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Rethink the Status of Tibet: The Sino-Tibetan Dispute, issues of Sovereignty and Legal Status

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Nearly 100 Tibetans have committed suicide over the past three years in protest of conditions under Chinese rule. At first, the self-immolators were mostly monks and nuns. Now more lay people, women and parents of young children are joining them. In response, Beijing has intensified the policies that have already caused so much despair. It continues to denigrate the Dalai Lama and Tibetan religion and language. It has increased already harsh security measures, and imposed criminal penalties on relatives of the suicide protestors.

What is to be done in the face of such repression? For starters, the world must re-examine how it acquiesced to China's Tibet policies.

When the People's Liberation Army invaded Tibet in 1950, Washington, along with London and Delhi, stood aside. This despite the fact that all three countries then believed Tibet to be de facto independent. The U.S. even considered making this case at the United Nations.

As Tsering Shakya recounts in his 2000 book "The Dragon in the Land of Snows," the U.S. went so far as draft a diplomatic memorandum for Great Britain. It argued that "the Tibetan people has the [same] inherent right as any other to have the determining voice in its political destiny hould developments warrant, consideration could be given to recognition of Tibet as an independent State."

That never came to pass. Britain was sounding its colonial retreat, leaving its prerogatives in Tibet to newly independent India. Indian Prime Minister Jawaharlal Nehru dreamed of cooperation on world affairs with China's communists, and believed he could deal effectively with Beijing on Tibet.

As for Washington, it soon became preoccupied with the war in Korea and once again subordinated Tibet to perceived larger interests. In the 19th century, Tibet was ignored in favor of commercial prospects in China and the Open Door Policy. Over the last century, the priority was setting up China as a counterweight to Japan and then the Soviet Union.

What if Tibet's claim to independence had been preserved rather than conceded? The U.S. and other countries would be in a much better position today to resist China's increasingly assertive claims of Tibet as a "core interest" and rebut Beijing's insistence on sovereignty as a complete bar to pressure on human rights. This claim has an impact on international affairs well beyond Tibet, permeating diplomacy and gutting the effectiveness of the United Nations on other crises like Syria.

The first step toward a new approach to Tibet is simple, although not easy. The U.S., its European allies, Japan and India should coordinate to reverse the dynamic of pressure and concession that China itself uses so effectively. This means backing those leaders who, like Estonian President Toomas Ilves, dared to meet the Dalai Lama. The religious leader's access in other capitals must be expanded.

Democracies must also respond to the Dalai Lama's plans for the future. After his death, Beijing will appoint a bogus successor through "guidelines on reincarnation" issued by the communist government's religious affairs department. It is not too soon for world governments to respond to Beijing's plan to destroy the most important institution in Tibetan Buddhism, a figure of inestimable importance to Tibetans both inside Tibet and in exile.

This should include endorsing the Dalai Lama's plan for his succession, a matter which might normally be outside the purview of governments. But under the circumstances is vital to the mission of preserving Tibetan religion and identity.

The U.S., Europe, India and Japan should also work together to establish regular contacts with the elected leader of the Tibetan exile government, Lobsang Sangay. This would help Tibetans to press for an easing of conditions inside Tibet and to engage with Beijing on solutions for the future.

All of these steps could reverse what now seems to be a never ending cycle of repression. Historically, the U.S. has subordinated its policy on Tibet to what it considered a larger strategic interest. It is time for a review of these policies and their effectiveness as well as new thinking to address the escalating suffering in Tibet.

Such a review need not endorse Tibetan independence, a goal which the Dalai Lama himself renounced in the 1970s and which many Tibetans also do not see as a priority. But understanding how the world acquiesced in communist China's subjugation of Tibet and the ineffective policies that flowed from that decision should enable the U.S. and other democracies to recover the principle American diplomats expressed in the 1950s, the right of Tibetans to determine the future of their homeland.

In 1950, those areas of the Tibetan Plateau ruled by the 14th Dalai Lama were entered by Chairman Mao's People's Liberation Army; following a brief and one-sided conflict, the Tibetan Government at Lhasa capitulated, seeking a negotiated settlement with its larger and more advanced neighbor. Nine years later, in March 1959, growing resistance to communist reforms and Chinese rule exploded into the failed Tibetan Uprising, forcing the Dalai Lama and much of his government to flee into exile in India, where they formed the 'Tibetan Government-in-Exile' (also known as the Central Tibetan Administration) in Dharamsala, North India. Since that time, the Sino-Tibetan dispute has been an on-going facet of international politics. At the heart of this dispute lies the question of the historical status of Tibet and its place in international law, which is hotly disputed by both sides.

