

REGIONAL FOCUS & CONTROVERSIES

Legal Autonomy of Tibet: A Tibetan Lawyer's Perspective

Dr. Lobsang Sangay*

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

* A Dr. Lobsang Sangay is a Research Associate at the East Asian Legal Studies Program, Harvard Law School. Lobsang studied in Tibetan refugee high school in Darjeeling, B.A (Honors) and LLB (Bachelor in law) in Delhi University, India. He did his Master and Doctorate degrees at Harvard Law School and was a recipient of 2004 Yong K. Kim' 95 Prize of excellence for his Doctorate dissertation. In 2006, he was selected as one of the twenty-four young leaders of Asia by Asia Society, a global organization based in New York City. He has given numerous lectures on Sino-Tibet issues in various institutes and venues around the world. He organized major conferences on Tibet between Chinese and Tibetan scholars at Harvard University. He is consulted by international media and has published articles about Tibet in the HARVARD ASIA QUARTERLY, JOURNAL OF DEMOCRACY, HARVARD SOUTH ASIA JOURNAL and chapters in books on Tibet and Human Rights.

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 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: