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The classification of the Tibetans as a people with the right to self- determination

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“Tibet is far away, and other countries have their own fears and troubles. We can well understand that there may be a tendency to let the events in Tibet drift back into history. Yet Tibet is on this very earth; Tibetans are human; in their way they are very civilised; certainly they are sensitive to suffering. I would dare to say that no people have suffered more since the Second World War; and their sufferings have not ended, they are continuing every day, and they will continue until the Chinese leave our country, or until the Tibetans have ceased to exist as a race or as a religious community”.

- Dalai Lama, My Land and My people

Preface

Tibet, the land of snows, has always in many people's minds been a mystical land with a deeply rooted religion and a people living in harmony with themselves and nature. Once one step outside this picture, the confrontation with the reality of the enormous problems and suffering that the Tibetan people had gone through during the last fifty years becomes almost too painful.

Much of the violations in Tibet have taken place without it being acknowledged in the rest of the world. The promises from China to solve the problems in Tibet together with the fear of offending China have made the nations of the world hesitate to demand freedom and respect for the human rights of the people of Tibet.

His holiness the Dalai Lama, receiver of the Nobel Peace Prize, has ever since the escape from Tibet in 1959 been devoting his life to the peaceful struggle against the Chinese suppressors. Together with his closest fellow workers he has created the Tibetan Government in exile which resides in Dharamsala in India. This has become a natural meeting place for the Tibetan refugees and a place where the Tibetan religion and culture can be nourished. Schools have been built for the children to be able to learn the Tibetan language and traditions since these subjects are no longer taught in the schools within Tibet. To support the practice of religion many monasteries have been re-built in India.

Although the Tibetans have in many ways have learned to exist outside their own country the independence and self-determination of Tibet is the object of the fifty years of Tibetan struggle. My thesis is devoted to try to find legal ground for the Tibetans to stand on in their request for self-determination. An existing legal ground for self-determination can be an incentive both for the world community to start acting towards this goal and, for the Tibetans not to give up the struggle for a free Tibet.

Acknowledgements

The Tibetan society, its history and devotion to religion is in many ways very hard to grasp coming from a totally different culture. To add the attempt of examination and application of the non-defined concept of peoples to this picture has not been an easy task to perform.

Therefore, I would specially like to thank Charlotte Wedin for helping me find relevant material and for kindly letting me use materials from her own collection. This material has been very valuable to me. Further, I would like to thank the librarian at the Raoul Wallenberg Institute, Habteab Tesfay, for patiently helping me in my endless search for new books.

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Abbreviations

CCP: Chinese Communist Party

CSCE: Conference on Security and Co-operation in Europe

EU: European Union

ICCPR: International Covenant on Civil and Political Rights

ICJ: International Commission of Jurists

NGO: Non Governmental Organisation

OSCE: Organisation on Security and Co-operation in Europe

PLA: People's Liberation Army

PLO: Palestine Liberation Organisation

PRC: People's Republic of China

TAP: Tibet Autonomous Prefecture

TAR: Tibet Autonomous Region

UDHR: Universal Declaration of Human Rights

UN: United Nations

USSR: Union of Soviet Socialist Republics

1 Introduction

It is almost fifty years since the Communist People's Liberation army entered Tibet. During this long period of time Tibet has only made brief appearances on the international political stage; in the 1950-1951 at the time of the Chinese invasion; the Dalai lamas flight to India and the UN resolutions in the end of the 1950's and in the beginning of the 1960's. These periods of international concern have been followed by long periods of absence of any news or information from Tibet except for the glowing reports from the PRC propaganda machine talking about "liberation" and "democratic reform".

However, since the early 1980's when Tibet was opened up in some ways to the outside world the tragedy was revealed. The Chinese rule in Tibet had in many ways destroyed Tibetan culture and civilisation. The ethnic Tibetans are today on the verge of being obliterated due to Chinese population transfer, population control policies and a series of other human rights violations.

The purpose of this thesis is to find a definition of the term "peoples" and to apply this defined term on the People of Tibet in order to determine if they have the right to self-determination. Since there is no clear definition of the current term a large part of the thesis has been devoted to the examination of relevant material to find clues to what to include in the definition. To be able to apply this definition on the Tibetans I have also vested much effort in trying to give an overarching picture of the situation past and present in Tibet. I have taken my point of departure in the following questions:

- What is the situation for the Tibetans today?
- What has been the reaction of other states to the problems in Tibet and the pursuit for self-determination?
- What constitutes a people?
- Do the Tibetans classify as a people?
- Do the Tibetan people have the right to self-determination and is this the best solution of the problems in Tibet?

The method used is to analyse and compare different sources of information concerned with the topic in order to put forward a picture as adequate as possible. The thesis is based on the following material: literature and research papers by both foreign, Chinese and Tibetan writers; international documents concerned with the question of peoples and their right self-determination; statistics and compilation of laws and regulations published by the Chinese government; statistics and facts published by the Tibetan government in exile; reports and

studies by NGO's and electronic information found on the Internet and at various CD-ROM databases.

The thesis is divided in to five chapters. In chapter one a brief statement of the purpose, sources and layout of the thesis is given; Chapter two gives a historical background which will form a ground for the rest of the thesis, it is divided into Tibetan history before the Chinese invasion in 1949 and Tibetan history after this event. Chapter three examines the situation in Tibet today from the perspectives of human rights, the position of the Tibetan government in exile, the autonomy and the positions of the UN and some selected countries. In chapter four, which is the most important part, together with the conclusions, the definition of the term "peoples" is pursued. In this chapter various materials from the UN and other international and regional organisations are examined. In the last chapter, chapter five, I conclude my thesis by applying the definition found in chapter four on the people of Tibet. In this chapter I also deal with question of the Tibetans right to self-determination.

2. Historical background

2.1 Introduction

The history of Tibet has proven to be a most important issue for the preservation of the Tibetan people and for its claims for self-determination. In trying to give an impartial picture of the history of Tibet one meets many difficulties since both sides have selectively patched bits and pieces of the historical record together to support their own viewpoints.

This is the case because international opinion has become an important dimension of disputes concerning the rights of minorities and the right of peoples to self-determination. The struggle to control representation of history and current events is often as intense as the struggle to control territory. The ensuing avalanche of charges and counter charges is very difficult to assess even for a specialist.

This first part of the essay is an attempt to give an overview over the most important events that has formed the Tibetan history before the Chinese invasion in 1949. It is also thought to be an outline of the relation between China and Tibet as well as an indication of the influence that China has had over Tibet throughout the course of history.

The history of Tibetan nationalism and Sino-Tibetan relations may be divided into four periods. The first period is the consolidation of the Tibetan State from the beginning of Tibetan history. The second period is in many ways coloured by the political-spiritual relationship between the Tibetans and the Mongols, a relationship which also lasted under the Chinese Manchu and Ming dynasties. In the third period, Tibet experienced modern imperialist pressures by both Great Britain and China and Tibetan nationalism was aroused in response. Last, during the fourth period, from 1950 to the present, Tibetan independence was eliminated by force and it came under the constant pressure of the Chinese government.

2.2 Tibetan history before 1949

2.2.1 Early history

The first historical record of Tibet traces back to the Tibetan Empire period (ca.630-842). During this period the former small Tibetan states united in a confederation that comprised the entire Tibetan plateau. The Tibetan Empire

fought the Chinese Empire of the Tang dynasty to a standstill. In 822 a treaty was signed, ending the Sino-Tibetan conflict, in which China recognised Tibet as an independent state with a territory encompassing the entire Tibetan plateau.¹ It demarcated the borders between the two countries and ensured that, "Tibetans shall be happy in Tibet and Chinese shall be happy in China".² During the empire period Tibet possessed all the characteristics needed to define it as a state: shared ethnicity, culture religion, language and territory. A national, cultural and political identity corresponding to the territory of the Tibetan Empire was created during the time of the empire; it even survived the collapse of the empire. The military and political competition between Tibet and China lead to an increased sense of nationality and statehood in Tibet. During this time Tibet also competed or had cultural or political contacts with the Arabs, Indians Nepalese and the Turks. It was not, during this time, internationally isolated as China sometimes has claimed.

After the fall of the Tibetan Empire the existing clans, tribes and regions within the Tibetan plateau went back to their former fractious independence. For the coming four hundred years Tibet knew no central authority.

This political vacuum was in the course of time filled by monastic Buddhism. The revival of Buddhism which had existed in Tibet's very early history started in Eastern Tibet with a small group of fugitive Buddhist monks who gradually returned to Central Tibet to restore and later establish monasteries. Also the kingdom of Guge in Western Tibet sought to extend its support of Buddhism by inviting the great Indian teacher, Atisha, to Tibet in the 11th century. He became the driving force behind the on going process of reviving Buddhism.

The order of Tibetan religion grew up around lineages of different disciplines and teachers. The power of these Buddhist orders increased when they started to found monasteries around the country, this being both the spiritual and the temporal power. Later, in the beginning of the 13th century, these Buddhist schools became the dominant authorities in economic, political and spiritual matters. Tibet still lacked a central authority since non-of the Buddhist schools were strong enough to out conquer the others. A political unity in Tibet was not achieved until the rise of the Mongol Empire under whose patronage one school achieved predominance.³

¹ International Commission of Jurists, Tibet: Human Rights and the Rule of Law, December 1997, p31.

² The pact of non- aggression was recorded on a pillar placed outside the Jokhang Temple in Lhasa. Unfortunately, even through chiselled in stone, this contract was to prove as flimsy as those later made on paper.

³ International Commission of Jurists (note 1), 31.

2.2.2 The Mongol Empire

In the early 13th century the Mongols had conquered all of northern China. When Genghis Khan threatened Tibet the Tibetans halted the impending invasion by offering to submit and pay tribute. The Tibetans failed to pay the tribute and the Mongols with Godan (Genghis Khan's grandson) in the lead of the forces threatened Tibet by placing itself just outside Lhasa. To avoid the invasion the head of one of the Buddhist schools, the Sakya School, Sakya Pandita submitted to Godan Khan. Sakya Pandita was later appointed the representative of the Mongol authority in Tibet. A similar arrangement was made in 1254 between Sakya Pandita's nephew, Phagspa, and Khubilai Khan. In the agreement Phagspa agreed to become Khubilai's teacher in Buddhism while Khubilai became the overlord of Tibet. This Cho-Yon⁴ relationship between the Mongol patron and the Tibetan lama became the pattern for Tibetan relations with the Mongol Yuan Dynasty (1271-1368).⁵

For almost three centuries Tibet kept control of its independence under succession of Tibetan princes and kings who rose and fell on the support of competing religious orders. After the fall of the Yuan dynasty in 1368 the Ming dynasty succeeded it. This was the first native Chinese dynasty to control all of China since the Tang dynasty (618-907). The Ming lacked the need or the will to impose the type of dependant relationship upon Tibet that had existed under the Yuan. Different from the Yuan, the Ming never claimed any authority in Tibet but was content with a superficial relationship. The Ming dynasty had no real interest in Tibet other than the role that Tibet played in the relations between Ming and the Mongols. Tibet was treated by the Ming as if it had inherited the Yuan relationship with Tibet. The Ming continued to confirm Tibetan officials' titles that existed under the Yuan dynasty. It also continued the patronage of Tibetan lamas and the award of honours and titles to them.

The relations between the Tibetan and the Mongols were maintained under the Ming dynasty. The Mongolian leader Altan Khan followed the example of the

⁴ While the Mongols dominated Tibet, the Mongol Khans and the Tibetan lamas developed a relationship known as cho-yon. Usually translated lama-patron or priest-patron, cho-yon is a unique Buddhist and Central Asian institution that cannot be categorised under current international legal terms. The Tibetans and Mongolians claim that this relationship was the core of Mongol-Tibetan relations, whereas the PRC contends that it was secondary to the incorporation of Tibet into Mongol China. The constitutive elements of the lama-patron relationship are the patron's commitment to protect the lama and the lama's commitment to fulfil the patron's spiritual needs, and its most important aspect is reciprocal legitimisation of authority: The Mongol Khans conferred temporal authority over Tibet on the Tibetan lamas, and the Tibetan lamas' religious mandate conferred legitimacy on the Mongol Khans' Imperial rule. The separate administration of Tibet within the Mongol Empire, and the unique and uniquely personal cho-yon relationship between the Mongol rulers and the Tibetan lamas, thus provide no support for the claim that the Chinese asserted sovereignty over Tibet during the Yuan Dynasty.

⁵ International Commission of Jurists (note 1), 32.

cho-yon relationship between the Tibetan Phagspa and the Mongolian emperor Khubilai Khan in 1577 when he invited the Tibetan lama Sonam Gyatso to his camp.⁶ Altan Khan awarded the name Dalai to Sonam Gyatso. It is a Mongolian translation of the Tibetan name Gyatso which means “oceanic” or “ocean of wisdom” in both the Tibetan and Mongolian language. Sonam Gyatso thereafter became known as the III Dalai Lama.⁷

Tibet was unified in 1642 by Gushri Khan on the behalf of the fifth Dalai Lama, Lobsag Gyatso (1617-1682) also known as the Great Fifth. The Fifth Dalai Lama had in 1638 bestowed the title of “Dharma King” (Tenzin Choskyi Gyalpo) on Gushri Khan as a reward for his service. The Khan, in return, recognised the supreme rule of the Dalai Lama to whom he was bound by a cho-yon relationship. Thus, after Gushri Khan installed the Fifth Dalai Lama as ruler with “temporal authority over all of Tibet”, the Khan received the title of King of Tibet, but retired to the Kokonor with his armies. This was the first time that a Dalai Lama had attained the status of both temporal and spiritual leader. He was able to exercise full authority over Tibet while the Mongols were content to provide military backing in return for nominal authority. Regional and sectarian conflicts were therefore eliminated and Tibet was politically unified, once again with the means of Mongol political patronage and reliance upon Mongol military force. During the reign of the fifth Dalai Lama, Tibet was not only unified but also pacified. The country experienced a surge in cultural and economic prosperity.

2.2.3 The Manchus

In 1639, several years before the Manchu conquest of China, the Fifth Dalai Lama established relations with the Manchu emperor. Later, in 1652 the Dalai Lama visited the new Manchu emperor in Peking to re-establish the cho-yon relationship that had existed between the Tibetans and the Mongol Yuan.⁸ The visit of the Dalai Lama to the Manchu emperor has been interpreted by the Chinese as the nominal submission of the Dalai Lama to the Manchu emperor. But, records of the visit show, on the contrary, that the Dalai Lama was showed a great deal of respect of the emperor in Peking.⁹

The importance of Tibet in Inner Asian politics in the mid- seventeenth century at the beginning of the Manchu Qing dynasty was almost entirely due to the Fifth Dalai Lamas influence with the remaining independent Mongols. But in 1682 the Fifth Dalai Lama died and at the same time the Qing found itself free of the

⁶ International Commission of Jurists (note 1), 32.

⁷ The title Dalai Lama was also applied retrospectively to previous incarnations. Sonam Gyatso therefore became the third incarnation.

⁸ Warren W. Smith, Jr, Tibetan Nation, A history of Tibetan Nationalism and Sino-Tibetan Relations, 1996, 110-113.

⁹ Ibid.,112-113.

domestic rebellions that had troubled it and was able to turn its attention to Inner Asian affairs. This led to the agreement between the Manchus and the Russians in 1689, the treaty of Nerchinsk, which marked the end of the great steppe empires. During this time firearms were introduced and this decreased the military power of the nomads. Tibetan influence in Inner Asian matters also decreased along with the strength of the Mongols.¹⁰

The actual control of Tibet by the Qing began in 1720. The Qing army entered Tibet in order to expel a group of independent Mongols from Dzungaria who had gained control over Lhasa. Later, in 1725 the Qing reorganised the administration of Tibet and put it in the hands of the secular nobility of Tibet. It also administratively separated the eastern Tibetan provinces of Kham and Amdo from central Tibet. The administration of Kham, east of the watershed between the Jinsha Jiang (Yangtze) and the Mekong, was to be handled by the native chiefs under the supervision of the governor of Sichuan. The administration of Amdo (Kokonor), over the Tibetans and the Mongols, were supervised by a resident Qing official, the Amban. Lhasa was run in the same way.¹¹

In 1750 the Amban of Lhasa was murdered and the Qing decided to re-organise the administration again. The new Amban got the overall authority over the Tibetan administration. The administration was re-organised for a third time in 1792, after the Qing once again had sent an army into Tibet this time to repel an invasion of the Gurkhas of Nepal. The Amban increased its powers and took control over the Tibetan frontier defence and foreign affairs. This Qing official also supervised the choosing of the incarnations of the Dalai Lama, Panchen Lama¹² and other high Lamas. By taking power over this institution in Tibetan religion the Qing attempted to establish their authority over the political succession of combined temporal and spiritual rule. The Qing also had another intention with this measure. The Amban could prevent the reincarnations to be found among the aristocracy and in doing that the Buddhist religion and the aristocracy were kept apart. It was important for the balance of power that the aristocracy was kept from gaining both secular and religious power.¹³

The measures that were undertaken in 1792 should be seen as the peak of Qing influence in Tibet. The reforms, re-organising the Tibetan administration were either never fully implemented or never used. The most significant reform that had most implications on the sovereignty of Tibet, the right of the Amban to approve

¹⁰ Ibid., 118-119.

¹¹ International Commission of Jurists, (note 1), 33.

¹² The Panchen Lama is the second most important figure in Tibetan culture, religion and politics, after His Holiness the Dalai Lama. The title Panchen Lama originates back to the Fifth Dalai Lama who in 1642 gave the title Panchen Lama, meaning Great Scholar, to his teacher the Abbott of Tashilhunpo Monastery in order to consolidate Gelugpa power. Since then it has traditionally been the role of the Dalai Lama and Panchen Lama to act as the teacher of the new incarnation.

¹³ Warren W. Smith, (note 8), 135.

reincarnations became essentially symbolic or was ignored by the Tibetans. From this time the Qing dynasty began to decline and as a consequence also the Qing influence in Tibet.

The nineteenth century saw a decline in the ability of the Qing to intervene in Tibet. The Qing was too preoccupied with foreign imperialism to be able to pay much attention to Inner Asia. In 1847 the Amban voluntarily handed over the financial and military powers to the Tibetan government. This represents the effective end of direct Qing administration in Tibet.¹⁴

In the late nineteenth century the Tibetans had created autonomous governmental institutions that combined ecclesiastical and secular interests. In creating this system the Tibetans avoided the foreign dependence that had characterised the ecclesiastical system in the past.¹⁵ By the end of the century the Qing still claimed authority over Tibet although the Amban in central Tibet had no more than the power of abuse and extortion left to suppress the Tibetan people to obeisance. Despite this, the claim of the Qing of authority over Tibet was generally accepted of the Tibetans.

The Qing dynasty, like the previous conquest dynasty, the Yuan, separated China from Inner Asia both in relation to political status and administrative divisions. For the Qing China was the “interior empire” and it was regarded upon as a subjugated state. The “exterior empire” consisted of the Inner Asian tribes and states and these entities were treated as dependent allies during the early Qing. The fact that Tibet was almost inaccessible and the difficulties involved in imposing direct administration contributed to the fact that the Qing maintained Tibet’s semi-autonomous status within the empire.

To summarise the important period of the Qing protectorate in Tibet one can see that it follows not only the pattern of Qing history, but also that it was partly determined by the inherent weakness of the of the Tibetan political system. The ecclesiastical system in Tibet created internal cultural and political unity. It also created autonomy by an astute use of Tibetan influence in Inner Asian politics. The other side of the coin was Tibet’s fatal dependence upon foreign political patrons. Tibet only enjoyed autonomy when the patrons were disinterested in Tibetan domestic affairs.¹⁶

Eventually, the Manchus were thoroughly assimilated and the lost their ethnic identity and language. Tibet was later regarded by China as Chinese territory, not as a territory of the Qing Empire. The Qing relationship with Tibet that had begun as nominal submission evolved in to Qing suzerainty and later a Chinese suzerainty. Although Tibet was placed, in the Chinese mind, in the category of

¹⁴Warren W. Smith, (note 8), 146.

¹⁵ Ibid., 146-147.

¹⁶ Ibid., 147.

“Chinese territory” the Tibetan national, ethnic and cultural identity was essentially unaffected by the Tibetan relation with China during the Qing dynasty.¹⁷ The Chinese has later claimed that Tibet became an integral part of China during the Qing dynasty. Even though Tibet was a dependent state of the Qing Empire and the Qing Empire was later transformed into a Chinese ruling dynasty, Tibet did not thereby become a part of China. The Qing’s protectorate over Tibet is not equivalent of Chinese sovereignty over Tibet.

2.2.4 The Great Game

The Qing declined in the beginning of the Twentieth century and it was contemporaneous with the end of the feudal age and the beginning of the age of modern nationalism in both China and Inner Asia. The Great game was known to the participants as the competition between the Russian and the British empires over influence in Inner Asia. Suddenly, Tibet was not merely an autonom part of the Qing’s territory but an object of international interest. When the British threat to Tibet increased the late Qing tried to get a firmer grip of Tibet. The 13th Dalai Lama¹⁸ was aware of the threat of the Qing and the fact that Tibet could easily be put under Chinese sovereignty. In this situation, with the British and the Chinese closing up on Tibet the 13th Dalai Lama decided to try to achieve independence.¹⁹

In the beginning of the century the British government of India (GOI) became very suspicious of the Russian influence in Tibet and tried to obtain trade privileges in Tibet. First the GOI turned to the Tibetan government for an agreement but the Tibetans did not want to discuss any such matter. In the hunt for an agreement the GOI turned to the Chinese from whom they obtained a variety of concessions regarding Tibet. Although the Chinese claimed authority over Tibet it could not force the Tibetans to respect the agreements. The 13th Dalai Lama did not even agree to hold direct talks with the GOI.²⁰

The British concluded to send an expedition to Tibet in 1904 to try to force negotiations with the Tibetans. This expedition became very important to Tibet because it put an end to Tibet’s international isolation and it finally exposed the myth that the Chinese had authority over Tibet. However, the expedition to Tibet forced the Dalai Lama to flee to the Outer Mongolia and it also provoked a Chinese attempt to reinforce its position in Lhasa. The Chinese got help from the Foreign Office in London who had not authorised the British conquest. The London Office was prepared, out of consideration for its relations to China and Russia to deny some of the political advantages gained in Tibet.

¹⁷International Commission of Jurists, (note 1), 35.

¹⁸ The 13th Dalai Lama was invested with temporal authority in 1895 and was the first Dalai Lama to rule Tibet since the Great Fifth. Other notably the 7th and 8th Dalai Lamas had assumed temporal power but none since the Great Fifth had effectively exercised that power.