Regarding the pre-20th century period, the fundamental argument between Beijing and Dharamsala rests in the interpretation of the constitutional relationship between Buddhist Tibet and imperial China. Beijing takes the view that Tibet was incorporated into China during the Yuan Dynasty in the 13 the Century, and that the territory had been inherited by each successive Chinese dynasty, of which both the Republic, and People's Republic of China, are natural heirs. In particular, they argue that Tibet was directly administered by the Manchus during the 18th and 19th centuries, and that during this time Chinese imperial representatives were sovereign in the region, had an attached army, and had administrative authority over Tibet's religious life and the choice of high lamas such as the Dalai and Panchen Lamas. They argue, furthermore, during the tumultuous fall of the Manchu Dynasty, Tibet was preyed upon by outside imperialist forces such as Britain, requiring the eventual peaceful liberation of the region by the PLA in 1950, a liberation which was ratified by the '17-Point' Sino-Tibetan Agreement of 1951, giving the PRC full legal rights to the territory of Tibet as an integral part of China.

By contrast, the Dalai Lama's exiled administration in Dharamsala asserts that the historical relationship between Tibet and China cannot be understood in solely imperial terms, but were primarily religious in form and addressed at the Mongolian Khans who founded the Yuan Dynasty, not the Chinese. While such diplomatic relations often involved the military defense of the Tibetan government (particularly in the 18th Century), they were characterized by the so-called chöyon relationship – that is, a legal relationship between a disciple and his religious teacher, rather than between imperial ruler and vassal. Such relations, they argue, have been renounced on several occasions by the Tibetans, and were indeed finally broken off with the fall of the Manchu Dynasty. This moment was marked by a full declaration of Tibetan independence by the 13th Dalai Lama, and followed by numerous practical augmentations of independent statehood, which were recognized in all practical regards by several neighbouring states, including British India. As a consequence, it is argued, the entrance of PLA troops into Tibetan territory in 1950 constituted military aggression against a sovereign and independent state by its larger neighbor, akin to the invasion of Kuwait in 1990.

Following a review of the various positions taken on this issue, this paper concludes by recommending to the Group a specific view regarding a modern interpretation of these debates:

That the meaningful resolution of pre-20th Century historical claims regarding the status of Tibet - based as they on clearly incommensurate understandings of sovereignty - is neither useful nor indeed possible in this context. Indeed, while no doubt important to historians, disputed claims based on Tibetan theocratic, Chinese imperial (or, for that matter, British imperial understandings and concepts) form an anachronistic and inappropriate basis for discussions of legitimate sovereignty in the modern world.

That, as is the case with other such disputes, more salient issues arise with the transition by both Chinese and Tibetan parties towards the modern framework of international statehood in the wake of the fall of the Manchu Dynasty in1911/2, a transition which went understandably unrecognized by the British authorities during the 1913 Simla negotiations between Britain, Tibet and China (whose deployment of the outdated imperial notion of suzerainty was the basis of the British position on Tibet until 2008).

That in line both this logic and with the 1959/60 statements of the International Commission of Jurists the most clear modern interpretation of the historical issue of sovereignty revolves around Tibet's clear de facto independence as a functioning state between 1913 and 1950, an independence which was brought to an end with the Chinese invasion of the region.

And finally that – in line with Article 1 of the United Nation's Charter - the question of historical claims to sovereignty, whilst important, must always be regarded as secondary to the principle of the self-determination of peoples, and to a people's right to meaningful participation in their own political, economic and legal future.

Since the entry of the People's Liberation Army into the Tibetan territories of the Fourteenth Dalai Lamas in October 1950, the failed Tibetan Uprising against communist rule between 1956-1959, and the final flight into exile of the Dalai Lama and the remains of his government (followed by some 80,000 refugees), intermittent contacts have been on-going between the leaders of the Chinese Communist Party in Beijing and representatives of the Dalai Lama exiled administration in Dharamsala, North India (see Sino-Tibetan Negotiations, 1950-Present, forthcoming). These negotiations have been dominated by three principal issues:

• The human, political and religious rights of the Tibetan people;
• The status and role of important Tibetan religious leaders, in particular the Dalai Lama;
• Tibet's position as a sovereign entity, both historically and in an on-going way.

While the last of these issues is often rather arcane and historical in nature, it has nonetheless constituted then initial framework for negotiations, and represents the principal basis of the PRC's claim to Tibet: the government of the People's Republic of China (PRC) has always demanded that the Dalai Lama, his representatives and administration relinquish all talk of an independent Tibet (both for the future and in the historical past) as the basic pre-condition for talks. By contrast, Tibetans (particularly in exile) have often claimed that the PRC government is seeking thereby to re-write Tibetan history, and deprive the Tibetan peoples of not simply their present rights, but their rights to a past of their own.

