

REGIONAL FOCUS & CONTROVERSIES

Legal Autonomy of Tibet: A Tibetan Lawyer's Perspective

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1. Introduction

The March 2008 uprising in Tibet was historic. Its geographic reach spanned 100 Tibetan counties, the majority of which lie outside Tibet Autonomous Region (TAR) in Qinghai and Sichuan Tibetan areas. Its participants came from all walks of life, and included monks and lay people, students and employed workers, nomads and farmers, young and old. The protests were spontaneous—and inevitable. The combination of simmering resentment over the failure of the Dalai Lama's six-year-long negotiations with Beijing (2002-2008), plus cultural assimilation, political repression, and economic marginalization, and the influx of Han Chinese settling in Tibet, had pushed Tibetans to the breaking point.

The 2008 March Uprising resembles the 1959 Uprising and similar protests in the late 1980s, all of which followed periods of attempted dialogue between Chinese and Tibetan leaders. There is a co-relationship between unsuccessful dialogues and growing frustration, and between unsuccessful dialogue and uprisings. When dialogue constantly fails, as in the case of the six dialogues between 2002 and 2008, the Uprising becomes not a question of *if*, but *when*. Protestors did not reject the Dalai Lama's call for

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dialogue and negotiations, but rather, Beijing's refusal to take those negotiations seriously. The fault is not with the Dalai Lama but the prevailing hardliner attitude of the Chinese government, which has not been willing to genuinely negotiate. Because of this unwillingness, Tibetans see the Dalai Lama as being taken for a ride.¹

Instead of acknowledging the shortcomings of the negotiations, Zhang Qingli, the Party Secretary of Tibet Autonomous Region, blames the Dalai Lama for the uprising and labels him "a wolf wrapped in monk's robes, a devil with a human face and a beast's heart." He uses language from the Cultural Revolution lexicon, stating, "We are in the midst of a fierce struggle involving blood and fire, a life-and-death struggle with the Dalai clique."²

Even the Chinese Prime Minister Wen Jiabao, joins the fray and claims, "We have plenty of evidence proving that this incident was organized, premeditated, masterminded, and inflicted by the Dalai clique." However, "the Los Angeles Times described the evidence produced as "little more than a schedule of international meetings by foreign Tibet activists" that "would pass for normal political activity in most countries." The list cited "Tibetan Solidarity Committee"⁴ set up by Tibet's exile government in India in late March (about which Beijing had been carefully informed, and as all exiled Tibetans knew, to the discontent of many) to persuade exiled demonstrators to avoid violence and to stop calling for independence or even freedom."⁵ Evidence proving that the Dalai Lama instigated the uprising has yet to be shown.

The Chinese government responded to the protests in Tibet and other ethnic Tibetan areas with undeclared martial law with more than a thousand disappeared, arbitrary detention and more than two hundred dead.⁶ The Uprising might be an omen that

¹ *Uprising Spurns Dalai Lama's Way*, Mar. 15, 2008, available at

<http://www.time.com/time/world/article/0,8599,1722738,00.html> (last visited on Oct. 10, 2008).

² Peter Ford, *For Beijing, Tibet threat is Life and Death*, THE CHRISTIAN SCIENCE MONITOR, Mar. 20, 2008, available at <http://www.csmonitor.com/2008/0320/p01s03-wosc.html> (last visited Oct. 10, 2008).

³ *Id.* This has all the more revealed the consistent claims by the Dalai clique that they pursue not independence but peaceful dialogue are nothing but lies.

⁴ The Tibetan Solidarity Committee website, available at <http://www.stoptibetcrisis.net> (last visited on Oct. 10., 2008).

⁵ Robbie Barnett, *Thunder from Tibet*, 55 N.Y.TIMES, May 29, 2008; N.Y.REVIEW OF BOOKS, available at <http://www.nybooks.com/articles/21391> (last visited on Oct. 10, 2008).

⁶ Woser, *Banning Tibet*, NEW STATESMAN, Aug. 1, 2008, available at <http://www.newstatesman.com/asia/2008/07/tibetan-china-lhasa-olympics> (last visited on Oct. 10, 2008). It is not surprising that the Chinese government responded to the Tibetans with undeclared martial law, with troops clamping down in every corner of Tibet. It is reported that an estimated 70,000 troops are presently in Ganzi County, more than troops sent to invade Tibet in 1951. Human Rights Watch reports arbitrary arrest, detention and torture, available at <http://hrw.org/english/docs/2008/04/30/china18684.htm>. Amnesty International reported that more than 1000 Tibetans have disappeared. For details, go to the Amnesty International website, available at <http://www.amnesty.org/en/for-media/press-releases/china-one-thousand>.

violent uprisings are in the offing if the issue of Tibet is not addressed quickly. The zero sum game of rhetorical vitriol should wage both sides to find a peaceful resolution on Tibet. Instead the Chinese government's draconian response echoed its historic reactions to unrest in Tibet. This response raises a crucial question: Does the Chinese government want to continue its hardliner policy in Tibet, or does it see that it is time to revise it with a moderate approach, in order to reach an agreement with the Dalai Lama?

With this question in mind, I would argue that under International Law, the Dalai Lama has a range of options to argue that Tibet was once an independent country, that it is under illegal occupation, and that therefore it is entitled to the right of self-determination. However, the Dalai Lama does not advocate a solution under international law. He seeks a solution within the framework of the Chinese Constitution, thereby choosing a moderate and rational path to reach "genuine autonomy for all Tibetans." I will address both of these frameworks, examining first that of International Law, and second, that of the Chinese Constitution:

2. Historical Background and International Law

One of the Chinese government's main contentions is its insistence that the Dalai Lama recognize that Tibet has always been "an integral part of China." Was Tibet an independent state or part of China? Historical context helps shed light on this question, and therefore, on the kind of status Tibet could possess. To analyze this historical status, it is important to first understand how international law defines "state" and to examine whether Tibet meets the criteria.

The Montevideo Convention on the Rights and Duties of States, particularly Article 1, articulates that a state's international legal personality requires (a) a permanent population, (b) a defined territory, (c) government, and (d) capacity to enter into relations with other states.⁷

Some international legal scholars insist additional criteria include that "A State is, and becomes, an international Person through recognition only and exclusively."⁸ This stipulation means that to enjoy the status of state, the entity has to be recognized by others. On the other hand, the Restatement (Third) of Foreign Relations Law opines that *formal* recognition by and to any state is not the main requirement, and that as long as

protesters-unaccounted-tibet-lock-down-20080618). See Tibetan Solidarity Committee alleged that more than 200 Tibetans have been killed, *available at* <http://www.stoptibetcrisis.net> (last visited on Oct. 10, 2008).

7 Convention on Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, reprinted in 28 AM. J. OF INT'L. L. Supp. 25 (1934).

8 L. OPPENHEIM, INTERNATIONAL LAW: A TREATIES 71, 125 (8th ed. 1955).

any entity fulfills the conventional Montevideo criteria of having the capacity to enter into relations, but without recognition, it is “required to be recognized as a state.”⁹

Whether the main criteria is the capacity to enter into relations with other states, or to receive recognition from other states, Tibet fulfills both. In the 8th Century, Tibet entered into relations with and received recognized from none other than China. This is recognized by a treaty in 821/22 signed between the governments of Tibet and China, which still exists in the form of a stone pillar in Lhasa and reads as follows:

Both Tibet and China shall guard the land and frontiers of which they have hitherto held possession. All to the east of the frontier is the country of Great China. All to the west is certainly the country of Great Tibet.

Henceforth, there shall be no fighting as between enemies, and neither side will carry war into the other's country... This Agreement, that the Tibetans shall be happy in Tibet and the Chinese happy in China and the great kingdoms united, shall never be changed.¹⁰

The above stated treaty clearly established that Tibet was an independent nation recognized by the Chinese government. This historical fact is endorsed by prominent Chinese historian Ge Jianxiong of Fudan University, who stated in his article “How Big was the 8th-century “China”?:

If “China” means the land of the Tang Dynasty, the Qinghai-Tibetan Plateau, which was ruled by Tubo/Tufan, does not count. Tubo/Tufan was a sovereign independent of the Tang Dynasty. At least it was not administered by the Tang Dynasty. Otherwise, there would have been no need for Tang Taizong to marry Princess Wencheng to the Tibetan king; there would have been no need to erect the Tang-Tubo/Tufan alliance table. It would be a defiance of history if we claim that since the Tang Dynasty Tibet has always been a part of China.¹¹

There is no dispute over the fact that Tibet was an independent nation in the 8th century, fulfilling the criteria of the Montevideo Convention on the Rights and Duties of

⁹ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW 202 (1987)

¹⁰ WARREN SMITH, TIBETAN NATION, A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS 73-74 (Westview 1996).

¹¹ Professor Ge Jianxiong, 62, Director of the Institute of Chinese Historical Geography and the Research Centre for Historical Geographic Studies at Fudan University in Shanghai. Full article titled “How Big was the Ancient China” is published on the China Review magazine and syndicated to China's biggest internet portals like 163 and QQ. The article is published on the China Review magazine and syndicated to China's biggest internet portals like 163 and QQ., available at <http://chinadigitaltimes.net/2007/02/tibet-not-always-part-of-china-chinese-historian-ge-jianxiong-eooaaeeon> (last visited on Oct. 10, 2008).

States, recognized by China and verified by a highly respected Mainland Chinese historian.

Even though conventional wisdom says that “recognition, *as a public act of state*, is an optional and political act and there is no legal duty in this regard,”¹² it can be demonstrated that Tibet entered into sufficient relations with its neighbors and concluded various treaties and agreements. This evidence further buttresses Tibet’s status as an independent nation, Examples of these relations are as follows:

Convention between Great Britain, China, and Tibet, (July 3, 1914), Treaty of Friendship and Alliance Between the Government of Mongolia and Tibet, (Dec. 29, 1912), Convention Between Great Britain and Thibet, (September 7, 1904) and Treaty Between Nepal and Tibet, (March 1956), and Peace Treaty Between Ladakh and Tibet at Tingmosgang (1684).¹³

The above treaties validate an entity as an independent nation. Comparatively when the United Nations was founded in 1945, there were only fifty-five nation-states as members and presently, there are 193 members, of which, many did not fulfill the four criteria of the Montevideo Convention on the Rights and Duties of States, or at least didn’t have as many treaty agreements with other nations. If the status of Tibet as a nation is in doubt, then revisiting and comparing the status of many of the United Nations members will lead to the conclusion that Tibet fares much better in meeting the criteria as a state. Most recently, this is demonstrated by the creation of states and UN members after the collapse of the Soviet Union.

Looking forward to later centuries, there are claims and counter claims about if and when Tibet became a protectorate/part of China. About this dispute, historian Eliot Spierling encapsulates conventional wisdom as follows:¹⁴

But although Tibet did submit to the Mongol and Manchu Empires, neither attached Tibet to China (emphasis added). The same documentary record that shows Tibetan subjugation to the Mongols and Manchus also shows that China’s intervening Ming Dynasty (which ruled from 1368 to 1644) had no control over Tibet (emphasis added). This is problematic, given China’s insistence that Chinese sovereignty

¹² Yossi Shain, *Governments-in-Exile and International Legitimacy*, in YOSHI SHAIN (ed.), *GOVERNMENTS-IN-EXILE* 219, 223 (1991).

¹³ MICHAEL VAN WALT VAN PRAAG, *THE STATUS OF TIBET*, Boulder (Westview 1987). See Appendices 5, 10, 17 & 19.

¹⁴ For more historical details, see DAWA NOBRU, *CHINA’S TIBET POLICY* 44-85 (Routledge 2001). See also ANNE-MARIE BLONDEAU AND KATIA BUFFETRILLE, *AUTHENTICATING TIBET: ANSWERS TO CHINA’S 100 QUESTIONS* 3-33 (Worldview 2008).

was exercised in an unbroken line from the 13th century onward. The idea that Tibet became part of China in the 13th century is a very recent construction. In the early part of the 20th century, Chinese writers generally dated the annexation of Tibet to the 18th century. They described Tibet's status under the Qing with a term that designates a "feudal dependency," not an integral part of a country. And that's because Tibet was ruled as such, within the empires of the Mongols and the Manchus (emphasis added). When the Qing dynasty collapsed in 1911, Tibet became independent once more. ...There is something less to the arguments of both sides, but the argument on the Chinese side is weaker. Tibet was not "Chinese" until Mao Zedong's armies marched in and made it so.¹⁵

The assertion that China's complex relationship with Tibet and its limited influence did not correspond to the concepts of nation-state and sovereignty in international law but was a later invention was affirmed by Prof. Dawa Norbu who points out:

...the historical structures and religio-politico mechanism, by which pre-modern China, directly or indirectly, exercised varying degrees and types of political influence over traditional Tibet. This exercise of power (or more appropriately influence) was expressed through rituals and ceremonies in their periodic bilateral relations. However by the late nineteenth century or early twentieth century, the symbolic domination and ceremonial relations fundamentally changed with the emergence of modern political ideas of Chinese nationalism and nation-state within which the Chinese nationalists first and then the Communists sought to integrate Tibet based upon a unitary conception of a Han dominated state.¹⁶