¹⁹ Warren W. Smith, (note 8), 151.

²⁰ Ibid., 154-155.

The British in Lhasa defeated the Tibetan forces and the head of the expedition Colonel Francis Younghusband concluded a treaty (the Lhasa Convention) with Tibetan representatives since the Dalai Lama was gone. The treaty granted Britain trade privileges in Tibet and allowed the British to station a British resident in Gyantse. It also required the Tibetans to pay the expenses of the invasion. Until the payment was made the British forces would occupy a part of the southern Tibet adjacent to India.²¹ The Chinese were willing to accept almost all of the provisions in the Lhasa Convention. The stumbling block was Tibet's right to independently conclude international agreements. China could not accept that it was denied participation in any treaty regarding Tibet. China kept reminding Great Britain of its recognition of China's suzerainty over Tibet.²²

London was very eager to obtain China's acceptance of the 1904 agreement and entered into negotiations with the Chinese. In 1906 an Adhesion Treaty was concluded between China and Great Britain. China agreed to the Lhasa Convention, to pay the indemnity and to allow Britain trade rights. Britain on its side agreed not to interfere in China's administration of Tibet if China was to exclude all foreign powers. In this case China was not considered a foreign power and once again this was an outflow of the Chinese suzerainty over Tibet. China succeeded in converting an agreement between Britain and Tibet into an agreement between Britain and China. In China's view the 1906 Adhesion Treaty was not a recognition of the Lhasa Convention but a recognition of the Chinese authority in Tibet.²³

2.2.5 The Tibetan declaration of independence and the Tibet-Mongolia Treaty

The British invasion of Tibet and the Dalai Lama's absence from Lhasa had opened the eyes of the Chinese. China started to increase its powers in Tibet; this was done by sending an expeditionary force into Kham in the eastern of Tibet. The thought behind this expedition was to convert a part of Tibet into a Chinese province. In the fear of losing a part of the territory the Dalai Lama had to reconcile with the Chinese. The Dalai Lama went to Peking where he accepted a reduction of his status in Lhasa in favour of the Amban who was allowed back in

²¹Ibid., 157-158.

²² Some problems with defining the term suzerainty in the Tibetan context occurred during this time. Hugh Richardson a British representative in Lhasa reported in 1945 to the GOI defining Suzerainty as: "nominal sovereignty over a semi-independent or internally independent state" He also added: "in practise the term had never been defined and indeed appears incapable of definition". Melvyn Goldstein, A History of Modern Tibet, 1913-1951, 1989, 41.

²³International Commission of Jurists, (note 1), 39.

his seat in 1909. However, the Chinese did not trust the Amban and in 1910 Chinese troops entered Lhasa. Once again the Dalai Lama fled, this time to India. In the early days of 1911 the Qing dynasty, still ruling, restored its authority in Tibet. This was made to the extent that if the Qing dynasty had not fallen so short after the restoration of Chinese power in Tibet, Tibet may have ceased to exist. Instead of this scenario Tibet was granted a temporary reprieve.²⁴

The revolution against the Qing dynasty began in October 1911. The last Qing emperor abdicated on the 12th of February 1912. On the 15th of the same month Yuan Shih-k'ai was elected the first president of the new Chinese Republic.²⁵ In Tibet all Chinese were expelled and the Dalai Lama re-entered Tibet in July 1912 reaching Lhasa in January 1913. Tibet was now free of the Chinese for the first time since 1720. Well in Tibet the Dalai Lama refused the titles he was offered by the Chinese. He also repudiated China's claim to have authority over Tibet in a proclamation issued by His Holiness the Dalai Lama XIII in 1913.²⁶ Taken all these actions together it is seen by the Tibetans as a declaration of the independence of Tibet and the Tibetan people.²⁷ Mongolia followed the Tibetan example in 1913. The two countries concluded a treaty in which they agreed to mutual acceptance of the independence.

2.2.6 The Simla Convention

The conference in Simla in India among China, Great Britain and Tibet was convened in October 1913. It was a British attempt to secure a Chinese recognition of Tibetan autonomy. China's position on the matter was that it had sovereignty over all of Tibet, direct administration over eastern Tibet based on historical rights of conquest and a reluctant willingness to grant "Outer Tibet" an autonomous status. Tibet's position was that it claimed independence over all areas of Tibetan inhabitation. In the middle were the British negotiators with their wish to maintain a buffer area in Tibet, they were not very anxious to grant Tibet independence. The Simla Convention²⁸ stated that "Outer Tibet" would be autonomous but it would still be under Chinese suzerainty. The plan for the "Outer Tibet" was that the Tibetans would administrate this part of Tibet without the interference of the Chinese. China was not allowed to station troops in "Outer Tibet". However, China was allowed to retain the Amban with his escort of 300 men. Problems occurred when the

²⁴ Warren W. Smith, (note 8), 181.

²⁵ Ibid.

²⁶ See supplement A.

²⁷ The ICJ found in its rapport in 1959 that: "Tibet's position on the expulsion of the Chinese in 1912 can fairly be described as one of de facto independence and there are strong legal grounds for thinking that any form of legal subservience to China had vanished. It is therefore submitted that the events of 1911-12 mark the re-emergence of Tibet as a fully sovereign state, independent in fact and law of Chinese control." ICJ, *The question of Tibet and the Rule of Law*, Geneva: International Commission of Jurists, 1959, 85.

²⁸ See Supplement B.

position of “Inner Tibet” was to be dealt with. After mediation of Great Britain an agreement was reached between the Tibetan and Chinese delegations about the boarder between the “Inner” and “Outer” Tibet. It was placed at the Mekong-Yangtze divide. The Simla Convention, although initialled by the Chinese representative, was not accepted by the Chinese government because it did not agree on the provision about the boarder. Great Britain and Tibet agreed to be bound by the Convention in a bilateral agreement while China chose not to be bound by it.²⁹

On the one hand Tibet was restrained, during the following years, from proclaiming full independence. The Tibetans were afraid of loosing the vitally important support of the British in securing the autonomy of Tibet and the ratification of China of the Simla Convention. On the other hand Britain was restrained from recognising the independence of Tibet in de facto since it recognised China’s suzerainty de jure. The outcome was that Britain increased its influence in Tibet. This included military support which helped the Tibetans to force the Chinese out of large parts of eastern Tibet (Kham). Tibet became centralised and achieved an unprecedented degree of national unity during the time of the 13th Dalai Lama.

2.2.7 The Death of the Thirteenth Dalai Lama and the continuing quest for independence

The 13th Dalai Lama died in 1933. In 1937 the reincarnation of the Dalai Lama was found in Amdo. He was brought to Lhasa and was installed as the 14th Dalai Lama in 1939. The Tibetans invited a Chinese representative to take part in the installation ceremonies together with the governments of India, Buthan, Sikkim and Nepal. The Chinese version of its participation was that they had approved and installed the 14th Dalai Lama. This has been denied of both Tibetans and other participants.³⁰ During the period prior to the new Dalai Lama’s attainment of majority, two Tibetan governmental institutions handled Tibetan affairs, the Tsongdu, or National Assembly and the Kashag, the council of ministers. Once again China approached Tibet with a proposal to accept the sovereignty of China over Tibet. The Tsongdu and the Kashag did not agree to this proposal and delivered the opinion that Tibet was independent. They even vent so far to demand Tibetan administration of the Chinese controlled areas in eastern Tibet. This standpoint was maintained during the 1930’s and 1940’s.

During the Second World War Tibet kept its neutrality despite of the fact that China was a part in the international conflict. During this time Tibet had its first diplomatic contact with the U.S. because Tibet refused to support a claim to transport supplies from India, through Tibet to China. In 1943 an American

²⁹ Warren W. Smith, (note 8), 188- 199.

³⁰ Melvyn Goldstein, History of Modern Tibet 1913-1951,1989, 314-323.

mission was sent to Tibet in order to work the situation out with the Tibetans. The American delegation was informed about Tibet's strive for independence during its visit and suggested that Tibet should try to achieve recognition of its claim during a post-war peace conference.

In 1945, when the war was over, Tibet sent "Victory Congratulation Missions" to China, India, United Kingdom and the U.S. as an attempt to obtain recognition. The same year an agreement of Friendship and alliance was made between the Soviet Union and China. In this treaty China was forced to recognise the independence of Mongolia.³¹ China appeared to be acting in accordance with the post-war anti colonialist spirit. A statement from Chiang Kai-shek encouraged the Tibetans urge for self-determination: *"As regards the political status of Tibet, the Sixth Kuomintang Congress decided to grant it a very high degree of autonomy, to aid its political advancement and to improve the living conditions of the Tibetans. I solemnly declare that if the Tibetans should at this time express a wish for self-governance, our Government would, in conformity with our sincere tradition, accord it a very high degree of autonomy. If in the future they fulfil the economic requirement for independence, the National government will, as in the case of Outer Mongolia, help them to attain that status. But Tibet must give proof that it can consolidate its independent position and protect its continuity so as not to become another Korea"*.³²

The Tibetans were lead to believe that the 1945 Chinese Constitutional Convention would confirm the Tibetans claim for self-determination. However, they found, as they attended the convention as observers, that their participation was seen by China as a participation of Tibet as a part of China and not as an independent, or soon to be independent state. During this convention China also protested against Tibetan missions to other countries. After this statement by the Chinese Government the U.S. and the United Kingdom only agreed to see Tibetan delegations at their New Delhi embassies. Despite of Chinese protests Tibet participated in a semi-official Asian Relations Conference in India in 1947.

2.2.8 Concluding remarks

To sum up this part of the Tibetan history it is interesting to have a look at the question: did Tibet at any time attained the required characteristics to be regarded

³¹ China was forced to recognise the independence of Mongolia because it was a part of the Yalta agreements. China was not represented at the negotiations. The Yalta agreements secured the Soviet Union's entry into the war against Japan. In the Yalta agreements the Soviet Union secret agreements as to the Kurile Islands, Outer Mongolia and special privileges in Manchuria. The claims of Soviet privileges in Sinkiang was abandoned.

³² Warren W. Smith, (note 8), 249. The original text can be found in: Chiang Kai-shek, "National Independence and Racial Equality", The Collected Wartime Messages of Generalissimo Chiang Kai-shek: 1937-1945, comp. Chinese Ministry of Information, 854.

upon and respected as an independent state? The answer to this question is off course varying depending on the source used but this is an attempt to have a brief, impartial look upon it.

In relation to Tibet and its struggle for sovereignty and self-determination it is relevant to put a focus on the requirements for statehood. The fulfilment of Tibet of these criteria are important because they are crucial in the debate about self-determination or autonomy. There seems to be a universal agreement that sovereignty is an attribute of statehood and that only states can be sovereign. The classical definition of statehood is to be found in the 1933 Montevideo Convention.³³ Article 1 of the Convention states: *‘The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government and (d) capacity to enter into relation with other states’*.

To begin with the governance of Tibet before under the Qing dynasty, it can be described as the governance of a vassal state. Tibet was subject to the suzerainty of China but despite of this fact it did have some international personality. A rather vague customary and personal relation that originated from feudal law defined the status of Tibet. As M.C. van Walt van Praag describes it “[A] distinctive element of the feudal suzerainty relationship is that the suzerain holds the source of the governmental authority over the Vassal State whose ruler he grants the right to exercise the authority autonomously”.³⁴ For instance international treaties that bound China during this time was automatically binding Tibet, but Tibet did retain some capacity for independent international action.

If one compares the status of Tibet at this time with the model drawn up in the Montevideo Convention there appears to be two elements missing to put Tibet in possession of statehood. The first is the absence of governmental authority. This was vested in the suzerain state China. Tibet had from time to time strong religious leaders and possessed partial power but it never found itself with the real governing power. The second element is the lack of capacity to enter into relations with other states. Tibet related, during the course of history to many different states and groups in the area surrounding Tibet. But it was the Qing Empire that had the contacts with the outer world. Tibet was internationally isolated until the British expedition reached Tibet in the beginning of the twentieth century. It is of utmost importance in this context to again point out the fact that even though Tibet was a dependent state of the Qing empire and the Qing empire was later transformed into a Chinese ruling dynasty, Tibet did not thereby become a part of China. The Qing’s protectorate over Tibet is not equivalent of Chinese sovereignty over Tibet.

³³ The Convention on the Rights and Duties of States, 26 December 1933, Art.1, 165 LNTS 19, (Not in force).

³⁴ Michael C. van Walt van Praag, *The Status of Tibet*, 1987, 105-106.

After the fall of the Qing dynasty in 1912 the governance of Tibet changed. During the Qing period there had existed a permanent people living on the defined territory of Tibet. The question of defined territory can off course be asked in relation to the many disputes and administrative re-organisations that the Qing carried out. The main factor for determination of the defined territory is although the fact that the Tibetan people lived on the land, and had done so for a long period of time, and saw it as there own. The elements of permanent population and defined territory continued to exist after the fall of the Qing.

The other two elements mentioned above also came into realisation after 1913 when Tibet declared its independence. Tibet had a government which, functioned in the territory of Tibet, conducting its own domestic affairs free from any outside authority. From 1913 to 1950 foreign relations were conducted exclusively by the government of Tibet. The conclusion can be drawn that Tibet from 1913 to 1950 demonstrated the conditions of statehood as generally accepted under international law. Tibet never under this period gained international recognition. This is due to the fact that many states wanted to be on a friendly footing with China and some of them were in the direct need of China. Official documents have showed that the countries that Tibet had foreign relations with treated Tibet as an independent state. This international non-recognition of Tibet is not in my opinion affecting the fact that Tibet was an independent state from 1913 to 1950.

2.3 Tibetan history after 1949

2.3.1 The Chinese liberation of Tibet

On the 1 of October 1949 Chiang Kai-shek was defeated and the PRC was formally proclaimed in Peking. Later, on the 24 November Radio Peking announced an appeal from the Panchen Lama directed to Mao about liberation of Tibet. It should be noticed that the Panchen Lama was only 12 years old at the time. The thought of liberation was confirmed on the 1 January when the Chinese government promised to liberate both Tibet and Taiwan. In a desperate attempt to avoid this the Tibetan government sent letters to the governments of India, the United Kingdom, the U.S. and Nepal requesting them to support Tibet and its independence. The Tibetan government also had the objective to send delegations to these countries and to the U.N There was no delegation sent to the U.N because India, the U.K and the U.S. saw this as a potential provocation of China. Tibet was advised by these three countries not to openly declare its independence or to approach the U.N with its claims. Their attitude towards the problem were that the U.N would probably be politically restrained from helping Tibet. But if China was not provoked it could come around to agree to Tibet's traditional autonomy. China never agreed to grant Tibet any autonomy. On the 7 October

1950 the PLA moved its troops into Tibet and the invasion was a fact.

The Chinese troops advanced across the Yangtze from Kham, north from Yunnan and south from Qinghai. The poorly led and organised Tibetan troops stood no chance and the PLA soon began to close up on Lhasa. A little more than a month after the invasion on the 11 November 1950 the Tibetan government appealed to the UN: *“The armed invasion of Tibet for the incorporation of Tibet within the fold of Chinese communism through sheer physical force is a clear case of aggression. As long as the people of Tibet are compelled by force to become a part of China against the will and consent of the people, the present invasion of Tibet will be the grossest instance of violation of the weak by the strong. We therefore appeal through you to the Nations of the world to intercede on our behalf and restrain Chinese aggression. The problem is simple. The Chinese claim Tibet as a part of China. Tibetans feel that racially, culturally and geographically, they are apart from the Chinese. If the Chinese find the reactions of the Tibetans to their unnatural claim not acceptable, there are other civilised methods by which they could ascertain the views of the people of Tibet, or, should the issue be purely juridical, they are open to seek redress in an international court of law”*.³⁵

The appeal to the UN did not lead to any immediate actions. The matter was postponed unanimously by the General Assembly’s General Committee. In the meantime the Tibetan government was forced to remove itself and the Dalai Lama to an area close to the Indian border to escape an anticipated Chinese invasion of Lhasa. The PLA threatened the Tibetan government with an invasion of Lhasa in order to force them to send a delegation to Beijing. In Beijing the Tibetan delegation were presented with several demands that they had to agree to in order to avoid a forcible conquest of Tibet. The Tibetan people had to agree to “a peaceful liberation” of Tibet. Left with no other choice, fearing the consequences of a total conquest of Tibet, the delegation signed the “Agreement of the Central People’s Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet” more commonly known as the 17-Point Agreement.³⁶

2.3.2 The 17-Point Agreement

Much has been said and written about the Agreement but in my view contradiction is the word that in the most authentic way describes the document. A striking antagonism was the promise by the Chinese authorities that on the one hand the political and religious system would not be altered, but on the other hand

³⁵ UN Doc. A/1549, 24 November 1950.

³⁶ The text of the Agreement on Measures for Peaceful Liberation of Tibet, New China News Agency (NCNA), 27 May 1951, in survey of China Mainland Press, see supplement C.

Tibet had to agree to be governed by the system of “national regional autonomy”. This system had big deficiencies. It promised much in general but was very vague on the specific provisions. It was clear from the beginning that the content of the Agreement was very much up to the interpretation and implementation made by the Chinese authorities.

The key to the entire Agreement was the achievement of total political control by the Chinese in Tibet. Article 11, which stated that: “*various reforms should be under taken by the Tibetan local government if the Tibetan people so demanded*”, looked very good on the surface. Later it became obvious that the demands from the Tibetan people were very easily put under the Chinese control by persuasive and coercive methods.³⁷ These reforms were not what the majority of Tibetans desired but whatever the Chinese wanted them to be.

In article 1 of the 17-Point Agreement there is a passage that describes Tibet’s return to the motherland. Not only did this Agreement deprive the Tibetans of their independence, but their whole unique identity was taken away. The Tibetans were no longer just Tibetans but now defined “as Chinese of the Tibetan minority nationality living within the motherland”.

Article 17 states that: “*this Agreement shall come into force immediately after signature and seals are affixed to it*”. However, there were two factors that challenged the validity of the Agreement. The first one was the fact that the negotiators, according to Dalai Lama, lacked the power to sign the document. The second reason for invalidity was the duress involved in the negotiation. This was recognised by the ICJ in its report in 1959; “*Tibet signed at pistol point*”.³⁸ Despite of these improper grounds for the Agreement China succeeded in showing the world that a peaceful solution had been negotiated together with Tibet. By doing this China deflected most of the international criticism.

After signing the agreement the Dalai Lama returned to Tibet and a heated discussion began between the him and his advisers about the acceptance of the document. The key question was whether Tibet would be able to preserve most of its cultural and political identity by accepting China’s demands or by refusing it. The fear of the latter solution was that the Dalai Lama would be forced to go into exile and that this would leave Tibet and its institutions without any protection at all. The Tibetan Kashag (Cabinet) and Tsongdu (Assembly) decided on the 28 September 1951 to trust the Chinese government and to accept, formally, the 17-Point Agreement. This was confirmed in a letter from the Dalai Lama to Mao dated the 25 October 1951. The acceptance of the Agreement was the final

³⁷ Warren W. Smith, (note 8), 297- 304.

³⁸ ICJ, The question of Tibet and the Rule of Law, Geneva: International Commission of Jurists, 1959, 95.

surrender to Chinese sovereignty and the obliteration of the Tibetan claim of independence.³⁹

2.3.3 The period of communist rule in Tibet

Not long after the acceptance of the 17-Points Agreement the PLA occupied Lhasa and central Tibet, but, China had extensive problem with gaining physical control over Tibet. Until 1954 it mostly adhered to the Agreement and CCP nationalities policies. The situation in Tibet was not similar to the situation of foreign conquest. More a period of Chinese assistance to Tibet. Meanwhile, the Chinese authorities created new territorial divisions of Tibet. According to these plans only central Tibet would form the future “Tibet Autonomous Region”. The eastern part of Tibet would disappear into the provinces of Yunnan, Gansu, Qinghai and Sichuan. As a consequence to this division the 17-Points Agreement would only be applied to the TAR. This would later prove to be a major cause to the 1959 Tibetan revolt.⁴⁰

From the end of 1954 up to the revolt in 1959 China made some considerable changes in their policy towards Tibet. In 1955 The Chinese government instituted the “Preparatory Committee for the TAR”. This effectively put the political power over Tibet in the hands of the Chinese government. This can be characterised as a breach of the 17-Points Agreement. The trigger of the revolt was the inclusion of the minorities of China in a plan called “High Tide of Socialist Transformation”. Only the Tibetans within the TAR was excluded. The plan consisted of an introduction of “democratic reforms” in Kham and Amdo. It included public denunciation of respected leaders and revered Lamas. The revolt in eastern Tibet spread fast and in the initial phase the Tibetans had some successes. Yet, it did not take long before China sent large troops to the area out conquering the Tibetans.

In 1957 the Dalai Lama, at the moment in India for a visit, threatened to seek asylum there. This together with the fact that the Chinese wanted to prevent the spreading of the revolt to the central part of Tibet made Mao promise that no reforms that did not come from the Tibetans themselves would be carried out in the TAR for the next one or two five-year plans. As for the 17-Point agreement this promise would not be applicable in the eastern Tibet. Further reforms were in fact carried out in eastern Tibet. This forced people to flee into central Tibet, which had the effect that the revolt, contrary to Chinese intention, spread to the central of Tibet.⁴¹

³⁹ International Commission of Jurists, (note 1), 48.

⁴⁰ Ibid.,49-50.

⁴¹ Warren W. Smith, (note 8), 387- 393.

2.3.4 The Lhasa revolt and the Dalai Lama's flight to India

Until the final crisis in Lhasa the Dalai Lama tried to prevent violence by mediating with the Chinese. He even tried to make those Tibetans in resistance to lay down their weapons. The Dalai Lama protested the methods of suppression used. The Tibetan government was accused by the Chinese to sympathise with the resisters and for supplying them with arms.⁴²

The revolt in Lhasa began in March 1959 with the rumours that the Chinese were planning to kidnap The Dalai Lama. The Dalai Lama was for the moment at his summer palace, the Norbulingka palace, in Lhasa. A large number of Tibetans came to the palace after hearing the rumours in order to protect their leader. Violence broke out between those Tibetans who had gathered outside the palace and Chinese forces. Thousands of people were killed during these days of fighting and the Norbulingka palace was destroyed. The Chinese soon put down the Tibetan revolt and martial law was declared.

It was no longer safe for the Dalai Lama to stay in Tibet. On the evening of the 17 of March the Dalai Lama escaped with the aid of his bodyguard and his closest advisers. Just before reaching India the Dalai Lama and his government formally repudiated the 17-Points Agreement.

With the Dalai Lama out of the picture the Chinese rapidly quelled the revolt in central Tibet. The Chinese resolved the Tibetan government on the 28 of March and new “democratic reforms” were implemented within the TAR. Military Control Commissions were established in all districts of Tibet with the exception of Shigatse where there was no need according to the Chinese authorities.

During the following years 80,000 Tibetans followed the Dalai Lama and went into exile in India. In Tibet those who had participated in the revolt or resisted the Chinese authority in another way were hunted and imprisoned. The Chinese introduced something called “study groups” where the Tibetans were subjected to all kinds of Chinese propaganda spreading the message that Chinese socialism was superior compared with the system that Tibet had had before. The Tibetan people had to repeatedly agree to Chinese ideas like, “Tibet had always been a part of China” and “the Dalai Lama was engaged in licentious and exploitative activities”. If not enough loyalty was found that person could be subjected to arrest.⁴³

Many of the Tibetan monasteries were destroyed during this time. Many of the monks had fled to India together with the Dalai Lama and those left, primarily in the large Lhasa monasteries, were removed with force or if higher ranked

⁴² Dalai Lama, *My Land and My people: Memories of the Dalai Lama of Tibet*, 1962, 162.

⁴³ International Commission of Jurists, (note 1), 52.

subjected to struggle and arrest. Smaller monasteries outside Lhasa were also subjected to this treatment in a later stage. The abandoned monasteries were looted and many invaluable items were removed and taken to China. Statements from the many Tibetan refugees prove that some of the Tibetan monasteries were already totally empty when the Cultural Revolution began in China in 1966.⁴⁴ The Chinese government has repeatedly stated that nothing of this kind took place before the Cultural Revolution.

In 1958 the clerical population of the TAR was estimated in a Chinese census to be 114,100 persons. In 1960 this number had decreased to only 18,104. For the functioning monasteries and temples the number was 2,711 in 1958 dropping to 370 in 1960.⁴⁵ These numbers were going to decrease even more as the Cultural Revolution swiped across Tibet.

2.3.5 The effect of the Great Proletarian Cultural Revolution in Tibet

The Cultural Revolution was from the beginning an attempt by Mao to overcome bureaucratism and revisionism in the CCP by means of a revival of the spirit, forms and consciousness of collectivism. Mao's model for creating something new was to first destroy the old. Nothing new could be built on the old foundations. The aim of the revolution was to destroy the so-called "four olds": old ideas, old culture, old tradition and old customs.

This was off course devastating for Tibetan culture and religion. The Cultural Revolution was officially launched in Tibet on 25 August 1965. The Jokhang, the central cathedral, was the first target to be invaded by revolutionary masses of various nationalities lead by the Red Guards. The Tibetan Red Guards, encouraged by the Chinese, defiled the religious texts and defaced murals.⁴⁶ The great temples and monasteries in Lhasa were defiled but they escaped physical destruction. The material destruction occurred at the countryside and the local monasteries were totally destroyed. In a few months in the end of 1966 the Red Guardians eradicated almost all evidence of the Tibetan culture. After this wave of destruction the Tibetans were instructed to dismantle the remaining temples and monasteries to use the stone and timber to construct Chinese houses, offices and barracks. When the Cultural Revolution was over in 1979 almost all of the Tibetan temples and monasteries were destroyed.⁴⁷

⁴⁴ Dawa Norbu, *Red star over Tibet*, 1987, 199.

⁴⁵ International Commission of Jurists, (note 1), 52, The original text can be found in, Zhang Tianlu, *Population change in Tibet*, Beijing: Tibetan Studies Publishing House of China, 1989, 28.

⁴⁶ International Commission of Jurists, (note 1), 73.

⁴⁷ Warren W. Smith, (note 8), 543-544.

The Cultural Revolution changed the way of life for the Tibetans. Everywhere in Lhasa pictures of Mao was festooned; some 40,000 were distributed in Tibet. Also posters singing the praise of the great leader Mao were hung up all over Lhasa. Tibetans were no longer allowed to dress as they used to or have their traditional long hair. They had to fit into the progressive socialist style. The traditional Tibetan holidays and secular festivals were replaced with revolutionary holidays and ceremonies.

One of the most degrading treatments was the “thamzing” or “struggle sessions”. The class struggle in which students were set against their teachers, monks against their abbots, worker against their employers and peasants against their landlords were fuelled by these “struggle sessions”. The “thamzing” was organised like a public trial where the audience was to be wiped into a rage, extracting confessions from the accused. It was common for the Tibetans to be forced to condemn the Dalai Lama and to speak against the Tibetan society. Confession of the involvement in reactionary activities and showing remorse was also a part of the procedure.⁴⁸

The communisation was revived in 1968 after a turbulent time in the first stage of the Cultural Revolution. The PLA forcibly established the communes, by the end of 1970, 666 communes were established. The PLA made compulsory requisitions of grain from the Tibetans to support their forces, this together with the communisation and a Chinese attempt to substitute the cultivation of wheat for Tibetan barley led to an enormous food shortage which lasted throughout the 1970s. The CCP announced in September in 1975 that the communisation of the TAR was completed. By then 99 percent of the townships in the TAR had set up communes which included transformation of agriculture and animal husbandry.⁴⁹ The communisation was a way for the Chinese to increase their control over all aspects of Tibetan life.

2.3.6 The effect of post-Maoist policies in Tibet

In 1979 more liberal cultural and economic policies were implemented in Tibet as part of the general liberalisation initiated by Deng Xiaoping. Tibetans in exile including the Dalai Lama were invited to return to Tibet and Tibetans imprisoned since 1959 were released. The Tibetans in exile were contacted by Deng Xiaoping offering to hold discussions with the Tibetans, about Tibetan participation in socialist construction, on their return. The Chinese leader made it very clear that the status of Tibet was not open for discussion during these talks. The Tibetans were allowed to send delegations to Tibet to see for themselves the improvements that had been made.

⁴⁸ Avedon, *In Exile From the Land of Snows*, 1995, 228-232.

⁴⁹ International Commission of Jurists, (note 1), 75.

The Chinese authorities had not expected the ecstatic welcome the delegations from the Tibetan government in exile received when they returned to Tibet in 1979 and 1980. The Chinese thought that the Tibetans would dissociate from the “clique of serf-owners” but this was not the case at all. The second delegation’s visit in Lhasa in 1980 had to be terminated by the Chinese since the reception were at risk of being uncontrollable. These events opened up the eyes of the Chinese government and it convened the first Work Forum on Tibet in 1980. The decision was reached, during the meeting, to send a delegation to Tibet lead by Hu Yaobang to ascertain the actual situation. The members of the delegation were shocked by what they observed in Tibet, particularly over the poverty of the Tibetans.⁵⁰ Upon its return the delegation proposed a radical reform program for Tibet which among other things contained a promise of reduction of the Chinese in Tibet.

The new attitude towards Tibet gave the Tibetan government in exile new hope and representatives were sent to Beijing in 1982 and 1984 for talks. However, the talks were fruitless since the Chinese were only willing to discuss the Dalai Lamas unconditional “return to the motherland”. Yet, the loosing of the social restrictions lead to a regeneration of Tibetan cultural and civil life. The religious activity also increased.

In 1984 a second Work Forum on Tibet was held. A new strategy of economic development for Tibet was adopted. This allowed the introduction of large number of Chinese cadres and experts into Tibet and permitted thousands of petty entrepreneurs to enter Tibet. The failure of holding up to the promise to reduce the Chinese in Tibet in the reform program was defended by the economical needs of Tibet. In 1987 a leftward shift was made in Chinese policies and the leader of the delegation in 1980, favourable to reform, was discharged. After the dialogue between the Tibetan government in exile and the Chinese government had failed and the Chinese policies in Tibet had become more aggressive the Dalai Lama decided to “internationalise” the question of Tibet and to seek support in the west.⁵¹

In September 1987 the Dalai Lama visited Washington, here he unveiled his “Five-Point Peace Plan” for Tibet. The plan called for: (1) The transformation of the whole of Tibet into a zone of peace, (2) The abandonment of the China’s policy of population transfer policy which threatens the very existence of the Tibetans as a people, (3) Respect for Tibetan’s fundamental human rights and democratic freedoms, (4) Restoration and protection of Tibet’s natural environment and the abandonment of China’s use of Tibet for the production of nuclear weapons and dumping of nuclear waste and (5) The Commencement of

⁵⁰International Commission of Jurists, (note 1), 77.

⁵¹International Commission of Jurists, (note 1), 78.

earnest negotiations on the future status of Tibet and of relations between the Tibetan and Chinese peoples.⁵²

This plan sparked demonstrations of support in Lhasa in October, which later escalated into riots. China publicly criticised the peace plan in harsh wording and this set off further demonstrations and riots in February and December 1988 and in March 1989. These riots were the most violent in decades and left scores dead and hundreds detained. After these events China declared martial law in March 1989, lasting more than a year.⁵³

The Dalai Lama made a new attempt in finding a reasonable solution to the situation in Tibet and to end the violence in June 1988. He addressed the European parliament with his conditions for the acceptance of the reality of Chinese sovereignty over Tibet. In exchange for China's sovereignty in Tibet there would be genuine and well-defined autonomous rights. This proposal, commonly known as the Strasbourg Proposal, was based on the autonomy promised to the Tibetans in the 17-Point Agreement and the "one country two systems" formula offered to Taiwan and Hong Kong by the PRC. Included in the Strasbourg Plan was the holding of a nation-wide referendum of the people of Tibet on the question of autonomy. This would leave for the people of Tibet to determine their political status. The proposal by the Dalai Lama was rejected by the PRC on the grounds that it was independence in disguise and as perpetuating the idea of Tibet as a separate country from China.⁵⁴

The Dalai Lama suffered some severe criticism for his solutions of the Tibetan situation. Further, the Chinese Government set unacceptable conditions for resuming the dialogue with the Dalai Lama and no constructive talks were held. The riots in Tibet in March 1989 were followed by the Tiananmen Square massacre on the 4 June 1989. China was more or less immune from the international sanctions posed and its economic development allowed the Chinese government to pursue its strategy of development and modernisation of Tibet. The plan for Strategic Ideas for the Economic and Social Development of Tibet, was adopted by the TAR government in 1989. Its policy was to implement the idea of opening up the TAR to the rest part of China and to the outside world.⁵⁵

2.3.7 Concluding remarks

At the time of its invasion by troops of the People's Liberation Army of China in 1949, Tibet was an independent state according to international law. The military invasion constituted an aggression on a sovereign state and a violation of international law. Today's continued occupation of Tibet by China, with the help

⁵² Warren W. Smith, (note 8), 601.

⁵³ Ibid., 602-608.

⁵⁴ International Commission of Jurists, (note 1), 80.

⁵⁵ Ibid.

of several hundred thousand troops, represents an on going violation of international law and of the fundamental rights of the Tibetan people to independence.

The Chinese Communist Government claims that it has a right to "ownership" of Tibet. It does not claim this right neither, on the basis of its military conquest in 1949 or alleged effective control over Tibet since then or since 1959. Nor, does it base its claim to "ownership" on the so-called "Seventeen Point Agreement for the Peaceful Liberation of Tibet" which it forced upon Tibet in 1951. Instead, China's alleged legal claim is based on historical relationships primarily of Mongol or Manchu rulers with Tibetan lamas and, to a lesser extent, of Chinese rulers and Tibetan lamas. The main events relied on by the Chinese Government occurred hundreds of years ago, during the height of Mongol imperial expansion.

In my view, the status of Tibet should be determined on its position in modern history. Almost every country can go back to some period in history to justify territorial claims on neighbouring states. This is unacceptable in international law and practice.

Much of the Tibetan society and culture were destroyed both before and under the Cultural Revolution. It is important to consider these extensive human rights violations in Tibet committed by the Chinese authorities. In recent debate, prominently in relation to the situation of the Kurds in Turkey and Iraq, repeated violations of the fundamental human rights have been discussed as a possible ground for the right to self-determination. This is not a recognised rule in international law and should be seen as a possible part of the concept of a right to self-determination. However, it is in relation to the modern history of Tibet worth keeping in mind.

3. Present situation in Tibet

3.1 Introduction

In this chapter I will present the present situation in Tibet by focusing on some different areas which will be important in relation to the possible classification of the Tibetans as a people. First I will give a picture of the human rights situation in Tibet. This will be done by presenting four different areas in which the violations of human rights have deeply affected the Tibetan society.

Second, I will give an insight in the structure and process of decision making of the Tibetan government in exile. In the third and fourth parts the conception of autonomy and its functioning in Tibet, and the various reasons for China to keep Tibet within its borders will be examined.

Finally, I will also give views of some selected countries and relevant bodies on the situation and solution of the problems in Tibet. These countries and bodies have been selected on the mere criteria of having interest and having taken some sort of action concerning the situation in Tibet. The views of these different countries and bodies will be important in determining the support of the Tibetan cause and the number of states that could come to recognise Tibet after a possible independence.

3.2 Human rights violations

3.2.1 Introduction

The human rights situation in Tibet has been questioned since the Chinese invasion in 1949. It is very difficult to obtain reliable information about the situation because the official information given can be suspected to be an idealisation which is in all corresponding with the white paper on the human right situation released by the Chinese authorities.⁵⁶ In this publication the Chinese government clearly states that Tibet is considered to be a part of the “motherland” and that the reported violations of human rights in Tibet is nothing but rumours spread by the Dalai Lama and his government in exile.

⁵⁶ White Paper on Tibet, Tibet – Its Ownership and Human Rights Situation, issued by the Information Office of the State Council of The People’s Republic of China 1992.

I will in this part try to give an overview of the situation in Tibet. This information is to a great extent based on reports issued by NGO's as Human Rights Watch Asia, Amnesty International and International Commission of Jurists. I will focus on four main areas: the population transfer, the treatment of dissidents - arbitrary arrest and detention – political imprisonment, freedom of religion and China's population control policies in Tibet.

3.2.2 The population transfer

The transfer of people of non-Tibetan origin into Tibet is seen by most Tibetans as the most serious threat to Tibet's culture and national identity. In the 1950's there were just a few Chinese settlers in most of the areas that later became the TAR. The Chinese population in central Tibet was almost negligible. In 1949 there was a population of approximately 2,000 Chinese in Lhasa, half of them were expelled in the same year. The Chinese population in Kham was only a few thousand.⁵⁷ In October 1952 after the PLA had entered Tibet President Mao made the following statement “ *Tibet covers a large area but is thinly populated. Its population should be increased from the present two or three million to five or six million, and then to over ten million*”.⁵⁸

In the years between 1954 and 1965 a large group of Chinese settled in Qinghai. These people came to Qinghai to provide labour for state farms reclaiming land for agriculture. This kind of state farms were also created within what was later to become the TAR, but this was done in a much smaller scale. During this period hundred of thousands of Chinese settled in Qinghai, including 200,000 in Xining, its capital.

In the area that later became the TAR the number of Chinese settlers rose slowly but steadily during the first thirty years of Chinese rule in Tibet. The ground for the present accelerated population influx was laid during this time. Thousands of Chinese was sent to the Camdo area to become farmers. There were also an increasing number of cadres and people from the PLA sent into these areas where there had not been any Chinese before.⁵⁹

In the 1980's, after the visit by Hu Yaobang, a program was launched to reduce the number of Chinese within the TAR. It was promised that the number of Chinese in the TAR would be reduced by 85 percent, but this great reduction was only partially achieved. Instead technical personnel continued to be sent to

⁵⁷ Tibet Support Group – UK, London, New Majority: Chinese Population Transfer into Tibet, London, 1995, 84.

⁵⁸ International Commission of Jurists, (note 1), 102, the original text can be found in: Mao, as quoted in “ Radio Address of Leosha Thuptentarpa to the Religious and Secular Officials of the Tibet Local Government and the Entire Tibetan People” People's Daily, 22 November 1952, in Tibet 1950 –67, 43.

⁵⁹ International Commission of Jurists, (note 1), 104.

the TAR. In 1984, at the Second National Work Forum on Tibet, the movement of workers to Tibet were facilitated as a measure to achieve economic development in Tibet. The following year, the Chinese authorities announced forty-three development projects in order to celebrate the 20th anniversary of the foundation of the TAR. All of these projects were contracted to Chinese provincial or municipal firms all employing Chinese personnel. The projects were to take place primarily in Lhasa and approximately 60,000 Chinese workers arrived there in 1984 to 1985.⁶⁰

By 1987 the increase in the number of Chinese in the TAR had almost reversed the reductions made in the early 1980's. This was due to the policy of China to develop and open up the TAR. This primarily meant opening up the TAR to interior Chinese provinces causing influx of a large number of Chinese. In 1987 Deng Xiaoping stated that: *"Tibet is a region with sparse population and has a vast expanse of land. The more than two million compatriots of the Zang nationality alone are insufficient for construction. There is no harm for the Han people to go and help them. Some more Han people there will be conducive to the development of the local nationality economy. This is not a bad thing"*.⁶¹ The success of Deng's new Tibet policy would be judged by the CCP on the grounds of economic development. This was apparently done without regard to who was conducting the development or who were the beneficiaries.

The process of "developing" Tibet continued in the early 1990's with an increased influx of Chinese on the Tibetan plateau. The work of upgrading the infrastructure in Tibet imported a large number of Chinese. Contributing to this was also the abolishment of the road checks between provinces, allowing Chinese to enter Tibetan autonomous districts of eastern Tibet or the TAR without any restrictions. Lhasa was hard pressed by the fact that regulations governing private enterprises were relaxed in Tibet. This allowed Chinese to start businesses in Lhasa and other Tibetan towns with the help of loans made available by the Chinese authorities. Soon thousands of Chinese flocked in Lhasa to open shops, restaurants or to engage in trade. The connections that the Chinese immigrants had with Chinese officials in Tibet and the fact that their businesses were well linked to the interior China gave them an advantage over the Tibetans.

In 1994 the Third Work Forum on Tibet was held and a new policy of "assimilating Tibet in the Chinese economic structure" was proclaimed by President Jiang Zemin. He opened the meeting by stating: *"while paying attention to promoting Tibet's fine traditional culture, it is also necessary to absorb the fine cultures of other nationalities in order to integrate the fine*

⁶⁰ Tseten W., Chinas reform in Tibet – Issues and dilemmas, The Journal of Contemporary China, vol. 1 no. 1, Fall 1992, 50.

⁶¹ International Commission of Jurists, (note 1),107, the original text can be found in: Xiang Ribao, 11 August 1995.

*traditional culture with the fruits of modern culture. This will facilitate the development of socialist new culture in Tibet*⁶². Once again the forum announced construction projects which would be undertaken in celebration of the 30th anniversary of the TAR in September 1995. As in 1984 these projects were contracted to Chinese firms which would import Chinese workers to Tibet or hire Chinese already in Tibet.

The Chinese that chose to move to Tibet could expect various advantages offered by the government. Cadre's incentives to go to the TAR included higher retirement pensions, a multitude of income supplements and priority job assignments for children. For non-cadres the incentives were economic and job opportunities, tax relief for entrepreneurs and very favourable investment conditions.⁶³

To conclude this part about the population transfer I will use some results of the Chinese census held in 1990. According to this the total number of Chinese in the TAR was 80,837 (3.7% of the total population) compared to the Tibetan population of 2.196 million. In Lhasa about 12% or 44,945 were Chinese of a total population of 375,968. The census theoretically included Chinese with permanent resident permits for the TAR as well as those with permits for other areas that had been in the TAR for more than one year. The census excluded all army personnel. The number of Tibetans in all the areas with Tibetan autonomous status was 4.34 million.⁶⁴ Further, TAR officials stated in 1996 that the percentage of Han people in The TAR had dropped to 3.3% of the total.

These figures become very confusing if they are compared to the figures published by the Tibetan government in exile. It puts the number of Chinese living in the TAR at 1,400,000 in Qinghai at 4,545,086 and for the remaining Tibetan areas at 2,000,000. This gives a total of approximate 7,945,000 Chinese living in traditional Tibetan areas.

The big differences in these estimates of the population are partially depending on the failure of the Chinese authorities to record the non-registered "floating" Chinese population in Tibet and also the non-recording of the military personnel in Tibet.

A credible and well-researched estimation of the Chinese population in Tibet was made by the Tibet Support Group – UK in 1995. It puts the number of Chinese population in the TAR at 250,000-300,000 including military, police and the floating population. The total number of Chinese in all Tibetan autonomous areas

⁶² International Commission of Jurists, (note 1),107, the original text can be found in: Third National Work Conference on Tibet 20-23 July, NCNA, Beijing, 26 July 1994, in FBIS-CHI-94-144, 27 July 1994,19.

⁶³ International Commission of Jurists, (note 1),113.

⁶⁴ China Statistical Yearbook 1992, Beijing 1993.

is put at 2.5 to 3 million. According to this the Chinese (including the Hui Muslims) account for 35-39 percent of the total population of the formerly ethnic Tibet (compared to 6-10 percent in 1950) and for 10-12 percent of the population of the TAR (compared to 0.1 percent in 1950).⁶⁵ This estimation will put us somewhere in the middle of the two competing estimations mentioned above.

It has been consistently denied by the Chinese government that it is practising a policy of population transfer in Tibet. As a response to the 1992 Sub-Commission resolution on Tibet⁶⁶, regarding the human rights protection in Tibet, the Chinese government stated that it had never implemented or even formulated a plan of emigration to Tibet. However, it is evident from Chinese policy statements and other evidence examined in this section that the influx of Chinese in Tibet is a result of various Chinese government policies and programmes. To transfer people in this way has been condemned as unlawful and in violation of a number of rights stated in human rights law and humanitarian law both in regard of the transferred as well as the receiving populations.⁶⁷ The UN Special Rapporteur on Population Transfer has stated that *“the disparate elements of international human rights law indicate the developing right of individuals and groups not to be subject to population transfer, either as participants or recipients. The cumulative rules of existing and emerging human rights and humanitarian law are consistent with a legal prohibition against most known forms of population transfer”*.⁶⁸ China’s transferring of Chinese into Tibet without the acceptance of the Tibetans lays within this definition. It should finally also be borne in mind that the population transfer is incompatible with any meaningful exercise of the autonomy by the Tibetans in the PRC.

3.2.3 The treatment of dissidents - arbitrary arrest and detention

There are many well-documented cases of these kinds of human rights violations in Tibet. Especially Human Rights Watch Asia has in its over 600 pages long report “Detained in China and Tibet” described the systematic imprisonment of dissidents in Tibet. Several hundred well-documented cases of arbitrary arrest and torture have been made public, all of them denied by the Chinese authorities.

In relation to this it is important to acknowledge that China has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but it has reserved itself against any involvement of the Committee Against Torture on the grounds of well-founded indications of systematic torture.

⁶⁵ Tibetan Support Group – UK, New Majority, 123, 153-154.

⁶⁶ UN Doc. E/CN.4/1992/37 at 35.

