons were appointed (who had previously been elected to serve at an Extraordinary Assembly in May 1990), thus making five Kalons (members of the Cabinet) altogether. New appointments to individual government departments followed.

On 10 March 1992 the Dalai Lama said 'The present Tibetan Administration (in-exile) will be dissolved the moment we return to Tibet, and I will hand over all my traditional political power to an interim government. This interim government will be responsible for drawing up a democratic constitution under which the new government of Tibet will be elected by the people.' [Quoted in *Tibetan Bulletin*, March-April 1992, p.16]

Tibetans in Tibet are not permitted to express their views, and there has been a long history of arrests and torture for those who show support for the Dalai Lama, for independence, for showing the Tibetan flag or for any criticism of Chinese socialism. But there are many underground leaflets and publications, and many printers have been arrested ('Eleven Tibetans were sentenced up to 19 years in jail for printing dissident leaflets' [TIN News Update, 27 December 1989]), and one notable 'manifesto' from the Drepung Group in 1989, led by a monk named Ngawang Phulchung. This read 'although the Chinese have repeatedly accused Tibetans of wanting to re-create the pre-1950s social system, Tibetans have no intention of reviving the old society.' The 'manifesto' emphasises that a future Tibet would not only be democratic but would be run on secular as well as religious principles. It emphasises that power must be exercised by representatives elected by all Tibetans, not just a particular class or group. [TIN News Update, op cit]

The recorded frequency and type of demonstrations by Tibetans in Tibet is illustrated on the Chart below. The following points may be noted.

- In the 5 years August 1987-92 there were 135 recorded demonstrations (others may go unrecorded, especially outside Lhasa);
- The trend number of demonstrations has been rising, with what may be a peak in 1991 of 37 demonstrations;
- All of the 'major incidents' were pre-February 1989;
- Protests led by nuns form a significant 30% proportion of the total;
- 15% of the demonstrations were outside of Lhasa.

Demonstrations in Tibet 1987-92

Frequency Chart

C	major incidents	(4)
N	protests led by nuns	(41)
#	student demonstrations	(5)
O	incidents outside Lhasa	(26)
P	protests inside prisons	(7)
-	demonstrations by others	(51)
Total		(135)

1987													
(8)											N		
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1988													
(17)				N	N	N	-	#	-	#	O	N	C
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1989													
(30)		N	N	C	N								
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1990													
(20)													
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1991													
(37)													
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1992													
(23)													
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	

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The **Australian Human Rights Delegation to China**, July 1992, found 'clear signs of anti-Chinese feelings from these contacts [when some members were able to talk privately with a number of ordinary Tibetans]. Tibetans unconnected with the government overwhelmingly opposed Chinese control of Tibet, sought independence and the return of the Dalai Lama, were unequivocal about the lack of religious freedom and civil and political rights and talked about a lack of justice, education, employment and freedom of expression, as well as restrictions on movement. They asserted that Tibetan culture and religion were gradually being submerged by the sheer weight of Chinese influences. The Delegation was told of their fear of arrest, interrogation and detention for merely being seen to converse with foreigners. Monks often spoke of close surveillance, yet the authorities insisted that security personnel were only stationed inside the major monasteries to protect property'. [*Report*, p.63]

Additional Notes on Sources for Evidence

LAWASIA (The Law Association for Asia and the Pacific, Human Rights Standing Committee) 'is a professional, non-governmental association of lawyers - private and governmental lawyers, judges and teachers.' Its objectives include 'promoting the administration of justice, the protection of human rights and the maintenance of the rule of law.' [*Defying the Dragon: China and Human Rights in Tibet*, LAWASIA and TIN, March 1991, Appendix F]

The Laogai Research Foundation is a non-profit organisation which is dedicated to promoting democracy in the People's Republic of China by exposing the grim reality of the Laogai - China's secret forced labour camp system. Hongda Harry Wu, Research Fellow Stanford University, Hoover Institution, is its Executive Director.

The Tibet Information Network (TIN) 'is an independent, non-profit making organisation which collects and analyses information about the current political and human rights situation in Tibet. It works to foster the free flow of information from Tibet about events and current conditions in that country.

TIN aims to provide accurate and objective information which is free from bias.

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Except where the safety of sources might be threatened, TIN shall make available any documents in its possession to anyone who wishes to see them in an unedited and unexpurgated form. [*Defying the Dragon*, op cit. pp.139-140]

Tibetan Bulletin is The Official Journal of the Tibetan Administration.

Tibetan Review 'is the only monthly publication of news and features on Tibet and the Tibetans. Besides regular surveys of the current situation in Tibet based on refugee statements and other reliable sources, the paper gives reports on the activities of the free Tibetans living in exile.' The publication is edited in New Delhi.

Annex 1 to Political Self-Determination Report

Main Contents of the Rights Accorded to the Tibet Autonomous Region, September 1965

(a) The right entrusted by the State to formulate local regulations. The autonomous region has issued 60 separate regulations, local provisions, legal instruments and decisions concerning political structure, social and economic development, judicature, natural resources, environmental protection, etc.

(b) The right to enforce State laws and policies, and formulate and implement special policies and measures in accordance with the actual situation in the locality. The major special policies in Tibet are as follows: The policy of 'land being used by households for independent management' is introduced to the agricultural areas and is pledged to 'remain unchanged for a long time to come'. For pastoral areas the policy of 'livestock being tended by households independently for private use' is carried out and equally 'will remain unchanged for a long time to come'. No agricultural and animal husbandry tax is to be levied, and all purchases by the State are to be cancelled over a certain period of time. Farmers and herdsman can freely sell their products. In the field of industry and commerce, national arts and crafts are supported and collective and private industries and trades are encouraged. With regard to education, boarding schools for children of farmers and herdsman are free in terms of tuition fee, food and accommodation.

(c) The right to ensure the Tibetan people to freely use and develop their own spoken and written languages. In 1987, the people's congress of the autonomous region adopted several provisions concerning the study, usage and development of Tibetan language, and set the principle of using both Tibetan and Chinese languages with Tibetan as the main language. A working committee on Tibetan language was also established. In October 1988 the detailed rules on implementing these provisions were issued by the autonomous region's government.

(d) Major responsible posts at all levels of the region's governmental and judicial departments are held by Tibetans. At present there are more than 37,000 Tibetan cadres in Tibet, taking up 66.6 per cent of the total number of cadres in the region. At the levels of autonomous region and of county, the percentage of Tibetan cadres is 72 per cent and 61.2 per cent respectively. Most posts at different levels of people's congresses, governments, courts and procurator's officers are also held by Tibetans.

(e) the right to manage and independently arrange local economic projects.

(f) The right to independently administer local education, culture, public health and develop local culture.

(g) The right to independently protect, exploit and use local natural resources according to the law.

(h) The autonomous right to carry out foreign economic relations and trade. Tibet has cooperated with a number of foreign countries and experts from international agencies in feasibility studies on how to exploit and use geothermal and hydraulic resources on Tibetan plateau and process livestock products. It has also accepted assistance from the United Nations World Food Programme for the exploitation of Lhasa River. At the same time, Zhangmu Port bordering Nepal has been opened to develop border trade. In order to promote Tibet's foreign economic relations and trade, the central government has adopted special policies, stipulating that the import and export tax for commodities in the Tibetan region is lower than the national tax for commodities in the Tibetan region is lower than the import and export tax for all the foreign income is to be kept by Tibet.

Source: Chinese Foreign Ministry Spokesman, Quoted in Economic and Social Council, E/CN. 4/1992/37 5 January 1992 bb. 15, 16.

Annex 2 to Political Self-Determination Report

The appurtenances of statehood enjoyed by Tibet pre-1950

1 Diplomatic recognition, and International treaties

The Tibetans never sought or obtained full diplomatic recognition; they did however enter into treaties with foreign countries which were recognised by those countries as legitimate. These included the *Treaty between Tibet and China* (821), *Tibet-Bashahr Treaty* (1681), *Peace Treaty between Ladakh and Tibet* (1684), *Tibet-Ladakh Treaty* (1842), *Agreement between Tibet and Kashmir* (1852), *Tibet Nepal Treaty* (1856), *Anglo-Tibetan Convention* (1904), *Anglo-Russian Convention (Persia, Afganistan and Tibet)* (1907), *Agreements between the Chinese and Tibetans (Thibetans)* (1912), *Treaty of Friendship and Alliance between Tibet and Mongolia* (1913), *Anglo-Tibetan Declaration* (1914), *India-Tibet Frontier: Exchange of Notes between the British and Tibetan Plenipotentiaries* (1914), *Tibet-Chinese Agreement on Peaceful Measures in Tibet* (1951) - (but see the ICJ conclusion on this Treaty in 'A Report to the International Commission of Jurists by its Legal Inquiry Committee', ICJ, Geneva 1960, Chapter 4) [*Tibet and its History*, Hugh E Richardson 1962]

2 Issue of passports and visas

In 1947-8 the Tibetan government sent a Trade Delegation to India, the United Kingdom, the United States and China. They were issued with official Tibetan government passports and travel documents which were recognised by the governments of all the countries visited. For entry into the UK they were issued with diplomatic visas.

The Tibetan Delegation was received in India by Viceroy Lord Mountbatten and by Prime Minister Jawaharal Nehru, in the UK by Prime Minister Attlee, in the United States by the Secretary of State, George Marshall (the Chinese Ambassador attempted to join the meeting but the Tibetans refused to allow this; the State Department also found the Chinese presence unnecessary). In China they were received by President Chiang Kai-shek (they were invited to attend a meeting of the National Assembly, which the Tibetans refused, saying they were a Trade Delegation). [*Tibet: A Political History*, Tsepon W D Shakabpa, 1984 pp.295,296]

3 Issue of own currency and stamps

Tibet began issuing its own silver coins, the tamka, in 1792, based on the Nepalese currency as its model, with Tibetan inscriptions. Later Tibetan copper coins were issued, varying in size according to value, embossed with the seal of a lion. This currency continued until the Chinese occupation in 1950. Paper currency was introduced in 1890 and postage stamps were issued at the same time. All notes and coins bore the government seal of the lion and the date of issue. The minting of coins and the printing of notes began after Tibetan officials went to British India to study the Calcutta mint. [*Tibet: A Political History*, Tsepon W D Shakabpa, 1984, pp.10,249] From 1910, when the Dalai Lama returned from a state visit to China, the name of the Tibetan government (Ganden Phodrang) was put on all silver coins. [*Op cit* pp.222,223]

4 The Tibetan army

The Tibetan army in normal times numbered about 10-12,000 persons. The greater part was stationed on Tibet's eastern border, and there were about 1,500 men in Lhasa, including the Dalai Lama's bodyguard, with smaller detachments at Shigatse and other important places in the west and north. It was armed principally with rifles, and a small number of machine guns and Lewis guns. Western training was given on a small scale in 1922 but was discontinued after about four years. [*Tibet and its History* Hugh E Richardson, 1962, p.17]

REPORT ON EVIDENCE

8 Economic and Environmental Self-Determination

John Heath

1 Legal background

'All peoples may, for their own ends, freely dispose of their natural wealth and resources . . .' (Art 1 para 2, UN *Civil and Political Rights Covenant*, and *Economic Social and Cultural Rights Covenant*).

2 Statements of law and official policy

Amongst the rights given to the Tibet Autonomous Region when it was set up in September 1965 are the following

- The right to manage and independently arrange local economic projects;
- The right to independently protect, exploit and use local natural resources according to the law. [Chinese Foreign Ministry spokesman, 'UN Economic and Social Council' E/CN.4/1992/37 5 Jan 1992 p.16]

'In 1989 the government of the Tibet Autonomous Region formulated the 'Strategic Ideas for the Economic and Social Development of Tibet'. It has implemented the policy of opening up to the rest of China and the outside world; exploring the regional, domestic and foreign markets; developing advantageous resources and stepping up development of key areas and key industries. The goal is to narrow as soon as possible the gap in economic development between Tibet and other areas of the nation to lay a solid foundation for the common prosperity of Tibetan and other ethnic groups.' [China's *White Paper on Tibet* 24 Sept 92 p.15]

Gyaltzen Norbu, the Tibetan Governor of the Tibet Autonomous Region and a Deputy Communist Party Secretary, has said that

'... economic construction has priority over protecting the environment. We should make the work of environmental protection always serve the general goals of socialist modernisation construction' [Quoted in *TIN News Compilation* 22 October 1992, p.13]

3 The geographical situation of Tibet

Tibet lies at the centre of Asia. 'Historical' greater Tibet is about the size of Western Europe although the Tibet Autonomous Region (established in 1965) is only about one half of this.

It has an average altitude of 4,000 metres (13,000 feet), although with wide variations. The Northern Plain is a perennially arid plateau with extremely low rainfall; Southern Tibet (dominated by the Himalaya and the valley of the Tsangpo [Brahmaputra]) has about 75% of the area above 4,000 metres, and Eastern Tibet, has steep valleys and three major river systems. Each of these three main regions has several different vegetation zones. Precise statistics require careful specification of the territory of 'Tibet'.

Tibet is Asia's principal watershed and the source of its major rivers. Ninety per cent of Tibet's rivers run off into transnational flows, but they have extremely high sediment rates - the Yellow River, Brahmaputra, Yangtse and the Indus are amongst the most heavily silted in the world.

'Historical' greater Tibet also has some 2,000 natural lakes. With steep gradients and abundant water, the country has a vast potential for hydro-electric power.

Its forests in the south and east are primarily old growth, predominately trees over 200 years old. The tree-line varies between 3,800 metres in the region's moist south to 4,300 metres in the semi-dry north.

It has also proven deposits of 126 different minerals, with a significant share of world reserves in lithium, chromite, copper, borax, iron and perhaps uranium.

4 Disposal of natural wealth and resources

(1) The Yamdrok Yumtso Hydro-electric Project

A very large pumped storage hydropower project is being constructed by Chinese labour at Lake Yamdrok Yumtso, the largest freshwater lake on the north side of the Himalayan Mountains and the third largest in Tibet. It will double the electrical energy supply in U-Tsang (which constitutes the larger part of the Tibet Autonomous Region), providing power to Lhasa and the neighbouring areas of Shigatse and Lhokha. It is planned to generate 90 Mw (eventually to 143 Mw). [*Tibet: Environment and Development Issues* (TEDI), 1992 pp.57,58]

The Chinese position is that this project, with the Langbachen geothermal power station, is the 'focus for energy development in Tibet'. [Communist Party Secretary Jiang Zemin, July 1990, quoted in *TIN News Update*, 10 Nov 1990 p.11.] It will do 'minimal damage to the environment'. There is also reportedly a new industrial zone likely between Lhasa and Shigatse with power coming from this project. [*TIN News Compilation* 22 October 1992, p.30]

The Tibetan view In 1985 members of the Tibet Autonomous Region delegation to the National People's Congress in Beijing formally petitioned the Chinese government to halt development of the power project. This was regarded as a test case under the Constitution. [*Tibetan Bulletin January-February 1992*, p.17] Strong opposition from the late Panchen Lama, vice chairman of the National People's Congress in Beijing, from 1980 had held back the project. He died in 1989, and the go-ahead for the project was then authorised. [TEDI 1992, p.59] The project is due for completion in 1995. However, a Tibetan eye-witness reports that the level of the lake has recently fallen 5-8 feet, although the reason is not clear. [*Inside Tibet Today* Brian Beresford 'Tibet Society of the United Kingdom', Autumn 1992, pp.13-15]

The Tibetan government-in-exile's information is that no integrated or long term assessment of environmental, social or cost-benefit factors seems to have been made. They express doubt about its economic viability. 'This scheme is ill-advised and will not provide long term sustainability or environmental security. This opinion is shared by most Tibetans including those who at present hold senior positions in the Chinese communist hierarchy'. 'Substantial opposition continues to exist within Tibet'. The lake has considerable religious significance for Tibetans, who consider it a 'life-power lake'. [From *TEDI 1992*, page 59] Construction is guarded by 1,500 People's Armed Police. No civilians were allowed in the development area.