Tibet was not incorporated as territorial part of the state of China rather fell within their respective empires because both Mongols and Manchus were foreign rulers over China themselves and also their empires extended beyond China.¹⁷ With particular reference to Tibet, both empires embrace Buddhism and correspondingly had close relationship/influence through "rituals and ceremonies" when Tibet was ruled by Buddhist priests, Sakya Lamas (1244-1358) and the Dalai Lamas (1642-1950) respectively. When Han ruler reasserted China, Confucianism embracing Ming emperors (1368-1644) did not control Tibet. When Han nationalists reclaimed and established Republic of China, Tibet asserted its independence as noted by historian Tsering Shakya: "Until the eve of the Chinese invasion in October 1950, the Tibetan Government exercised internal and external freedom, which clearly demonstrated the

¹⁵ Eliot Sperling, *Don't Know Much About Tibetan History*, N.Y.TIMES, Apr. 13, 2008, available at http://www.nytimes.com/2008/04/13/opinion/13sperling.html?_r=1&pagewanted=print&oref=slogin (last visited on Oct. 10, 2008).

¹⁶ Nobru, *supra* note 14, at 15.

¹⁷ For details, *see id.* at 44-85.

country's independence"¹⁸ which is conventionally accepted by scholars outside of China.¹⁹ Therefore to insist that Tibet was always part of China far less in the context of international law and concepts of nation-state and sovereignty indicates historical revisionism on the part of the Chinese government.

3. The Question of Military Annexation under International Law

The At this point, the next question to ask is whether under international law Tibet could become part of China through the process of annexation.the criteria.

The U.N. Charter's codification of the principle of non-aggression,²⁰ and generally accepted norm is that "...With the possible exception of some rogue states...most governments now acknowledge that the acquisition of territory by military force, a method previously deemed valid under international law, will no longer be tolerated; ex injuria jus non oritur (a right cannot originate in an illegal act)."²¹

In his insightful analysis on Tibet, Robert Sloane argues, "Military conquest, at least prior to the twentieth century, could confer sovereignty over foreign states. But today, few dispute that 'illegal occupation cannot of itself terminate statehood.'"²² For this reason, the international community rightly objected to Iraq's attempt to annex Kuwait in 1990,²³ to the Soviet Union's invasion of Afghanistan in 1979,²⁴ and to Indonesia's purported annexation of East Timor in 1975. Why then does every state continue to validate China's sovereignty over Tibet, when its only conceivable claim, as shown repeatedly by historical and international law scholarship, is military annexation?"²⁵

According to international law stated above, it is apparent that forcible invasion and occupation of Tibet by the PRC Red Army is illegal, and therefore, the status of Tibet

¹⁸ TSERNG SHAKYA, *THE DRAGON IN THE LAND OF SNOWS* xxiv (Pimlico 1999).

¹⁹ WARREN SMITH, *TIBETAN NATION: A HISTORY OF TIBETAN NATIONALISM AND SINO-TIBETAN RELATIONS* (Westview 1996), H.E. RICHARDSON, *TIBET AND ITS HISTORY* (Shambala 2nd ed. 1984), VAN WALT VAN PRAAG, MICHAEL C. *THE STATUS OF TIBET* (Westview 1987). Even Melvyn Goldstein acknowledges that Tibet was *de facto* independent country between 1911 to 1951. See MELVYN GOLDSTEIN, *A HISTORY OF MODERN TIBET 1913-1951*, xix-xx (University of California Press 1989).

²⁰ U.N. Charter art. 2(4).

²¹ SHARON D. KORMAN, *THE RIGHTS OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE* 218-34 (1996).

²² IAN BROWNLIE, *THE LAW OF RECOGNITION IN INTERNTIONAL LAW* 78 (1994).

See also IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES*, (Oxford 1963).

²³ S.C. Res. 660; U.N. SCOR 45th Session, 2932nd meeting; UN Doc. S/RES/660 (1990) (Condemning the Iraqi invasion and calling for the immediate withdrawal of Iraq's troops from Kuwait). Sloane 130.

²⁴ GA Res. 37; UN GAOR, 35th Session, Supp. No. 48, 70th Plenary meeting at 17; UN Doc. A/35/48 (1980).

²⁵ Robert. D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT'L. L. REV. 107-186 (2002).

remains an “occupied nation.”

The Chinese Government could claim that by virtue of implementation of the 17 Point Agreement, during the period from 1951-1959, Tibet became part of China. While it is true that the 17 Point Agreement was signed by the representatives of the Chinese government and the Tibetan government, it is also indisputably true that the 17 Point Agreement was signed under physical duress to the signatories and threat of military invasion by Red Army. This makes the treaty void *ab initio*, as the Vienna Convention on the Law of Treaties clearly states that consent “procured by the coercion of its representative through acts or threats directed against him” or “by the threat or use of force” shall be void and “without any legal effect.”²⁶

If the claim is that the 17 Point Agreement is valid because it was implemented for eight years (1951-1959), then it can be pointed out that under international norms “de-facto enforcement of a treaty does not validate its *de jure* illegality.”²⁷ Moreover, it can be argued that the key provision no. 4 of the Agreement was violated. This provision states as follows:

The central authorities will not alter the existing political system in Tibet. The central authorities also will not alter the established status, functions and powers of the Dalai Lama. Officials of various ranks shall hold office as usual.²⁸

An examination of the Agreement and its implementation will conclude that the political system in Tibet, including the power of the Dalai Lama, was drastically altered and progressively weakened. The traditional power was replaced by the Communist Party officials and Army, and consisted of mainly Han Chinese officials. The restrictions and violations of the Agreement were the last straw that forced the Dalai Lama and his supporters to flee to India in 1959. Clearly, the 17 Point Agreement remains an illegal document regardless of its implementation.

The violation of the Agreement further affirms an international norm that the status of a pre-existing state remains intact “unless and until the source or validity of [its] government has indisputably been transferred...to the government of another State.”²⁹ The dispute over the 17 Point Agreement from the very signing and lack of implementation strengthens the notion that the “source or validity” of the Tibetan government was not transferred voluntarily. Under these terms, the status of Tibet

²⁶ Vienna Convention on the Law of Treaties, arts 51-52, reprinted at 8 I.L.M. 679 (1969).

²⁷ FAIRBORZE NOZARI, *UNEQUAL TREATIES IN INTERNATIONAL LAW* 286 (1971).

²⁸ TSERING SHAKYA, *THE DRAGON IN THE LAND OF SNOWS: A HISTORY OF MODERN TIBET SINCE 1947*, 450 (Pimlico 1999).