⁶⁷ UN Sub-Commission Res. 1990/17, 1991/28, 1992/28 and 1993/34.

⁶⁸ UN Doc. E/CN.4/Sub.2/1993/17,79.

Many Tibetan nationalists have been detained and tortured for peaceful activities as displaying the Tibetan national flag, distributing pro-independence material, expressing opposition to Chinese rule in private conversations and possessing audio, visual or written material by or about the Dalai Lama.⁶⁹ Many monks and nuns have been imprisoned, some of them as young as thirteen years old, for holding peaceful demonstrations during which they spoke in favour of independence. Between 1987 and 1989 dozens of demonstrators were killed by the Chinese security forces. Martial law has been declared several times and following the lifting of it the authorities has almost always imposed new, harder, restrictions on public assembly.

In recent years the discontent has grown in rural areas in Tibet resulting in an increasing number of protest in the villages. This has lead to the arbitrary arrest of more lay men and women than before. Most of these peoples are accused of staging demonstrations, organising underground groups or putting up illegal posters.

New security measures were introduced by the Chinese in 1994 to prevent nationalist demonstrations and to limit the religious activities. As an example, the sale of photographs of the Dalai Lama was banned and so were also the possession of those by governmental employees. In September 1994 a new security body was established to oversee security in all institutions and enterprises, including the monasteries. This new security body provoked much protests in the monasteries and elsewhere, which was immediately suppressed by the security forces. The arresting of monks, nuns and lay men and women continued under 1995 especially in connection with the 30th anniversaries of the establishment of the TAR on the 1 of September that year.⁷⁰

It is off-course very hard to find reliable numbers on the prisoners of conscience that are held in Tibet by the Chinese authorities. Amnesty International published the number of 650 prisoners of conscience in 1995⁷¹ and the Swedish human rights delegation visiting Tibet in March 1994, handed over a list of 337 names of political prisoners to the TAR Bureau of Justice based on the above mentioned work of Human Rights Watch Asia.⁷² The Swedish delegation questioned the fact that the share of “contra revolutionary crimes” in Tibet was 21 times higher than in the rest of the country, 6.5% compared to 0.3%, according to official Chinese statistics. It is a fact that the interpretation of “contra revolutionary crimes” is

⁶⁹ Amnesty International, China, No one is safe – Political repression and abuse of power in the 1990’, March 1996, 45-46.

⁷⁰ Ibid., 48-49.

⁷¹ Ibid., 47.

⁷² Rapport från den Svenska MR-delegationens besök i Kina och Tibet 20-30 mars 1994 – överlämnad till utrikesministern den 4 oktober 1994, 37. (Report from the Swedish human rights delegation in China and Tibet to the Swedish Foreign Minister)

much wider in Tibet than in the rest of China. The Swedish delegation also expressed its concern about the fact that the demanding of more autonomy for Tibet is considered to be a “contra revolutionary crime” when it is at the same time confirmed in the Chinese constitution.

The Chinese explanation to these facts is that the struggle between the separatist and the anti-separatist forces are due to historical reason, severe, frantic and complicated, a choice of words that reminds us of the language of class struggle used under the cultural revolution. It is mainly the persons that oppose the Chinese authority and its presence in Tibet that make up the surplus of political prisoners. According to the official view of the Chinese authority this does not mean that the support for the separatist thought is particularly strong because it is just a question about a few individuals. It is quite hard to see the logic in this reasoning when the Chinese have to mobilise so much power in order to suppress these few unharmed individuals.

The Chinese authorities have tried to decrease the number of political prisoners in Tibet by convicting political dissidents for crimes of violence. Several foreign human rights organisations have reported that a large number of peaceful demonstrators have been charged and convicted of severe crimes of violence based on confessions forced by torture.⁷³

3.2.4 Freedom of religion

The Tibetans are a devout people and their Buddhist religion forms a significant part of their lives and their identities. The post-Mao liberalisation, initiated in Tibet in 1979, included freedom of individual religious practice and a limited revival of institutional Buddhism. The Tibetan people were allowed to engage in the old religious practices such as spinning of prayer wheels, circumambulation of Buddhist shrines and prostrations and making butter and money offerings at reopened shrines. The restoration of many of the old temples and monasteries as Potala, Sera and Drepung began during this time. Many Tibetans devoted their private time to rebuild the important monastery of Ganden, which was the first monastery of the Gelugpa sect and an important symbol of the Tibetan nation and state.

Monasteries and temples were also rebuilt outside the TAR and for the first time since 1959 Tibetans were allowed to make pilgrimages to Lhasa. Despite of this revival the monasteries were just a shadow of what they once were. This was much due to the fact that there were so few monks left with the knowledge on how to impart advanced learning.⁷⁴

⁷³ Ibid., 38-39.

⁷⁴ International Commission of Jurists, (note 1), 273-274.

The unsupervised revival of Tibetan culture had off-course an impact on the political life among the Tibetans. Soon Tibetan nationalism also revived and the Chinese authorities did not tolerate this. The CCP moved to restrict the reconstruction of the monasteries, monks being initiated and religious instructions by monks. The rebuilding of the monastery of Ganden was halted in 1983 by the arresting of almost all the monks, nuns and workers working on the building.

More restrictive policies on religion have been implemented since the mid-eighties. The Chinese constitution from 1982 both protects and restricts the religion. It states the following: *"Citizens of the People Republic of China enjoy freedom of religious belief. No state organ, social organisation or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupts public order, impair the health of the citizen or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination"*.⁷⁵ The Tibetan practice of Buddhism is not seen by the Chinese as *"normal religious activities"* and is therefore restricted in many ways.

The monasteries and temples are the purview of a local governmental body called the Religious Affairs Bureau, the local Party Committee, Party work teams and branches of police stations set up under the Public Security Bureau. Almost all monasteries have also been overseen by a Democratic Management Committee, which manages all the affairs of the monastery including religious affairs, study, security and finances. This management committee has taken over the guiding role of the abbot in running the monastery. This state control over the monasteries was increased after the riots in 1987, 1988 and 1989. So-called work teams were sent to the monasteries in the Lhasa area. These "work teams" expelled those monks directly involved in the riots and demonstrations and subjected the remaining monks to indoctrination on patriotism and the Chinese version of the Tibetan history.

The admission of new monks and nuns and the reconstruction of monasteries were also restricted. These rules and restrictions were applied more severely in the Lhasa area where the demonstrations and riots had taken place, than in the rural area of the TAR and in Tibetan areas outside the TAR. Because of this the religious revival and also the political protest shifted to areas outside Lhasa. Later, this brought upon the Chinese to impose even more far-reaching restrictions on religion.

At the Third Work Forum on Tibet, held in 1994, the Dalai Lama and the "Dalai clique" were identified as the root of Tibet's instability and as being the enemy of

⁷⁵ The Chinese Constitution of 1982, art. 36.

the security and unity of China. Once again new policies were enforced aimed at stricter control over the monasteries. The purpose was also to undercut the influence of the Dalai Lama. In March 1994 the Chinese officials openly declared that no more monasteries were to be built and that there would be a set limit to the number of monks and nuns. The Swedish delegation, visiting Tibet at this time, were told by a Chairman of the TAR Religious Affairs Bureau that there *‘were now 1,400 active monasteries in Tibet and the number of monks and nuns totalled 34,000. This fully satisfies the demands. Religious liberty has now been fully implemented’*.⁷⁶ Tibetan cadres became targets for special measures proclaimed by the Work Forum. If they did not have a firm standpoint (meaning Chinese values) they should be subjected to investigation and purification.

3.2.4.1 The Panchen Lama affair

The 10th Panchen Lama, Lobsang Trinley Lhundrup, died on the 28th of January 1989. He spent his whole life at the Tashilhunpo monastery balancing with the Chinese authorities. Only four days before his death he stated that the Chinese presence in Tibet did more harm than good. His unexpected and sudden death started the speculations about him being murdered. After the death of the 10th Panchen Lama the search for a new incarnation started. The Chinese government approved this search by the adoption of an accommodating posture allowing the Tibetans to use traditional Tibetan methods. In 1995 it became clear that the new incarnation was the six year old Gedhun Choekyi Nyima. This boy was recognised by the Dalai Lama on the 14th of May 1995.

China swiftly denounced the recognition, arrested the selection committee and detained the six-year-old boy together with his family. The Tashilhunpo monastery was purged and the Chinese launched a campaign requiring all leading monks, as well as Tibetan cadres, to denounce the Dalai Lama for making the announcement. In the following months virtually all top Tibetan lay men and religious officials in the TAR made public statement condemning the Dalai Lama’s announcement. However, this was done without rejecting the choice of the boy himself – thereby leaving open the possibility that the Chinese could make the same choice. Further, the campaign was not limited to the TAR.

In November 1995 the Chinese government ordered Tibetan religious leaders to participate in a closed meeting at a military-owned hotel in Beijing to declare that the child that the Dalai Lama had selected was not the true re-incarnation of the Panchen Lama. After this the Chinese government officially rejected the child, already widely accepted by the Tibetans, in favour of a child chosen by the Chinese authorities. This new incarnation was to be forced upon the Tibetan

⁷⁶ Rapport från den Svenska MR-delegationens besök i Kina och Tibet 20-30 mars 1994, (note 72), 41.

people. The new choice was installed as the 11th Panchen Lama at a closed midnight ceremony in Lhasa.⁷⁷

The Panchen Lama is one of the most important religious characters in the form of Buddhism practised by the Tibetans. The Panchen Lama plays a central role in the religious life of the Tibetans together with the Dalai Lama. It is the Dalai Lama who appoints the new Panchen Lama when he dies and the Panchen Lama appoints the new Dalai Lama when he dies. When the Chinese gained control over the Panchen Lama they also gained control over the appointment of the next Dalai Lama and as a direct consequence also over the Tibetan people. This have therefore become one of the most serious violations against the religious freedom of the Tibetans promised to them in the 17-point agreement. Whatever reason there can be for the Chinese to try to gain religious control in Tibet it can never defend the fact that a six-year-old boy is detained.⁷⁸

3.2.5 China's population control policies in Tibet

The Chinese population control policy in the TAR has been conducted in three stages: (1) In 1975 propaganda for family planning was launched by the Chinese authorities, (2) In 1980 the same population control policies were enforced for Han- Chinese in Tibet as for Han Chinese living in the rest of China and (3) In 1985 population control policies were enforced on Tibetan workers and cadres, they were allowed to have two children sometimes three or four.⁷⁹

The policy and its subsequent implementation have generally been characterised by the following principal features: (1) Couples must apply for birth permits before they start pregnancy, (2) The national average target for births per couple is 1.6. One child is generally encouraged, though another chance can be given to rural couples, especially if the their first child was a daughter. A third is forbidden, (3) After having the permitted number of children, women are required to wear an IUD and (4) Those who have proceed with unauthorised pregnancies generally must have them terminated; after that one spouse is sterilised.⁸⁰

Tibet has always had a very small population. The population has been controlled over the centuries by sending one boy from every family to become a monk. It is also quite common that one girl is sent to become a nun. Even with the increasing number of Han Chinese in Tibet and the limitation on the number of monks and nuns the population of the TAR is just 1% of that of China's. There has never

⁷⁷ International Commission of Jurists, (note 1), 285-286.

⁷⁸ The information is available at: [http://www.tibet.a.se/information om Tibet/Panchen Lama](http://www.tibet.a.se/information%20om%20Tibet/Panchen%20Lama), Date of entry: 1999-04-28.

⁷⁹ Rapport från den Svenska MR-delegationens besök i Kina och Tibet 20-30 mars 1994, (note 72), 37.

⁸⁰ International Commission of Jurists, (note 1), 307-308.

been any tradition of birth control in Tibet and a termination of a pregnancy through an abortion runs counter to the Buddhist beliefs.

The regulations governing the different Tibetan autonomous areas are usually more permissive towards Tibetan families than towards Chinese families. The application of these rules differ some what in their application between the eastern Tibetan areas and the TAR. It was generally so that the policies began earlier and were stricter in the eastern of Tibet. In the TAR the rules were enforced later and were applied first in the towns and only more recently in the rural areas. The first set of guidelines was, as mentioned above, implemented in the TAR in 1985. These guidelines were followed by official regulations in 1992. The regulations from 1992 established that Tibetans cadres, workers, staff of enterprises and residents in cities and towns were allowed to have two children, with three years separation between the first and the second child. The Chinese families living under the same circumstances were only allowed to have one child. Tibetan families living in the rural areas or as nomads were allowed to have three children under some circumstances.

The population control policies were implemented in a quite flexible way in the beginning but after a couple of years it proceeded in a more determined way. So-called birth control teams started to perform abortion and forced sterilisation in and around the Lhasa area. A pilot programme in Gyatsa county, 150 km east of Lhasa, resulted in the sterilisation of 700 of the 4000 women in childbearing age in the area. In 1990 it was reported that 3% of the 600,000 women in childbearing age in the TAR had been sterilised.⁸¹

The application of these rules has become more uniform within the TAR and are conducted in line with a policy of “penalty and reward”. There are rewards for late marriages, late births, UDI insertion, abortions as well as for sterilisation. The rewards consist of priority arrangement for the child’s medical care, school attendance, enrolment at the universities and work within factories or in the army. The penalties for not following these rules are a fine of 500 yuan for the first extra birth and 1000 yuan for the second extra birth. This can be compared with the 1995 official annual per capita within the TAR which is an income of 960 yuan for rural dwellers and 5,036 for urban dwellers. In addition to the fines there is a rule stating that neither members of the couple will be promoted, given a raise, enjoy a bonus or be awarded the status of an advanced worker. The extra child is also excluded from getting extra grain or oil allotments. In some cases other penalties than those mentioned have been used. The parents can be excluded from the right to stand for elected positions. The child may not get a residence permit without which it is in most cases excluded from food rations, access to school, health care and governmental employment.

⁸¹ International Commission of Jurists, (note 1), 310.

3.3 The Tibetan government in exile

The Tibetan Government has been re-organised according to modern international democratic principles.⁸² It administers all matters concerning Tibetans in exile, including the re-establishment, preservation and development of Tibetan culture and education. It also leads the struggle for the restoration of Tibet's freedom. The Tibetan people, both inside and outside Tibet, consider the Government in Exile based in Dharamsala North India, to be the sole legitimate government of Tibet.

The Tibetan community in exile functions in accordance with the Charter for Tibetans in Exile. It is administered by the Kashag (Council of Ministers), which is accountable to the Assembly of Tibetan People's Deputies (a democratically elected parliament). The Tibetan Supreme Justice Commission functions as an independent judiciary body.

The Assembly is the highest elected legislative organ of Tibetans in exile. The present Assembly is the eleventh in order since its inception. It has 46 elected members representing the three provincial regions and five major religious sects of Tibet. All legislative powers and authority are vested in the Assembly. Legislation further requires the assent of His Holiness the Dalai Lama. Thus, the Dalai Lama makes these decisions after the consultation of the Assembly and the Kashag. Any Tibetan who has reached the age of 25 years has the right to contest elections to the Assembly without discrimination on grounds of sex, religion, and social origin. Every Tibetan who has reached the age of 18 years is enfranchised without any discrimination as mentioned above.⁸³

The Central Tibetan Administration (CTA) is comprised of three autonomous commissions: Election, Public Service and Audit and seven departments: Education, Security, Religion and Culture, Home Affairs, Information and International Relations, Health, and one Council for taking care of the planning.

The CTA has successfully rehabilitated Tibetan refugees, mainly through the assistance of the Government of India and various international voluntary organisations, in 14 major and 8 minor agricultural centres, 21 agroindustrial settlements and 10 handicraft centres throughout Nepal and India. There are also 83 Tibetan schools in India, Nepal and Bhutan with approximate 23,000 children currently enrolled.

⁸² The Charter of the Tibetans-in-exile (1991) can be found at: <http://www.tibetict.org/materials/tibet/>, Date of entry: 1999-04-29.

⁸³ This information is available at: <http://www.tibet.com/>, date of entry: 1999-04-28.

More than 117 monasteries have been re-established in exile. Further, a number of institutions, including the Tibetan Medical and Astrological Institute, the Library of Tibetan Works and Archives, the Tibetan Institute of Performing Arts, the Centre for Tibetan Arts and Crafts - all based in Dharamsala, the Central Institute for Higher Tibetan Studies in Sarnath and Tibet House in New Delhi have also been re-established. These institutions help to preserve and promote an ancient heritage and culture facing imminent extinction in its own homeland, whilst enhancing the cultural life of the exile community.

The Kashag or the cabinet of the CTA is responsible for exercising executive powers subordinate to His Holiness the Dalai Lama. The members of the Kashag are elected by the Assembly of Tibetan People's Deputies. The Kashag is the highest executing organ of the CTA.

The Tibetan Supreme Justice Commission was established in 1992. It symbolises the judiciary part of CTA. The Tibetan Supreme Justice Commission is responsible for the settlement of cases and controversies of a purely civil nature which are internal to the refugee community. Disputes will be settled more or less in accordance with arbitrary procedures. The Commission will establish local justice commissions in each settlement and circuit justice commissions (equivalent to high courts) in six different zones.

There is provisions for three statutory bodies in the Charter; Tibetan Public Service Commission, Tibetan Election Commission and Office of the Auditor General. The main function of the Public Service Commission is to appoint, recruit, train, and promote the civil servants of the CTA. The Tibet civil service consists at the moment of 350 civil servants.

The Election Commission's task is to conduct and oversee the election to the Assembly of Tibetan People's Deputies, the local people's assemblies and hold referendums. It should also arrange the election of members to the Kashag; the Chairman of the Kashag and other such elections as stated by the provisions of the Charter. The Office of the Auditor General is responsible for auditing the accounts of all departments and subsidiaries of CTA, including all public Tibetan institutions like co-operatives and societies, educational institutes, trading concerns, health centres and hospitals.

The two most important departments are the department of Religion and Culture and the department on Information and International Relations. The department of Religion and Culture was set up in 1959 to preserve and promote understanding of Tibetan religion and culture. It acts to preserve both the Buddhist and the Bonpo traditions. This department also works for the re-establishment of the monasteries in exile. In order to keep the traditions and religion alive it also publishes religious and cultural writings.

The department on Information and International Relations came into being in 1972. It distributes information about Tibet and oversees the CTA's international relations. It publishes journals in Tibetan, Hindi, English and French as well as books in Tibetan and English on different aspects of the Tibetan issue. The department of Religion and Culture monitors human rights, environmental issues and the condition of women in Tibet. This Department co-ordinates the working of the Tibetan offices abroad. There are currently 11 offices in New York, Washington D.C., Paris, Geneva, London, Zurich, Budapest, Moscow, Tokyo, Canberra and Kathmandu. The Department also liaises with Tibet support groups around the world, as well as other organisations which deal with Tibetan issues.⁸⁴

3.4 Is the system of autonomy working in Tibet

At the moment the ethnic Tibetan territory is divided into one autonomous region, the TAR which comprises less than half of the historical Tibetan territory and less than half of the Tibetan population, and other autonomous areas within the provinces of Qinghai, Gansu, Sichuan and Yunnan. Thus, there is no united autonomous region consisting of all the areas within which the Tibetans originally were the majority population. Today the Tibetans are minorities in 5 out of the 10 TAPs.⁸⁵

The ICJ has developed a concept of what rights an autonomous region should enjoy in question of self-government, in a meaningful sense. According to this model a fully autonomous territory should include most of the following: (a) A locally elected legislative body with some independent authority over local concerns, including control or influence over primary and secondary education, language and land use and planning, (b) A locally elected chief executive, (c) An independent local judiciary with full responsibility for interpreting local laws and (d) Joint authority over matters of common concern, such as ports, police and exploitation over natural resources. This concept would also include the favouring of the maintenance of the structures of a traditional government already in place.⁸⁶ I will in this part use this concept for examining the de facto autonomy enjoyed by the Tibetans today.

The Tibetan autonomy is based on two sets of rules, the 17-point agreement from 1951 and the Chinese's constitution and laws. The 17-point agreement gave the Tibetan people a right to exercise national regional autonomy under the unified leadership of the Central People's Government. It was specifically agreed that the political system in Tibet would not be changed. The same went for the status and functions of the Dalai Lama. These specific promises were only intended to be

⁸⁴ Ibid.

⁸⁵ International Commission of Jurists, (note 1), 87-88.

⁸⁶ International Commission of Jurists, (note 1), 83.

applied in what was to become the TAR, in the other areas the Tibetans were only minorities among other minorities without the right to autonomy.

The Chinese legislation covering this area is the 1982 Constitution and the 1984 Law on Regional Autonomy. The Constitution talks about four different institutions, the people's congress, people's governments of autonomous regions, autonomous prefectures and autonomous counties. They have the following order of precedence; the local people's governments are subordinate to the State Council and accountable to the local people's congress. The local people's congress is subordinate to the National People's Congress, which is the PRC's supreme legislative body.⁸⁷ The described organs of self-government exercise the autonomy within the limits of their authority as prescribed by the Constitution and the Law of National Regional Autonomy and other laws, and implement the laws and policies of the state in the light of the existing local situation.⁸⁸

The autonomy is very much limited by the fact that article 116 of the Chinese Constitution states that the people's congress of an autonomous area has the power to "*enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities of the area concerned. Such regulations must be submitted for approval to the Standing Committee of the National People's Congress*". This means that every decision made by the autonomous institutions have to be approved by the Chinese national assembly. In the light of these fact one can really question the real autonomy of the Tibetans.

The same passus can be found in the Law on National Regional Autonomy from 1984. First there is a right given to make decisions in the light of the economic and cultural characteristics of the people, then there is a duty to send all decisions to the Standing Committee for approval. Also amendments and non-implementation of decisions or instructions of state organs at a higher level on the grounds that the laws or regulations do not suit the conditions for an autonomous are to be approved by the Standing Committee.⁸⁹ In the fields of culture and language the persons of minority nationalities are allowed freedom of religious belief. However, the central government retains the right to restrain religious activities in the interest of public order, health and education.⁹⁰

It is evident that the restrictions on the autonomous powers are considerable. Certain power are subjected to the approval of the Central People's Government, the State Council or the National People's Congress. Other powers, as in the case of the fields of culture and language, are restricted in accordance with legal stipulations. It should also be kept in mind that all the

⁸⁷ The Chinese Constitution of 1982, art. 110.

⁸⁸ Ibid., art. 115.

⁸⁹ Law on National Regional Autonomy of 1984, art. 20.

⁹⁰ Ibid., art. 11.

decisions made have to be in accordance with the state plans and it is the interests of the state as a whole that should be the guiding factor in all decisions made. If the Law on National Regional Autonomy is taken in conjunction with the Constitution the government structure and powers are not very much different from the government structure and powers at the regional levels of government.