(2) Mining and mineral resource developments

Tibet, which the Chinese call Xizang 'The Western Treasure House', is extremely rich in mineral resources. They constitute over 40% of such resources currently available to China, and seven of them are amongst the 15 minerals which China will run out of in this decade [according to the Xinhua Chinese news agency, 16 March 1991, reported in *Tibetan Bulletin* March-April 1992 p.37]. Many are also very significant in terms of global reserves. [TEDI 1992, p.25,26,48] Fifteen mining projects in Tibet have been announced by the Chinese for foreign investment. [*Tibetan Bulletin* July-August 1992, p.10]

The Chinese position. It is a declared policy of the Chinese government that 'the west was to supply the raw materials for the development of the east (of China)' [Zhao Ziyang, the then Communist Party Secretary, in an official statement April 1988, quoted in *The Poverty of Plenty*, Wang Xiaoliang and Bai Nanfeng, p.xvi.] China's *Seventh Five-Year Plan 1986-91* confirms this. [*Poverty of Plenty*, *Op cit* p.xv] Road construction is linking Tibet's principal mining areas to China's industrial zones to the east, which is laying the foundation for large scale development activity.

The Tibetan position. Pre-1959 the Tibetan social and religious culture enforced restraints on mining. The Dalai Lama has reinforced this traditional attitude: 'Destruction of nature and natural resources results from ignorance, greed and lack of respect for the earth's living things. Future generations will inherit a vastly degraded planet if . . . destruction of the natural environment continues at the present rate' [from *Tree of Life: Buddhism and Protection of Nature*]. Mining management is dominated by Chinese. 'The principal problem with mining in Tibet is the fragility of geological formations, leading to environmental impacts on a scale unprecedented in other mountain regions'. [TEDI 1992 p.48] A British observer (August 1992) widely travelled in Tibet says that there are many convoys of trucks travelling (20 or 30 at a time) from China into Tibet laden with gantries, derricks and what appears to be mining equipment.

There have been many protests by Tibetans about mining developments by the Chinese in areas where they live (eg. *TIN News Compilation 22 October 1992* p.12). Some of those who protest have been arrested. [*Tibetan Bulletin, op cit*]

Other factors See below on the Special Economic Zone in Gormo, associated with mineral resource development.

(3) Timber extraction by the Chinese

The Chinese position is that 'work has proceeded on tree planting, the safeguarding of forests and the prevention of forest fires. Hillsides have been closed off for forest conservation and the destructive lumbering of forests banned. From the early 1960s to the present, the region has planted 70m trees, and hillsides closed off for forest conservation reached 140,000 ha a year. Tibet now has 6.32 million ha of forests, of which 22,000 ha has been planted by people in the region. Forest areas have been expanding every year, with the increase in standing timber greater than that of felled timber. The region has set up seven nature reserves, while another five are under construction or in the planning stage. Reserves are to reach 325,300 sq.km, accounting for 26.5% of the region's total area, effectively protecting rare wildlife and plants. [*China's White Paper on Tibet*, 24 Sept 1992, p. 20]

However, the Vice Minister of the Ministry of Forestry in the People's Republic of China, Dong Zhiyong, said that

'Because the wood processing industry is administered in the same way as mining, there is no regulation for regeneration, tending and resource management. Contrary to the principle of forest production, too little emphasis is placed on the planting and tending of seedlings. For example, only 13.6% of the labour force in forestry industry work is in forest management and planting, whereas the desirable figure should be 30%-40%.' [*International Centre for Integrated Mountain Development, Proceedings of the International Workshop, October 1985, quoted in 'Essential Environmental Materials on Tibet', October 1990, p.12*]

Also 'one third of the river valleys have become semi-deserts . . . and their boundaries have extended even to the upper reaches of the tributaries . . . The ability to retain water resources has also been reduced. [Op cit]

The Tibetan position Tibet's conifer forests are amongst the most dense in the world (old growth spruce averaging 2,300 cubic metres per hectare). Between 1950-85 their coverage fell from 25.2 to 13.6 million hectares, some 9% of its territory down to 5%. Timber extraction by the Chinese from Tibet since 1950 totals some 2,990 million cubic metres, amounting to 46% of the available forest stock in that year. The flow of laden lorries to the east into China is virtually continuous. An estimate based on Lhasa Radio and other sources gives the value of timber extracted up to 1985 is US\$ 54 billion. [*TEDI 1992* p.51.]

The government-in-exile deplores the continuing deforestation of Tibet.

'In the Kongpo and Pawo Tamo areas of U-Tsang, neighbouring the great bend in the Tsangpo as it turns into India, a concentration of over 20,000 Chinese army personnel and Tibetan prisoners are reported to be involved in felling dense old-growth forests of spruce, fir, cedar and broad-leaved species. Networks of ancillary roads are also under construction in this restricted area. Important in themselves, these centuries old forests play an important role in stabilising the catchment ecology of the major rivers in the region. Their destruction for commercial purposes is damning condemnation of Chinese forest policies in Tibet' [*TEDI 1992* p. 49]

In addition to deforestation causing a significant increase in soil erosion, adding to the flooding of major rivers, it is also believed to cause climatic changes which may affect the monsoon (and hence agricultural production) and the world's weather. (The reason has to do with the slower rate of melting of snow in the spring when it lies on the ground than when the ground was covered in trees, and hence the delayed upward air currents which draw in the monsoon from the Indian ocean). [*TEDI 1992, pp.66-69*]

Other views Re-afforestation is said to be negligible. Natural regeneration is exceedingly difficult because of temperature variation and soil erosion. In 1988 Richardson reported that the forests in Tibet were being managed as a non-renewable resource. He reported also on the Chinese State Plan for annual log production in various areas (300,000 cubic metres in U-Tsang in the 1980s, for example). Illicit non-Plan production exceeds Plan production, most of it being exported from Tibet. Significant amounts of felled timber are left to rot due to lack of coordination between official Chinese agencies responsible for felling and for transport. [S D Richardson 'The Forest Economy of Tibet' *Commonwealth Forest Review*, vol.67 no.3, pp.253-262, 1988. Jack D Ives and Bruno Misserli, *The Himalayan Dilemma*, London, Routledge, 1989, quoted in TEDI]

(4) Alleged Pollution by Toxic Waste

The Chinese position

'There is no pollution in the rivers of lead, zinc and copper or artificial radioactive pollution. [*Reply of the Permanent Representative of China to the United Nations Office at Geneva, 'Economic and Social Council', Commission on Human Rights, The Situation in Tibet, 5 January 1992. E/CN.4 1992/37, pp.26,27*] Furthermore, environmental departments have adopted a series of measures to protect biological environment, such as the construction of Yangzhouyong Lake power station, Shannan Luobusaluo Iron Mine and other big projects. [*op cit*] Various Regulations have been issued for environmental protection.

Other views

In 1991 Greenpeace USA discovered a plan to ship sewage sludge from Baltimore to Tibet for use as fertiliser (subsequently cancelled). Such sludge is commonly croniclly laced with toxic pollutants. [TEDI 1992, p.60] Chinese authorities are allegedly forcing Tibetans to buy and use large quantities of chemical fertilizer at high prices against their will. Farmers claim that they are poisonous and highly damaging. They scorch the crops, and many goats and sheep are lost. Cattle die with swollen stomachs. Greepeace accuse the Chinese government of using Tibetan farmers as guinea pigs to test new chemical products. [reported in *Tibetan Bulletin* Nov-Dec 1991, p.20]

There are reports from several suspected areas of Tibetans who have died inexplicably after being affected by severe fever, vomiting and dysentery. Significantly large numbers of deformed births are also reported from Tso Ngomnpo in Amdo and Nyakchuka. [Quoted in *TEDI 1992* p.61. TIN News Compilation 22 October 1992 p.13.] The latter also reports the death of a high proportion of Tibetan villagers living near what is believed to be a uranium mine. There are reported to be 45 uranium mines in Tibet, including some very large deposits. Gold mining involves the use of mercury, and Tibet is known to be rich in gold reserves. Thus the exact cause (or causes) of toxic pollution would require detailed investigation.

(5) Alleged pollution by nuclear waste

The Chinese position

'There is no nuclear pollution at all. The little natural radioactive pollution as a result of the high altitude is ... within the normal limit' [*Reply of the Permanent Representative of China to the United Nations, op cit* pp.26,27]

The Tibetan position is that there have been persistent reports of the dumping of nuclear waste in Tibet. China is most likely dumping its own nuclear waste in Northern Chang Tang and near Nyakchuka in U-Tsang where it has set up a nuclear test facility. The secrecy involved make such reports hard to confirm.

Other information

The China Nuclear Energy Industry Corporation has offered Western countries nuclear waste disposal facilities, although exactly where is unclear. In 1987 negotiations took place with west Germany to store spent nuclear fuel in Tibet in return for assistance with China's nuclear programme. Whether this went ahead is uncertain. [*Tibetan Bulletin*, July-August 1992, p.10]

US Vice-President Al Gore has written that 'The Tibetan people are powerless to prevent Chinese officials from destroying the ecology of their homeland because of China's armed subjugation of Tibet in the last 40 years.' [*Earth in the Balance: Ecology and the Human Spirit*, Al Gore, Houghton Mifflin, 1992]

5 Economic Development in Tibet

The 'Special Economic Zones' in Lhasa and Gormo

Following Deng Xiaoping's very successful initiative in Guangdong province in 1980, Special Economic Zones (free from government control and with financial incentives and infrastructure provision) have proliferated. Their initial success was due to very careful preparation and to ethnic Chinese from Hong Kong and Taiwan investing their cash and experience in the area. In August 1992 the Chinese initiated another 14 'inland zones' (the 4th level Special Economic Zones), one in Lhasa, and one in Gormo (in the northeastern Tibetan plateau where mineral deposits exist). In Chinese planning, mineral exploitation is mentioned as a target for the 4th level special zones. [See Chapter 10 in *Revitalizing Socialist Enterprise* by Gu Yang, Ed. John Heath, Routledge 1993].

The Chinese position is that 'earnestly implementing this decision has important significance for speeding up Tibet's economic development, maintaining the unity of the motherland, strengthening the unity of nationalities and further deepening the superiority of the socialist system' [*Tibet Daily* 3 August 1992, quoted in 'Tibetan Bulletin', July-August 1992]. China's Vice Minister of Personnel in August 1992 announced further incentives for Chinese going to Tibet (higher wages, and guaranteed jobs when they return to China).

Chen Kuiyuan, First Party Secretary in Tibet, has called on 'inland Chinese to come and help open up Tibet' [*TIN News Compilation* 22 Oct 1992 p.28]. His policy is to speed up Deng Xiaoping's reform programme in Tibet. 'We should open our job market to all fellow countrymen, particularly those who know how to develop village and town enterprises and a commodity economy.' [*TIN News Update* 5 Dec 1992]

The Tibetan government-in-exile's position is to welcome the Lhasa decision as a 'step in the right direction' and 'where it will help Tibetans' but to fear that the Chinese will use these zones to speed up the population transfer of Chinese into Tibet. In particular the connection has been made between the need to resettle over 1 million Chinese from the Yangtze River Three Gorges Project and the creation of large numbers of jobs in Tibet. How much the Tibetan people will gain from the development of these zones is unclear. [*Tibet Bulletin Op cit*]

The views of Tibetans in Lhasa are represented only by underground groups and by private interviews with un-named Tibetans. All point to their expectation that it is the Chinese who will benefit, not the Tibetans. [*TIN News Compilation* 22 October 1992 pp.36,37]. They also point to the discrimination against Tibetans in these developments.

There is no indication that Tibetans were consulted about these schemes. No public hearings have been reported. The plan for Special Economic Zones is decided in Beijing by the State Economic Reform Commission as national policy.

Other views

Chinese statements clearly indicated that the new policy 'means bringing in Chinese to run this policy' and that more and more Chinese cadres are arriving in Tibet, including the more remote areas [*TIN News Compilation* 22 October 1992, pp.30-32].

Internationally many special economic zones fail (as recently in Tumin, North Korea, close to the Chinese border). [*See Revitalizing Socialist Enterprise, Op cit*]

Other signs of economic development

The schemes mentioned above appear to be part of a major effort by the Chinese to 'open up' Tibet. 'The evidence that the Communist authorities are embarking on a new era of consolidating their power appears to be more blatant than at any period since travel to Tibet was first allowed in the early 'eighties. Chinese settlers are increasing in all major towns'. [*Inside Tibet Today* Brian Beresford 'Tibet Society of the United Kingdom', Autumn 1992 pp. 13-15]

'Along with the hydroelectric scheme a new highway has been built along the Tsangpo river to Shigatse, cutting the trip from Lhasa by 3-4 hours. It was built by the army in a record 2 1/2 years, bypassing Gyantse and lake Yamdrok Lha-tso and is fully tar-sealed. The work on extending the runway at Gongkar airport for Lhasa has been completed (again in record time) and work is proceeding apace on an international terminal. In nearly all major towns across central and western Tibet it is evident that a large construction programme is well under way.' [*Inside Tibet Today*] 'Thousands of soldiers and workers have started a 700million yuan 3 year project to rebuild the Chinghai-Tibet road' [*TIN News Compilation* 22 October 1992 p.28]

'So what is happening (in Tibet)? If I had to say it in one word it would be Construction. Everywhere you go there are building sites of one kind or another, official or private, Chinese or Tibetan, as if there was a race to cover the earth in concrete. [Tibetan speaking Western visitor to Tibet, comparing with a previous visit in 1989, quoted in *TIN News Compilation* 22 October 1992 p.29]

Major new residential construction projects have been reported in all towns in Tibet, even in remote rural areas (notably near Tradun [Zhongba], 700 km west of Lhasa, an area which has not seen Chinese settlers before). Land is being bought from Tibetan farmers in Emagang county near Tibet's second city, Shigatse, according to reports which say that the area, known for its fertility, is being prepared for settlement by several thousand Chinese migrants. [*TIN News Update* 3 December 1992]

In September 1992 Lhasa's new mayor, Lobsang Dundrup, ordered the clearing of a campsite inhabited by some 2,000 Tibetan nomads and pilgrims who were living temporarily in Lhasa. Some were paid to leave, others were removed by force. Unofficial reports claimed that the land was wanted to build houses for new migrants from China. [*TIN Op cit*]

A source in Beijing said that Chinese officials had replaced local Tibetan administrators in Emagag and some other rural areas this year in order to facilitate the new developments, which it was thought were likely to encounter strong local opposition. [TIN *Op cit*]

Some of the new construction is for Chinese administration, and as part of a wider social policy. 'One town, Gertsey on the Northern Plateau, has been created largely over the past 5 years by Muslim labourers from Sinkiang north of Tibet. I was told that the sole purpose of the town is to administer the taxation and control of the nomads . . . In 1988 the hamlet of Paryam on the southern route east of Mount Kailash (western Tibet) was virtually empty. In 1992 I found dozens of walled compounds. About 70 or 80 homes had been completed here just during 1992 'we've been sent here from Shigatse to do this work. It will provide nice houses for all the nomads in this region.' one of the workers said. Already nomads need passes to go to regions designated by the administrators.'

'In all these schemes money seems to present no object. This would imply that the Chinese government anticipates a revenue coming not only from the exploitation of natural resources but also from the tourist traffic . . . My overriding impression from Tibetans in the cities was a new fear and helplessness.' [*Inside Tibet Today, Op cit*]

REPORT ON EVIDENCE

9 Social and Cultural Self-Determination

- John Heath

1 Religion

The International Commission of Jurists' Report

In 1960 the Legal Enquiry Committee of the International Commission of Jurists, in a 343 page Report *Tibet and the Chinese People's Republic* [ICJ, Geneva], concluded that

- The Chinese will not permit adherence to and practice of Buddhism in Tibet
- They have systematically set out to eradicate this religious belief in Tibet
- In pursuit of this design they have killed religious figures because their religious belief and practice was an encouragement and example to others
- They have forcibly transferred large numbers of Tibetan children to a Chinese materialist environment in order to prevent them having a religious upbringing.