²⁹ Brownlie, *supra* note 22, at 177.

remains valid because Tibet was militarily occupied, a condition of statehood decisively repudiated³⁰ in Article 2(4) of the UN Charter which states that member states shall "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."³¹ On October 24, 1970, the General Assembly adopted Resolution 2625, which proclaims that "no territorial acquisition resulting from the threat or use of force shall be recognized as legal." According to Brownlie, one could argue that illegal occupation of Tibet "cannot of itself terminate statehood."³²

Similarly, the International Commission of Jurists and its three reports on Tibet in 1959, 1960, and 1997, concluded that prior to the occupation, "Tibet had achieved de facto independence and all of the requirements of de jure independence except formal international recognition."³³

With the status of Tibet as an independent nation, one could argue that Tibet is entitled to the right of self-determination under international law as stipulated in the Article 1 (2) and Article 55 of the Charter of the United Nations. Article 1 of both the International Covenants on Civil, and Political Rights and Economic, Social and Cultural Rights (1966), affirm that: "[A]ll peoples have the right of self-determination."³⁴

It could be argued that the application of self-determination is qualified by the fundamental principle of "territorial integrity" by virtue of which a state cannot be dismembered.³⁵ On the other hand, customary International law could argue that the principle of self-determination may in some cases take precedence over states' claim to domestic jurisdiction:³⁶

"... if the national unity claimed and the territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination, the subject or peoples are entitled to exercise with all the consequences thereof, their right to self-determination."³⁷

³⁰ Korman, *supra* note 21, at 218-34.

³¹ UN Charter art. 2 (4).

³² Brownlie, *supra* note 22, at 78.

³³ INTERNATIONAL COMMISSION OF JURISTS, TIBET AND THE CHINSE PEOPLE'S REPUBLIC 43 (1960).

³⁴ "International Covenants on Economic, Social and Cultural Rights, International Covenants on Civil and Political Rights, and Optional Protocol to the International Covenant on Civil and Political Rights. UN GAOR, 21st Sess., Supp. 16.

³⁵ However, this qualification was addressed in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states.

³⁶ Smith, *supra* note 19, at 674.

³⁷ HECTOR GROSS ESPIELL, THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS (United Nations 1980). See UN Doc. E/CN.4/Sub.2/405/Rev.1, para. 89.

As argued before, Tibet was illegally occupied and, under international law, remains under alien domination. Hence, Tibetans are entitled to the right of self-determination which is also reiterated by the UN Resolution, which reads as follows:

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.³⁸

Based on these cited resolutions and documents, the Dalai Lama would be standing on firm legal ground if he argued that under international law, Tibet is entitled to the right to self-determination belongs in the future of Tibet. Using a comparative example, Paul Harris makes a strong argument that “If Kosovo has a right to self-determination, the right of Tibet is infinitely stronger. The catalogue of gross oppression, the second-class citizen status of Tibetans under Chinese rule, and the identity of Tibet as a country are all much clearer than in Kosovo’s case. ...Unless real autonomy is offered, self-determination in Tibet is bound to mean independence. China may hold down the Tibetans by force for a long time, but, as the example of Ukraine and Russia shows, even hundreds of years of repression is unlikely to extinguish the longing for self-determination among what are, incontrovertibly, a people.”³⁹

³⁸ GA Res. 1723 (XVI), available at <http://tibetjustice.org/materials/un/un5.html> on Tibet (1961) at 10.

The General Assembly,

Recalling its resolution 1353 (XVI) of 21 October 1959 on the question of Tibet,

Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life which they have traditionally enjoyed,

Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighboring countries,

Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of peoples and nations, and have the deplorable effect of increasing international tension and embittering relations between peoples,

1) Reaffirms its conviction that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;

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;

3) Expresses the hope that Member States will make all possible efforts, as appropriate, towards achieving the purposes of the present resolution.

³⁹ Paul Harris, *Is Tibet Entitled to Self-Determination*, available at <http://webb-site.com/articles/tibetharris.htm> (last visited on Apr. 26, 2008). This article by Senior Counsel Paul Harris was originally commissioned by Hong Kong Lawyer, the Journal of the Law Society, the Editorial Board of which approved, but then U-

As shown earlier, the four criteria of the Montevideo Convention on the Rights and Duties of States were clearly met by Tibet, including its capacity to enter into and conclude treaties with the neighboring countries. The conclusion of the 17 Point Agreement was void under the Vienna Convention on the Law of Treaties because of threats both to the negotiators and military invasion of Tibet. As stipulated by the resolution of the United Nations, Tibet could claim right of self-determination and challenge the sovereignty and territorial integrity of China over Tibet. However, the Dalai Lama does not choose to use international law as the basis for arguing Tibet's right to self-determination. Instead, he chooses to resolve the Tibet issue peacefully "within the framework of the Chinese Constitution."⁴⁰ This is a major concession by the Dalai Lama which reflects his conciliatory approach and earnest efforts to resolve the Tibet issue without disturbing the stability and unity of China.

4. Options of Autonomy under the Chinese Constitution

As early as 1922, the Communist Party of China (CPC) adopted policies on minorities.⁴¹ In 1931, trying to outdo the Kuomintang, the Basic Law (Constitution) of the Chinese Soviet Republic (CSR) of Communist Party of China explicitly provided in Article 14 "the right of national self-determination of the national minorities in China" including the right to "separation from China."⁴² In 1949, like the Soviet and KMT, the CPC

turned and decided not to publish. In the interests of freedom of speech and debate that are cornerstones of HK's success, Webb-site.com is publishing it instead. Self-determination need not mean independence. In many situations, autonomy within a larger nation state offers the best of both worlds, combining the benefits of being part of a large state in terms of defence, foreign relations and economic opportunity, with preservation of local laws, customs and culture from outside interference. Hong Kong is a good example. The Dalai Lama has repeatedly said that he favours autonomy for Tibet within China, provided that it is meaningful autonomy. Such is his authority with the Tibetan people that they would probably support autonomy in any referendum in which he expressed support for it. However unless there is a change in Chinese government thinking, real autonomy does not appear to be on offer. This is shown by the continuing aggressive denunciation and misrepresentation of the Dalai Lama by Chinese official spokespersons.

⁴⁰ Statement of the Dalai Lama (Mar. 10th, 2006), Dharamsala, India. For details go to the website: <http://dalailama.com/march10/47thMarch10.html> (last visited on Oct. 1, 2008).