There are a number of other factors that have also undermined the practical existence of real Tibetan autonomy. First of all stands the fact that the real power in China is vested in the CCP. The party structure runs parallel to the governmental structure and exerts a great deal of formal and informal influence over the governmental organs on each level. It is a major part in ensuring that institutions on the lower governmental levels, as the autonomous governmental organs, adhere to central party guidelines. Since it is in the CCP that the real power is vested one would think that Tibetans should obtain posts in the party on positions regarding the TAR. This is however not the case. The position of TAR CCP Secretary, which is considered to be the most powerful position within the TAR, has never been held by a Tibetan. The same goes for the majority of other top positions in the CCP in Tibet. There is further not much chance for the Tibetans to become party members since it is required that one should be an atheist. This is a requirement that not many of the Tibetans can live up to.⁹¹

Another key element is the heavy presence of the Chinese security forces in the TAR. The PLA, which is very closely related to the CCP, constitutes the main element of Chinese control in the TAR. The PLA does not as a rule accept religious believers and therefore there is only one Tibetan officer in the Tibet Military District out of 31. This fact, that the Tibetans do not hold the key positions is a pervading characteristic. When a Tibetan holds the highest position it is almost always true that the vice post is held by a Chinese exercising the de facto power.⁹²

The scenario that I have now described seen together with the religious oppression, the treatment of dissidents and population transfer mentioned above, is not showing us a picture of a people which is in possession of the rights described in the beginning of this part. Instead it becomes clear that the Tibetans control over what is considered to be their affairs is very limited. In the White Paper on Tibet, presented by the Chinese government in 1992, it is stated that the TAR has exercised political autonomy since 1965. This statement, as we can see from the above mentioned, is nothing but an embellished paraphrase.

⁹¹ International Commission of Jurists, (note 1), 96-97.

⁹² International Commission of Jurists, (note 1), 97-98.

3.5 Why does China need Tibet

There are several reasons behind China's endless struggle to keep Tibet within its borders. First of all there is the geographical factor. The TAR possesses a strategic position in the border country between several states. The TAR is bounded by India, Nepal, Bhutan and Burma. China is very reluctant to lose this important area. There are also areas connected to the TAR that are so-called disputed areas between China and India. China is afraid that it will also lose these areas if they let the TAR and the rest of Tibet go.

Second, China is composed by fifty-six officially recognised ethnic groups or nationalities.⁹³ These about 90 million peoples populate an area of 60% of Chinese territory. It would be hard for China to argue on why one of these groups and not the others should have the right to form a separate state. China does not consider the special features of Tibet and its former independence. China would also lose a considerable part of its territory in letting Tibet go. Tibet constitutes one fourth of the total area of China. This area is needed in order to have room for the growing population of 1.2 billion. The communist goal is to keep the nation together and for all the people within it to work for what is considered to be the best of the country.

Third, Tibet is very rich on natural resources. The great woods in the South-east are very important for the forest industry. Further, all the great rivers in Asia have their sources in Tibet. These rivers are used by the Chinese to produce electricity from hydroelectric power plants. Also the lakes in Tibet, many of the holy to the Tibetans, are going to be used to produce electricity in the future. Tibet is very rich on minerals. It possesses reserves of 126 different minerals, with the world largest deposit of lithium, chromium, copper, boron and iron. Further, it has a large deposit of uranium, which is needed in the Chinese nuclear industry. Oil is also produced in Tibet, particularly in Amdo, where 1 billion metric ton of crude oil is produced every year. China needs these resources, and almost all of the minerals, oil and wood from Tibet are taken to China to be refined or exported. The Tibetans is neither allowed to participate in the planning for their natural resources nor to gain from the profits.

Finally, the Tibetan plateau is idealistic for the storage and firing of nuclear weapons. Especially India has reacted very strongly to this fact since Chinese military and navy practically surrounds it. Chinese technology is also spread to Pakistan. The five nuclear tests that India carried out between the 11th and 13th of May last year was partly a reaction to China's nuclear weapons in Tibet.

3.6 Views of selected countries and relevant

⁹³ Minority Rights Group, World Directory of Minorities, 2ed, 603.

bodies on the Tibetan situation and the question of self-determination

3.6.1 The United nations

The UN has been concerned with the question of Tibet and the human rights situation there since it passed the first General Assembly Resolution on the subject in 1959. Thus, it was particularly in the end of the 1950's up to the mid 1960's that the UN concerned itself with the question of Tibet. The UN has passed a total of three General Assembly Resolutions on Tibet and the Sub-Commission of the Human Rights Commission has passed one Resolution.⁹⁴ There have also been several statements from different thematic special rapporteurs and working groups on the situation in Tibet as well as observations of the UN Committee on Racial Discrimination.⁹⁵

3.6.1.1 The first United Nations Resolution

On the 9 September 1959 Tibet appealed its case to the UN for the second time, since there had been no peaceful solution to the Sino-Tibetan conflict after the last appeal in 1950. The Dalai Lama claimed in this appeal that Tibet was a sovereign state based upon the Thirteenth Dalai Lama's declaration of independence in 1912, the Simla Convention from 1914, Tibet's World War II neutrality and the recognition of Tibetan passports used by the 1946 Tibetan Trade Delegation. The appeal of the Dalai Lama called upon the UN to recognise the violations of Tibetan independence. A second appeal was also launched on humanitarian grounds, including dispossession of Tibetans' property, mass murder, persecution of religion and forced labour. Notwithstanding the fact that the appeal was built on the violation of Tibet's independence it was handled in the UN under the label of human rights violations, including the right to self-determination.

On the 28 September Ireland and the Federation of Malaya handed over a proposition to include the Tibetan question on the General Assembly's agenda.

⁹⁴ United Nations General Assembly Resolutions 1353 (XIV) 1959, 1723 (XVI) 1961, 2017 (XX) 1965 and Sub-Commission Resolution 1991/10, E/CN.4/Sub.2/1991/10.

⁹⁵ Special Rapporteur on Torture, E/CN.4/1995/34, Working Group on Enforced Disappearances, E/CN.4/1995/36, Special Rapporteur on Extrajudicial Executions, E/CN.4/1995/6, Special Rapporteur on Religious Intolerance, E/CN.4/1995/91, Special Rapporteur on Religious Intolerance, Addendum, E/CN.4/1995/91/Add.1, Committee against Torture, A/51/44 (1996), Concluding Observations of the UN Committee On Racial Discrimination 1996, Special Rapporteur on Extrajudicial Executions, E/CN.4/1996/4, Special Rapporteur on Torture, E/CN.4/1996/35, Special Rapporteur on Torture, Addendum, E/CN.4/1996/35/Add.1, Working Group on Enforced Disappearances, E/CN.4/1996/38, Working Group on Arbitrary Detention, E/CN.4/1996/40, Special Rapporteur on Religious Intolerance, E/CN.4/1996/95.

This started up a serious debate about the relationship between the violation of fundamental human rights and article 2 (7) of the UN Charter which states a prohibition against intervention in matters which are essentially within the domestic jurisdiction of states.

On the 21 October 1959 the General Assembly voted on the adoption of a Resolution on the Question of Tibet. This resolution was later adopted by a vote of 46 in favour, 9 against and 26 abstaining.⁹⁶ The Resolution concluded that the Tibetan people like all others had the right to civil and religious freedom as being a part of the fundamental human rights and freedoms. It also acknowledged the cultural and religious heritage of the people of Tibet and the autonomy which they had traditionally enjoyed. It finally called for the respect of the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.⁹⁷

3.6.1.2 The Second United Nations Resolution

On the 19 August 1960, Malaya and Thailand proposed that the question of Tibet would be considered once again by the General Assembly. They stated that the fundamental human rights of the Tibetan people continued to be disregarded by the Chinese government. The draft resolution submitted by these two countries contained a referral to the violations of human rights in Tibet. It also spoke of, for the first time in relation to Tibet, the principle of self-determination of peoples and nations.

The vote for the inclusion of the question of Tibet in the General Assembly was 49 in favour, 13 opposed and 35 abstaining. However the issue of Tibet was not discussed during the General Assembly's 15th Session due to time constraints. The Tibetan issue was brought about again by Malaya and Thailand during the General Assembly's 16th Session in 1961. These two countries were soon joined by Ireland and El Salvador and together they submitted a draft resolution on Tibet. The question of Tibet was brought up for discussion on the 26 September 1961. By the vote 48 in favour, 14 opposed and 35 states abstaining Tibet was put on the agenda of the General Assembly once again.⁹⁸

The discussion about Tibet was resumed in the General Assembly on the 19 of December 1961. During the debate about the draft resolution presented by Malaya and Thailand Tibet was discussed from the perspective of a peoples right to self-determination. The Soviet Union and its satellite states opposed to the whole debate about Tibet on the ground that they considered the question of Tibet as non-existent and as being a violation of the Charter of the UN. This was due to the fact Tibet was considered to be a part of China.

⁹⁶ International Commission of Jurists, (note 1), 59-61.

⁹⁷ General Assembly Resolution 1353 (XIV), See Supplement D.

⁹⁸ UN Doc. A/PV.1014, 25 September 1961.

Despite the attitude of the eastern block the resolution was adopted by a vote of 56 in favour, 11 opposing and 29 states abstaining.⁹⁹ In the resolution the General Assembly is gravely concerned with the continuation of the violations of fundamental human rights in Tibet. It further states that these events is in violation of the UN Charter and the UDHR which both includes the principle of the right to self-determination of peoples and nations. The resolution finally called for the cessation of the practices which deprives the Tibetan people of their fundamental human rights and freedoms including the right to self-determination.¹⁰⁰

3.6.1.3 The third and final appeal by Tibet to the United Nations

The discussion about a third resolution on Tibet was based on the information put forward by the Panchen Lama in 1962. He presented a 120-page report best known as the “70,000 Character Petition” to Zhou Enlai China’s premier. This was a detailed study on the tragedy that was taking place in Tibet. The report was above all focused on the starvation of the Tibetan people by the Chinese and the fear of the destruction of the Tibetans as a distinct people.

Later in 1964 the ICJ presented a report based on the statements from Tibetan refugees in India. They confirmed the picture given by the Panchen Lama in his reports. Further, the report stated that the domination and persecution of the Tibetan people by the Chinese authorities had continued despite of the efforts made by the UN. A new appeal from the Dalai Lama together with the ICJ report lead to the issue of Tibet being introduced at the UN for a third time. El Salvador, Ireland Thailand, Philippines, Malaysia, Malta and Nicaragua presented the draft resolution, submitted in August 1965. During the discussion about Tibet various delegations reiterated the Tibetans right to self-determination in unequivocal terms and expressed their deep concern for the human rights situation in Tibet. The resolution was approved by a vote of 43 in favour, 26 opposed and 22 states abstaining.¹⁰¹

The resolution followed in pattern the two previous resolutions with the addition it the fifth paragraph that all states should use their best endeavours to achieve purposes of the present resolution.¹⁰²

In relation to the passing of this resolution the TAR was created by the Chinese government. A process of local single-candidate elections established the TAR People’s Congress, which convened on the 1 September 1965 to formally establish the TAR. The Chinese government accompanied this creation with much propaganda and fanfare calling it the achievement of Tibetan self-governance.

⁹⁹ UN Doc. A/PV.085, 20 December 1961, para. 108.

¹⁰⁰ GA Res. 1723 (XVI), See Supplement E.

¹⁰¹ UN Doc. A/PV.1403, para. 100.

¹⁰² GA Res. 2079 (XX), See Supplement F.

However, the actual situation was that the political authority remained in the hands of the CCP Tibet Regional Committee and the PLA which both consisted of almost exclusively Han Chinese.

3.6.2 The United States

The U.S. has under a long period of time been supporting the Tibetan struggle for independence. In several Senate and Congress Resolutions the support for the Dalai Lama has been expressed. Further, The U.S. has on several occasions expressed that the objective of U.S. policy towards China is to promote dialogue between the PRC and the Dalai Lama in order to find a solution to the problem. Generally, the U.S. has lately begun to involve the respect for human rights in its foreign policy towards China and Tibet.

In 1997 The U.S. named a Special Co-ordinator for Tibet. The central objective of this position is to promote dialogue to resolve the issue of Tibet and to vigorously promote human rights, cultural and religious freedom of the Tibetans. This post was however not created to start a process of developing diplomatic relations with Tibet or create an Ambassador to Tibet or to Dharamsala. The U.S. is the first country in the world to establish such a position. In relation to creation of this post President Clinton and Secretary Albright pledged to make Tibet a more important issue in bilateral relations with China and to raise the issue of negotiations with Chinese President Jiang Zemin during the state visit he was to attend in the fall of 1997.¹⁰³

Greg Craig was appointed to become the first special co-ordinator for Tibetan issues. Later, the post as special co-ordinator was passed over to the US Assistant Secretary of State for Population, Refugees, and Migration, Julia Taft. China reacted very strongly to this appointment and stated that it was "staunchly opposed" to the appointment of a new US co-ordinator for Tibetan affairs. Spokesman Sun Yuxi said Tibet was an inalienable part of Chinese territory and that Tibetan issues were purely internal affairs which no other country had the right to interfere with.¹⁰⁴

The U.S. has also participated in the support for the Tibetans by submitting resolutions to the UN. As late as on the 16 of April this year the United States submitted a draft resolution criticising the violations by China to the United Nations Commission on Human Rights. The U.S. text expressed concern about abuses including unfair trials, harsh sentences and "increased restrictions" in Tibet. It welcomed changes in criminal procedure law, but called on China to release political prisoners, including those jailed for "non-violent counter-revolutionary

¹⁰³ This information is available at: <http://www.tibetict.com/materials>, Date of entry: 1999-04-30.

¹⁰⁴ AFP, Beijing 21 of January 1999.

activity". It also called on China to protect the cultural and religious identity of Tibet. The U.S. appealed to the EU to sponsor the resolution but it did not succeed in finding enough co-sponsors.

3.6.3 The European Union

The first response from the EU in relation to the situation in Tibet was a resolution by the European Parliament, passed on 14 October 1987, on the issue of supporting the Five-Point Peace Plan unveiled by the Dalai lama under his visit in Washington. The EU, through the European Parliament, has since this resolution was concluded continued its condemnation of the human rights violations in Tibet. It has also recognised the fact that China has invaded Tibet and that it is in fact occupying the territory of Tibet.

In a resolution from 1995 the European Parliament stated that the invasion and occupation of Tibet by the PRC was illegal. This is due to the fact that before the invasion by China in 1950, Tibet was recognised de facto by many countries as an independent state. Further, it stated that Tibet is an occupied territory according to the principles laid down in international law and the resolutions of the United Nations.¹⁰⁵

In June 1988, the Dalai Lama approached the members of the European Parliament with the Strasbourg Proposal, mentioned above. This was the first time that the Dalai Lama officially accepted President Deng Xiaoping's precondition of giving up the thought of independence in exchange for a dialogue.

The European Parliament has also been involved in the question of the disappearance of the Panchen Lama. On the 13 July 1995 the European Parliament adopted a resolution on the situation in Tibet and the disappearance of the six-year old Panchen Lama. It stated that it was '*gravely concerned at reports of the abduction of a six-year old Tibetan boy, Gedhun Choekyi Nyima, and his parents, by the Chinese authorities shortly after he had been recognised by the Dalai Lama as the latest reincarnation of Tibet's second most important spiritual leader, the Panchen Lama, who died in 1989*'.¹⁰⁶

The prevailing object of the European Parliament has been to promote the dialogue between the Chinese and the Tibetans. This has been made clear throughout all the resolutions passed by the Parliament. The latest resolution by the European Parliament was adopted on the 13 May 1998. This resolution was passed in relation to the hunger strike in New Delhi on the 39th anniversary of the Tibetan insurrection against the Chinese. Six Tibetan

¹⁰⁵ European Parliament Resolution on the Disappearance of Panchen Lama, Strasbourg, 13 July 1995.

¹⁰⁶ Ibid.

activists, Dawa Gyalpo, Dawa Tsering, Karma Sichoe, Palzom, Yndung Tsering and Kunsang, went on hunger strike, and on the 49th day of the strike, the Indian police decided to detain the pursuant to a law forbidding suicide. When the police intervened, Thunpten Ngodup, an elderly Tibetan who had been looking after the strikers from the start, set fire to himself as a sign of protest and later died in a New Delhi hospital. This kind of action reflects the desperation felt by the Tibetans after forty years of Chinese occupation.

In the resolution the European Parliament was determined to take action against the repression in Tibet. First of all it acknowledged the visit of its troika of EU ambassadors to China to Tibet between 1 and 10 May which forms a part of the EU-China dialogue on human rights with the aim of collecting information on the social, economic and political situation in Tibet. Further, it stated that the Council and the Commission of the EU should within their respective powers take steps to ensure the appointment of a Special UN Rapporteur on Tibet. In relation to this the member states should take steps to ensure that the Tibet question was included without delay on the agenda for the next session of the UN General Assembly. In respect of the work within the EU the resolution called for an appointment of an EU representative for Tibet. Finally, the resolution called on the Chinese government to open political negotiations with the Dalai Lama about the future status of Tibet.¹⁰⁷

3.6.4 India

India's involvement in the question of Tibet is caused by its geographical position as a close neighbour to Tibet, its long history of relations directly with Tibet, the great number of Tibetan refugees in India and the Indian acceptance of letting the Tibetan government in exile reside on its territory.

During the discussion in the UN General Assembly about the first UN resolution on Tibet India questioned the purpose of debating the situation in Tibet in the UN on the ground that it considered it unlikely that any state would send an army to China or Tibet. Instead the expression of opinion would produce reactions of the Chinese government that would do even more harm to the Tibetan people than they had already gone through. Further, the Indian government stated that the path of reconciliation was the only constructive path.¹⁰⁸

India maintained this attitude towards Tibet during the drafting and passing of the second resolution in 1959. This position was based on several factors. First, the friendly relations with China that was not to be disturbed. Second, India's role as a mediator in international conflicts could have been severely damaged if India

¹⁰⁷ European Parliament Resolution on Tibet, Strasbourg 13 May 1998.

¹⁰⁸ International Commission of Jurists, (note 1), 61.

had gone against China in this question. India's ambition during this period was to play a role as a mediator in the Cold War conflicts. India thought itself suited for this role due to its supposed moral authority and its non-aligned position in the East-West conflict. Third, a fundamental premise of Indian policy was that peaceful relations among the major powers of Asia were possible in the post-colonialist period.¹⁰⁹

The position held by India during this period was explained during the discussions of the last General Assembly resolution on Tibet in 1965. The Indian delegation explained that its opposition against discussions concerning Tibet at the UN in 1950 was based on the assurances given to the Indian government by the Chinese that it would settle the problems in Tibet by peaceful means. The maintenance of this attitude throughout the discussions in 1959 was due to *"hope against hope that wiser counsel would prevail among the Chinese"*.¹¹⁰

India now declared that it supported the cause of the people of Tibet fully and wholeheartedly. The statement by India concerning the human right violations is one of the strongest, out spoken by a state, related to the question of Tibet. It stated *"The passage of time has completely belied our hopes. As the days pass, the situation becomes worse and cries out for the attention of all mankind. As we know, ever since Tibet came under the strangle-hold of China, the Tibetans have been subjected to a continuous and increasing ruthlessness which have few parallels in the annals of the world. In the name of introducing 'democratic reforms' and of 'fighting counter-revolution', the Chinese have indulged in the worst kind of genocide and the suppression of a minority race"*. The Indian delegation concluded its statement by saying *"[t]he naked truth is that the Chinese Government is determined to obliterate the Tibetan people"*.¹¹¹

As for the situation today it should be added that the nuclear weapons nowadays placed in Tibet gives the Indian government an incentive to object even more to the Chinese rule in Tibet. If the Chinese were to lose the power in Tibet these weapons would surely not be a threat to India anymore.

3.6.5 El Salvador

El Salvador has played a major role in bringing attention, within the UN, to the problems of Tibet. It has been the driving or supporting force behind all three General Assembly Resolutions described above. On the 14 November 1950 it brought the Tibetan case to the UN for the first time. This did not, as stated

¹⁰⁹ Warren W. Smith, (note 8), 285.

¹¹⁰ UN Doc. A/PV.1394, 14 December 1965, paras. 29-30.

¹¹¹ Ibid., paras 38-40.

above, lead to any resolution due to the fact that it was considered that the problem could be solved by peaceful means.

During the process of negotiating the first resolution in 1959 El Salvador made an important statement concerning the non-intervention principle in the UN Charter article 2 (7). El Salvador held that even a less than totally independent state, under some form of suzerainty or protection by another state, was still a state under international law. It can clearly be determined from these early statements of El Salvador that it supported Tibet's struggle for independence. It also brought up the question of Tibet's political status as an issue deserving special consideration by the UN. El Salvador proposed that a UN Commission be appointed to ascertain the wishes of the Tibetans with regard to their political allegiance.¹¹²

There was no appointment of a UN Commission but El Salvador continued to put forward the question of Tibet. At the General Assembly's 16th Session on 18 August 1961 El Salvador joined the efforts of Malaya and Thailand and submitted the draft resolution on Tibet which later was adopted by a majority of states. During the debate about this draft resolution El Salvador held a long speech forcefully in favour of the inclusion of the Tibetan issue on the agenda of the General Assembly. El Salvador reminded the other countries that it had been the only country to take up the Tibetan appeal in 1950, but unfortunately, it was the view of the United Kingdom and India that had prevailed. It further stated that a discussion of an issue in the UN was not equivalent to actual intervention in the domestic affairs of any state and that the General Assembly had already in 1959 pronounced itself to the effect that it was competent to discuss the question of Tibet. El Salvador concluded by saying that *'the question of Tibet has not finally been settled simply because Communist China has succeeded in achieving domination over the small country of Tibet'*.¹¹³

¹¹² Warren W. Smith, (note 8),496.

¹¹³ General Assembly Fifteenth Session, 19 August 1960, UN Doc. A/4444.

4. The definition of the term “peoples”

4.1 Introduction

This part of the thesis is devoted to an attempt to find a definition of the term “peoples”. This is not an easy task since there exist no clear, undisputed definition in international law. The method used here is therefore to examine existing instruments and customary law that has developed in the area as well as three significant cases to be able to point out the important characteristics. The characteristics gathered from this material will later be used in order to conclude if the Tibetans can be regarded as a people with the right to self-determination.

Initially I will make some short remarks about different ways of looking upon the concept of peoples that can be helpful in the further search for a definition. First of all it can be interesting to see if it is possible to make a negative definition of the term people. This means trying to see what is not included in the concept. As will be showed later there are major differences between a minority and a people. It can be concluded that a people are not a minority, and from this we can derive a lot of facts that are of significance in defining the term. First of all a people are not based on an objective characteristic as ethnic origin, religion or language. The term “people” is not an ethnical term but rather a geographical term, as will be seen later above all in the cases presented.