[See especially p.14 *et seq* on 'The intent to destroy Buddhism in Tibet']

The period of the Cultural Revolution in China (1966-76) added further to the attempted destruction of religion (and not only in Tibet). By the end of that period it is said that only ten monasteries were left standing. [*Forbidden Freedoms: Beijing's Control of Religion in Tibet* (International Campaign for Tibet), 1990, p.33. This is the principal recent study of the subject, pp.100]

Since 1980 however the Chinese authorities have attempted to correct this 'mistake' and to redress 'unjust, false and wrong cases'. Much repair work and restoration has taken place. By 1989, 1,142 active monasteries and religious centres were said by Chinese sources to exist in the Tibet Autonomous Region [*Op cit* p.33], with some 34,000 monks and nuns (an average of 30 per institution), a statistic to be compared with the 593,000 estimate for the whole of Tibet pre-1959 [*Op cit* p.86], and for example 10,000 monks in Lhasa's Drepung Monastery in 1950.

The present Chinese position

Article 36 of the 1982 *Constitution of the People's Republic of China* reads -

'Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in or not to believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.'

China's White Paper on Tibet (24 Sept 1992) reads -

'The Tibetan people now enjoy full freedom to participate in normal religious activities. Almost every religious family has a small sutra recitation hall or a niche for a Buddhist statue. More than one million worshippers make the pilgrimage to Lhasa each year . . . The government respects and protects traditional religious activities and the rites of the various sects.' [p.15]

'Those who carry out law-breaking and conduct criminal activities under the guise of religion will be prosecuted according to the law.' [p.16]

The Chinese authorities have made funds available for the rebuilding of monasteries, under their strict control. The amounts stated from different Chinese sources vary widely. The order of magnitude appears to be '36 million yuan prior to 1989' and '27 million yuan 1980-89'. [*Forbidden Freedoms* p.38] However much of this cash is taken in administration. It is believed that most resources come from local Tibetan people who wish to see their monasteries rebuilt and their traditions restored and continued. [*Op cit*]

Unauthorised rebuilding can however result in arrests and expulsions for 'unlawful religious activities' (as occurred in 1983 at the rebuilding of Ganden, formerly Tibet's most prestigious monastery). [*Op cit*, p.35]

Another aspect of Chinese policy is given in a document entitled *Propaganda Speeches on Strengthening National Unity and Unifying the Motherland* [quoted in TIN, the 'Tibet Information Network', *News Update* 10 November 1990 p.13]. It states that the duty of the Communist Party 'is to encourage the withering away of religion'- an objective, which it describes as 'long term and enduring'.

'The work of us cadres at each level is to creatively carry out the Party's policy, and . . . to accomplish our

due responsibilities in order to promote the natural extinction of religion ... We will not tolerate any thoughts and deeds that are anti-Communist, anti-people, separating the motherland, and destroying national unity'. [Op cit]

The document also shows the intention to enforce the ban on Tibetans becoming monks before the age of 18, and to restrict the further reconstruction of monasteries. Those that have been opened must be preserved for the sake of 'traditional national culture, developing the tourist industry and planting trees ... Of course, to undertake religious activities outside the religious sites is abnormal, and must be strictly forbidden.' [Op cit]

Political activities and government security policy in monasteries

Monasteries have become centres of political activity in Tibet. Many monks and nuns suspected of political activities are still being detained or expelled from their monasteries and convents. Many have been sent to their villages of origin where they are not permitted to carry out monastic activities. [Continued patterns of human rights violations in China, Amnesty International, May 1992, p.7] Many monks and nuns lead demonstrations. They may then be given terms of administrative detention 're-education through labour'. [Amnesty International's Concerns in Tibet, January 1992 p.5]

Monks and nuns are among the only sectors in society able to organise without easy infiltration by government informers - for lay people to meet without observance by the security forces is almost impossible. [The Long March: Chinese settlers and Chinese policies in eastern Tibet, 'Results of a Fact Finding Mission in Tibet', August 1991 p.17]

The response to such activities by monks and nuns has been given by the Tibetan Governor of the Tibet Autonomous Region, Gyaltzen Norbu, in a speech at the 'Regional Conference on Basic Work on Public Security in Grassroots Units', 20 November 1990. [TIN News Compilation 22 October 1992, p.54] -

'Right now, local police stations are being established in some major monasteries, and management offices are also being established in some monasteries by the relevant departments. It is hoped that the management of the monasteries will be carried out according to the monasteries' management democratic regulations and according to the requirements for the management and rectification of monasteries formulated by the Autonomous Region's 'Leading Group for the Stabilisation of the Situation'.

'The many disturbances in the past show that there are weak points in our management and control of monasteries. Controlling monasteries actually means solving the following two problems. The first is that, no matter how, we must ensure that the People's Democratic Management Committees [see below] are in the hands of people who support the leadership of the Communist Party, the socialist system, and the preservation of the unity of the Motherland. This is the question of leadership.'

'The second problem is that we must fully use, discover and educate activists amongst the monks and nuns. This is the question of unifying, educating and winning over the majority. When we win over these two forces and set up a perfect management system and rules, then the management and control of monasteries should be no problem. Even if a problem arises we will still be able to keep the general situation under control.'

'Work teams' have been sent to monasteries to screen monks and nuns for political attitudes, and political controls over religious activities has been sharply increased. [One Year under Martial Law: an Update on the Human Rights Situation, Amnesty International, March 1990] Religious activists have been detained without charge or trial for months. Following the lifting of martial law in Lhasa, on 23 May 1990, a Regulation prohibited the use of 'religion or other activities' in 'demonstrations or parades [which] ... endanger national unity or social stability'. [People's Republic of China: Violations of Human Rights, Amnesty International, April 1991 p.5]

'Since 1987, hundreds of monks and nuns have been incarcerated for extended periods of time. Evidence suggests that few [of those imprisoned] have escaped severe beatings, and most are tortured. Only a minority of those arrested have been formally charged with any crime. It is widely believed that monks and nuns are subjected to worse treatment than lay political prisoners, who are in turn treated worse than common criminals. A 1989 Chinese article referred to these monks as 'the scum of the religious circles' [The Long March p.57]

Institutions of control

The two highest level institutions of government control are the 'Religious Affairs Bureau' (with its centre in Beijing, the Lhasa branch was established in 1956, now usually called the 'Nationalities and Religious Affairs Commission) and the 'Tibetan Buddhist Association', a Lhasa branch being established in 1957. It was established by the Chinese in 1952 (as the 'Chinese Buddhist Association') to advise the Religious

Affairs Bureau. Its role has changed over the years and is now concerned with 'implementation of government policies, education of monks in the patriotic mould, and supervision over monastery management'. [*Forbidden Freedoms* p.24]

At the lowest level, Chinese religious policy is carried out in all except the smallest Tibetan monasteries by the 'Democratic Management Committees' (DMC) referred to above by Gysaltsen Norbu, and introduced in 1959. In larger monasteries these are said to be 'highly repressive, government controlled bodies' and are generally run by the Chinese, while in the smaller monasteries there is more lenience. [*Op cit* pp. 25,29]

There are many types of controls within monasteries. First there are quotas for maximum size. In this the Religious Affairs Bureau plays a significant and probably dominant role. In 1989 the quota at the Drepung Monastery was said to be 450 monks, and in mid-1987 it was reported to have as many as 700. By 1990 there were reported to be only 300 official monks remaining because so many had fled, been expelled or sent to prison. [*Op cit* p.65] Also at Drepung, in August 1990 40 monks petitioned and staged a walk-out for the readmittance of 41 monks who had been expelled by the DMC. They were 'the best students of the monastery who in the future will be the keepers of the monastery's traditions'. [*Op cit* p.91, also TIN News Update, August 1990]

Related to size, there is also control over entry - number and minimum age. Its nature varies. For example, at Shekar, until 1986 only monks who had been there prior to 1959 were admitted. After these 24 monks petitioned that the monastery could not survive without the admission of novices, and months of negotiation, 13 places were agreed (out of 40-50 applicants). [*Forbidden Freedoms* p.90] In principle, proof of political qualification for entry is required ('love of the country and the Communist Party', and the candidate's parents should have 'a good political background') although monks themselves also undertake screening. Lhasa area monasteries have been forbidden from officially accepting novices since 1988. [*Op cit* p.59]

Abbots of the larger monasteries, as at Drepung or Sera, are completely under the control of the DMCs. Although one half of the members of a DMC may be appointed by monks themselves, such persons would have to be approved by the Religious Affairs Bureau (who appoint the other half) or by current DMC members. [*Op cit* p.27]

There is a scarcity of good teachers in present day monasteries. Their educational level is said to be low (as evidenced by monks who escape from Tibet). Monks who are capable of more profound understanding are not given the opportunity to achieve it. In part this is because the Chinese controlled DMCs do not allow sufficient time to engage in religious study. [*Op cit* pp.44,47]

There are in addition many other ways in which the Chinese exercise their influence or control over the monasteries. Funding and budgets are strictly controlled. Sculptures and paintings have to be undertaken by a Chinese team or the monastery would face government disapproval. The Chinese also attempt to control the appointment of abbots (the heads of monasteries), which require the approval of the monastery's DMC, and the approval of the relevant branch of the Religious Affairs Bureau. [*The Long March*, *Op cit*. p.19]

Impact on the Tibetan people

The 'International Fellowship of Reconciliation' in a report on *Violations of human rights in Tibet: a social and cultural perspective* [summarised in Economic and Social Council, *Commission on Human Rights* E/CN.4/1992/37 5 January 1992] expressed the likely impact as follows -

'It is often said that freedom of religion in Tibet consists of the freedom of lay people to perform a variety of ritualistic observances and that the restrictions are aimed at the monks and nuns. However, the restrictions on lay people . . . strike at the heart of Tibetan culture. The Tibetan religion is characterised by a vast array of rituals which are utilised in many ways, on many levels, and for a wide variety of practices. To enliven and empower these rituals, deep wisdom and expert guidance are essential . . . otherwise they can collapse into superstition. The wisdom and guidance are personified in the advanced lamas. By obstructing genuine transmission of knowledge, the Chinese are severing the root of the Tibetans' spiritual wisdom and energy without which the infrastructure will become withered and impotent.'

'Currently teaching . . . is prohibited outside of religious sites. Yet traditionally Tibetans would receive teachings in their homes or in public places other than monasteries. Without thorough and careful instruction . . . ordinary practices of religion, such as the recitation of mantras, circumambulation of religious monuments, prostration, the turning of prayer wheels, can degenerate into repetitive but meaningless actions. Birth, marriage and death in Tibetan society were traditionally marked by elaborate rites for which monks were employed . . . There is a real danger that for lay people the ritual and symbols of religion survive, but the substance is gone. The effect is to make Tibetans look like a backward and superstitious people, bowing down in inherited faith to images which have lost their meaning.' [*Op cit* paras 9 and 10]

2 Education

The Chinese position

'Before its peaceful liberation, Tibet only had a monastery education for the study of scriptures and a few private schools . . . More than 90% of Tibetans were either illiterate or semi-literate. At present, the region has three universities with a total enrolment of 1,973, some 15 secondary, vocational and technical schools with 3,968 students, 68 ordinary middle schools with 23,000 students, 2,398 primary schools with 130,000 students, and 54.4% of school-age children go to schools . . . [*Reply of the Permanent Representative of the People's Republic of China to the UN Office in Geneva, Economic and Social Council E/CN.4/1992/37, 5 January 1992 p.20.* Note that the above numbers refer to education in 'the region', which implies inclusion of Chinese students.]

'To develop education in Tibet, the government has invested more than 1.1 billion yuan and introduced a series of special policies over the past 40 years . . . The principle of 'giving priority to local nationalities' has been carried out in recruiting students for various kinds of schools at different levels. Priority is given to candidates of Tibetan and other local nationalities in the recruitment of university, college and secondary vocational school studies.' [*China's White Paper on Tibet, 24 Sept 1992 pp.16,17. The White Paper gives different but similar statistics to those quoted in the previous paragraph.*]

Other views

Against a national illiteracy rate in China of 23% in 1982 according to the Census, the figure in the Tibet Autonomous Region was 73% (and 80% in 1988 according to the *Chinese Tibet Daily*). By the 1990 Census this had reportedly fallen to 45%. The reliability of a Census depends upon exactly what questions are asked and of whom, and these figures require some technical explanation which is not available. [*Tibetan Bulletin, Jan-Feb 1992 p.7 and Inside the Treasure House, Catriona Bass, p.78*]

To assess the benefits attributable to the Chinese in the education of Tibetans there are two types of relevant comparison: (1) The situation today compared with what would have happened in the development of Tibetan education if the Chinese had not taken over Tibet in the 1950s, and (2) Any differential application of education between Chinese and Tibetan children in Tibet today.

On (1), a relevant basis of comparison is the actual development of education by Tibetans in exile. This is some indication of what they would have done if they had remained in Tibet and in control of their own affairs.

First it should be mentioned that there are three types of school catering for Tibetan children in India. These are:

- 1 **CTSA Schools** (Central Tibetan Schools Administration), run by the Government of India;
- 2 **CTE Schools**, financed and managed by the Council for Tibetan Education whose Secretary is appointed by His Holiness the Dalai Lama, and
- 3 **Autonomous Schools**, including the Tibetan Children's Village (TCV) Schools.

In 1985 there were said to be some 17,700 children in all of the above, in 85 schools. Since then however numbers have increased (Tibetan children in TCV Schools have doubled from a reported 4,437 in 1985 to some 9,000 in 1992). [*See Education of Tibetans in Exile (1960-1985), Tsering Dhundup, 1987/88, and Metok, Summer 1992, the Newsletter of the Tibetan Children's Village*]

In 1960, one of the earliest actions of the Tibetans in exile, after establishing their principal settlement in Dharamsala, India, was to start the first Tibetan Children's Village 'dedicated to the welfare and education of orphans, semi-orphans and destitute Tibetan refugee children'. In India the 9,000 Tibetan TCV children are in infant, junior and senior schools, in 3 similar Villages (a fourth is now being constructed for 800 recent arrivals from Tibet), 5 Residential Schools, 7 Day-schools, 15 Day Care Centres, 3 Vocational and Handicraft-cum-Training Centres, one Technical Training Institute, 2 Village Farms and 2 Youth Hostels.

Secondary School examination results in 1991 ('All India Secondary School Examination') showed an overall pass rate for Tibetans in the TCVs of 94% (26% in the First Class category); in the Dharamsala TCV Science Stream, 58% passed in the First Class category. [*Metok, Summer 1992*]

In the original Dharamsala TCV, 1,600 of the 2,000 children have come from Tibet - and they are still arriving (another 239 children in the first half of 1992). The Montessori method of teaching is widely used. In addition, the children of many Tibetan refugees in other countries attend Tibetan and non-Tibetan schools.

Secondly, in Tibet itself today there is evidence of widespread discrimination against Tibetan children, at all levels, and a lack of provision or opportunity. For example, in many rural areas there are no schools for Tibetans. Local monasteries used to provide local general education, but since their destruction there has been no replacement. [*TIN News Update 25 May 1990*] Moreover, third children are denied access to govern-

ment education as part of the Chinese population control policy, and 'there are thousands of such children in the villages'.

Primary and middle schools are often completely separate for Tibetan and Chinese children. At primary level, where both Chinese and Tibetan attend they are divided by nationality. Tibetans are taught in Tibetan, with perhaps three hours each week in Chinese. Chinese children are all taught only in Chinese.

In the national examination, which dominates entrance to a middle school, Chinese is crucial and Tibetan unimportant. From the age of 12 Tibetan and Chinese are educated at the same schools.

The language of education in middle schools and above is Chinese. Since most Tibetan children are not able to express what they have learnt, Chinese and Tibetans are segregated so that Tibetans can learn Chinese. Since about one half of the time teaching Tibetans is absorbed learning Chinese, most are unable to fulfil the requirements for the final examination (a common examination throughout China) which determines whether a person can sit for university entrance.