⁴¹ In 1922, the Second National Congress of the CPC was held in Shanghai. During this congress the national autonomy issue was raised and discussed. The CPC put forward guidelines for solving nationality questions which said that national minorities should enjoy the right of self-determination and the right of creating independent national republics. Moreover, it was said a federal state should be founded on the basis of the autonomy being practiced in Mongolia, Tibet, and Huijiang. In 1931, the First National Congress of the CSR was held and two important laws were enacted: the Constitutional Outline of the Chinese Soviet Republic; and the Resolution on National Minority Questions Within China. SHI JUN, *STUDIES ON LEGAL SYSTEM NATIONALITY (Minzhu fazhi yanjiu)* 15-27 (Peking University Press 1986).

⁴² MICHAEL PALMER, ANTHONY DICKS, AND YUAN CHENG, *MODERN CHINESE LAW: LEGISLATION AND RELATED MATERIALS*, 9 vols. 1:1 (Department of Law, School of Oriental and African Studies 1992).

backed away from such policies. At that time, the “Common Program,” adopted by the Chinese People’s Political Consultative Conference, provided “regional autonomy” (Article 51) to “concentrated minorities” which was affirmed in the first Constitution of China adopted in 1954.⁴³

To further illustrate the concept of autonomy, in 1984 China promulgated the Regional National Autonomy Law (RNAL).⁴⁴ The preamble of the RNAL states that “Regional ethnic autonomy embodies the state’s full respect for and guarantee of the right of the ethnic minorities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all its nationalities.”⁴⁵

Twenty years later, China’s 2004 *White Paper on Tibet* states that regional ethnic autonomy is established “in order to protect the equal and autonomous rights of ethnic minorities...so that the people of ethnic minorities are their own masters exercising the right of self-government to administer local affairs and internal affairs of their own ethnic groups.”⁴⁶

The Dalai Lama argues that the White Paper and the Chinese Laws claim to provide autonomy, but that they lack implementation. If there was proper implementation, the Dalai Lama sees the path of peaceful solution paved constructively and progressively. Because he is willing to compromise, and to accept the Chinese laws as the basis for a peaceful solution, in his March 10, 2008 statement (an annual address akin to the State of the Union), the Dalai Lama stated:

Tibetans--as one of the larger groups of China's 55 minority nationalities--are distinct in terms of their land, history, language, culture, religion, customs and traditions. This distinctiveness is not only clear to the world, but was also recognized by a number of senior Chinese leaders in the past. I have only one demand: self-rule and genuine autonomy for all Tibetans, i.e., the Tibetan nationality in its entirety. This demand is in keeping with the provisions of the Chinese constitution, which means it can be met. It is a legitimate, just and reasonable demand that reflects the aspirations of Tibetans, both in and outside Tibet. This demand is based on the logic of seeing the future as more important than the past; it is based on the ground realities of the present and the interests of the future. The long history of the past does not lend itself to a simple black and white interpretation. As such, it is not easy to derive a solution from the past history. This being the case, I have stated time and again that I do not

⁴³ *Id.* at 1:2.

⁴⁴ China Regional National Autonomy Law was adopted by the National Peoples Congress on Oct. 1, 1984 and few provisions were added and revised by the same body on Feb. 28, 2001.

⁴⁵ The preamble of the Regional National Autonomy Law of 1984 published in the website: <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9507&PHPSESSID=6e41652125e73876e6b4e050f86dbffa> (last visited on Oct.1, 2008).

⁴⁶ The White Paper is titled “Regional Ethnic Autonomy in Tibet” and is published by the Information Office of the State Council of the People’s Republic of China, May 2004, Beijing.

wish to seek Tibet's separation from China, but that I will seek its future within the framework of the Chinese constitution.⁴⁷

Clearly, the Dalai Lama is responding to the Chinese government's allegation that he wants to split the motherland. His statement above leaves no doubt that he has no such plans. On the contrary, by recognizing Tibetans as one of the fifty-five minorities, by seeking "genuine autonomy for all Tibetans," and by seeking the future of Tibet "within the framework of the Chinese constitution," the Dalai Lama proposes a workable solution which, if accepted, would be mutually beneficial to both parties.⁴⁸

The term "genuine autonomy for all Tibetans" assumes that Tibetans do not enjoy autonomy in Tibet, nor are they included in one administrative region. The four-word term can be divided into two categories: "all Tibetans" and "genuine autonomy."

"All Tibetans" in Administration and Territory:

The term "all Tibetans" covers all the Tibetans formerly living in a single geographical unit and now divided up and living in five separate regions: Tibet Autonomous Region "TAR", Western Sichuan, Northern Yunnan, South-Western Gansu and a major portion of Qinghai. It is extremely important to recognize that the Chinese government equates Tibet with Tibet Autonomous Region only, and that this equation excludes the traditional Tibetan provinces of Amdo and Kham. The Dalai Lama argues that Tibetans are entitled, within the Chinese Constitution, to live under a single administrative area (which includes parts of the four other neighboring regions Tibetans inhabit). However, it must also be made clear that this argument does not make the nonsensical claim that the Dalai Lama is asking for one-fourth of the territory of China, or for Greater Tibet to include half of Sichuan and Gansu, etc.⁴⁹ Rather, the Dalai Lama is asking for the policy as stipulated in the Chinese constitution and implemented in Xinjiang Autonomous Region and Zhuan Autonomous Regions respectively, an area that would include all the Tibetans because of their commonality of language, culture, religion, custom, topography, and even economy. Like Xinjiang and Zhuang Autonomous Regions, it is

⁴⁷ See *His Holiness the 14th Dalai Lama of Tibet*, available at <http://dalailama.com/march10/47thMarch10.html> (last visited on Oct. 1, 2008).

⁴⁸ Michael Davis, *Establishing a Workable Autonomy in Tibet*, 30 HUM. RTS. Q. 227-258 (2008), available at http://www.press.jhu.edu/journals/human_rights_quarterly/30.2Tibet.pdf (last visited on Oct. 1, 2008).

⁴⁹ Fareed Zakaria, Interview with Premier Wen Jiabao (Sept. 28, 2008), available at <http://edition.cnn.com/TRANSCRIPTS/0809/28/fzgps.01.html> Wen Jiabao said "...And many people in the United States have no idea how big is the so-called "greater Tibetan region." The so-called "greater Tibetan region," preached by the Dalai Lama, actually covers Tibet, Sichuan, Yunnan, Qinghai and Gansu - altogether, five provinces. And the area covered by this so-called "greater Tibetan region" accounts for a

more sensible to have a common policy and governance covering all the Tibetans instead of channeling through five different provincial governments where Tibetans in some areas comprise less than 5% of the provincial population.