Further, there is no demand on a people to identify themselves with the group in the way that minorities have to do in order to possess the subjective characteristic. As for the numerical factor, that plays an important role in the concept of minorities, it has no relevance in the case of a people. For instance in the case of South Africa the black population was characterised as a people, being a lot more than 50 percent of the population in the country. Finally, the time element is to be examined. There is no explicit time requirement to be found in the material concerning the definition of the term “peoples”. But it should be mentioned that in relation with the emphasis on the geographical element there are in the process of determining the association with the territory a certain focus on the time element. This will be further elaborated in the Palestine case.

After making these small remarks I will now turn to the work of finding a positive definition of “peoples”. It should be borne in mind in relation to this work that due to the fact that there is no clear majority opinion on this matter much of the conclusions have to be drawn from interpreting the various instruments and state practice.

4.2 The practice of the UN

4.2.1 The foundation of the basic right of self-determination

In order to understand the concept of “peoples” it is necessary to have an overview of the instruments containing this right. This is the fact, as will be showed below, because these instruments have been fundamental in the development of customary law. Further, it is in customary law we find the real keys to the concept of “peoples”. The grounds for peoples right to self-determination are contained in article 1(2) of the UN Charter¹¹⁴ and article 1 common to the two International Covenants of 1966.¹¹⁵ Non of these instruments contains a definition of the term “peoples”.

Further, it is of out most importance in relation to this chapter to be able to separate external self-determination from internal self-determination. The external form comprises the regulation of a people’s status *vis-à-vis* the outside world while the internal variant regulates a people’s affairs within a country.¹¹⁶

There have been emerge and consolidation of customary rules in two different ways as a consequence of the treaties and the Charter of the UN, mentioned above. First, in the process of elaborating the principle, states were able to take a stand, voice their views and concerns as well as to react to the statements of other states. All these pronouncements stimulated much debate and it made states adopt positions that were conducive to their gradual acceptance of general standards on the matter. Second, these instruments together with the monitoring mechanisms had a significant spin-off effect. Because a membership of the UN was practically to compare with a membership of the world community the number of member states increased and as an effect also the contracting parties to the two International Covenants. This set the stage for the gradual formation of general norms on the matter. There is no doubt that these treaties have been a major factor contributing to customary rules.

In relation to the emerge of customary rules in this case it is important to understand the fact that the formation of customary law as consisting of *usus* and *opinio juris* did not proceed in the usual way. Normally the first stage that emerges is the repetition of conduct by an increasing number of states leading to the point were it is believed that this conduct is not dictated by practical reasons but also imposed by some sort of legal command. In the case of self-

¹¹⁴ Charter of the United Nations of 26 June 1945, 1UNTS XVI.

¹¹⁵ International Covenant on Economic, Social and Cultural Rights, of 16 December 1966, 993 UNTS 3, and International Covenant on Civil and Political Rights, of 19 December 1966, 999 UNTS 171.

¹¹⁶ Alfredsson G., Different Forms of and Claims to the Right of Self-determination, in Clark D. and Williamson R. (editors), *Self-determination–International Perspectives*, 1996, 59.

determination the first initiative to conclude general standards was taken by the majority of the member states of the UN in General Assembly Resolutions. These Resolutions are neither *usus* nor *opinio juris* but a mechanism triggering (a) the taking of a legal stand by many member states of the UN and (b) the gradual adoption by these states of attitudes consistent with the Resolutions.¹¹⁷ This process and its incentive on the development of a definition of “peoples” is best described by putting special emphasis on two documents issued by the UN on the subject of decolonialisation.

4.2.2 The UN and decolonialisation; a historical perspective

Due to the fact that the principle of decolonialisation was applied in a very inconsistent way during the First World War it was not initially recognised as a fundamental right under the UN regime created in 1945. The principle of self-determination is mentioned twice in the Charter of the UN both times in the limiting context of developing “friendly relations among states” and in relation with the principle of “equal rights....of peoples”.¹¹⁸ Despite the political significance of the principle of self-determination it had not attained status of international law by the time of the drafting of the UN Charter or in the early years of the UN. This is a contributory element to the fact that there is no definition of the beneficiaries of the right to self-determination in the Charter.¹¹⁹

The concept of self-determination was further evolved under the political and moral imperatives of decolonialisation. What had been a weak principle of self-determination became a right to self-determination. The development of the principle is demonstrated by the General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960.¹²⁰ This declaration declares that: “*All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*”.¹²¹ The last paragraph reaffirms the sovereign rights of all peoples and their territorial integrity. There is a fundamental limiting principle in paragraph six of the declaration found in almost all UN documents relating to self-determination. It states “*Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN*”. This decreased the possibilities for peoples to really make use of their right to self-determination. The aim of the declaration is quite clear; all colonial territories have a right to self-determination. However, some uncertainties

¹¹⁷ Cassese A. Self-determination of peoples – A legal reappraisal, 1996, 69-70.

¹¹⁸ Charter of the United Nations, arts. 1(2) and 55.

¹¹⁹ Steiner H. and Alston P. International human rights in context – Law, Politics, Morals, 1996, 972-973.

¹²⁰ The Declaration on the granting of independence to colonial countries and peoples, 14 December 1960, General Assembly Resolution 1514 (XV).

¹²¹ *Ibid.*, Para. 2.

arises from the language used. In relation to the term “peoples” there is no definition given. A contrasting relationship is existing between, the title of the declaration which refers only to “colonial peoples”, and paragraph 2 which refers to “all peoples” as having the right to self-determination. Thus, it could be concluded that this declaration gives little guidance in relation to the definition of the term “peoples”. It in fact creates an uncertainty, which has put its impression on the further development of the definition of the term.

The next document issued by the UN, continuing the process of decolonisation, was the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Declaration on Friendly Relations).¹²² This declaration took many years to negotiate and it was later adopted by the General Assembly in 1970. The fact that it was adopted without a vote leads to the conclusion that this declaration states the existing international law.

In this context it should first be noticed that this declaration does not contain any definition of the term “peoples”. The declaration puts a limited scope of the beneficiaries of the right to self-determination. It mentions the “distinct” status of “a colony or other Self-governing Territory” as a pre-request for the right of self-determination. The use of the singular “people” in the same text clearly points out that the concept minorities is considered to be something different from the concept of peoples. Various minorities within a territory may not enjoy the same right of self-determination, as that possessed by a people as a whole.¹²³

Second, the Declaration on Friendly Relations follows the previous UN formulations and places the goal of territorial integrity or political unity as a principle that is superior to the principle of self-determination. The declaration states: “*Nothing in the forgoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples.....thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour*”. Thus, the principle of territorial integrity is only to be applied on states that conduct themselves in compliance with the principle of equal rights and self-determination of peoples. Further, the government has to represent the whole people belonging to the territory without any distinction to race, creed or colour.

¹²² Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, Contained in the Annex to General Assembly Resolution 2625 (XXV) of 24 October 1970, Adopted without a vote.

¹²³ Steiner H. and Alston P. International human rights in context, (note 119), 974-975.

This implies a requirement of internal democracy. The larger parts of the members of the UN were not willing to draw this far-reaching conclusion. It is more fair to say that what were agreed upon was that a state will not be considered representative if it formally excludes a particular group from participation in the political process on the grounds of race, creed or colour as was the case in South Africa and Southern Rhodesia. The democratic rule is an important element of the definition of “peoples” and the Declaration on Friendly Relations was the first step in establishing this link between internal and external self-determination. This will be further examined below in the three selected cases.

4.2.3 The practice of the Human Rights Committee

The Human Rights Committee (the Committee) is the organ monitoring the compliance with the ICCPR. As mentioned above, the right to self-determination is contained in article 1 of this covenant. It is quite surprising that there is no definition of “peoples” to be found in the work of the Committee since it should examine the reports of member states on measures adopted in order to give effect to the rights in the covenant. One can ask if it is possible to examine a measure, adopted in order to give effect to a right, without knowing who the beneficiaries are?

The work of the Committee has tended to take a restrictive view on self-determination. The manifestation of this has taken various forms. First, it has focused on the external dimension of self-determination. In a general comment from 1984 the Committee stated that parties to the covenant “*had to take positive action to facilitate realisation of and respect for the right of peoples to self-determination*”. However, it was added that, “*in so far as sovereign states is concerned, this action for the promotion of self-determination must be consistent with the states obligations under the Charter of the UN and international law*”.¹²⁴ This statement in part neglected the internal dimension of self-determination and this was further developed by the fact that the Committee implemented the principle of non- interference. States were debarred from inquiring as to whether internal self-determination was being implemented in another state.

In many reports from the member states to the Committee it is clear that the right to self-determination is completely ignored. This led to a statement in the 1984 comment that: “*with regard to paragraph 1 of article 1, states parties should describe the constitutional and political processes which in practice allow the*

¹²⁴ Report of the Human Right Committee to the General Assembly, UN Doc. A/39/40, 1984, 143, para. 6.

exercise of this right”.¹²⁵ However, the Committee did not elaborate on the kind of internal process it was referring to; they could range from federal systems to democracy to autonomy for groups.¹²⁶ It is quite clear from the state reports admitted over the years, even after the general comment, that there is a big confusion about the contents and beneficiaries of the right to self-determination. Further, it can also be concluded that the emphasis was laid on the concept of external self-determination even though internal self-determination was mentioned in some instances.

Second, in consistency with the trend described above, the committee tended in the outset to maintain a loose interpretation of the various provisions of the ICCPR concerning the democratic process mainly article 22 concerning freedom and association and article 25 concerning the right to take part in election and the conduct of public affairs. A single-party system was regarded as compatible with the concept of representative democracy under this interpretation. The Committee concluded that in particular pluralism and the rule of law were not always considered as necessary elements of a true democracy. The test determining whether a state was a democracy or not was rather loose and not very exacting.

Third, the monitoring system has played an important role in slowing down the process of defining “peoples”. The committee has consistently taken the view that communications under the Optional Protocol I only can be lodged by individuals. As a consequence peoples or peoples’ representatives have no right to invoke the rights set out in article 1 of the ICCPR. This viewpoint has been justified by arguing that the Optional Protocol I gives individuals right to complain to the Committee only in cases where a contracting state has violated a right which the individual is entitled to under the Covenant. Because the right to self-determination is a collective right individuals have no right to complain of an alleged breach.¹²⁷

In recent years the Committee has changed its practice towards giving attention to internal self-determination. It seems as if the Committee nowadays regards non-multi-party systems as not being compatible with the democratic model outlined in the ICCPR. Both committee members and state parties tend to put a greater focus on the internal self-determination as a truly democratic decision-making process. This will give the populations of sovereign states a chance to make a genuine choice between various political and economical options.

¹²⁵ Ibid., para.4.

¹²⁶ Alfredsson G., Different Forms of and Claims to the Right of Self-determination, (note 116), 58-59.

¹²⁷ Cassese A. Self-determination of peoples, (note 117), 64.

4.3 Decolonialisation; The Palestinian case

4.3.1 Brief background

When the Second World War was over in 1945, Palestine remained a territory administered by the United Kingdom under a mandate received from the League of Nations in 1922. After escalating violence due to increasing Jewish immigration and strong Arab opposition to this, the United Kingdom brought the matter before the UN. The same year the General Assembly established a committee consisting of 11 states to investigate all questions relating to the problem of Palestine and to later recommend a solution. A majority of the committee recommended that Palestine should be partitioned into an Arab and a Jewish state, with a special international status for Jerusalem. The minority of the committee favoured a federal state with Arab and Jewish components, with Jerusalem as its capital.

On the 29 November 1947 the General Assembly adopted resolution 181 (II)¹²⁸, approving with some minor changes the Partition Plan proposed by the committee. The plan was accepted by the Jewish Agency but the Palestinian Arabs and the Arab states rejected it on the ground that it violated the Charter of the UN, which spells out the right of people to decide their own destiny.¹²⁹

Since then the UN has increasingly involved itself in trying to find a solution of the problem. In this process the UN and the world community, in the face of continuing opposition from Israel supported by the U.S., came to recognise the question of self-determination of the Palestine people as the core of the Middle East problem.

4.3.2 The interpretation of the term “people” in the Palestinian case

In my ambition to find a definition of the concept of peoples I have chosen the question of Palestine because it gives a good example of both external decolonialisation and occupation. Palestine’s decolonialisation process is very interesting because it did not take very long until the decolonised territory was in fact occupied again this time by the state of Israel. It is also interesting because the world community has almost unanimous¹³⁰ agreed to the classification of the Palestinians as a people and granted them the right to self-determination. In

¹²⁸ General Assembly Resolution 181 (II) of 29 November 1947, Adopted on the report of the ad hoc committee on the Palestinian Question, the document can be found in United Nations Resolutions series 1, volume 1 1946-1948, edited by D. Djonovich, 322.

¹²⁹ The United Nations and the Question of Palestine, Published by the United Nations Department of Public Information, DPI/1994-41241-May 1990-10M, 1-5.

¹³⁰ With the exceptions of Israel and the United States.

relation to this I have gone through the General Assembly Resolutions passed and the discussions around them in order to be able to conclude which criteria that were used to define and characterise the Palestinians as a people.

The first resolution was, as described above, passed in 1947 with the purpose of creating two new states. It was rejected by the Arabs. The Charter of the UN provides that states as well as peoples are the subject of the right to self-determination. The UN has applied this yardstick, ever since it dealt with the question of Palestine.

The resolution also granted the Jewish people of Palestine a right to statehood, which indicates a right to self-determination. Although resolution 181(II) is not legally binding this recommendation seems to include an eligible interpretation of the right of self-determination with regard to the subjects that was commensurate with the situation in Palestine at that time, which constituted a threat to peace. It should also be noticed that the Resolution chose as its starting point not the process of the religious, political, economic and social facts established by the British Mandatory Power but a recognition of these facts as an objective reality. This viewpoint flows from the legal fact that the UN Charter has no retroactive effect and that the application of the principles of the UN is admissible to events that took place before it came into force.

The fact that the people of Palestine waived the UN-granted right to self-determination, on the ground that a decision of this nature only could be taken by the people itself, does not mean the loss of this right. The people of Palestine had obtained legal personality and a right to self-determination and the General Assembly later confirmed this in several Resolutions.¹³¹

When looking through the General Assembly Resolutions and the discussions around them one can find three main, overarching categories of criteria for the determination of a people. The first one is the existence of a political subject of the right of self-determination of the people of Palestine, the second one is the existence of Palestinian nationalism and the third one is the presence of a specific geographical area or territory.

¹³¹ General Assembly Resolution 2535 (XXIV) of 10 December 1969, 2649 (XXV) 30 November 1970, 3236 (XXIX) of 22 November 1974, These documents could be found in United Nations Resolutions series I, edited by D. Djonovich.

4.3.2.1 The element of a political subject of the right to self-determination in the definition of “peoples”

In relation to the exercise of the right to self-determination the crucial point is not just an academic selection of the subject, but rather a question about the specific historical subject of such right through whom a people in practise can exercise international personality in world affairs. Modern international law does not take a position on the question as to which political forces that are to exercise the right to self-determination of a people in international relations. In fact it leaves this decision to the formation of political will i.e. to the internal political forces of a given people.

In the case of the Palestinian people, this process has a number of peculiarities that leaves its impressions on the nature and forms of its political representatives. This includes the non-existence of a state of its own and military occupation of the land that the Palestinians concerns as rightfully theirs. This has lead to the fact that the views and opinions of the people of Palestine on the exercise of self-determination have been shaped in the course of an anti-imperialist national liberation struggle. The expression of will have not taken place in political parties of a traditional nature as is custom in established states but in resistance organisations committed to armed struggle. Due to the integration of the major resistance organisation, the Palestine Liberation Organisation (PLO), which includes mass and vocational organisations as well as individuals, the Palestine people has a political umbrella organisation which represent almost all important sections of the international movement. This constitutes the ground of the right for the PLO to claim exclusive political representation of the will and the overall interest of the Palestinians in relation to self-determination.

The PLO, as a representative for the Palestinian people, has been recognised by more than 100 states. It has also obtained observer status in the UN by General Assembly Resolution 3237 (XXIX) of 22 November 1974. The recognition of the PLO and the recognition of the Palestinians as a people are closely related. Without a central political unit the concept of a people fails. The status of peoples as subjects of the right to self-determination allows the conclusion that their representative bodies can maintain international relations as long as the process of establishing their own state or association with an existing state has not yet been accomplished.¹³²

The conclusion that can be draw from the Palestinian example and the UN reaction to it is that the concept of “peoples” are dependent of a political unit

¹³² Question of Palestine: Legal Aspects – A Compilation of Papers Presented at the United Nations Seminars on the Question of Palestine in 1980-1986, United Nations, New York 1991, I. Schoennfelder, The Right to Self-determination and the Establishment of an Palestinian Nation-State, 91.

representing the people, in this case the Arab people of Palestine. A group needs something of a gathering factor to be able to pursue its goals and therefore it is quite obvious that this factor should be included in the concept of “peoples” that are so closely related with the goal to attain self-determination. An interesting fact is the element of a resistance organisation committed to armed struggle within the PLO and the fact that it is regarded upon by the world community as a separate political unit. One would think that to represent a people in a democratic way did not only mean representing a large part of the people but also by democratic means. In my opinion this case clearly shows that this is not a pre-condition.

4.3.2.2 The element of nationalism as a part of the definition of “peoples”

As many examples through out history have showed, nationalism and colonisation is closely linked together. Nationalism often sprouts under the rule of a foreign power. It consists of national identity and self-awareness and is a characteristic that can be assigned to a people.

The Palestinian nationalism has existed since the days of the Ottoman Empire and has developed alongside Arab nationalism. No distinctive Palestinian people or entity, however, existed before the British Mandate after World War I. It was during the mandate period that it developed and came to possess all the attributes of nationalism. It developed into political activities focused on the question of independence stressing that foreign control be overthrown. Realistically, this meant British control and European influences.

When the General Assembly adopted Resolution 181 (II) in 1947 and created a Jewish and an Arab state there was no reference to the Palestinians. The Arabs that lived in the Palestine mandate at this time saw them selves as being a part of the “Arab Nation”. They shared the same culture, language and religion as other Arabs, yet there developed a consciousness amongst these Arab inhabitants and refugees from the former Palestine mandate which resulted in the emerge of a new national identity, the Palestinian people. The national identity of the Palestinian people has been recognised by the General Assembly in Resolution 2672 C (XXV) of 8 December 1970. It was the change of consciousness amongst the population that resulted in a new awareness of that population as a separate nation.¹³³

These facts point in the direction of a taking up nationalism as a criterion for being a people. As we see, from the above mentioned example, common ethnic, cultural, linguistic or religious features creating a group and the self -identification with this group is not enough. The concept of “peoples” requires the awareness of mutual identity and of being a separate state. This can be called nationalism or

¹³³ T. Musgrave, *Self-determination and National Minorities*, 1997, 164-165.

self-awareness but it still it comprises something more than the mere belonging to a group because of common features and common will.

4.3.2.3 The element of a defined geographical area or territory as a part of the definition of “peoples”

When looking into the question of territory the contrasting relationship between the principle of self-determination and the principle of the sovereignty and territorial integrity of the state is striking. If the principle of self-determination is not to become an empty concept it is necessary to give people that exercise its right to self-determination the right to decide on the frontiers of the state that it seeks to establish. This should off-course be based on the respect for the integrity of the territory of other peoples and states. But the general interconnection between political independence and the territorial integrity of a state already in existence is generally not applicable to the state-building process of a people struggling for self-determination.

To build a state and to request self-determination requires the possession of territory. Therefore it is not hard to draw the conclusion that the basic concept, the concept of peoples should in fact contain a request of the people being associated with the territory which they claim they have a right to. There are two basic problems related with the question of territory. First, the question of defining the territory and second, to find out which kind of association with the territory will put the people on the territory in charge of it.

The defined territory in this case is the West Bank and The Gaza Strip, which has been declared by Mr. Yasser Arafat, the Palestinian leader, as the territory that the new state of Palestine will essentially consist of.

In the case of association I have found two grounds in the Palestinian case. The first one is the historical connection which is interrelated with the second ground of Palestinian identification with the territory as their own. The question of the historical association is a hard nut to crack since both the Jewish and the Palestinian people according to their separate religions have the right to the same land. The problems began in the late nineteenth century when Zionist settlers began to buy land from both Arabs and Palestinians. This process continued up to the Israeli declaration of independence in 1948. The big controversy has been the fact that part of the land occupied by Israel was in fact given to the Palestines when the Arab state was created under General Assembly Resolution 181(II).

The Arab people living in this area which later became the Palestinian people, as described above, had been living on this territory for a very long period of time. In examining the history of this area it can be concluded that the Palestinians has a historical association with the territory and it also becomes clear that they really identify this territory as the territory of their state. It is very important of see the connection between the historical association and the identification. Because on

one hand, the element of association through identification can not be claimed to be valid without the existence of a historical relation. The historical element on the other hand is not much support if the people do not identify itself with it.

4.3.3 Concluding remarks

The Palestinian case and the norms that have stemmed from this case have been very important for the development of a policy towards colonised peoples. As I stated in the beginning of this section, the UN has used the Palestinian case as a yardstick when it comes to questions related to decolonialisation. It should of-course be reminded that this conflict comprises so much more than the thought of decolonialisation. Above all, the religious conflict is one of the longest and worst seen in modern history.

The Palestinian case has contribute to the definition of the term “peoples” by giving prominence to the existence of the element of; a political subject of the right to self-determination, nationalism and association to territory. These elements are very important in order to understand the models that are used in modern international law today. It is not until these models are put in the light of the groundbreaking cases, as the Palestinian case, that we will be able to grasp the contents of these rules.

4.4 Separation by agreement; the Czechoslovakian case

The Czechoslovakian case is a good example of the rare situation of a peaceful split up of a country. Therefore I am going to use this case in the further search for elements that can clarify definition of the term “peoples”.

When the Decolonialisation era came to an end the former colonialising states regarded this process as a concluded chapter of history. But, this process had in no way stopped and instead the world community was faced with a spectrum of new situations and new peoples demanding to be seen as peoples with the right to self-determination. Czechoslovakia is one of the more recent cases in which a people have succeeded to obtain self-determination.¹³⁴

¹³⁴ Brölmann C.,Lefeber R. and Zieck M. (Editors), *Peoples and Minorities in International Law*, 1993, 10.