Success depends upon having completed all the required books on the syllabus. Also admissions to university are based very much on connections. It is theoretically easier for Tibetans to enter university than Chinese because Tibetans require only 180 points, against 200 for Chinese. (Many Chinese come to the university in Lhasa because admission is easier than in China.) [*Tibetan Bulletin* 'ABC of Discrimination in Education in Tibet' Jan-Feb 1992, and *Inside the Treasure House* pp.78-83. Ms Bass was a teacher in Tibet for 1 1/4 years 1985/86 and with her English friend, also a teacher, visited many schools throughout the country.]

Since the 1950s the brightest Tibetan Children have been sent to China for education, for up to 7 years at a time. Between 1986-89 6,400 Tibetan children aged 12-14 were sent to China for four year stretches, and a 1991 Chinese report says that more than 9,000 Tibetan children currently are studying in China. Tibetan parents have no choice over whether their children will be sent to China. (Nyama Tsamchoe, a Tibetan student from Lhasa who fled to India, testified at the 42nd UN Human Rights Sub-Commission for International Educators for World Peace: 'If you are selected to go you cannot refuse or you will lose your residence permit and your ration card). [Quoted in *Tibetan Bulletin*, *Op cit*]

'Tibetans who worked in the Chinese administration often managed to get their children streamed with the Chinese. It was advantageous in many ways. Not only would they be able to learn English they would also - and no secret was made of this - get better teachers and better facilities. 'They become like Chinese' a Tibetan cadre once said. He wanted his children to be able to compete for jobs and acquire a similar standard of living to the Chinese. But they were growing up unable to read and write their own language' [*Inside the Treasure House*, p.82]

Discrimination in employment starts in the schools -

'It turns out that in the schools which give chances for better jobs, and better social prospects, the admission of Chinese is favoured, The leaders who decide about admissions are mostly Chinese. If a Chinese and a Tibetan have an equal number of points to enter a higher school it is not the only criterion. The Chinese leader will try to get his relatives or Chinese people coming from his district admitted in order to give them a possibility in the future to get a better job. Of course the Tibetans want to get into these schools but because of their lack of connections it is more difficult for them'. [TIN summary (BB) May 25 1990 p.17]

'Yi Zhong, where I would teach summer classes, had 27 forms. Only 12 of them were for Tibetans. The Chinese teachers said it was unfortunate, but there were not enough classrooms to have more Tibetans. The Chinese felt that their children should take priority. They were already suffering hardships by being in Tibet, and they saw no reason why they should be further deprived . . . For most university courses in China - for science it was essential - you had to know English. [*Inside the Treasure House*, pp.79,80,82]

4 Employment, work and taxation

Defying the Dragon: China and Human Rights in Tibet (LAWASIA and TIN), March 1991, pp.140, states that -

'Everyday life in the PRC is dominated by government and Party control. The key to job promotion and access to privileges in this system is (Chinese) *guanxi*. This refers to a network of connections between individuals, families and organisations acquired through one's social status or work. The exchange of favours and the use of influence largely determine who gets the good jobs, business permits, permission to travel, access to better schools, scarce consumer goods so on. In Tibet it is the Chinese who have the better *guanxi* and who therefore enjoy greater access to these privileges.'

Government and Party employees who are ethnic Chinese automatically enjoy good *guanxi* because they come to Tibet under official sponsorship. They and their families are guaranteed accommodation and access to good schools to compensate for the 'hardship posting' to Tibet. Their connections with the Chinese

dominated bureaucracy mean that they are more likely than Tibetans to secure favours in the daily inter-course with government departments.'

'It appears, though, that even Chinese traders and entrepreneurs who are not employed by state enterprises also enjoy better *guanxi* than local Tibetans. Tibetans say this is because they do not normally come to Tibet unless they have already established a prior link into the system ... Tibetans are not *a priori* denied access to the privileges enjoyed by Chinese. However, to enjoy these privileges Tibetans need to be in a permanent government position and/or a Party member, or cultivate connections with influential Chinese. To develop good *guanxi* Tibetans need to adopt Chinese norms of behaviour and be proficient in the Chinese language. Becoming a cadre (a professional government employee or Party member), whether Tibetan or Chinese, in itself implies a public endorsement of a uniquely Chinese set of priorities.' [All the above *Op cit* p.75]

'The market-oriented reforms of the past decade have undoubtedly given tremendous opportunities to entrepreneurial Tibetans. Farmers have benefited from the exemption of farm taxes [but see below for evidence of the 'heads I win, tails you lose' Chinese attitude to the re-imposed taxation of farmers]. Both farmers (growing barley) and nomads (trading in butter, meat and wool) have profited from the 'responsibility system' [on this system see Ch.4 by Hua Sheng and Du Haiyan in *Public Enterprise at the Crossroads*, 1990 Ed John Heath] in which they are permitted to sell a proportion of their produce on the open market. Many Tibetan traders and truck drivers have also flourished in the generally freer economic climate.' [*Defying the Dragon* p.82]

'In the urban centres that direct economic and political life of the nation, Tibetans are confronted by the Chinese dominated system ... Tibetans say the main problem is that Chinese workers are given preference over Tibetans in recruitment and promotion. In many of the 43 'Help Tibet Prosper' projects, where whole Work Units have been transferred from China, it is to the exclusion of local labour, even for unskilled jobs. Within mixed Tibetan and Chinese Work Units, Tibetans dominate the manual, unskilled positions while Chinese fill most executive posts.' [*Op cit* p.83]

The following are verbatim accounts by several individuals. Their perspective may be narrow and unduly weighted by experience in Lhasa, which is not representative of Tibet as a whole -

'The Chinese will get special bonuses for working in Tibet (because of the altitude) so in the end they get more money. The Chinese also have more advantages for housing, ration cards, and access to many things. When they arrive in Lhasa they get money to have a place to live, and to furnish the house. No facilities in housing will be given to a Tibetan'. [TIN *Op cit*. p.19]

'Job vacancies are not advertised. Most jobs are given by the Chinese to their friends and relatives. If Tibetans apply for a good job their names will automatically be rejected. To get even small jobs backdoor connections are needed, and very few Tibetans have these connections.' [TIN *Op cit*. p.20]

Any Chinese coming to Lhasa will automatically get a business permit. For Tibetans, even professional traders, to get a business permit is very difficult ... In Tibet the majority of Tibetans are not employed, they work in the fields or are nomads. I don't know any unemployed Chinese in Tibet.' [TIN *Op cit*]

It appears that Tibetans generally occupy the lower positions and the Chinese the higher ones.

- Television office for the whole of the TAR
40 Chinese 120 Tibetans. 80% of office and administrative posts occupied by Chinese. Tibetans mostly in lower grades.
- Larger government bookshop in Lhasa
24 Chinese 32 Tibetans. Most higher positions occupied by Chinese
- Office for street planning and road construction
50 Chinese 150 Tibetans. Key positions held by Chinese. Tibetan road workers have a quota to fill. Wages are docked if it is not met. Chinese have fixed salary.
- Nagehun Reception Office
7 Chinese 25 Tibetans. Chinese in higher positions.

It is also alleged that in all of these offices there are examples of Chinese with lower qualifications being given higher posts than Tibetans with higher qualifications. [All from TIN *Summary* 25 May 1990]

'Even for Tibetans who have joined the Communist Party, the highest job they can get is to be in charge of one district.'

'Even if students complete their studies, the possibility of ending up with a profession is very limited. This is one of the main reasons why there are so many youths hanging around, ending up as thieves. The Chinese say that the Tibetans are incapable and don't do anything worthwhile, but the Chinese deprive them of possibilities. That is why there are so many beggars, prostitutes and youngsters wasting their time. [TIN *Op cit*. p.18,20]

In Lhasa it is reported that Chinese traders can obtain permission to locate their shops directly in front of Tibetan shops, and that when the Tibetan shop fails the Chinese owner of the shop in front will buy out the Tibetan and extend his premises backwards. It is also reported that Tibetans are no longer being given permits for shops. [From a European businessman in Lhasa who speaks Tibetan, summer 1992] Sometimes the attempt by a Chinese to set up a shop in front a Tibetan shop leads to violence, and 'such scenes having taken place regularly since 1 March 1991'. An unconfirmed report said that there were now more Chinese shops in Lhasa than Tibetan (respectively about 5,000 against 4,000). [TIN News Update 3 September 1991 pp.29,30]

Business taxation on Tibetans seems very arbitrary and can be raised dramatically (100%-125%) without prior notice, and there is a suggestion that the Chinese traders do not pay taxes. [Op cit pp.27,28]. There are Lhasa Municipal Customs taxes (said to be 2% of capital per month), sales taxes (5% of capital per month), sanitation charge (2 yuan/month) and land tax for stalls (15 yuan/month). Thus taxes on capital alone are 84% per annum, and the normal way of increasing the tax paid is to revalue the capital - sometimes without notifying or checking with the trader concerned ('pro-independence groups claim that re-assessment of capital value happens more to families who include people who have been active in demonstrations'). The order of magnitude of increase is illustrated by a sweet cake seller who was paying 14 yuan in total taxes in January 1991, which was increased to 24 yuan in March and then to 70 yuan 'a figure which exceeded the combined value of her capital and income'. After protests this amount was subsequently reduced to 21 yuan. [Op cit p.28,29]

Taxation on farmers is based on the achievement or otherwise of meeting the state imposed target. These targets are reported as being as high as 20% over the previous year's output. Once a crop is harvested the tax is based on the achieved increase. A failure to reach the target allegedly results in a fine, which may involve giving up some of the family's material wealth. Part of any excess over the target is also taken as a tax-equivalent. The target output is paid for at the government determined price, although out of this income the farmer is obliged to purchase the government required amounts of fertilizer (a scheme evidently introduced in 1989). This creates much resentment because in the first year after the application of fertilizer output rises (and the following year's target is thereby increased) but in later years output falls because there is insufficient rain to wash the phosphates out of the soil. Tibetan farmers are said to be fighting to be permitted to return to their traditional methods of farming. [Evidence from the same European businessman who speaks Tibetan mentioned above, summer 1992.]

5 Housing

The Mexico based world-wide 'Habitat International Coalition', in *An analysis of the Situation Regarding the Rights to Adequate Housing in Tibet*, 1991, summarised in UN Economic and Social Council, Human Rights Commission, E/CN.4/1992/37, 5 January 1992 pp.43-47, reports the following

'The Tibetan part of Lhasa [until the 1950s the whole city was virtually 100% Tibetan] now constitutes only 2% of the total area of the town ... and in the Master Plan of Lhasa for the year 2,000 the Tibetan quarter is totally absent'

'Although housing space within Lhasa has increased dramatically since the Chinese takeover of Tibet, Tibetans continue to face systematic discrimination regarding the allocation, habitability and cultural adequacy of public housing units. Chinese settlers are guaranteed a housing unit on arrival in Lhasa. Similar rights are not available in practice to Tibetans'

'Most urban areas in Tibet provide a stark contrast between new and relatively well-equipped quarters for Chinese immigrants and settlers, and run-down traditional housing within the segregated Tibetan sector. Whereas the provision of toilets, running water and electricity to Chinese households is routine, the vast majority of Tibetan households within urban areas do not have toilets or running water.'

'Lhasa residents must carry identification papers at all times ... on 21 March 1989 all Tibetans without residence permits were forcibly removed from Lhasa. There have been no reports of such evictions affecting Chinese settlers without residence permits'

'Tibetans have been subject to excessive fines for having unauthorised persons residing in their homes. ... Homes of Tibetans have been subject to random and sometimes daily searches by Chinese authorities; harassment by the police has been reported on a wide basis.'

In rural areas, Tibetan homes and villages are systematically circumvented in the provision of water and electricity, with these services made accessible only to Chinese government offices, settlements and military installations.'

The 'Habitat International Coalition' concludes that the right to adequate housing is subject to widespread and systematic violation by China in the occupied territory of Tibet, and cites the following Chinese actions and policies in substantiation of this allegation:

- Racial discrimination in the housing sphere
- The intentional denial of essential services
- Selective housing investment which disproportionately benefits Chinese settlers
- The unlawful expropriation of homes and property without compensation
- Forced evictions from dwellings
- Demolition of housing
- The imposition of unfair and excessive fines for groundless reasons
- Illegal searches of homes
- The general absence of dweller control of housing
- The overall decline in Tibetans' housing and living conditions.

The above work is being expanded, with much new material, into a book to be published by Scott Leckie *Housing Rights Violations - The Case of Tibet*, 1993 (forthcoming). It will provide many detailed examples of the above alleged violations, especially of discrimination of all kinds in the housing of Tibetans compared with those provided for the Chinese, together with an analysis of the application of legal obligations on the Chinese.

In November 1990, TIN published a 7 page *Housing Supplement: Reconstruction in the Old City of Lhasa* [News Update 10 November 1990] based on a clandestine professional survey. The above 'Habitat International Concern' Report appeared to draw partly on the TIN Survey. In the TIN Survey the following additional points were made:

'50 traditional Tibetan residential compounds have been demolished over the last 12 months ... 3,000 or so Tibetans are directly affected ... there is no evidence that they were consulted.'

'The new housing is split in different parts of the city so that communities will be dispersed. The old web of alleyways is not suited to modern amenities such as plumbing or piped sewage. It is also largely inaccessible to vehicles and represents a major security problem for the Chinese police.'

'[The new] apartments are small, modular and of exactly the same size each with 2.5 rooms ... on 3 stories instead of 2 stories ... no dwellings have a water supply within the apartment and no dwellings have a drain of any kind ... one tap and one drain will have to serve an average 41 people ... kitchens are empty concrete boxes without even a fitted shelf ... sewage waste is compelled by gravity through a square hole in the floor eventually to a pit beneath the street ... the toilets do not flush and are operationally the same as those demolished ... there is an average of 8 persons per toilet ... each room has one ceiling mounted electric light ... no units have a power point ... and the power supply is adequate only for the three lights and a television ... the 4.1 amps per apartment would be insufficient for electrical heating or cooking ... there is no individual fusing for apartments creating the likelihood of frequent building wide power cuts if residents place any demands beyond basic lighting ... the traditional Tibetan housing was energy efficient with thick walls but the new blocks are plaster over 10cm thick concrete ... ceilings are simply the bottom side of the concrete floor above, the cracks filled with plaster ... all surfaces are hard and cold ... and are unlikely to be tolerant of settling foundations or earth tremors ... workmanship is poor, sand (for cement, made on site) appears to be of poor quality and the gravel is much too coarse ... all columns and beams are concrete (many of questionable integrity) which, by design, have no flexibility ...

(Note that Lhasa is subject to earth tremors, the latest being in July 1992 and was reported as 6.5 on the Richter Scale with the epicentre 30 miles northwest of Lhasa. [TIN News Update 31 July 1992])

The absence of sufficient electrical power in Tibetan homes for cooking means that reliance has to be placed on kerosine. But kerosine can only be purchased with special coupons, subject to the fulfillment of certain conditions (failure to attend a work session or a meeting can lead to cancellation of the right to receive them). Coupons can be bought on the open market, but having purchased them their validity can be cancelled overnight without warning. Also kerosine prices may increase 100% without prior warning. Such actions by the Chinese have resulted in strong Tibetan protests, which sometimes they win by the Chinese modifying their decisions. [TIN News Update 3 September 1991 pp.29,30]

The Chinese position

China's White Paper on Tibet 24 Sept 1992 gives the following information -

'Old Tibet, under the feudal serf system, had only three officially operated, small traditional Tibetan medical establishments, having simple and rough medical equipment, and a few private clinics. There were close to 100 practitioners, and even including folk doctors of Tibetan medicine, the number totalled only about 400, averaging less than 0.4 per 1,000 people ... Absolutely no medical treatment was given to the broad masses of serfs and slaves when they fell ill. [*Op cit.* p.18]

In 1991 the region boasted 1,197 medical establishments, 401 times as many in 1951. There were no hospital beds in 1951 but 5,077 in 1991. Professional medical workers numbered 9,740 ... among them 7,749 were health technicians, with Tibetans accounting for 80% of the total ... The incidence of various infectious and endemic diseases has gone down by a substantial margin ... over 85% of children have been inoculated ... the principle of 'giving priority to local nationalities' has been carried out in recruiting students ... In order to meet the needs for the development of Tibetan medicine, the autonomous region founded the Tibetan Medical College and the Tibetan Medicine Research Institute ... The government provides free medical care for all Tibetans. [*Op cit.* pp.18,19]

Other views

Some European doctors experienced in medical practice in developing countries, in recent years on an assignment lasting several months in Tibet, worked in one large area and reported the following

'It is extraordinarily difficult to find out statistics of what's happening, reality and truth. To save face much lying seems to go on. To avoid criticism what is said may be what is expedient ... Plague (and possibly other diseases) does exist ... however no one is allowed to know this; it must never be mentioned until the government sees fit to announce it ...'

'The general condition of the people is on the whole reasonable. There are a few poor looking beggars but rank raw poverty and malnutrition are not often seen ... but it is probably correct to say that there is more here, however, than in other parts of China ... up to 50% of children may be underweight. Single deficiency disorders such as rickets are common in some areas.'

'In theory, health care is free. In practice there is a charge for each visit and for the brown OPD (out-patient department) record. Patients are sometimes charged for services and diagnostic procedures. A deposit may be required before admission. Workers can be refunded by their work unit. Villagers can receive no such refund if there are charges. Many medicines, particularly those which are more expensive, must be bought by the patient. This debars many villagers (for whom cash is not a ready commodity) from receiving necessary medication. Relatives supply food for in-patients.'

'Facilities at prefecture and regional level are comparatively good. However equipment, drugs and adequately trained staff are lacking at county, shang (community) and village level. It is at these levels of primary health care delivery where the need is greatest ... There are in fact too many staff to be able to do a good job. Motivation is low. They can sleep for a year before there are questions, so why bother! Money for patient care appears short but there is plenty available for such things as entertaining. The reward system puts money in the pockets of the few, and allows some patients to be well treated. It mitigates against poor villagers. There is little pride in work, more a fear of criticism. Villagers largely have to fend for themselves.'

'The medical system is based on theories many years old. Little up-dating has gone on. Useless drugs abound. Few really essential drugs were seen. The system needs a good overhaul. Use of essential drugs and standard treatments would certainly revolutionise treatments and make them safer and more efficient. They would be cheaper and be more likely to bring treatment within the range of the poorest and most remote. Given the right climate it can be done. It cuts at the root of many top people's knowledge and prestige, and can therefore be very threatening.'

'County level doctors are trained at the Regional Medical School in Lhasa ... admission is granted to middle school graduates, who must also pass an entrance exam ... all courses are conducted in Chinese.'

'There are few if any signs of repression (I knew of none), except a largely unspoken attitude that (a) Tibetans are not worth bothering with, and (b) Villagers are not worth bothering with.'

Such statistics as exist are consistent with these views. The crude death rates per thousand were 7.48 and 9.92 in U-Tsang (western and south-central parts of Tibet) and Amdo (the north-eastern part of Tibet) respectively in 1981, as against an average of 6.6 in China. Child mortality rates in Tibet are 150 per thousand against 42 in China. The average diet in Tibet contains 2,000 calories per day compared to 2,500 in China (for Tibetans who do hard physical work in a mainly cold climate, even 2,500 calories per day is said to be barely

sufficient). [World Bank 1984, UNDP 1991, TIN 1991c, all quoted in Tibet: *Environment and Development Issues 1992*, p.39] Also eyewitnesses report consistent information 'The two women with medicines were leaving here. A band of spindly legged children rushed to meet them ... they were ragged and barefoot, like many of the children in the villages we had passed through. The hair of several of them had a reddish tinge of malnutrition.' [*Inside the Treasure House*, Catriona Bass, 1990, p 174]

Discrimination is also evident in the Lhasa City Hospital. A member of the hospital staff said - 'We have no good medicines to provide and what we do have is used for treating rich patients and government employees, with poor patients from villages being left to suffer or even to die.' It is being managed on a 'responsibility system'; 'it used to be a good hospital, but now it is just for the sake of generating income'. [Quoted in TIN News Update 3 September 1991 p.63]

There may however be another factor in this situation. There have been accusations that the authorities have deliberately discriminated against this hospital for political reasons. Staff at the hospital are said to have treated demonstrators injured in street protests without cooperating with the security forces. During demonstrations several other hospitals and clinics refused to treat demonstrators wounded or dying, or handed them over to the police. The Lhasa City Hospital was said to be the only one that helped Tibetans in the October 1987 and March 1989 demonstrations. Evidently the Chinese head of the hospital sided with the doctors and told the Public Security Bureau that it was the hospital's duty to save and treat patients irrespective of the nature of the injury. 'The Tibet Regional government therefore has a negative attitude to it' said one Tibetan. Also 'Tibetan staff [at the hospital] are said to be very nationalist, and this could be one reason why we are made to use what we have' (when they applied to purchase more essential drugs). [TIN News Update, 3 September 1991 p.63]

The Regional authorities are also said to have tried to divert to the People's Hospital (which is run directly by the Regional government and is widely considered to be better equipped) a recent offer of aid from an Italian group destined for the City Hospital. The offer appears to have been withdrawn. [TIN News Update, *Op cit* p.63]

Further information about sources

LAWASIA (The Law Association for Asia and the Pacific, Human Rights Standing Committee) 'is a professional, non-governmental association of lawyers - private and governmental lawyers, judges and teacher.' Its objectives include 'promoting the administration of justice, the protection of human rights and the maintenance of the rule of law.' [*Defying the Dragon: China and Human Rights in Tibet*, LAWASIA and TIN, March 1991, Appendix F]

REPORT ON EVIDENCE

10 Denials of other Human Rights of the Tibetans

- John Heath

1 The Chinese position on Human Rights

This has already been covered earlier and only the salient features of the key documents are given here, with some other relevant statements.

The 1982 Constitution of the People's Republic of China

The Constitution provides for the protection of various rights of PRC citizens, including 'equality before the law, (Article 33); the right to vote and stand for election (Article 34); the freedom of speech, of the press, of assembly, of procession and of demonstration (Article 35); the freedom of religious belief and the protection of 'normal religious activities' (Article 36); the 'freedom of person' (Article 37); personal dignity; privacy of home and correspondence and the right to criticise state agencies or officials and to obtain compensation for losses suffered through infringement of civic rights (Articles 38 to 41). Defendants tried before People's Courts have the 'right of defence' (Article 125). [Quoted in *People's Republic of China: Repression in Tibet, 1987-1992* Amnesty International (AI) May 1992, p.13] (See Section 6 below for details about sources.)

Human Rights in China, [People's Republic of China (PRC), 8 Nov 1991, 26pp.]

'It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights' . . . Without national independence, there would be no guarantee for the people's lives . . . The Constitution stipulates that every citizen is entitled to the rights prescribed by the Constitution and the law and at the same time must perform the duties prescribed by the Constitution and the law, and that in exercising their freedoms and rights, citizens may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens. Legally, citizens are the subjects of both rights and duties.'

'So-called political prisoners do not exist in China. In Chinese criminal law 'counter-revolutionary crime' refers to crime which endangers state security . . . such as those carried out in conspiring to overthrow the government or splitting the country. In China the rights of prisoners while serving their sentences are protected by law . . . A citizen's right to work is the essential condition for his right to subsistence . . . The state protects the lawful rights and interests of the minority nationalities . . . discrimination against and oppression of any nationality are prohibited, and any acts that undermine the unity and create splits among the nationalities are also prohibited . . . The political rights of minority nationalities are ensured . . . China's population policy has two objectives: Control of population growth and improvement in quality of the population.'

Reply of the Permanent Representative of China to the United Nations Office at Geneva, [Economic and Social Council, Commission on Human Rights, 5 Jan 1992 27pp.]

'It is the fundamental purpose and task for the department of public security and judiciary to protect the basic rights and freedom of the Tibetan people, public property and lawful private property of the citizens, maintain social order, punish criminals in accordance with the Constitution and law'. [para 49].

'All the people in public security and judicial departments in the region are required to act according to law in their work and torture is strictly forbidden and criminals are given humanitarian treatment'. [para 53]

China's White Paper on Tibet, [PRC, 24 Sept 1992, 22pp]

'The human rights the Tibetan people enjoy today are poles apart from those under feudal serfdom. The Dalai clique and international anti-China forces, who flaunt the banner of 'champions of human rights', do not denounce the dark, savage and cruel feudal serfdom at all, under which the Tibetan people were deprived of all human rights by the serf-owners. But they continue to tell lies even after the lies they told previously have been exploded, alleging that the Tibetan people, who have become masters of the country, have lost their human rights. Their purpose is to mislead the public and create confusion in an attempt to

realise their dream of dismembering China, seizing Tibet and finally subverting socialist China. Here lies the essence of the issue of so-called human rights in Tibet.' [p.22]

People's Daily (overseas edition).

Chinese Prime Minister Li Peng, in an interview published on 20 May 1991 in this official Communist Party newspaper, is reported to have said

'Some foreign forces are fabricating allegations of a so-called 'human rights' problem in Tibet and wantonly interfering in China's internal affairs. Under no circumstances will this be allowed by the Chinese people as a whole, and this includes the people of Tibet. Their actions also violate the established principles governing international relations.' [Quoted in *People's Republic of China: Repression in Tibet, 1987-1992*, AI, 20 May 1992, p.16]

Qian Qichen, Foreign Minister of the PRC is reported to have said (April 1990)

'The United Nations human rights declaration is an important international instrument. China has always attached importance to the United Nations conventions and covenants regarding human rights'. [Quoted in *Defying the Dragon: China and Human Rights in Tibet*, a joint report by LAWASIA and Tibet Information Network (TIN), March 1991, p.95]

Chen Kuiyan (First Party Secretary in Tibet) has emphasised 'stability', the Chinese term for the repression of dissent, as a key element in his policy. On June 11 1992 he called on the Party to be 'tough with two hands' in the fight against 'sinful attempts ... to split the motherland'. [TIN News Update 5 December 1992]

2 Other views on the concept of human rights in China

Report of the Australian Human Rights Delegation to China (14-26 July 1991)

The Chinese approach to human rights is also described in this report, especially pp.5-11 and 39-61. The report emphasises the cultural divide between the Western approach to human rights and the Chinese perception of their own distinctive history, culture, and stage of economic development. There was seen to be a lack of clarity in the Chinese position (ranging from 'very hard' [which sees human rights as a lever in the Cold War against China, as reflected in the subsequently published 'China's White Paper', quoted above] to 'very soft'), and an expressed view that economic survival, and now economic development, has priority over other aspects of human rights.

The Delegation for Relations with the People's Republic of China from the European Parliament, 16-26 Sept 1991 13pp.

The Delegation was told [Report, p.4] that 'China respected human rights in accordance with the United Nations Convention' and that (in relation to the Delegation's visit to Tibet) 'the right to dissent was not acceptable when the desired objective was to bring down the government'

3 Conclusions from major studies of the facts

There is a considerable literature on alleged abuses of human rights in Tibet, stretching back over many years. In this report it is possible only to summarise the principal conclusions from recent reports of those organisations which have studied the evidence in detail and which have high standards of integrity in their reporting.

Merciless Repression: Human Rights in Tibet (Asia Watch, May 1990, 100 pp.) Note that there were two previous Asia Watch reports on violations of human rights in Tibet, February 1988 (74 pp.) and July 1988 (57 pp.).

'China's record in Tibet is in clear violation of accepted international norms of respect for human rights. Although the PRC condemns all criticism of its human rights record as unwarranted interference in its internal affairs, the PRC's accession to international instruments concerning human rights contradicts that position. Chinese actions and practices in Tibet, including discriminatory practices in furthering Chinese settlement in Tibet, arbitrary political arrests and imprisonment, have placed the PLC in clear violation of the *Universal Declaration of Human Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. [p.91]

Defying the Dragon: China and Human Rights in Tibet (Joint report by LAWASIA and TIN, March 1991, 140 pp.)

- 'In Tibet China continues to violate provisions of the Universal Declaration of Human Rights, including -
- right to life, liberty and security of person (Art 3)
 - right not to be subject to arbitrary arrest (Art 9)
 - right to a fair and public hearing by an independent and impartial tribunal in the hearing of any criminal charge (Art 10)
 - right to be presumed innocent until proved guilty (Art 11)
 - right not to be subjected to arbitrary interference with privacy, family, home or correspondence (Art 12)
 - right to freedom of thought, conscience and religion (Art 18)
 - right to freedom of opinion, expression, and peaceful assembly (Art 19,20) [*Op cit* p.99]

'There is overwhelming evidence that torture and other forms of cruel, inhuman or degrading treatment or punishment are a routine part of detention in police stations, detention centres, labour camps and prisons in Tibet. The flow of first hand accounts of mistreatment in prison has been as constant after China's ratification of the UN Convention Against Torture. Neither the imposition of martial law in Lhasa, nor the ostensible return to civilian rule, appear to have improved the situation.'

'The openness with which violence is used suggests that it is a reflection of government policy, or at least has government acquiescence. It belies the assurance given by the Chinese delegation to the Committee Against Torture in April 1990 that Tibetans 'are treated with the utmost humanitarian considerations and [are] not subject to any form of torture'. On the contrary, a confidential TAR Party document issued in September 1989 acknowledges that:

'there have been serious cases of some PSB [Public Security Bureau] leaders and cadres inflicting severe corporal punishment on culprits arrested and detained in prison. People have been severely beaten in some prisons in Lhasa, and in some Procuracies while being searched and 'awaiting reform''.

'Furthermore, China has failed to address the apparent acquiescence to, or encouragement of, practices in police stations, prisons, labour camps and detention centres in Tibet that violates its obligation under the Convention on Torture. The evidence that juveniles are subjected to torture and other forms of mistreatment and that they are incarcerated in adult penal institutions also violates provisions of the Convention on the Rights of the Child'. [*Op cit* p.99]

People's Republic of China: Repression in Tibet 1987-1992

(Amnesty International, May 1992, 60 pp.) Note that there have been many other reports from AI concerning Tibet. From the beginning of 1989 these are **Feb 1989**, 9pp: **March 1990**, 22 pp: **April 1990**, 19 pp: **May 1990**, 80 pp: **May 1990**, 16 pp: **April 1991**, 17 pp: **Oct 1991**, 25 pp: **Feb 1992**, 12pp: **May 1992**, 20pp: **May 1992** 24 pp: **26 May 1992** 4 pp.

This report is in five chapters. Chapter one reports that 'the imprisonment of prisoners of conscience held over decades, and other grave violations of human rights in Tibet, have been reported to Amnesty International since the early 1970s.' Details are given of many long term political prisoners and prisoners of conscience. Chapter 2 examines issues relating to prisoners of conscience in Tibet.

'Hundreds of Tibetans have been detained in the past five years for periods ranging from a few months to three years for taking part in peaceful political activities or because they were suspected of otherwise supporting Tibetan independence ... After martial law was lifted in May 1990 arrests continued ... many of those detailed in mass arrest operations appear to have been held in custody under regulations on 'shelter and investigation', a form of detention imposed by the police to detain suspects without charge or trial ... detainees who are not tried receive terms of administrative detention known as 're-education through labour'. [*Op cit* pp.7,18]

Chapter 3 concerns the torture and ill-treatment of detainees.

'Torture is endemic in Tibet. Eye-witnesses and former victims report that detainees have been beaten, given electric shocks and tied with ropes in excruciatingly painful positions in order to extract from them 'confessions' or 'information' about activities related to Tibetan independence ... Most torture victims in Tibet whose cases are known to Amnesty International are pro-independence demonstrators and other political activists, but relatives of activists, including children, have also reportedly been tortured.' [*Op cit* pp.3638]

Chapter 4 covers killings and extra-judicial executions of demonstrators.

'Several dozens of civilians have been killed by police and military forces in Tibet since the first violent crackdown against unarmed and peaceful demonstrators took place in Lhasa in October 1987 ... Since 1990 Amnesty International has received reports that individual participants in small, peaceful demonstrations

have been stabbed by police officers carrying out arrests. One person is reported to have died in 1991 as a result of such an attack.' [Op cit p.44]

Chapter 5 finds that the death penalty is commonly used in the TAR, as in the rest of China.