Most importantly, the Dalai Lama's argument is based squarely in the Chinese laws. According to the constitution of China, there are five major autonomous regions in China. Each of them were established at different times: Inner Mongolia (1947), Xinjiang Autonomous Region (10/1955), Zhuang AR (3/1958), Hui (3/1958), and Tibet AR (9/1965). In Zhuang AR, 90% of the Zhuang population live in the area and have their own single Administrative Unit. Similarly, 90% of Uighur population live in Xinjiang AR. Because of their nomadic nature, Mongolians are scattered in four provinces without geographical connection. However, nearly 70% of Mongolians living in Inner Mongolia have a single Administrative Unit. The most special case is the Hui Minority, a group which is ethnically of Central Asian/Siberian descent, and/or married with ethnic Chinese or, in many cases, Han Chinese converted to Islam. The minority is scattered throughout ten provinces. However, where they are the majority, the Chinese government has gone out of its way to gerrymander the Hui Autonomous Region.

Only Tibetans, though living together in the single geographical area of the Tibetan plateau, are divided into five neighboring provinces. This is in violation of the Article 4 of the Chinese Constitution, which states:

Regional Autonomy is practiced in areas where ethnic minorities live in *concentrated communities*.

Similarly Article 12 of Minority Nationality Act of 1984 states:

Autonomous areas may be established where one or more minority nationalities live in *concentrated communities*, in the light of *local conditions* such as the relationship among the various nationalities and the level of *economic development*, and with due consideration for *historical background*.

Here, the operative term is "concentrated communities." Based on this term, the other four autonomous regions were established because the majority of Mongolian, Uighur, Zhuang, and Hui populations were living in a concentrated community and, as a result, separate autonomous regions were established. According to the Chinese ethnic maps and topography, Tibetans, too, are living in a concentrated community – but they are denied a single administrative unit. This denial violates both the Chinese Constitution (1982) and the Minority Nationality Act of China (1984).

In the present arrangement, rather than consolidating and streamlining

administrative mechanisms to effectively address common issues of all Tibetans, "all Tibetans" are divided, into different provinces where policies are implemented through differing channels.

Genuine Autonomy in Executive, Legislative and Judiciary Aspects of the Government

The executive or administrative power of the Regional National Autonomy Law places emphasis on employment of minority officials, specifically requiring equitable representation of minorities in the government (Article 17, 18, 22). The RNAL explicitly requires that the Chairman of the Autonomous Region, the prefect of an autonomous prefecture or the head of an autonomous county shall be of minority nationality (Article 17). Also, other positions of administration require equitable representation of the minority and other minorities in the area. It is not defined what "equitable" representation means--it could range from 50% to 90%. Interestingly, of the fifteen members of the Governor's council (local state council) of the Tibetan Autonomous Region, seven are Chinese and the other eight are Tibetan, a few of whom with Chinese spouses. It is important to note that among the up to twenty-nine departments, the most powerful trio-- the Organization/Personnel under the TARPC, Finance, and Planning -- often remain the exclusive domain of Chinese officials, with only symbolic deputy positions given to the Tibetan officials.⁵⁰ Even though Jampa Phuntsok, a Tibetan, is projected in the media as the Governor of the TAR, clearly it is He Peng, Executive Vice-governor, who is more powerful and holds critical portfolios.

The Communist Party of TAR, which is the power center of the region, consists of fifteen members on the Standing Committee of the Party Politburo. Among these positions, eight are filled by Han Chinese and seven by Tibetans, at least two of whom are half Chinese.⁵¹ Clearly, the Chinese representation is the majority in both numbers and power. Needless to say, the Party Secretary is the most powerful position. The fact that this position has never been filled by a Tibetan for the last fifty years speaks volumes about the Tibetans' absence of administrative power and the consequent lack of Tibetan autonomy in the government.

In the legislative branch, the TAR's People's Congress has eighteen Chairmen and Vice-Chairmen, eight of whom are Tibetans, five Chinese, and one Chinese Muslim.

quarter of China's territory."

⁵⁰ The main departments are: Personnel Department (Zhao Lian for Organization & Sonam Doma as Deputy), Finance Department (Pema Tsewang Secretary and Ting Ye Xian as deputy) and Planning Commission Kesang Tsering as Secretary and Li Quo Yu as deputy, (from 20+ departments)

⁵¹ See ChinaTibetNews, available at <http://www.chinatibetnews.com/zhengfuzaixian/index.htm> (last visited on

This is a disproportionate representation which does not correspond to the ethnic composition in the area. In the Standing Committee of the Regional Peoples Congress (the legislative body which represents the Congress and meets throughout the year to legislate laws), Tibetan and other minority representation is 69.23%, with more than 30% representation of Chinese members- even though the non-Tibetan population (including Han Chinese) is officially estimated at less than 8% in TAR. This disproportionate representation of the Han Chinese and non-Tibetans in the Standing Committee once again indicates that the dominant influence in the decision making process of the legislature is not in the hands of the Tibetans.

Looking to the third branch of government, the Chinese judiciary is organized in a hierarchical order. The Supreme Court sits at the highest level, followed by other courts in a descending order. There is no special treatment given to courts in minority areas. As the lower court is subject to the higher court, the courts in the minority areas are subject to the higher court, especially supervision by the Supreme Court (Article 46). Therefore, there is no room for judicial independence or even autonomy.

The head of the TAR's People's Court is a Tibetan, and the head of the People's Procurates of TAR is a Chinese. Among the People's Court and People's Procurates at the regional, prefectural (city) and county levels, the combination of both Tibetan and other minorities have only 69.82% judicial representation, which means the Chinese representation is more than 30%. Furthermore, the figure calculates county levels, where Tibetans are likely to be an absolute majority, which further increases Chinese judicial appointments and lessens Tibetan representation at the regional and prefectural level.

What is alarming is that because of their ethnicity, Chinese officials not only control power at the highest level of the government, but that even at the lower levels, including the totality of the cadre officials, Chinese staff are increasing, while Tibetans are decreasing:

Since 2000, the numbers of Tibetan state sector employees, (i.e. staff and workers in state-owned units) as well as the share of Tibetans in state sector employment, have been declining sharply. In particular, the share of Tibetans in cadre employment was lower than 50 percent in 2003 (49.7 percent), down from 71.6 percent in 2000. Despite the massive amount of funding from Beijing that has gone into both government administration and construction over these years, current policies effectively discriminate Tibetans from state employment.⁵²

Oct 1, 2008).

⁵² ANDREW FISCHER, TIBET INFORMATION NETWORK (TIN) UPDATE, Jan. 20, 2005 (ISSN 3313-3315). The total number of staff and workers in state-owned units is divided between permanent workers and workers

Tibetans constitute 92% of the population, as claimed by the Chinese government, but not even 50% of the cadres, indicating that their already fragile status in the government is further declining. With the overarching local Communist Party dominated by Han Chinese in the highest decision-making body, their influence is palpable in all major policies.