4.4.1 The element of a democratic decision as a foundation for agreement to split up

The former Czechoslovakia was split into two new countries by an agreement between the two winning parties in the June 1992 elections.¹³⁵ On the first of January 1993 two new countries were established, Slovakia and the Czech Republic.¹³⁶ The first fact that should be noticed about this case is the fact that the right to separate is based on an agreement. One can ask if it is much of a right if an agreement is needed, but no state is likely to make any serious objections when the parties have agreed to the divorce. However, it is interesting to have a look at the foundation of the agreement. The agreement to split up the country was based on a democratic election held in former Czechoslovakia in June 1992. This becomes important to the concept of “peoples” in the way that it seems to be a pre-condition that the people who strive for a split up needs to observe the democratic means of making this decision.

The whole concept of this form of self-determination and the peoples right to, it stands and falls on the fact that an agreement has to be concluded in a democratic way. Much of this form of self-determination is build on the fact that other states do not object to the split up, which also is related to the geographical question which I will soon come to. If the peoples agree to a split up and this is confirmed by democratic means, as an election, it is unlikely that other states will question if this group really is a people. This makes it very obvious that common ethnic, religious or linguistic characteristics has very little to do with the determination of these groups as a peoples. In fact it is the acting in democratic ways and the world community’s approval that defines the people. Behind the group acting together lays off-course a feeling of affinity. But the concept of nationalism as a ground for the concept of “peoples” seen in the case of Palestine is not really an important feature for the objective determination of the Czechs and Slovaks as different peoples. However, it is off-course likely that the feeling of nationalism contributes to the unification of the group.

4.4.2 The importance of the existence of a defined geographical entity

There is a clear emphasis on the existence of a geographical entity in the process of splitting up a country by an agreement. The new countries, which emerge after a split up are expected to follow the internal borders of the country falling apart. This is not confirmed in written law and looking at the practice, this is not always consistent. However, it can be concluded that the boarders of the old country is

¹³⁵ The Civic Democratic Party (Obcanska Demokraticka Strana, ODS) in the Czech lands and the Movement for a Democratic Slovakia (Hnutie za Demokraticke Slovensko, HZDS) in Slovakia.

¹³⁶ Cowen Karp R., Central and eastern Europe: The Challenge of Transition, 1993, 101.

the least controversial ones and as long as these are not transgressed there is likely to be no objection in relation to the territorial question.¹³⁷ This means that also this case points towards the importance of including the concept of a “defined territorial entity” in the definition of “peoples”.

The split up can, and will off-course in many cases have an impact on the security and stability in the region. In the Czechoslovakian case the Slovak geopolitical axioms brings about an interesting example. Slovakia has borders with Austria, the Czech Republic, Hungary, Poland and Ukraine. In a event where Slovakia is not able sustain an independent existence both Hungary, Ukraine and to a lesser extent Poland could come forward with claims on parts of Slovakia’s territory based on historical facts. Nearly 20 percent of Slovakia’s 5.5 million inhabitants belongs to a national minority, the largest being the over 500,000 strong Hungarian minority in the southern part of Slovakia.¹³⁸ It is not too hard to imagine, in the wake of the disintegration of former Yugoslavia, what could happen if Slovakia’s control over its territory is weakened. This shows that breaking up a territory along existing boarders is not at all without danger since the power to defend it, as a result of the splitting, is in most cases weakened.

4.4.3 Concluding remarks

A friendly split up, as we have seen in the case of the former Czechoslovakia is quite unusual. There has been fear that this would lead to instability in peace and security. But, so far the new states and peoples have succeeded in keeping control over their territory.

The separation by agreement of the Czech and the Slovakian states gives some new input to the definition of the term “peoples”. First, it puts emphasis on the define territory. Taken together with the Palestine case this criterion has proven to be a most important one. It also shows the imminent danger in splitting up countries along existing national boarders. The other side of this coin is, however, that if the existent borders were not followed, the splitting up by agreement would have been much more complicated because it would have affected other states territory.

Secondly, it gives an incentive that the people have to base their agreement on a democratic decision. This is an example of the fundamental rule, described above, that the state represents the legitimacy of the people, not their own expression of state interest.

¹³⁷ Alfredsson G., Different Forms of and Claims to the Right of Self-determination, (note 116), 62.

¹³⁸ Cowen Karp R.,(note 136), 105-106.

4.5 The disintegration of the former USSR

4.5.1 Introduction

This case is of interest because the twelve Soviet Republics, remaining after the three Baltic States obtained self-determination in 1990, had no ground to base a claim for self-determination on, let alone secession. The sovereignty of Baltic States was recognised by the Russian Soviet Socialist Republic (RSFSR) in December 1918. Soon after this, the three Baltic States became members of the League of Nations. It is therefore out of the question that the annexation of these states by the Soviet Union in 1940 was opposite to international law. Further, their claims for self-determination were valid under the UN charter since there is a prohibition to use force for territorial gain. However, the other twelve Soviet republics did not have this right and this became a big dilemma in the aftermath of the independence of the Baltic States.

International law did not provide the Soviet Republics with any means to obtain self-determination but in contrast, such a right was laid down in the Soviet Constitution of 1977. Article 72 provided that: *‘Each Union Republic shall retain the right freely to secede from the USSR’* the closely linked article 70(1) further stated: *“ The Union of Soviet Socialist Republics is an integral, federal, multinational state formed on the principle of Socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics”*.¹³⁹ This promising statement of the USSR was nothing but a dead letter and it was never used in practise.

On the 7 of Aril 1990 the USSR Supreme Court passed a law concerning the holding of referendums by the Soviet Republics in order to determine their destiny. This law seemed to implement article 72 of the 1977 constitution but it clearly failed to meet with international standards. What we are seeing here is an example of an attempt of agreeing to a peaceful split up, as in the Czechoslovakian case. This attempt failed due to the complicated and cumbersome process that had to be followed by the Republics wanting self-determination. It was almost impossible to follow these instructions and one can wonder if this was just a way of putting a spoke in the wheels of the Republics. However, this law is very interesting because of the fact that it was the first national law that regulated the right of secession in a detailed way. It contained provisions for all possible legal issues raised by the Republics. This law was not implemented due to the collapse of the federation beginning in 1990 and

¹³⁹ Cassese A. Self-determination of peoples, (note 117), 264-265, the original text can be found in, Hazard J. Soviet Republics in International Law, Encyclopedia, vol. X, 1985,418-422.

continuing to the peak in August 1991 with the failure of the military coup.¹⁴⁰ The process of obtaining independence by the twelve Republics occurred because of these reasons outside both international and municipal law.

4.5.2 The forms of legitimisation of the new states emerging after the break up of the former USSR

It is clear that the twelve Republics tried very hard to find some kind of legal ground for the process of self-determination. One of these attempts was to hold referendums on whether or not to secede from the Soviet Union. This clearly shows that the legal ground was sought within the general legal principle of self-determination. The democratic way of determine the position of what can become a new independent state is, as I have showed above, an important part of the principle of self-determination and therefore also of the concept of “peoples”.

From the outside, many states looked upon the dissolution of the USSR from the perspective of the principle of self-determination. It was almost as important for these states, as for the states breaking away, to form some legal model or ground that could enclose these events. The European Community (EC) took the first step on the meeting of the Foreign Ministers of the twelve on the 16 December 1991. A set of so-called guidelines for the recognition of the new states was adopted at this meeting.¹⁴¹ The concept of self-determination and peoples came in to play in two respects.

The principle of self-determination was first proclaimed as a form of general principle or preamble. The declaration of the EC states the following: “*The Community and its member States confirm their attachment to the principles of the Helsinki Act and the Charter of Paris, in particular the principle of self-determination*”. This statement can be interpreted as meaning that the progressive breaking up of two states is seen as a realisation of the political principle of self-determination and also as a historical concept that each people should freely choose its international political status.¹⁴²

The second aspect in which self-determination came into play was a more novel one. The twelve states of the EC came up with a new set of requirements, as an addition to the existing ones, that the nascent Republics had to meet with in order to achieve recognition. The requirements were the respect of the rule of law, democracy and human rights and the establishment of guarantees for the rights of ethnic and national groups and minorities in accordance with the commitment subscribed to in the framework of the CSCE. Thus, the recognition was linked

¹⁴⁰ Cowen Karp R., *Central and Eastern Europe: The Challenge of Transition*, (note 136), 258-259.

¹⁴¹ Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, of 16 December 1991, 4 EJIL, 1993, 72.

¹⁴² Cassese A. *Self-determination of peoples – A legal reappraisal*, (note 117), 266-267.

together with the existence of the democratic rule, that is, internal self-determination.

This was a profoundly innovative approach to the concept of self-determination and it put a new set of tools in the hands of the ones trying to define the term “peoples”. The link between external and internal self-determination was affirmed for the first time in practice. This link had been theoretical and abstract in the UN Covenant on Civil and Political Rights due to the loose language in article 1 and the various provisions on political rights. It was made clear that independent statehood, i.e. external self-determination, could come into the question only if the Republics respected the principle of representative democracy, that is, internal self-determination. Further, an additional link was concluded between the internal self-determination and the protection of minorities. The principle of representative democracy was not complete without the protection of minorities just as no endorsement could be given to external self-determination unless internal self-determination was realised.¹⁴³

4.5.3 Concluding remarks

The breaking up of the Soviet federation and the formation of new states gives us some further guidance towards a definition of the term “peoples”. In fact, these groups that wanted self-determination, did not have the characteristics needed according to international law in order to obtain this. But nevertheless, the reactions to their actual declaration of self-determination can point us in the direction of what is required of the new states to obtain recognition of the world community. As the concept of being a state is so profoundly linked to the recognition this is of much importance.

First of all it is put forward that each people should freely choose its international political status. The non-existence of this right is one characteristic of a people having the right to self-determination. This is a part of the political principle of self-determination, which in this case is regarded as realised in the breaking up of two states. Further, the “people” has to respect the rule of law, adhere to democracy which includes the protection of minorities and observe the human right standards contained in the framework of the CSCE. The requirement of using democratic means was also seen in the Czechoslovakian case but it is further developed here with the input to respect and protect minorities. This is also a good example of the thought that a people are something different than a minority.

It could be concluded from this case that a people that adhere to these requirements without possessing the rest of the characteristics required to be classified as a people will be recognised by at least the EC member states. However, it should be noticed in relation to this case that the “motherstate,” the

¹⁴³ Ibid. 267-268.

former USSR was weakened by the turbulence and was later dissolved. There were no direct political obstacles for the twelve member states of the EC to recognise the Republics. My standpoint on this matter is that one should be very cautious in drawing to wide conclusions from the response of the member states of the EC. It should be kept in mind that a strong central authority could in this case have obstructed the twelve European states from recognising the newcomers.

4.6 Summary

The era of decolonialisation had a serious impact on the perception of the concept of peoples and their rights. It can be concluded from the two declarations dealing with decolonialisation that colonised territories have a right to self-determination. This leads to the conclusion that colonial history is one of the grounds qualifying a population as a people. None of the documents issued on this topic presents a definition of “peoples”. This has later, as mentioned above, created a great uncertainty when the concept was to be applied on more recent situations not dealing explicitly with decolonialisation. For instance the Declaration on the Granting of Independence to Colonial Countries and Peoples refers to “all people” as having the right to self-determination. This can be interpreted as excluding the demand of a relation to colonialisation.

The use of the singular “people” in the Declaration on Friendly Relations clearly points out that the concept of minorities is considered to be something different from the concept of peoples. Various minorities within a territory may not enjoy the same right of self-determination, as that possessed by a people as a whole.

Further, in the Declaration on Friendly Relations it is stated that the government has to represent the whole people belonging to the territory without any distinction to race, creed or colour. If the government is not following this requirement it could give the people a right to self-determination. This view is further supported by the Human Rights Committee which regards non-multi-party systems as not being compatible with the democratic model outlined in the ICCPR. For the sake of the definition this implies that non-representation by a government due to race, creed or colour or by a one-party-system could be a part of the definition. The democratic rule is an important element of the definition of “peoples” and the Declaration on Friendly Relations was the first step in establishing this link between internal and external self-determination.

The following premises can be included in a definition:

- Colonised peoples have a right to self-determination. The non-existence of the right to freely choose its international political status is one characteristic of a people.
- The concept of minorities is considered to be something different from the concept of peoples.
- Non-representation by government due to race, creed or colour or by a one-party-system.

The three cases that I have dealt with above also gives some new clues to what a definition may include. The situations that were examined were; political decolonisation and liberation of occupied territories (Palestine case), separation by agreement (Czechoslovakian case) and the breaking up of a federal state (former USSR case).

All three cases showed that the geographical entity was an important element in the definition. The problem with splitting or breaking up an existing country is that it is in most cases (as in the cases of Czechoslovakia and USSR) done along national borders and not ethnic lines. This has and will in the future create a lot of conflicts of the kind we are witnessing today in former Yugoslavia.

In the Palestine case two grounds of association with the territory could be concluded namely: the historical connection and the identification of the people with the territory. These two grounds are helpful in explaining the term “defined territory” which is often used in relation to the concept of “peoples”. Further, from the Palestinian case it can be concluded that it is important to have a political unit representing the people. That the representation has to be democratic is supported by all three cases. For example, the referendums held in many of the Republics of the former USSR were means to make the breaking up legitimate. The democratic representation is an important part of the principle of self-determination and therefore also of the concept of “peoples”.

As mentioned above the element of nationalism should also be included in order to be able to determine a definition. Common ethnic, cultural, linguistic or religious features creating a group and the self-identification with this group is not enough. This shows once again the differences between a minority and a people. The concept of “peoples” requires the awareness of mutual identity and of being a separate state.

The last case of the three, the breaking up of the former USSR, gave us a new very interesting view on the requirement of recognising a new state. These requirements have had a great impact on the way we define a people. To obtain recognition it was determined that the newcomers had to adhere to the rule of law, respect human rights and to govern the state in a democratic way. This link

between the external and the internal self-determination is new in its kind and taken together with the link established between internal self-determination and the protection of minorities the concept becomes revolutionary for the definition of “peoples”.

The following premises can be added to the definition:

- A defined geographical entity.
- In order to explain the term “defined territory the two grounds of association with the territory could be helpful: the historical connection and the identification of the people with the territory.
- A political unit representing the people.
- Nationalism can also be included, the concept of “peoples” requires the awareness of mutual identity and of being a separate state.
- Adherence to the rule of law.
- Respect for human rights.
- Governance of the state in a democratic way.
- The protection of minorities.

Taken together this displays a quite covering set of characteristics which can be used in order to define the beneficiaries of the right to self-determination. But it should off-course be borne in mind that this is a patchwork of rights and criterions taken from different instruments and deduced from state practice of different states. However, the time has obviously come for the world community to try to find a definition to the term “peoples”, used since the early days of the UN. Nothing could be more devastating for an existing right than the non-existence of a definition of its beneficiaries.

The concluding chapter will focus on the application of this definition on the People of Tibet. In relation to this classification the right of the Tibetans to self-determination will also be examined.

5. Conclusions

In this final part of the thesis I will apply the premises, concluded from the previous chapter, one by one on the Tibetan people to be able to conclude the status of the Tibetans and their possible right to self-determination emanating from this status.

- Colonised peoples have a right to self-determination. The non-existence of the right to freely choose its international political status is one characteristic of a people.

The basic question is here whether the Tibetans qualify as a colonised people lacking the right to freely determine its international political status? The first characteristic of a colonised territory is that there has been a military invasion and an annexation of the territory. In my view it can be concluded that Tibet was an independent state before the Chinese invasion in 1949. At the time of the invasion Tibet possessed the needed characteristics found in the 1933 Montevideo convention. This is also confirmed by the Thirteenth Dalai Lama's declaration of independence in 1912, the Simla Convention from 1914, Tibet's World War II neutrality and the recognition of Tibetan passports used by the 1946 Tibetan Trade Delegation.

As a logical consequence to the fact that Tibet was in fact independent when the Chinese troops entered Tibetan territory comes the conclusion that this was in fact a military invasion with a following annexation. Further characteristics of colonial rule as foreign settlement within the colonised territory, a plan of making the colonised people civilised and bringing development and progress to the dependent and underdeveloped colony all fits the description of the Chinese rule in Tibet. The taking out and using of natural resources by the colonising state and the repression of civil rights is also two characteristics of colonial rule that could be added to the picture.

The perhaps most important fact that points towards Tibet being a Chinese colony is the fact that the political representation is very limited. As mentioned above all the decisions made within Tibet have to be confirmed by the Standing Committee of the National People's Congress". This means that every decision made by the autonomous institutions have to be approved by the Chinese national assembly. In fact the Tibetans lacks the right to freely determine its political status. The Chinese denial of the Tibetans request to hold a referendum to determine its political status supports this conclusion.

In my opinion it could be concluded that the Tibetans are in fact colonised by the Chinese and this prevents them from freely choosing their own political status

- The concept of minorities is considered to be something different from the concept of peoples.

This is more a general statement to keep the concept of minorities and peoples apart. This does not mean that a people can not possess any of the characteristics that will define a minority but that the concept of people consists of so many other characteristics as showed here in the conclusions.

The concept of peoples is not based on an objective characteristic as ethnic origin, religion or language. The term people is not an ethnical term but rather a geographical term which is supported by the fact that this criteria had a prominent role in all three cases examined above. The possession of a defined territory is much more important in the process of classifying a people than the possession of the objective characteristics. If one looks at the characteristics of a minority the objective criterions are vital to the determination while a defined territory is not mentioned.

Further, there is no requirement for a people to identify themselves with the group in the way that minorities have to do in order to possess the subjective characteristic. Neither the numerical factor, as the case of South Africa shows, nor the time factor are relevant to the concept of “peoples”.

- Non-representation by government due to race, creed or colour or by a one-party-system.

The representation by government can be conducted in two different ways in order to give a special group of people the efficient right to participate in the political governance. The first way is to let the special group participate in the political system of the particular country on the same democratic grounds as the other citizens. This will in some cases require special measures to be taken by the authorities. The second way is to create an autonomous area for the group where they can practice self-governance under the preconditions stated above.

The Chines government has formed an autonomous region in Tibet, the TAR, which does not embrace the territory that historically belonged to the Tibetan people. Within this region it is stated that the Tibetans shall have the right to practice self-governance. This is not possible in practice due to a number of facts. First of all, as an overarching fact, it was promised to the Tibetans, in the 17-point agreement forming the Tibetan autonomy, that the existing Tibetan political system would not be altered. However, this has been done in a totalitarian way by forcing the Tibetans to adhere to the Chinese system. This system is based on the CCP, which does not allow non-atheists to become party members. This is a clear case of discrimination on the ground of religious believe since almost all Tibetans are religious.

It is important to notice that the real power in China is vested in the CCP and that the exclusion from the party effectively leads to the abolishment of power. The political system in China is built on a one party structure. This taken together with the fact that the Tibetans have almost no chance to be involved in this system clearly shows the Tibetans are not represented by the Chinese government.

- A defined geographical entity.
- In order to explain the term “defined territory” the two grounds of association with the territory could be helpful: the historical connection and the identification of the people with the territory.

The Tibetan plateau, which formed the historical Tibet, is a distinct geographic and ecological region. It consisted of three parts, the U-Tsang, Kham and Amdo. This region is distinct and separated from China and other surrounding countries by its altitude due to its close position to the Himalayas and by the big deserts in the north.

Throughout history the Tibetans has identified themselves with this distinct area as being their separate land. A Tibetan political identity corresponding to the boundaries of the plateau was created, as early as, under the empire period. The environment has been of primary significance in the evolution of the ethnic, cultural and national identity of the Tibetan people. Many of their characteristics have been determined by the necessities of environmental adaptation. These are unique characteristics which are not possessed by the Han Chinese. This supports the historical connection between the Tibetans and their land. My view is that the historical Tibet, consisting of the U-Tsang, Kham and Amdo, forms a defined geographical area. The Tibetans are related to this land both historically and by the identification of the territory as their own country.

- A political unit representing the people.

The Tibetan government in exile is the political unit representing the Tibetan people. This is, as described above, a democratic institution with representatives elected by the Tibetan people. Any Tibetan who has reached the age of 25 years has the right to contest elections to the Assembly without discrimination on grounds of sex, religion, and social origin. Every Tibetan who has reached the age of 18 years is enfranchised without any discrimination as mentioned above.

This unit is composed by all the institutions that are commonly present in countries considered as democratic. The institutions function in accordance with the Charter for Tibetans in Exile. It consists of the Kashag (Council of Ministers), which is accountable to the Assembly of Tibetan People's Deputies, a

democratically elected parliament. The judicial power is vested in the Tibetan Supreme Justice Commission, which is an independent judiciary body.

The Assembly is the highest elected legislative organ of Tibetans in exile. It has 46 elected members representing the three provincial regions and five major religious sects of Tibet. All legislative powers and authority are vested in the Assembly. Legislation further requires the assent of His Holiness the Dalai Lama.

In my view, the Tibetan government in exile possesses all the needed characteristics for forming a political unit representing the whole Tibetan people. All the major religious sects are represented in the most important organ, the Assembly. There are no grounds for excluding any one who is a Tibetan from participating in the elections or from running as a candidate in the elections in the Charter for Tibetans in Exile. Because of the fact that the whole Tibetan community is based on the religion the final decision on legislative matters are taken by the religious leader, the Dalai Lama. In my opinion this is not opposing the democratic thought since the Dalai Lama makes these decision after consultation with the Assembly and the Kashag. It can be concluded that the Tibetan government in exile is a political unit representing the whole Tibetan people.

- Nationalism can also be included, the concept of “peoples” requires the awareness of mutual identity and of being a separate state.

Modern Tibetan nationalism is founded upon a distinct national identity and history, but, like many modern nationalisms such as the Palestinian, it achieved its political manifestation only by cause of foreign imperialist influences. Tibetan national consciousness was stimulated by China’s threat to transform its previously vague political domination over Tibet into full sovereignty and by British support for Tibetan autonomy. Tibet’s attempts to achieve the goals of modern nationalism were hampered by the legacy of ecclesiastical rule and the conservative influence of the Buddhist church. Ecclesiastical influence was ideologically anti-nationalistic due to the universalist nature of Buddhist doctrine and politically anti-nationalist because of the church’s inherent dependence upon foreign political patronage.

Since the Chinese invasion and occupation there has been an increase in Tibetan nationalist continuousness despite the fact that China has devoted intensive efforts at its suppression, including the elimination of most of the upper and educated classes. The CCP’s assault on the Tibetan civilisation have been less effective in creating “class consciousness” and “love of the motherland” than in creating anti-Chinese nationalism and a desperate need among the Tibetans for cultural and national survival. This Tibetan nationalism has increased as a response to the loss of national independence.