Fifteen cases were recorded by Amnesty International between May 1990 and April 1991... Trials in death penalty cases, as in other cases, are grossly unfair: procedures are biased against the defendants and pervasive political interference in the work of the judiciary critically hampers its independence.' [Op cit p.49]

Political Prisoners in Tibet (Asia Watch and TIN, Feb 1992 71 pp.)

This report is based on three lists of Tibetan prisoners compiled between August-November 1991, in total 360 named persons, including some 120 recently released. (Further lists not published bring the total to 680.) They relate to Tibetans in the Tibet Autonomous Region only.

The vast majority of prison terms were imposed for non-violent protests such as displaying the Tibetan flag, writing slogans on stones or wall, publishing and distributing leaflets, compiling prisoner lists and talking to foreigners about repression in Tibet. Most protests occurred in Lhasa but pro-independence activities were also widespread outside the capital. Although the number of reported arrests in 1990-91 is lower than the figure for 1987-89, the lists show that severe sentences are still being handed out for peaceful demonstrations in support of Tibetan independence.

Twenty-eight per cent of sentences were for over 5 years. Two thirds of prisoners were under the age of 25.

Monks and nuns are among the only sectors of Tibetan society able to organise without easy infiltration by government informers, and account for two-thirds of the total (and 80% of the women). For lay people to meet without attracting attention is almost impossible. As a result, not only are most demonstrations staged by monks and nuns, but the authors have more information about them than about lay prisoners.

Note: In 1984 the Bureau of Information of the Tibetan government-in-exile issued a list, open to international verification, of the names of 1,207,487 Tibetans and the circumstances of their death (prison and labour camp, executed, battles, starvation, torture and suicide) and their location, claimed to be correct up to 1983.

The Suppression of a People: Accounts of Torture and Imprisonment in Tibet, John Ackerly and Blake Kerr M.D. (Physicians for Human Rights) 1989, 62pp.

The report, based on 17 interviews with Tibetan men and women, including several monks who had been imprisoned and tortured, and a former Tibetan policeman who described how he himself had tortured prisoners, concludes -

'There can be no doubt that the use of arrest, imprisonment and torture of large numbers of Tibetans continues to be an integral part of China's effort to suppress Tibetan nationalism.'

'The treatment of political prisoners in Tibet is incompatible with international standards of human conduct and decency, and at odds with China's ratification of the United Nations Conventions against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in October of 1988. We are gravely concerned that the assault on human rights in Tibet today threatens the very existence of a Tibetan identity.' [Op cit p.55]

4 Further issues relating to arrests and imprisonment

The prison system in Tibet The system of courts, the judicial procedures and the system of prisons in Tibet reflect those throughout China.

'Politically, the labour reform system of China (ie the prison system) is the same as its Soviet and Nazi German counterparts. All use violence to suppress political dissidents. However, the labour reform system of China differs from the other two in its conception and means of suppression - 'mind reform through forced labour'. In economic terms China differs from the other two in that it forces work not only from prisoners but also from those who have already completed their term. In China labour reform camps are an economic enterprise. The products of prisoners' labour are sold in domestic as well as foreign markets and have become an indispensable component of the national economy' [Laogai: The Chinese Gulag, Hongda Harry Wu, (1992, 247pp.) p.5. This is the basic work on the subject. For a note on the structure of prison camps in China see Annex 1]

This situation, based on extensive Chinese experience, is also found in Tibet, where Hongda Harry Wu

lists 12 prison institutions in the Tibet Autonomous Region. [Op cit pp.180,181. *The Delegation from the European Parliament* was told that there was only one prison in Tibet, in Lhasa, with a capacity of 700 people. *Report*, p.10]. For example, in Drapchi there are work quotas for prisoners with profit targets 'which are enforced' ... In all, 96 political prisoners in Unit 5 are given the responsibility for making a profit of 40,000 yuan. [TIN *Tibetan Prisons Survey*, Jan-May 1992 Ref Doc 1(XC)] Work in prisons in Tibet was being reported over 3 years ago [TIN *News Update* 15 September 1989], and has a much longer history in China [see Hongda Harry Wu 'By 1965 the Communists had established over 800 fairly large labour reform factories, mines and farms'. *Op cit*, p.60] The new factor (since the Deng Xiaoping economic reforms) is the enforcement of profit targets.

Also in China, when a prison sentence is complete the prisoner may not be released but instead may be sent to undertake forced labour. 'Except in name, there is no basic difference between prisons and labour reform disciplinary production camps.' [Hongda Harry Wu *Op cit* p.8] Such was the case in Tibet with Jigme Zangpo who was made to work in a Forced Labour Brigade at the Nyethang lime works when his sentence was completed. [TIN *News Update*, 20 August 1992 p.11] As Hongda Harry Wu points out, such practices are part of the Chinese philosophy of 'mind reform through forced labour'. [Op cit p.5]

The annual total earnings from forced labour in Chinese prison camps of all kinds is estimated at US\$ 1.4-1.6 billion - no separate estimate exists for Tibet's contribution to this total. [*China's Laogai: ('Comments on Criminal Reform in China', issued by the Chinese government on August 11, 1992)*. The Laogai Research Foundation, September 1992 p.14]

Treatment of political prisoners in Tibet

Hongda Harry Wu remarks that in China 'over the past 10 years (up to mid-1991 when his book went to press) the effectiveness of thought reform and political education has decreased dramatically, mirroring the general collapse of faith in socialism and Mao Zedong Thought in the society at large. Thus the use of violence in the LCRs (Labour Reform Camps, prisons, detention centres etc) has increased in order to compensate for the decreased effectiveness of thought control'. [Op cit p.144]

Such a high level of violence in Tibetan prison institutions as described in section 3 above has been continuously reported over many years. One individual testimony is given in Annex 2 to this paper (this case and other similar ones are also reported in *Amnesty International's Concerns in Tibet* January 1992, pp.7,8). Almost every TIN *News Update* has details, during arrests and in prisons, of violence against both women and men. This is a continuing concern for human rights organisations, as summarised earlier. The violence against persons may however now have been extended.

Since 1989 there are many testimonies of forced blood extraction amongst Tibetan prisoners. No consent is asked. The blood is taken only from Tibetan prisoners. Chinese prisoners are exempt. 30-40 ml are extracted at a time.

The charge of taking blood from Tibetan prisoners without consent was entered into the US Congressional Records in 1990 (following the Lhasa protest against such practices by nuns, who were then arrested). 'This practice, combined with near starvation conditions, condemns these innocent captives to a gradual tortuous, yet apparently natural death. These brave men and women are literally having their life slowly siphoned out of them'.

Example: Gyaltsen Wangchuk was one of 16 people arrested for participating in a non-violent demonstration on International Human Rights Day, December 1988. She was beaten with rifle butts on her breast until she fell unconscious. She had a broken hip from the torture and was then forced to give blood'. [All the above from *Tibetan Bulletin* November-December 1991, p.16]

In May 1991 the *South China Morning Post* reported that a branch of the People's Liberation Army was seeking foreign partners for a joint venture to export blood products to the United States, Europe and Asia. The article, called 'Army Hospital seeks to Export Blood Products' referred to certain areas in Tibet's eastern province of Amdo and said that the Xining Medicine and Medical Science Development General, the largest commercial unit of the PLA, had received interested replies from the USA, Hong Kong and Taiwan about the venture. [See *Tibetan Bulletin* November-December 1991, pp.5,6]

Visits by foreign delegations to prisons in Tibet are either denied (the Australian delegation in July 1991 were refused a requested visit to the Gutsa detention centre in Lhasa and to meet with specified prisoners of conscience [*Report of the Australian Human Rights Delegation to China*, p.1]). Acts of torture may take place at prisons not visited (in Annex 2 it is said that 'the Ambassadors of Denmark, Sweden, Norway and the United States were all given official tours of Drapchi prison in Lhasa while Sonam Drolkar was being tortured or in solitary confinement in Seitru jail, less than a kilometre away').

Arrest and imprisonment of minors

In accordance with Communist regulations (Art 23) juvenile offender camps are organised on provincial, municipal and autonomous region levels. All juvenile offenders are forced to labour like other prisoners, and are organised along the same military lines as labour reform camps (prisons). [*Laogai: the Chinese Gulag* Hongda Harry Wu, 1992 p.11]

- A Tibetan schoolboy, Migmar, spent 1 year in prison after taking part in a demonstration, and on release (March 1990) was not permitted to return to his school, according to an unconfirmed report [TIN News Update 3 September 1991 p.4]
- On 8 December 1989 a Tibetan schoolstudent named Phurbu was sent without trial for indefinite 're-education through labour' for putting up pro-independence posters in a Lhasa school. The Chinese usually do not specify the sentence for children under 18 but release them when the labour camp governor or local procurator decides the offender's behaviour has improved. [TIN News Update 27 December 1989]
- Five other children were awaiting sentence accused of forming a 'counter-revolutionary' organisation. [TIN Op cit]
- A 17 year old Buddhist nun, Gyaltzen Monlam (with about a dozen other nuns) was reported detained on 21 August 1990 for shouting slogans supporting the Dalai Lama and opposing the Chinese presence in Tibet. She is now serving a three year term of 'education through labour'. [*People's Republic of China, Repression in Tibet, 1987-1992, p.30*]
- A 16 year old nun, Gyaltzen Drolma, was reported as being arrested (along with ten other nuns) for demonstrating in support of the Dalai Lama on the Barkor pilgrimage path on 9 June 1991. She was reported as still in detention at the end of 1991. [Op cit p.30]
- A 14 year old student, Lhakpa Tsering, was arrested in December 1989 for organising or joining a 'counter revolutionary group' at No.1 Middle School, Lhasa and sentenced for 2 years [TIN News Update 10 November 1990 p.5]
- A 17 year old carpenter, Dawa Chungdag, was sentenced in Lhasa to 8 years - details of the charges are not known [TIN News Update 10 November 1990 p.5]
- A 12/13 year old girl from Medrogonghar (near Lhasa), arrested 3 February 1992, whereabouts unknown. [TIN Op cit]
- A 13 year old novice nun arrested in Lhasa, whereabouts unknown. [TIN Op cit]

Unexpectedly long prison sentences

In Chinese labour reform camps (prisons), political prisoners are usually treated much more harshly than common criminals, and their sentences are relatively longer. [*Laogai: The Chinese Gulag, Op cit p.26*]

- At least 14 years in prison for failing to punish a child who had written 'Down with Chairman Mao' on the wall of the school toilets (Jigme Zangpo, 1960) [TIN News Update 20 August 1992 p.11]
- The same man received an extra 8 years for shouting one sentence in support of the Dalai Lama during a visit to Drapchi prison by a Swiss Delegation of diplomats, December 1991. [TIN News Update Op cit]
- 5 years for writing a 'reactionary song' on a school blackboard (Dawa Drolma, aged 23, September 1989) [*Tibetan Bulletin, March-April 1992, p.8*]
- 3 year sentence for suggesting that his friends should wear Tibetan clothes on a Chinese holiday. He was also accused of distributing at Gangden Monastery cotton strings blessed by important lamas, and it was alleged that he had 'reactionary leaflets' in his home [Dorje Wangdu, aged 33, April 1991] [*Tibetan Bulletin, Op cit*]
- 12 years for encouraging youths to sing a reactionary song (Tsering Ngodrub, September 1989) [Reported in China News Agency 13 September 1989, quoted in TIN News Update 15 September 1989]

5 Issues relating to birth control

China's publicly stated policy

'Family planning is also being encouraged among minority nationalities to further their well-being and prosperity, and is based on the minority people's own free will. The specific requirements for minorities are different from those for Han families and are determined by the governments of autonomous regions and provinces according to the population, economy, resources, culture and customs of each nationality. Such a population policy, taking into account both the state's necessity to control population growth and the masses' real problems and degree of acceptance, tallies with China's actual economic and social situation and conforms to the people's fundamental interests. As experience proves, the policy has been understood and

supported by the masses after thoroughgoing publicity and education. The fourth census showed that among the children born in 1989 throughout the country, the more-than-three children birthrate dropped to 19.32% from 62.21% in 1970.' [*Human Rights in China*, PRC 8 Nov, 1991]

'The government has special policies on birth control in Tibet. Family planning is not practised for the farmers and herders who constitute 88% of the region's entire population. The government only conducts publicity campaigns to inform them about rational births and ways to have healthy babies. Tibet has a vast expanse of territory, but few land resources which can be developed. In 1991 the average amount of cultivated land per person was only 1.54 mu. As Tibet's population has been increasing at a fast rate, population control is necessary. Since 1984 the regional government has advocated and carried out the policy of two children per couple among Tibetan cadres, workers and the staff of enterprises and residents in cities and towns. However, among the Han cadres, workers and staff members in Tibet, the policy of one child per family has been advocated and enforced. Only 12% of the people in Tibet are covered by the family planning policy. In the process of carrying out family planning, the government always persists in the principle of 'mainly publicity, volunteering and service', and prohibits any form of forced abortion.' [*China's White Paper on Tibet*, 24 Sept 1992, p.19]

Birth control regulations Official Chinese secret documents obtained by the *Tibet Information Network* (TIN) in London have revealed details for the first time of the detailed birth control regulations currently imposed on Tibetans. [TIN News Update, 2 October 1992] What follows is a summary of the very detailed 4 page report.

In the Decision on How to Strengthen the Work of Birth Control (Central Committee of the Communist Party, 12 May 1991) the primary objectives in China are 'birth control, control of population growth and the improvement of the quality of population'. The document applied the question of population quality not to the Chinese but to justify the decision to impose birth control amongst the minorities.

The Chinese report says that 'in order to raise the economic and cultural standard and national quality in the minority areas, birth control must also be implemented among minorities; the detailed demand and method to be decided by each local autonomous region or province'.

The *Established Guidelines Relevant to Granting Birth Permits* (Tibet Autonomous Region, 1985) show that birth control regulations were already in force in Tibet when Beijing in that year was claiming that 'the minority [ie non-Chinese] groups in Tibet ... are exempt from family planning'. Tibetans outside of the TAR have been subject to birth controls for about 10 years.

The 1992 *Regulations on Birth Control in the Tibet Autonomous Region* (no longer 'guidelines') are more severe than those issued in 1985 and imply a use of force. They also extend their scope to Tibetans living in the countryside.

Tibetans in towns are allowed only two children, as long as the mother is at least 22 when she has her first child, and 25 when she has her second. The birth of a third child, is 'strictly controlled'. The range of punishments for offences against the regulations is very wide and complex. It includes fines, demotion, wage cuts, abortions and sterilisations and other pressures.

Fines for an urban Tibetan couple who have an unauthorised child will be at least 500 yuan (US\$ 50), about 3 months income for a government employee. Neither of the couple would be eligible for promotion, wage rises or bonuses for 2 years. For a second illegal Tibetan child the fine is 1,000 yuan, and the regulations say that the parents 'will be given the necessary administrative punishment' by their work units. Fines can go as high as 8,000 yuan (about 5 years income) for people who do not have local registration papers. In certain situations sterilisation is compulsory.

The detailed rules of punishments are kept secret, even from doctors (only 400 copies of the Regulations were printed, marked for circulation only to high level Party cadres and court officials). Some officials threaten or implement punishments which are more extreme than those allowed under the regulations. As testimonies verify, Tibetan women do not know precisely what the rules are and are only revealed as threats to have an abortion.

For example, a pregnant married Tibetan doctor Tashi Dolma (since escaped to Dharamsala) said 'she (her Chinese superior) warned me 'paying the fine (for having the baby) is just a small matter. You will be punished from the Party Secretary. You will be given only 30% of your salary for you to live on, and it will never be increased. Your child's name will not be registered, so the child will not be allowed to a nursery or to school. Possibly you could both be sacked from your jobs'. She also said that in her area of Qinghai the maximum limit for urban Tibetans had been reduced to one child per family and the fine for a first unauthorised child was increased to 1,700 yuan, and her account suggested that this rule was already in force 3 years earlier.

Officials are set annual quotas of contraceptive operations, which include abortions and sterilisations, as well as a fixed number of permitted extra births which must not be exceeded if they want to keep their jobs (according to the Ganze 'Procedure').