In sum, Tibetans do not enjoy the prescribed autonomy and they are not the "masters of their own affairs, exercising the right of self-governance to administer local affairs and internal affairs of their own ethnic groups," as promulgated and prescribed in the Chinese constitution and Minority Nationality Act of 1984 and China's White Paper.

5. Conclusion

In the midst of recent protests in Tibet, Zhu Xiaoming published an article in the influential journal, *Qiushi*. The significance of this work is measured both by where it is published, and by its author's position as the Director of the China's Tibetology Center, a think tank of the United Front Department. This department is responsible for Tibet policies and is directly involved in the eight meetings with the representative of the Dalai Lama. Reflecting the hardliner argument, Zhu Xiamong sums up the Chinese government's stand on Tibet as follows:

In May 2003, Comrade Hu Jintao pointed out that in Tibet we must always uphold the leadership of the Chinese Communist Party, adhere to the socialist system, and uphold the system of the ethnic regional autonomy.⁵³ This is the famous principle of "Three Adherings."⁵⁴

employed on contracts. Among permanent workers, the share of Tibetans fell more sharply, from 71 percent in 2000 to 53 percent in 2003. More specifically, there was a sharp reduction in total permanent employment in 2002, from 133,650 jobs in 2001 to 108,765 in 2002, of which Tibetan employment fell from 89,448 jobs to 76,764. However, in the next year, this category of permanent state-sector employment recovered back up to 133,580 in 2003, even though the Tibetan share fell even lower to 71,185 jobs at the same time.

More significantly, a large section of this replacement of permanent employees took place at the higher levels of government among the cadre workforce. The share of Tibetan cadres fell from 72 percent in 2000 to just less than 50 percent in 2003. Essentially, the total figures for the employment of cadres (including non-Tibetan) increased from 69,927 in 2000 to 88,734 in 2003, at the same time as the number of Tibetan cadres fell from 50,039 cadres to 44,069. In the past, Tibetans were generally less represented at the higher levels of the cadre hierarchy, although up to 2000 the Tibetan share of cadre employment was more or less equal to the other lower categories of employment among staff and workers, all hovering around 70 percent. Now, there are less Tibetans employed as cadres than there are employed within the lower categories.

⁵³ The guiding ideology to do Tibet work well in the new century and at the new phase is to adhere to the leadership of the Chinese Communist Party, adhere to the socialist system, uphold the system of the ethnic regional autonomy, establish and implement the scientific concept of development, and focus on the economic construction.

⁵⁴ Zhu Xiaoming, Director, *China's Tibetology Center, Beijing*, "The Central Government's Policy toward the

To acknowledge the "Three Adherings" and to completely change their political stance is the only road for the 14th Dalai and his followers to return.⁵⁵

We must maintain sharp vigilance, do a good job, thoroughly smash the plot of the separatists, and resolutely safeguard the unity of the motherland.

In order for the Chinese government to move on Tibet, Zhu Xiaoming makes it clear that the "Three Adherings" of Socialism, Communist Party, and Regional Ethnic Autonomy are the "only road" for the Dalai Lama.

Nicholas Kristoff of The New York Times reports that "For the first time, the Dalai Lama is willing to state that he can accept the socialist system in Tibet under Communist Party rule. This is something that Beijing has always demanded, and, after long discussion, the Dalai Lama has agreed to do so."⁵⁶

The article points out that the major concession was not received well and that the Dalai Lama "was scolded by many Tibetans who think that he has been too conciliatory toward China." Kristoff advises President Bush and other leaders to praise the Dalai Lama's courage in taking such a difficult step toward reconciliation.⁵⁷

But instead of welcoming this major concession by the Dalai Lama, as argued by

Fourteenth Dalai Lama Changed from "Two Approvals" to "Three Adherings," available at <http://www.srxww.com/news>. Part of the article states as follows:

In November 1998 when Comrade Jiang Zemin met with U.S. Vice President Al Gore, he said: "The Chinese government's policy toward the Dalai is clear and consistent. It is not the case that we are reluctant to engage in dialogue with the Dalai. As long as the Dalai truly gives up his view of "Tibet independence," stops all separatist activities, openly acknowledge that Tibet is an inalienable part of China and that Taiwan is a province of China, and recognizes that the PRC government is the sole legitimate government which represents the whole of China, the door to negotiations is open.

For the past 50 years, the relevant departments of the Central Government have contacted and held several talks with the Dalai's representatives. Their stand, viewpoints and attitude have always been clear, firm and consistent, and that is: the focus of our struggle with the Dalai is not an ethnic issue, nor is it a religious issue, and even less it is a so-called human rights issue. The core and the essence of our struggle with the Dalai clique is the major political issue to safeguard the unity of motherland and to oppose separatism. As long as the Dalai clique does not give up splitting the motherland, or stop their ideas and actions striving for "Tibet independence," we can not relax our thinking even for one day, neither can we stop the struggle for even one day. In October 1998, Comrade Jiang Zemin delivered an important speech, requiring that all leaders of the various levels, especially senior cadres, must maintain high vigilance on the Dalai clique's political strategy. "Three Adherings" is the powerful counterattack against the Dalai's political strategy.

⁵⁵ The words and deeds of the 14th Dalai lama further proves that he stubbornly stuck to his political stand which makes an enemy of all the Chinese people, including the Tibetans, and is willingly acting as a loyal tool for the western anti-China forces. As the common saying "Man proposes but Heaven disposes" goes, the struggle between the separatists and anti-separatists will continue.

⁵⁶ Nicholas Kristoff, *An Olive Branch from the Dalai Lama*, N.Y.TIMES, Aug. 6, 2008, available at <http://www.nytimes.com/2008/08/07/opinion/07kristof.html> (last visited on Oct. 1, 2008).

⁵⁷ Nicholas Kristoff, *After the Games: Tibet*, N.Y.TIMES, Aug. 14, 2008, available at

Zhu Xiaoming, another scholar affiliated with the United Front dismissed it as follows:

It is inexplicable that the Dalai Lama publicized his requests through a Western journalist, instead of raising them directly to the Central Government, since Beijing has spoken out repeatedly the door to dialogues is open. Talking through an American journalist's mouth reduces the creditability of his message, and makes people wonder if the Dalai really desired to solve the problems or is it another PR smoking campaign on behalf of the West. ...So, whom the Dalai Lama should talk to is the Central Government in Beijing, not some Western individuals.⁵⁸

What is not acknowledged in this argument is that the Dalai Lama has repeatedly and clearly conveyed, to the Chinese leadership, through his envoys the message published by Nicholas Kristoff. The above dismissive article reflects either that the United Front has not relayed the stand of the Dalai Lama to the Central Government, or it is running out of arguments. Rather than argue on the merit of the Dalai Lama's concession, the United Front is complaining that the forum where it was delivered is not appropriate. Actually, the Dalai Lama has come out publicly to demonstrate that he is sincere and conciliatory in reaching out to the Chinese government.