The Tibetan government in exile in Dharamsala, India has been beyond the reach of the Chinese authorities and has been able to nourish the nationalistic flames in Tibet. This has undoubtedly contributed to the maintenance and growth of Tibetan nationalism as being a feeling of existing as a separate state with a people of mutual identity.

- Adherence to the rule of law.
- Respect for human rights.
- Governance of the state in a democratic way.
- The protection of minorities.

The inclusion of these premises in the definition of the term “peoples” was introduced by the OSCE after the disintegration of the former USSR. In the case of Tibet it is quite difficult to do anything else than ponder about what kind of an attitude the government of Tibet will adhere to since it has not for the last fifty years been in the position to govern its own country. However there are quite clear indications in the behaviour of the existing Tibetan institutions to what we can expect in relation to some of these premises.

First, it can be concluded, from the reasoning above about the Tibetan people being represented by a political unit, that the Tibetan government in exile is a democratically formed organ with democratic decision making procedures. Nothing speaks for their abandonment of this way of governing their territory and people. In my view it should be put as an advantage to the Tibetan people that they have created a democratic system after a history of feudal rule. This shows the willingness of the Tibetan people to adhere to international custom and the ways of modern society.

Second, the Tibetan people are a peace loving people that live their lives in accordance with the rule of non-violence. In my opinion it could be expected that the government of Tibet would respect human rights. To have an over all respect for human right is off-course a project which will take a long period of time but I think that there is a great willingness to follow these rules to prevent violations of these rights from happening on their territory again.

Finally, comes the hard question about the protection of minorities. If the Tibetan people were to gain control over their territory there would be a large minority (according to Chinese figures) of Han Chinese within the Tibetan territory. This will certainly be a complicated problem to solve since many of the Chinese have been in Tibet for a long period of time. The Tibetans have in almost all cases behaved in an understanding but questioning way against the Chinese. I think that

the presumed Chinese minority would be treated well by the Tibetan government but it is not for me to speculate what would be the reaction of common people.

After applying all the premises, deducted from the various cases and practises by international organisations, it can in my opinion be concluded that the Tibetans are a people. This will give them the corresponding right of self-determination. It is off-course one thing to have the right and another ting to be able to exercise the right, but, it will give this people a starting point and a right to demand their right.

After many years of fighting for the right to self- determination the Dalai Lama, in the Strasbourg Plan succumbed to the Chinese repression, and asked for a functioning autonomy. This demand was denied by the Chinese government. Since there is no willingness from the Chinese side to work this situation out for the best of the two parties, even after the Tibetans has laid down their request for total independence, the ball lays with the international community to take firm action in this matter. One step forward would be the establishment of a UN Commission on Tibet or the appointment of a Special Rapporteur. This would bring new life to the question of Tibet within the UN and hopefully this would lead to some sort of international pressure on China to solve this problem.

It would in my opinion, after this long period of Chinese dominance in Tibet, be best if the procedure of independence could start as a working autonomy which would later evolve into total sovereignty of the Tibetan people over their own land. This would give both parties time adhere to the future separation and it would give the Tibetans a chance to restore their country and the political structure within Tibet.

Lately, the relations between China and Tibet have become even colder than before. As it looks now there seems to be no solution in the foreseeable future. The truth is that there is not much time left to solve this precarious situation since the Tibetan people is getting closer, and closer, to the verge of being eradicated.

Supplement A

Proclamation Issued by His Holiness the Dalai Lama XIII (1913)

PROCLAMATION ISSUED BY H.H. THE DALAI LAMA XIII, ON THE EIGHTH DAY OF THE FIRST MONTH OF THE WATER-OX YEAR (1913)

Translation of the Tibetan Text

I, the Dalai Lama, most omniscient possessor of the Buddhist faith, whose title was conferred by the Lord Buddha's command from the glorious land of India, speak to you as follows:

I am speaking to all classes of Tibetan people. Lord Buddha, from the glorious country of India, prophesied that the reincarnations of Avalokitesvara, through successive rulers from the early religious kings to the present day, would look after the welfare of Tibet.

During the time of Genghis Khan and Altan Khan of the Mongols, the Ming dynasty of the Chinese, and the Ch'ing Dynasty of the Manchus, Tibet and China co-operated on the basis of benefactor and priest relationship. A few years ago, the Chinese authorities in Szechuan and Yunnan endeavoured to colonise our territory. They brought large numbers of troops into central Tibet on the pretext of policing the trade marts. I, therefore, left Lhasa with my ministers for the Indo-Tibetan border, hoping to clarify to the Manchu emperor by wire that the existing relationship between Tibet and China had been that of patron and priest and had not been based on the subordination of one to the other. There was no other choice for me but to cross the border, because Chinese troops were following with the intention of taking me alive or dead.

On my arrival in India, I dispatched several telegrams to the Emperor; but his reply to my demands was delayed by corrupt officials at Peking. Meanwhile, the Manchu Empire collapsed. The Tibetans were encouraged to expel the Chinese from central Tibet. I, too, returned safely to my rightful and sacred country, and I am now in the course of driving out the remnants of Chinese troops from DoKham in Eastern Tibet. Now, the Chinese intention of colonising Tibet under the patron-priest relationship has faded like a rainbow in the sky. Having once again achieved for ourselves a period of happiness and peace, I have now allotted to all of you the following duties to be carried out without negligence:

1. Peace and happiness in this world can only be maintained by preserving the faith of Buddhism. It is, therefore, essential to preserve all Buddhist institutions in Tibet, such as the Jokhang temple and Ramoche in Lhasa, Samye, and Traduk in southern Tibet, and the three great monasteries, etc.

2. The various Buddhist sects in Tibet should be kept in a distinct and pure form. Buddhism should be taught, learned, and meditated upon properly. Except for special persons, the administrators of monasteries are forbidden to trade, loan money, deal in any kind of livestock, and/or subjugate another's subjects.

3. The Tibetan government's civil and military officials, when collecting taxes or dealing with their subject citizens, should carry out their duties with fair and honest judgement so as to benefit the government without hurting the interests of the subject citizens. Some of the central government officials posted at Ngari Korsum in western Tibet, and Do Kham in eastern Tibet, are coercing their subject citizens to purchase commercial goods at high prices and have imposed transportation rights exceeding the limit permitted by the government. Houses, properties and lands belonging to subject citizens have been confiscated on the pretext of minor breaches of the law. Furthermore, the amputation of citizens' limbs has been carried out as a form of punishment. Henceforth, such severe punishments are forbidden.

4. Tibet is a country with rich natural resources; but it is not scientifically advanced like other lands. We are a small, religious, and independent nation. To keep up with the rest of the world, we must defend our country. In view of past invasions by foreigners, our people may have to face certain difficulties, which they must disregard. To safeguard and maintain the independence of our country, one and all should voluntarily work hard. Our subject citizens residing near the borders should be alert and keep the government informed by special messenger of any suspicious developments. Our subjects must not create major clashes between two nations because of minor incidents.

5. Tibet, although thinly populated, is an extensive country. Some local officials and landholders are jealously obstructing other people from developing vacant lands, even though they are not doing so themselves. People with such intentions are enemies of the State and our progress. From now on, no one is allowed to obstruct anyone else from cultivating whatever vacant lands are available. Land taxes will not be collected until three years have passed; after that the land cultivator will have to pay taxes to the government and to the landlord every year, proportionate to the rent. The land will belong to the cultivator.

Your duties to the government and to the people will have been achieved when you have executed all that I have said here. This letter must be posted and proclaimed in every district of Tibet, and a copy kept in the records of the offices in every district.

From the Potala Palace.
(Seal of the Dalai Lama)

Notes

Source: W.D. Shakabpa, *Tibet: A Political History* (New Haven, 1967), pp.246-248.

Supplement B

CONVENTION BETWEEN GREAT BRITAIN, CHINA, AND TIBET SIMLA 1914

Attached to the Anglo-Tibetan Declaration of 3 July 1914

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, His Excellency the President of the Republic of China, and His Holiness the Dalai Lama of Tibet, being sincerely desirous to settle by mutual agreement various questions concerning the interests of their several States on the Continent of Asia, and further to regulate the relations of their several Governments, have resolved to conclude a Convention on this subject and have nominated for this purpose their respective Plenipotentiaries, that is to say:

His Majesty the King Of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, Sir Arthur Henry McMahon, Knight Grand Cross of the Royal Victorian Order, Knight Commander of the Most Eminent Order of the Indian Empire, Companion of the Most Exalted Order of the Star of India, Secretary to the Government of India, Foreign and Political Department;

His Excellency the President of the Republic of China, Monsieur Ivan Chen, Officer of the Order of the Chia Ho;

His Holiness the Dalai Lama of Tibet, Lonchen Ga-den Shatra Pal-jor Dorje; who having communicated to each other their respective full powers and finding them to be in good and due form have agreed upon and concluded the following Convention in eleven Articles.

Article 1. The Conventions specified in the Schedule to the present Convention shall, except in so far as they may have been modified by, or may be inconsistent with or repugnant to, any of the provisions of the present Convention, continue to be binding upon the High Contracting Parties.

Article 2. The Governments of Great Britain and China recognising that Tibet is under the suzerainty of China, and recognising also the autonomy of Outer Tibet, engage to respect the territorial integrity of the country, and to abstain from interference in the administration of Outer Tibet (including the selection and installation of the Dalai Lama), which shall remain in the hands of the Tibetan Government at Lhasa.

The Government of China engages not to convert Tibet into a Chinese province. The Government of Great Britain engages not to annex Tibet or any portion of it.

Article 3. Recognising the special interest of Great Britain, in virtue of the geographical position of Tibet, in the existence of an effective Tibetan Government, and in the maintenance of peace and order in the neighbourhood of

the frontiers of India and adjoining States, the Government of China engages, except as provided in Article 4 of this Convention, not to send troops into Outer Tibet, nor to station civil or military officers, nor to establish Chinese colonies in the country. Should any such troops or officials remain in Outer Tibet at the date of the signature of this Convention, they shall be withdrawn within a period not exceeding three months.

The Government of Great Britain engages not to station military or civil officers in Tibet (except as provided in the Convention of September 7, 1904, between Great Britain and Tibet) nor troops (except the Agents' escorts), nor to establish colonies in that country.

Article 4. The foregoing Article shall not be held to preclude the continuance of the arrangement by which, in the past, a Chinese high-official with suitable escort has been maintained at Lhasa, but it is hereby provided that the said escort shall in no circumstances exceed 300 men.

Article 5. The Governments of China and Tibet engage that they will not enter into any negotiations or agreements regarding Tibet with one another, or with any other Power, excepting such negotiations and agreements between Great Britain and Tibet as are provided for by the Convention of September 7, 1904, between Great Britain and Tibet and the Convention of April 27, 1906, between Great Britain and China.

Article 6. Article III of the Convention of April 27, 1906, between Great Britain and China is hereby cancelled, and it is understood that in Article IX (d) of the Convention of September 7, 1904, between Great Britain and Tibet the term 'Foreign Power' does not include China.

Not less favourable treatment shall be accorded to British commerce than to the commerce of China or the most favoured nation.

Article 7.a. The Tibet Trade Regulations of 1893 and 1908 are hereby cancelled.
b. The Tibetan Government engages to negotiate with the British Government new Trade Regulations for Outer Tibet to give effect to Articles II, IV and V of the Convention of September 7, 1904, between Great Britain and Tibet without delay; provided always that such Regulations shall in no way modify the present Convention except with the consent of the Chinese Government.

Article 8. The British Agent who resides at Gyantse may visit Lhasa with his escort whenever it is necessary to consult with the Tibetan Government regarding matters arising out of the Convention of September 7, 1904, between Great Britain and Tibet, which it has been found impossible to settle at Gyantse by correspondence or otherwise.

Article 9. For the purpose of the present Convention the borders of Tibet, and the boundary between Outer and Inner Tibet, shall be as shown in red and blue respectively on the map attached hereto.¹

Nothing in the present Convention shall be held to prejudice the existing rights of the Tibetan Government in Inner Tibet, which include the power to select and appoint the high priests of monasteries and to retain full control in all matters affecting religious institutions.

Article 10. The English, Chinese and Tibetan texts of the present Convention have been carefully examined and found to correspond, but in the event of there being any difference of meaning between them the English text shall be authoritative.

Article 11. The present Convention will take effect from the date of signature.

In token whereof the respective Plenipotentiaries have signed and sealed this Convention, three copies in English, three in Chinese and three in Tibetan.

Done at Simla this third day of July, A.D., one thousand nine hundred and fourteen, corresponding with the Chinese date, the third day of the seventh month of the third year of the Republic, and the Tibetan date, the tenth day of the fifth month of the Wood-Tiger year.

Initial of the Lonchen Shatra A.H.M.

Seal of the Lonchen Shatra Seal of the British
Plenipotentiary

Schedule

1. Convention between Great Britain and China relating to Sikkim and Tibet, signed at Calcutta the 17th March 1890.
2. Convention between Great Britain and Tibet, signed at Lhasa the 7th September 1904.
3. Convention between Great Britain and China respecting Tibet, signed at Peking the 27th April 1906.

The notes exchanged are to the following effect:

1. It is understood by the High Contracting Parties that Tibet forms part of Chinese territory.
2. After the selection and installation of the Dalai Lama by the Tibetan Government, the latter will notify the installation to the Chinese Government whose representative at Lhasa will then formally communicate to His Holiness the titles consistent with his dignity, which have been conferred by the Chinese Government.
3. It is also understood that the selection and appointment of all officers in Outer Tibet will rest with the Tibetan Government.
4. Outer Tibet shall not be represented in the Chinese Parliament or in any other similar body.

5. It is understood that the escorts attached to the British Trade Agencies in Tibet shall not exceed seventy-five per centum of the escort of the Chinese Representative at Lhasa.

6. The Government of China is hereby released from its engagements under Article III of the Convention of March 17, 1890, between Great Britain and China to prevent acts of aggression from the Tibetan side of the Tibet-Sikkim frontier.

7. The Chinese high official referred to in Article 4 will be free to enter Tibet as soon as the terms of Article 3 have been fulfilled to the satisfaction of representatives of the three signatories to this Convention, who will investigate and report without delay.

Initial of the Lonchen Shatra (Initialled) A.H.M.

Seal of the Lonchen Shatra Seal of the British
Plenipotentiary

Supplement C

Seventeen-Point Plan for the Peaceful Liberation of Tibet (1951)

THE AGREEMENT OF THE CENTRAL PEOPLE'S GOVERNMENT AND THE LOCAL GOVERNMENT OF TIBET ON MEASURES FOR THE PEACEFUL LIBERATION OF TIBET

23 MAY, 1951

The Tibetan nationality is one of the nationalities with a long history within the boundaries of China and, like many other nationalities, it has done its glorious duty in the course of the creation and development of the great motherland. But over the last hundred years and more, imperialist forces penetrated into China, and in consequence, also penetrated into the Tibetan region and carried out all kinds of deceptions and provocation. Like previous reactionary Governments, the KMT [p.Kuomintang] reactionary government continued to carry out a policy of oppression and sowing dissension among the nationalities, causing division and disunity among the Tibetan people. The Local Government of Tibet did not oppose imperialist deception and provocation, but adopted an unpatriotic attitude towards the great motherland. Under such conditions, the Tibetan nationality and people were plunged into the depths of enslavement and suffering. In 1949, basic victory was achieved on a nation-wide scale in the Chinese people's war of liberation; the common domestic enemy of all nationalities--the KMT reactionary government--was overthrown; and the common foreign enemy of all nationalities--the aggressive imperialist forces--was driven out. On this basis, the founding of the People's Republic of China and of the Central People's Government was announced. In accordance with the Common Programme passed by the Chinese People's Political Consultative Conference, the Central People's Government declared that all nationalities within the boundaries of the People's Republic of China are equal, and that they shall establish unity and mutual aid and oppose imperialism and their own public enemies, so that the People's Republic of China may become one big family of fraternity and co-operation, composed of all its nationalities. Within this big family of nationalities of the People's Republic of China, national regional autonomy is to be exercised in areas where national minorities are concentrated, and all national minorities are to have freedom to develop their spoken and written languages and to preserve or reform their customs, habits, and religious beliefs, and the Central People's Government will assist all national minorities to develop their political, economic, cultural, and educational construction work. Since then, all nationalities within the country, with the exception of those in the areas of Tibet and Taiwan, have gained liberation. Under the unified leadership of the Central People's Government and the direct leadership of the higher levels of People's Governments, all national minorities

have fully enjoyed the right of national equality and have exercised, or are exercising, national regional autonomy. In order that the influences of aggressive imperialist forces in Tibet may be successfully eliminated, the unification of the territory and sovereignty of the People's Republic of China accomplished, and national defence safeguarded; in order that the Tibetan nationality and people may be freed and return to the big family of the People's Republic of China to enjoy the same rights of national equality as all other nationalities in the country and develop their political, economic, cultural, and educational work, the Central People's Government, when it ordered the People's Liberation Army to march into Tibet, notified the local government of Tibet to send delegates to the Central Authorities to hold talks for the conclusion of an agreement on measures for the peaceful liberation of Tibet. At the latter part of April, 1951, the delegates with full powers from the Local Government of Tibet arrived in Peking. The Central People's Government appointed representatives with full powers to conduct talks on a friendly basis with the delegates of the Local Government of Tibet. The result of the talks is that both parties have agreed to establish this agreement and ensure that it be carried into effect.

1. The Tibetan people shall be united and drive out the imperialist aggressive forces from Tibet; that the Tibetan people shall return to the big family of the motherland--the People's Republic of China.
2. The Local Government of Tibet shall actively assist the People's Liberation Army to enter Tibet and consolidate the national defences.
3. In accordance with the policy towards nationalities laid down in the Common Programme of the Chinese People's Political Consultative Conference, the Tibetan people have the right of exercising national regional autonomy under the unified leadership of the Central People's Government.
4. 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.
5. The established status, functions, and powers of the Panchen Ngoerhtehni shall be maintained.
6. By the established status, functions and powers of the Dalai Lama and of the Panchen Ngoerhtehni is meant the status, functions and powers of the 13th Dalai Lama and of the 9th Panchen Ngoerhtehni when they were in friendly and amicable relations with each other.
7. The policy of freedom of religious belief laid down in the Common Programme of the Chinese People's Political Consultative Conference will be protected. The Central Authorities will not effect any change in the income of the monasteries.
8. The Tibetan troops will be reorganised step by step into the People's Liberation Army, and become a part of the national defence forces of the Central People's Government.
9. The spoken and written language and school education of the Tibetan nationality will be developed step by step in accordance with the actual conditions in Tibet.

10. Tibetan agriculture, livestock raising, industry and commerce will be developed step by step, and the people's livelihood shall be improved step by step in accordance with the actual conditions in Tibet.

11. In matters related to various reforms in Tibet, there will be no compulsion on the part of the Central Authorities. The Local Government of Tibet should carry out reforms of its own accord, and when the people raise demands for reform, they must be settled through consultation with the leading personnel of Tibet.

12. In so far as former pro-imperialist and pro-KMT officials resolutely sever relations with imperialism and the KMT and do not engage in sabotage or resistance, they may continue to hold office irrespective of their past.

13. The People's Liberation Army entering Tibet will abide by the above-mentioned policies and will also be fair in all buying and selling and will not arbitrarily take even a needle or a thread from the people.

14. The Central People's Government will handle all external affairs of the area of Tibet; and there will be peaceful co-existence with neighbouring countries and the establishment and development of fair commercial and trading relations with them on the basis of equality, mutual benefit and mutual respect for territory and sovereignty.

15. In order to ensure the implementation of this agreement, the Central People's Government will set up a military and administrative committee and a military area headquarters in Tibet, and apart from the personnel sent there by the Central People's Government it will absorb as many local Tibetan personnel as possible to take part in the work. Local Tibetan personnel taking part in the military and administrative committee may include patriotic elements from the Local Government of Tibet, various district and various principal monasteries; the name list is to be prepared after consultation between the representatives designated by the Central People's Government and various quarters concerned, and is to be submitted to the Central People's Government for approval.

16. Funds needed by the military and administrative committee, the military area headquarters and the People's Liberation Army entering Tibet will be provided by the Central People's Government. The Local Government of Tibet should assist the People's Liberation Army in the purchases and transportation of food, fodder, and other daily necessities.

17. This agreement shall come into force immediately after signatures and seals are affixed to it.

Signed and sealed by delegates of the Central People's Government with full powers:

Chief Delegate: Li Wei-han (Chairman of the Commission of Nationalities Affairs);

Delegates: Chang Ching-wu, Chang Kuo-hua, Sun Chih-yuan

Delegates with full powers of the Local Government of Tibet:

Chief Delegate: Kaloon Ngabou Ngawang Jigme (Ngabo Shape)

Delegates: Dzasak Khemey Sonam Wangdi, Khentrung Thuptan, Tenthar, Khenchung Thuptan Lekmuun Rimshi, Samposey Tenzin Thondup

Supplement D

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 1353 (XIV)
NEW YORK, 1959.

The General Assembly,

Recalling the principles regarding fundamental human rights and freedoms set out in the Charter of the United Nations and in the Universal Declaration of Human Rights adopted by the General Assembly on 10 December 1948,

Considering that the fundamental human rights and freedoms to which the Tibetan people, like all others, are entitled include the right to civil and religious liberty for all without distinction,

Mindful also of the distinctive cultural and religious heritage of the people of Tibet and of the autonomy which they have traditionally enjoyed,

Gravely concerned at reports, including the official statements of His Holiness the Dalai Lama, to the effect that the fundamental human rights and freedoms of the people of Tibet have been forcibly denied them,

Deploring the effect of these events in increasing international tension and embittering the relations between peoples at a time when earnest and positive efforts are being made by responsible leaders to reduce tension and improve international relations,

1. Affirms its belief 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. Calls for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.

Supplement E

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 1723 (XVI)
NEW YORK, 1961

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 neighbouring 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.

Supplement F

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 2079 (XX)
NEW YORK, 1965

The General Assembly

Bearing in mind the principles relating to human rights and fundamental freedoms set forth in the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights.

Reaffirming its resolutions 1353 (XIV) of 21 October 1959 and 1723 (XVI) of 20 December 1961 on the question of Tibet,

Gravely concerned at the continued violation of the fundamental rights and freedoms of the people of Tibet and the continued suppression of their distinctive cultural and religious life, as evidenced by the exodus of refugees to the neighbouring countries,

- 1) Deplores the continued violation of the fundamental rights and freedoms of the people of Tibet;
- 2) Reaffirms that the 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;
- 3) Declares its conviction that the violation of human rights and fundamental freedoms in Tibet and the suppression of the distinctive cultural and religious life of its people increase international tension and embitter relations between peoples;
- 4) Solemnly renews 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;
- 5) Appeals to all States to use their best endeavours to achieve the purposes of the present resolution.

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