The threat of physical force underscores the text of the Regulations. It is implicit within the quota system now imposed on cadres. The current *Five Year Plan* for Tibet says 'we must step by step implement the birth planning quotas of cities and towns, providing the leaders of the birth-planning work the strength, resources and administrative means'. Abortion appears to be seen as a principal method of birth control, more important than either education or contraception.

Some reported experiences

There is an increasing number of reports and testimonies of physical force being used to secure abortions or sterilisations of Tibetan women (possibly to meet the quotas mentioned above). The full extent is unknown. Here are two reports. [see *Tibetan Bulletin*, July-August 1991, pp.25,26]

1 Dr Blake Kerr of International Physicians for Human Rights met two monks in Amdo who testified that in autumn 1987 a Chinese birth control team set up their tent next to his monastery. The monks said 'the villagers were informed that all women had to report to the tent for abortions or sterilisations or there would be grave consequences. The women who refused were taken by force, operated on, and no medical care was given. Women nine months pregnant had their babies taken out. We saw many girls crying, heard their screams as they waited their turn to go into the tent, and saw the growing pile of foetuses build outside the tent, which smelled horrible. The birth control teams do not round up Chinese women who live in these villages'.

2 Another testimony stated that in the summer of 1984, 11 Chinese authorities arrived in Sharbom township and announced to the roughly 400 people their intention to carry out birth control operations. The authorities, some of whose names were given in the testimony, 'went to more than 40 households and terrorised the women into submitting to birth control operations. Those who resisted were tied up, thoroughly beaten and taken away to be forceably operated on. On the 12 day of the 5th month (Tibetan calendar) the Chinese government undertook a house-to-house search for those evading birth control. Those families who resisted, according to the testimony, had personal property confiscated and many livestock killed, and both men, women and children were beaten.'

Tashi Dolma pointed out that 'apart from talking to people I know at the hospital it is virtually impossible to find out details about such practices from the general public or the patients. The reasons are: (1) Being Buddhists, no Tibetan would like to talk about such experiences for fear of being looked down upon in the society. (2) Tibetans regard such operations as committing murder.[*Tibetan Review*, October 1990, pp.4,5]

Mervyn Goldstein and Cynthia Beall, two American social anthropologists, found that 'there is clearly a policy of coercive birth control operative in Lhasa (in 1985) ... but that 'in Tibet's farming and nomadic areas (in 1986-88 'in a relatively isolated traditional nomad area called Phala') ... we found no evidence of any policy restricting the number of children that herding and farming women can bear ... and general observations of high fertility are supported by demographic information for all females in the nomad community'. [*China's birth control policy in the Tibet Autonomous Region: myths and realities*, Mervyn C Goldstein and Cynthia M Beall, 'Asia Survey', Fall 1990]

6 Additional Notes on Sources

Amnesty International 'is an international non-governmental organisation which seeks the release of prisoners of conscience,* advocates fair and prompt trials for all political prisoners and prisoners threatened with the death penalty; opposes the death penalty, torture or other cruel, inhuman or degrading treatment or punishment of prisoners, 'disappearances' and extra-judicial executions. As part of its work, Amnesty International supports and publicises the activities of international organisations which work to secure the observance of the Universal Declaration of Human Rights'.

* People imprisoned, detained or otherwise physically restricted by reason of their non-violent political, religious or other conscientiously held beliefs or on account of their ethnic origin, sex, colour or language. [*AI. People's Republic of China: Amnesty International's Concerns in Tibet*, 1 February 1992, p.1]

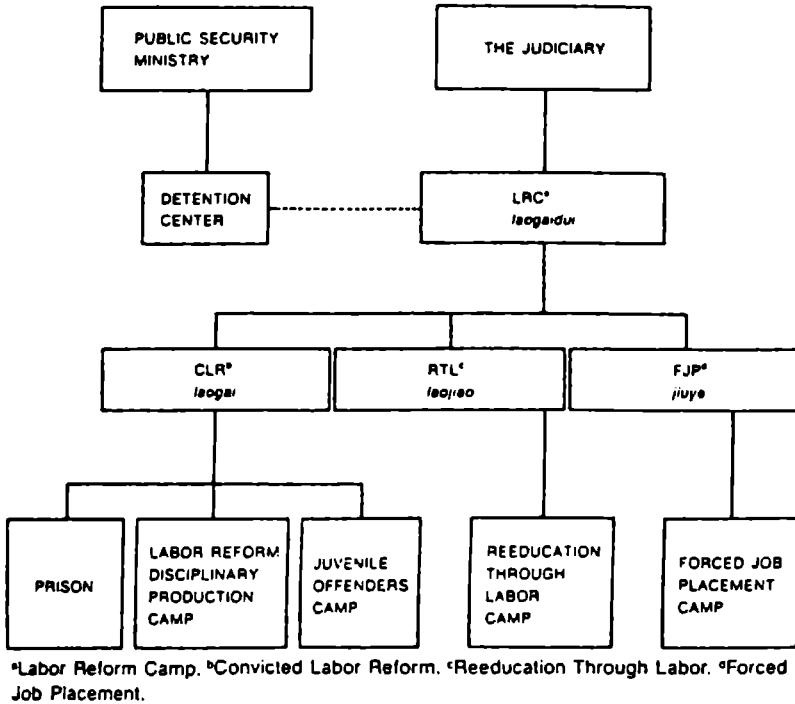
Asia Watch, a Division of Human Rights Watch, 'was established in 1985 to monitor and promote observance of internationally recognised human rights in Asia'. [*Political Prisoners in Tibet*, February 1992, Foreword]

Annex 1

The Labour Reform Camp System in China

The source of this information is *Laogai: The Chinese Gulag* Hongda Harry Wu (Westview Press 1992), 247pp. For expressing 'counter-revolutionary opinions', the author spent 19 years in more than twelve different camps in northern China. In 1991 he returned to China for up-dating and to gather more information about the system by which the products of the Laogai are distributed and sold, both domestically in China and to export markets.

The Chart below [p.7 *Op cit*] shows the basic structure of the public security system in China, and how it relates to the judiciary. There may be variations in Tibet.



All of the six different types of institution shown above, and summarised below, should be considered as part of the prison system in China.

Detention Centres

The main purpose of detention centres is to house criminals who have not yet been sentenced. Most criminals who are sentenced to terms below two years are also confined in detention centres. All criminals, whether sentenced or not are required by law to engage in forced labour. [*Op cit* p.6] According to Art 92 of China's criminal code, arrested criminals (an arrest is a presumption of guilt) must be tried and sentenced within sixty days. In practice this is completely ignored. Some prisoners spend the rest of their lives in detention centres and die there without having been sentenced. The total number of prisoners in China in detention centres is estimated at 500,000-600,000.

Prisons

Only criminals who have been arrested and sentenced are confined to prisons (there are also secret prisons of the Communist Party, thought to be 'significant' in extent). Except in name there is no difference between prisons and labour reform disciplinary production camps. All prisons house factories or workshops in which all prisoners are forced to labour. Each prison has an alternative production unit name (thus Xinjiang No.3 Prison is also called 'Xinjing No.3 Mechanical Tool Factory'). The total number of prisoners in China is estimated at 500,000-700,000.

Labour Reform Disciplinary Production Camps

In China 87% of prisoners are held in this type of camp. They are organised along military lines, run by the Public Security Police, with squadrons (the lowest level), companies, battalions, detachments and general brigades. A 'battalion' has about 1,000 prisoners, and a 'detachment', the level above, is a complete entity, an independent administrative and work unit which, under various names, manages its own financing, production, sales and cost accounting. Under Deng Xiaoping's economic reforms, each detachment has become individually responsible for its profits and losses. The total prisoner population in these Camps is estimated at 3-4 million.

Juvenile Offender Camps

All juvenile offenders are forced to labour like other prisoners and are organised along military lines like Labour Reform Disciplinary Production Camps. The total prison population of juveniles is estimated at 200,000-300,000.

Re-education Through Labour Camps (RTL)

Communist government policy is that RTLs 'should be established according to the needs of provincial, autonomous, regional and municipal people's governments ... however records should be filed with the Public Security Bureau.' Basically there is no distinction (except in origin and the route by which prisoners arrive there) between RTLs and Labour Reform Disciplinary Production Camps. RTLs involve no judicial process.

Prisoners in RTLs receive a salary for the work they do, but after all costs are deducted (food, clothes, blankets, shoes etc) very little is left, and anyway no money is actually handed over to the prisoners.

A new prison of this kind opened near Lhasa in February 1992, called the Trisam prison, and 40 prisoners were transferred from unit No.2 of Lhasa's Sangyip prison. It is located 1 km from the large new military complex under construction on the road to Lhasa airport, mentioned in Evidence Report 5d. [TIN News Update, 3 December 1992]

Who is in need of 'Re-education through Labour' is decided by the Communist Party or directly by Public Security. There are four Types of offender (see Hongda Harry Wu Op cit pp.92-94). For example Category C of Type 2 are 'people who merely complained or made some disparaging comments, expressed dissatisfaction with a certain Party leader, revealed some dissident ideas in personal letters or diaries, or even held some rather immature political concepts (ie ones that differed from Communism).' [Op cit p.93]

Normally the term of imprisonment under RTL is for not more than 3 years, but extra terms may be added without explanation. One may have offended against one or more of 10 specified types of behaviour, any one of which is sufficient to warrant extension. Or one may be transferred to a Forced Job Placement Camp.

Forced Job Placement Camp (FJP)

Job placement personnel, after serving their terms in other penal institutions, may not be accorded the same freedoms and rights as ordinary citizens. They may be forced to 'continue reform' in labour reform enterprises run by Public Security and judicial bureaus. They are deprived of the right to choose their own jobs of their own lifestyles. They cannot transfer or move their place of residence.

About 50% of CLR (Convicted Labour Reform) prisoners in Prisons, Labour Reform Disciplinary Production Camps and Juvenile Offenders Camps will be sent to FJPs, and so will about 20-30% of RTL prisoners. Regardless of government policies, the situation has always been one of 'They go in, but don't come out', so the number of FJP prisoners is steadily increasing. They are organised in the same military fashion, and receive a salary for their work (after deductions). If FJPs have a family they can be allocated housing within the confines of the Labour Reform Camp (very few take this up). Their work is directed by public security cadres, and the production arrangements are under the control of Public Security.

Hongda Harry Wu concludes, following further visits to China in 1991, that 'the number of political offenders in the Labour Reform Camps has decreased sharply and now stands at approximately 10 per cent of the total prison population (ie around 1 million persons). Moreover, in accordance with Communist Party regulations, each province municipality and autonomous region has established specialised prisons for political prisoners' which are of course also production factories. [Op cit p.144]

TIN INTERVIEW / 19 NOVEMBER 1991

Women Tortured for 6 months in Lhasa Prison

- Interview

A Tibetan woman was held in solitary confinement for 300 days without charge or trial, according to detailed testimony given to T.I.N. by the former prisoner, who has since escaped to India. The prisoner, suspected of political activity, was severely tortured whilst in custody.

The woman, 25 year old Sonam Drolkar from Lhasa, showed scars indicating that she had been kicked and beaten. She said that from 2nd August 1990 she was stripped naked and given electric shocks or other forms of torture every second day for six months. She also described being sexually violated with an electric baton. She received no medical treatment until February 1991, when a prison doctor warned that she was close to death and the torture sessions stopped. She was not allowed out of her cell at any time and never saw other prisoners. She was not provided with a mattress or blanket.

The account, of which extracts are printed below, suggests that the authorities in Lhasa have continued the practice of torturing political detainees. This practice was routine in Tibet in 1988-89, but since 1989 it has not been possible to carry out interviews with recent prisoners. Sonam Drolkar is the first former prisoner interviewed by TIN since martial law was imposed in 1989.

The torture and maltreatment of Sonam Drolkar continued for three months after October 1990, when western diplomats were invited for the first time to visit Lhasa prisons. The Ambassadors of Denmark, Sweden, Norway and the United States were all given official tours of Drapchi prison in Lhasa while Sonam Drolkar was being tortured or in solitary confinement in Seitru jail, less a kilometre away.

According to a detailed account from a Tibetan directly involved in the events, the arrests of Sonam Drolkar and of the detainee who named her under interrogation were the result of indiscrete behaviour by a western TV journalist who was active in Lhasa in the summer of 1990.

Amnesty International issued an appeal last month for independent investigation of Sonam Drolkar's alleged maltreatment. The following extract from her interview with TIN are given in the third person, as provided by the translator.

Sonam Drolkar Interview Extracts September 1991

1: Use of Electric Shock Treatment

Soinam Drolkar was arrested at 9pm on 29th July 1990 when 20 police came without a warrant and searched her house in Lhasa. They found letters in her house but nothing else. She was taken to Seitru prison (Prison Section No.4, part of the Sangyip prison complex) where two Tibetan police officials in plain clothes questioned her. She denied any connection with political activities. The next night she was taken to a room where

there was a team of four people, three Chinese and one Tibetan, from the Public Security Department ('Gong An Thing').

Q: What did they do to her?

A: She was stripped naked. They wrapped wire around her body and they started questioning her. When she didn't accept [what they said] then they turned on the switch and when the switch was on she would be trembling, and would be burnt.

Q: Where did they put the wire on the body?

A: First it was wrapped round the fingers [interviewee indicates tips of both index fingers] and then they would wrap it around the body [interviewee indicates wire wrapped around upper arms, upper chest, around back, around stomach and upper thighs.] Then they turned on the switch.[...]

Q: And this was connected to something and they could turn it on with a switch, like a light?

A: Yes [...] She didn't see where it went. They brought 1 roll in from outside. [...]

Q: Did they do this to her right away or did they tie her up and ask her more questions first?

A: At first they put the questions to her. When she didn't accept what they said, then they would wind this wire around her.

Q: Before they used the electricity, had they ever hit her or slapped her? Any kind of beating?

A: She was slapped several times. And they would punch her.

Q: Does she have any idea how long they it go on? A second? 5 seconds?

A: When the shock was given she would temble and then fall unconscious.

Q: When she returned to consciousness, was she in the same place or had they taken her back to her cell?

A: The first time she became unconscious and then came back, she found she was lying on the same place where she was standing. She found her body had become all blue coloured.

Q: So she was still naked?

A: Yes.

Q: After she regained consciousness, did they let her put clothes back on? What did they do to her then?

A: Then they would put more questions to her [...]

Q: So the men were still there?

A: Yes, they were still there and they would ask more questions. If she didn't answer they would again switch on the current. She thought her body was going to pieces. The shocks came up and she became unconscious again.

Q: How long did this on?

A: After the second shock, she didn't know what happened after that. She found that she was in the room where she was kept in the prison.

Q: How many days did they ask questions before they started the torture?

A: On the second day [at Seitru] two people come to interrogate her. On the third day they [the other team] started the torture.

Q: How many days did the torture last?

A: At one day intervals they used to do all the torture and asking questions.

Q: 'One day interval' means they would do it on one day and then not the next, then torture again the next?

A: Yes.

Q: How long did it go on like that?

A: Six months.

2: Other Forms of Maltreatment

Q: For six months the torture was the same, the electricity?

A: They also used the electric baton. [interviewee uncomfortable during explanation...] It seems that when she was unconscious they have beaten her because she saw many marks on her body. Her ribs were broken and she could not stand up.

Q: How big were the marks on her body?

A: [...] Here [indicates base of neck above chest] she got a big mark where she says they kicked her with their boots. [Interviewee shows a large scar at the base of her neck. [...]] It is crescent shaped, about four inches long and an inch wide. It is very rough.]

Q: Was it bleeding?

A: Yes. She wasn't sure how they did it because she was unconscious. When she became conscious and tried to get up, she couldn't because of pain everywhere in her body and it was blue and there was bleeding [...]

Q: Did she ask for any medical treatment or did they give any medical treatment?

A: When she became conscious she found that her clothes were all covered with blood from bleeding mostly from the neck. [interviewee then ... shows scars on her wrists, said to be from handcuffs. The scar is about an inch long, thin and follows the contour of the wrist.]