It is amply clear that the Dalai Lama is willing to accept the present reality of socialism as an ideology and the Communist Party as the governing system in Tibet. In fact, the Dalai Lama simply wants the Chinese government to effectively implement its Constitution and laws that impact the Tibetan people. From a negotiation point of view, this is the most conciliatory position the Dalai Lama could take. He is not challenging any ideological or institutional parameters; rather, he is saying that if the Chinese government implements what it claims to provide Tibetans in its own White Papers, in its own declared policies and laws, then negotiators can find a lasting solution to the Tibet issue.

Unfortunately, the Chinese government's hardliner refuse to recognize the issue of Tibet to be dealt even under the Chinese constitution and rather reduce it to the status of the Dalai Lama as a person. The Chinese official said the contacts and dialogue were "about the Dalai Lama's personal future, not the so-called 'China-Tibet negotiation' or 'dialogue between Han and Tibetan people'."⁵⁹ If the dialogue is only about the personal status of the Dalai Lama, then it was long ago rejected by none other than the

<http://www.nytimes.com/2008/08/14/opinion/14kristof.html> (last visited on Oct. 1, 2008).

⁵⁸ Jin Canrong, *An illusive olive branch from the Dalai Lama*, Aug. 21, 2008 (11:00AM), available at http://www.chinadaily.com.cn/china/2008-08/21/content_6957584.htm (last visited on Oct. 1, 2008).

⁵⁹ Raghavendra, *China warns Dalai Lama over Olympics*, July 07, 2008, available at <http://www.rediff.com/news/2008/jul/07tibetrow.htm> (last visited on Oct. 1, 2008).

Dalai Lama.⁶⁰ As early as July 1981, then Chinese Communist Party General Secretary Hu Yaobang announced "China's Five-point Policy towards the Dalai Lama", urging the Dalai Lama to return to China so that he "will enjoy the same political status and living conditions as he had before 1959." The Dalai Lama rejected the offer and stated that the issue was not his own position in Tibet, but rather the welfare of six million Tibetans.⁶¹

If such hardliner policy continues then it can be argued that the current two-party dialogues have been futile. In order to move forward on Tibet issue, perhaps it would be useful to consider Nicholas Kristoff's suggestions that "The present track of talks between the Communist Party's United Front Work Department and the Dalai Lama's representatives will never get anywhere. The only hope is for Beijing to pluck Tibetan affairs from the United Front officials and hold direct talks between the Dalai Lama and either President Hu Jintao or Prime Minister Wen Jiabao, negotiating until a deal is reached."

Not just European or American governments sensed the urgency but even normally docile Japan and Australia have appealed to the Chinese government. Japanese Premier Fukuda stated that "there was a need to face up to the reality that the matter has become an international issue..."⁶² Echoing the same sentiment, Australian Premier Rudd states "it is necessary to recognize there are significant human rights problems in Tibet and the current situation in Tibet is of concern to Australians. ...We recognize the need for all parties to avoid silence and find a solution through dialogue."⁶³ The questions now lie with the Chinese government. After a mass uprising in Tibet that posed the single biggest challenge and threat to the stability and unity of Peoples Republic of China since 1951, will the PRC finally recognize the value of the concessions made by the Dalai Lama and begin talks in earnest?

Tibet offers a wonderful opportunity for the Chinese government to showcase to the world how civilized and respectful nation like China treats Tibetans. Instead of defensive guilt stricken argument of what you did to Native and African Americans in

⁶⁰ Because of such unreasonable attitudes on the part of the Chinese government, not only Tibetans but even the representatives of the Dalai Lama who met with their Chinese counterparts are increasingly frustrated. As XXX puts: "There is a growing perception among the Tibetans, among friends of Tibet... that the whole tactic of the Chinese government in engaging us is to stall for time... My colleague and I told our Chinese counterpart candidly that we ourselves are beginning to inch towards this school of thought."

⁶¹ Lobsang Sangay, *Claims of the Dalai Lama's Nepotistic Behavior Wrong*, THE AGE, June 7, 2007.

⁶² AFP, *Australian PM says significant rights problems in Tibet*, Apr. 9, 2008. In an article in the South China Morning Post of February 13, 2008, Frank Ching said, "Beijing insists that he is not only a religious leader, but is actually trying to split China." Ching added, "However, when the Dalai Lama is received by foreign leaders, it is solely in his capacity as a spiritual leader." He continued, "No country in the world recognises Tibet as an independent country; China could greatly reduce complications in its relations with other countries by simply dealing with the Tibetan issue more pragmatically."

⁶³ AFP, *Tibet an 'International Issue,' Japan PM tells China*, April 19, 2008.

America and European colonialism respectively, we are entitled to repeat the similar mistakes, rather China can rise above and demonstrate magnanimous policy towards Tibet thereby rising to the occasion as a truly civilized nation. Otherwise, whenever a Chinese person claims greatness about China, many in the world will disagree and point to Tibet as an ugly legacy. Whether China wants to be burdened or blessed with Tibet, is a choice the Chinese leaders has to make. Hopefully they will choose real communist or confucian principles of egalitarianism and magnanimity over oppression and indignity.

China wants to be a great nation. History has shown that greatness cannot be bought in the marketplace, and cannot be bought with force. Greatness must be earned. It has yet to be determined what kind of greatness is China heading for? The way China treats Tibet will reflect what kind of powerful nation China becomes. The Chinese government today perceives the Tibet issue from the perspective of Chinese nationalism, but fails to understand that Tibetans also perceive themselves as victims, or rather victimized by former victims of western and Japanese imperialism. The inability of the Chinese government to move beyond the constraints of this type of nationalism presents a huge obstacle to confronting the core issues facing the Tibetan people.

New thinking is needed for the nation of China to continue its evolution towards greatness. It is not fantastic to suggest that certain elements in the by-gone Chinese imperial sphere may be worth renewing. The Dalai Lamas middle path approach of seeking genuine autonomy within the framework of China could be interpreted as looking at Chinas own rich history as a model for a solution. China has a historic opportunity before it. As it rises to the world stage, now is the time for it to extend its hand to HH the Dalai Lama and the Tibetan people to secure its place as a model amongst nations.⁶⁴

⁶⁴ I want to thank Laura Zimmerman, John Watt and Paige Wilson for their comments: Any mistakes in the article are solely mine, however.