Q: So did she ever get any medical treatment?

A: [translator: No. She tried to bind her clothes on her neck and her hands.] [...]

Q: Was it usually the same people who tortured her each time or would they be changed?

A: After getting the electric shocks her memory was diminished and she couldn't recognise if they were the same or if others came. But she feels that they would change after some days.

Q: Was it always men?

A: The interrogation team had only men. But the torture party sometimes had a woman and sometimes only men.

Q: Did the woman also torture?

A: She did the same.

Q: Did they also beat you all this time?

A: Yes.

Q: What did they use?

A: [After giving electric shock] they used some objects [...]. She heard they were using iron rods to beat her, mostly iron rods, but she never saw because she was unconscious.

Q: She also said they used the electric baton. What part of her body did they touch with it?

A: [she is uncomfortable with this question ...] On every part, on the face, and on every part [she motions with a sweep along the front of her body downward ...]

Q: There were some reports that they have tortured women by touching it to the genitalia. Did anything like that ever happen to her?

A: Yes.

Q: Did they ever make the electric baton go inside her body?

A: [she is uncomfortable ...] Yes. [...]

Q: During the time they were torturing her, did they keep the handcuffs on her all the time?

A: Yes, they were kept on 24 hours a day, and also on the feet.

Q: All the time?

A: Yes.

3. Solitary Confinement

Q: What kind of room did they keep her in? Was she by herself or were there other prisoners in her cell?

A: She was by herself.

Q: During these months when she was being tortured, did she ever see other prisoners at that time?

A: No, no one was there. For the whole time, she never saw another prisoner. [...] No one was allowed to meet her except the interrogating team. Where she was kept [there were] no windows. [...] there was [an electric] light. It was on all the time. [...] She didn't know if it was day or night because there were no windows.

Q: So during this whole year she never knew if any other prisoners were nearby, she never saw anyone or had contact with anyone?

A: [translator: that is right]

Q: During the year did she ever have any exercise? Was she ever permitted to walk around?

A: She was never allowed to go outside the room where she was kept.

Q: How big was the room?

A: [indication seems to be about ... 3m x 3m]

Q: Did she have a bed?

A: No.

Q: So she had to sleep on the floor? Dirt or concrete?

A: Concrete.

Q: So when she would lie down, she had to lie on the concrete?

A: Yes, nothing was there.

Q: There wasn't a blanket or anything?

A: Nothing.

Q: So in the winter time even when it was very cold ...

A: Nothing was there, even in the winter. She was given one bucket for a toilet, that was all that was there. [...]

Q: What about food?

A: In the morning they gave her two small 'tin-momo' [plain tibetan dumplings]. In the daytime, a small amount of rice and vegetable cooked in water, nothing else. At

night, two small pieces of tin-momo and a little boiled vegetable.

Q: What about her health all this time? Did she ever get sick?

A: When they came and asked her to stand up, she was quite weak and sick and could not stand. She would stand up and then fall down, so they would beat her to make her stand up, then interrogate. [...] After the torturing, when they gave food, she would try to eat but she could not because it gave too much pain inside.

Q: So she couldn't swallow?

A: She would vomit, [because] there was so much pain inside. [...] After being given the electric shocks, blood would come out when she would urinate and blood would also come out when she vomited.

Q: And this went on for six months?

A: Yes. She was given no treatment at all.

Q: Did she ever ask for any treatment?

A: She asked and told them about the pain and she asked at least for a bandage [indicates wrists], but they never responded ...

Q: What would they say?

A: They said there wasn't anything.

4: After the Torturing: February-June 1991

Q: The torturing went on half the time she was in prison. What happened the rest of the time?

A: After six months she had become quite thin and weak. Every day she was vomiting blood and had blood in the urine. For six months it had gone on without change, but after that they stopped beating her. Then they brought some person to check her, a doctor.

Q: Why does she think they stopped beating her? Were they afraid she might die?

A: After six months they brought the doctor. He said that if they gave her more [electric] current she would die. So they stopped.

Q: What was her time like after that? Did they still keep her alone?

A: She was kept lying on the floor for six months.

Q: That's all?

A: That's all. Only food was given and no one could see her.

Q: Did she ever leave her room at any time?

A: No. When she was allowed to come out [after about ten months], her eyes were not working properly, she couldn't face the sun and see properly. [...]

Q: Did she ever know how long she would have to stay there all together? Did they ever tell her?

A: After six months, she was told she would kept for life imprisonment.

Q: Did she ever have any kind of trial?

A: No, she didn't have anything like that. Just interrogation. [...] She asked why she would be kept for life imprisonment, because she had not done what they had charged. She did not accept that. They said she was lying and if she would tell the truth the policy would be very good and more sympathetic. But she still would not say anything.

Q: What happened then?

A: They told her that she should tell who she was linked with and who she worked

with and who she knew, especially Khampas. She said she knew no one and had no links with anyone.

Q: When she finally left, did she still have the life sentence standing against her?

A: It had not been decided, the life sentence was still there. They thought she was sick, so they admitted her to the hospital.

Q: When was she admitted in the hospital?

A: She was first admitted to the Gongan Thing hospital, the police hospital. The doctors of that hospital decided not to treat her, because she would be no more [she was going to die]. They said that if she had money to pay the fees for treatment and medicine, then she could stay in a different medical centre. So some other people said they would pay and she was admitted into a better hospital.

Q: How long ago was that?

A: June [1991]

APPENDIX D

STATEMENT BY MARCUS EINFELD

1. There is and can be no serious dispute that Tibetan civilization has a separate, long and distinct history. It is in present danger of disappearing.
2. The Tibetans are unquestionably a people whose own ethnicity is undeniable.
3. They are presently under alien rule by China indistinguishable from colonial occupation.
4. China imposed its rule upon Tibet without the consent of the Tibetan people.
5. Chinese rule has been and continues to be based on a discrimination against Tibetans which is racially based.
6. Under Chinese rule Tibetan culture and beliefs are being systematically crushed.
7. Human rights abuses are being carried out on a major scale against the Tibetan people.
8. The Chinese authorities refuse free access to Tibet and severely hinder the flow of information to and from Tibet. Access for the international media is forbidden. Discussions with Tibetans and the use of independent interpreters are prohibited.
9. Recent delegations from Australia, Austria and Switzerland, among others, were given such restricted rights to investigate the facts and make observations as to render their visits of extremely limited value. In these circumstances, the Chinese invitations to such delegations were a sham.
10. To like effect was the official Chinese rejectionist and impolite attitude to this conference. We are a group of international lawyers attempting to address what is widely recognized and accepted as being an important and real issue of law and morality. Yet the Chinese authorities peremptorily rejected our invitation to engage in dialogue and discussion with us and sought to dissuade us from undertaking our work at all. The international professional community simply does not operate in this rather crude way. We were and remain genuinely interested in such discourse. We ask China for the opportunity. We will talk to leaders, judges, lawyers, academics and officials. Our search is for solutions not dogma.
11. No one in the world except the Chinese authorities denies that the future of the Tibetan people raises issues of great importance that cry out for a resolution. Being required to look for solutions without the opportunity to listen to and consider the Chinese position in full debate does not remove the problem nor will it intimidate us into abdicating our investigations altogether. It merely makes the problems more difficult for China to resolve ultimately.
12. We wish to monitor in respect of Tibet, as many of us do in our professional capacities in respect of other countries almost every day, the repeated claims of Tibetans and many independent observers that major and repeated human rights violations are occurring in Tibet. Other than China, few if any other countries, and no major countries, continue to maintain a position that such monitoring represents an unjustifiable interference in their internal affairs. It is the virtually unanimous view of the international community, and it is manifestly the case, that the persistent violation of human rights is and can never be such a matter.
13. Moreover, history is replete with examples of the failed efforts of other countries to establish that there have been no abuses by trying to exclude the rest of the world from their investigation and revelation. In recent times the repeated consequence of the ultimate inevitable exposure has been the collapse or forcible removal of the regime which practised them.

14. If the Chinese position that no discrimination or human rights abuses are being committed against Tibetans is true, the Chinese authorities have nothing to fear and everything to gain from granting full independent international access to Tibet. This Conference stands ready to respond to a Chinese invitation to fill that role at short notice.
15. The Chinese authorities know that without an urgent change in the current situation in Tibet, the future survival of Tibetan civilization is under immediate and present threat. They appear to believe that the other nations of the world are too pre-occupied with their own problems and other pressing international troublespots, and are too interested in currying favour with the Chinese authorities for a variety of reasons, to intervene on behalf of a remote and defenceless people such as the Tibetans who can offer little except a rich civilization and a deep moral integrity. Even in the case of a powerful nation like China, perhaps there is a limit to the number of uses that may legitimately be made of the strategy of threat and bluff.
16. Conscience has rarely proved a particularly effective dictator of nation states. Yet the failure of the international community to respond promptly and effectively to the present situation in Tibet will constitute a manifest complicity in the death and disappearance of the Tibetans as a people.
17. International law grants to all peoples the right to self-determination. International law grants the same right to identifiable minorities such as the Chinese themselves categorise the Tibetans.
18. The Tibetans have never been granted a genuine and free act of self-determination. Nor has the Dalai Lama and the Tibetan people in exile ever been granted the full and unconditional right to return to Tibet to participate in this internationally recognized entitlement to express the true will of the people as a whole.
19. China's repeated assertions that the Tibetan people are free and voluntary members of its People's Republic will be finally settled only by presenting the matter to the people themselves. Like in so many other countries in recent years, the participation of the international community as independent observers of such a plebiscite would be helpful to the attainment of a fully recognized result.
20. We call upon China to enter into immediate negotiations with the the Dalai Lama and duly appointed representatives of the Tibetan people with a view to obtaining the wishes of the Tibetan people as to the entity and methods by which and the people by whom they wish to be governed. This Conference stands ready to assist in this process in whatever way the parties consider useful.

APPENDIX E
MAP OF TIBET

Tibet

XINJIANG UIGHUR AUTONOMOUS REGION

TAKLI MAKAN DESERT

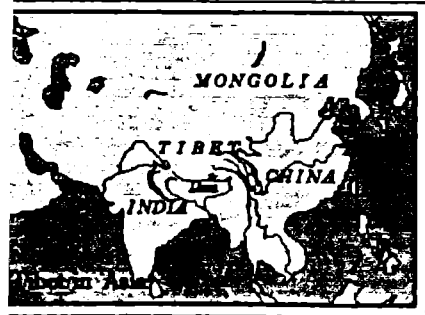
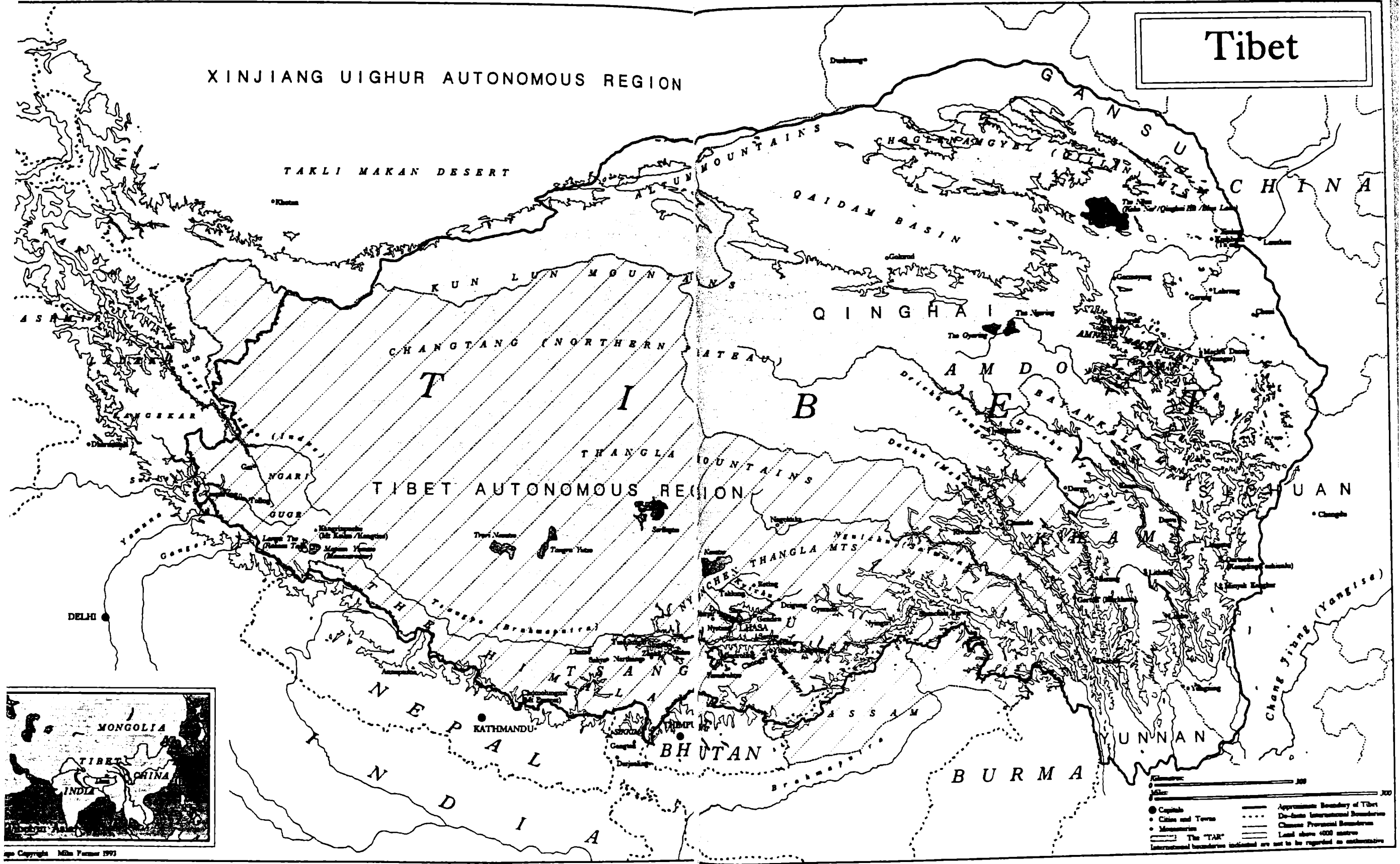
CHANGTANG (NORTHERN PLATEAU)
T I B E T
TIBET AUTONOMOUS REGION

QINGHAI

AMDO

THANGLA MOUNTAINS

CHEM THANGLA MTS.



Scale: 1:500,000
Legend:
● Capital
○ City and Town
○ Monastery
— The "TAR"
— Approximate Boundary of Tibet
- - - De-facto International Boundary
- - - Chinese Provincial Boundary
- - - Land above 4000 meters
International boundaries indicated are not to be regarded as authoritative

'The application of self-determination raises questions of morality and politics in a very pronounced way. Recent history seems to be illuminating both the emancipatory role of self-determination, as well as its potentially destructive impacts as a vehicle for ultra-nationalism. To validate a claim of self-determination it is increasingly helpful to demonstrate that its realisation will not have disruptive effects but, on the contrary, will help resolve outstanding conflicts and create favourable economic and political conditions for the peoples affected. The Tibetan struggle has renounced violence and is therefore very much dependent on waging a symbolic war on the terrain of legitimacy.'

Professor Richard Falk

'The right of self-determination, in all its dimensions, is one of the most contentious and politically charged areas in contemporary international law and relations. Self-determination concepts and law are in a state of evolution and no clear separation can be made between self-determination as an end in itself and as a means to a broader set of goals or moral principles. It is vital that the international community, the affected peoples and the affected States begin to develop new forms of political associations that will allow distinct peoples some form of political expression of their identity that is satisfactory to them. These structures may come to be regarded as less threatening than the existing cycle of ethnic repression and resistance within States that presents the greatest threat to international peace and security today and the greatest source of injustice.'

Professor Howard Berman

'The Tibetans are a people and have been so for longer than most European nations, certainly in the sense in which each of the English, the French and the Germans are a people. Very few European nations have had borders nearly so definite as Tibet.'

Professor Eugene Kamenka