1. Disputes Regarding The Historical Status of Tibet

One of the principal differences between the views of Beijing and Dharamsala rests in their interpretations of history as the basis of claims to sovereignty in the region. In general, China's claims to Tibet are based on its understanding of pre-20th Century imperial Chinese history; by contrast, while the Central Tibetan Administration of the Dalai Lama generally reject Chinese presentations of pre-modern history, they have concentrated primarily on Tibet's 20th century history, in particular its assertion of independence between 1913 and 1950, and the Tibetan people's present wish for, and right to, self-determination.

2. The pre 20th Century Status of Tibet

Beijing's principal claims to Tibet rest upon two principal historical assertions:

(i) That the government of the People's Republic of China as a unified nation is the rightful inheritor of the imperial possessions and territories of the combined Chinese dynasties that historically ruled China, and

(ii) That, since the early medieval period, the Tibetan territories of the Dalai Lamas and their predecessors have been subject territories of such imperial rule.

Dharamsala, by contrast, asserts that Tibet's primary diplomatic relations were religious alliances with the Mongol dynasties that invaded and ruled China, and only secondarily with China itself, and that, while such arrangements often involved the close defence of Tibet by Mongol and Chinese troops, this in no sense constituted Tibet's subjugation to, or unification with, China, but rather a continued status somewhere between autonomy and independence.

3. The 20th Century Status of Tibet

Of greater concern to the modern Tibet Question is the status of Tibet during the early twentieth century: was the entry of Mao's PLA troops into Tibet in 1950 a 'peaceful liberation' that simply reconsolidated established Chinese territories in the wake of a period of civil war and revolution, or; a straightforward case of military aggression against a sovereign and independent neighbor, equivalent to, for example, present-day France invading Algeria on the grounds that it was once a fully-incorporated French department. In this regard, the Dalai Lama's administration in exile in Lhasa strongly asserts that between 1913-1950, Tibet was a sovereign state, whose full independence was recognized in numerous ways on the international stage. The government of the PRC, by contrast, asserts that this period was marked by a continuation of Chinese rule under the new Nationalist Government.

4. Summary of Beijing and Dharamsala's Positions Regarding the Historical Status of Tibet

Such historical disputes remain largely peripheral to the life of modern Tibetans in a practical sense: in particular, they should not be confused with the issue of Tibetans' contemporary human, religious, economic and cultural rights. However, for both Beijing and Dharamsala, they retain an enormous symbolic and legal importance.

Beijing's position in particular rests almost wholly on the historical claims outlined above, in particular the claim that a unified China maintained continuous sovereignty over Tibet since the 13th century, and that during this time Tibet was never independent in any real way. Were this not the case, then the events of 1950 would constitute an illegal and arguably colonialist invasion, and would be in breach of their own constitutional principles. Their historical claim to Tibet is, moreover, essential to the notion that Tibet is an integral part of China, and not merely a colony, and therefore that any complaints or interventions regarding the Tibet issue on the international stage constitute interference in China's internal affairs, and therefore a breach of Article 2 of the United Nations Charter. In this sense, Beijing has always regarded it as a precondition of talks not only that Dharamsala give up any proposal of independence, but also any assertion that post-12th Century Tibet was ever independent. At the same time, however, it should be noted that this position is certainly not a post hoc view held with the intention of justifying the invasion of Tibet, but was equally strongly asserted by the (pre-communist) Chinese government in its negotiations with Britain in 1914v.

Dharamsala's position on Sino-Tibetan history is part of a wider view that can be summarized in four principal points

- Firstly, that Tibetan governments over time engaged in several legitimate constitutional engagements with China through Mongol leaders or their descendents (whether the Khans or the Manchu). These relations were modeled on the explicitly religious patron-priest (or chöyon) relationship, in which - through acting as the spiritual guides (or gurus) to successive emperors - key Tibetan leaders acted as their religious superiors, for which they received economic support and military protection.
- Secondly, they assert that while these various arrangements involved differing degrees of constitutional dependence and independence vis-à-vis China, all of them involved the maintenance of genuine domestic autonomy within Tibet itself.
- Thirdly, that between 1913 and 1950, Tibet constituted a fully sovereign independent state, and that the PLA entry into Tibetan territories in 1950 constituted an act of foreign aggression.
- Finally, that regardless of somewhat arcane historical debates, the PRC's present de facto sovereignty over Tibet should not entitle them to re-write history, commit extensive human rights abuses, destroy Tibet's unique religious, cultural and natural heritage, and transform Tibetans into second-class citizens in their own country through mass population transfer, particularly in the face of the clear popular wish by Tibetans for self-determination.

The first three points above, it is worth noting, are very clearly not a post-hoc vision of Tibetan history, but were distinctly asserted in the Tibetan Government's negotiations with Beijing as far back as 1913. This position has strongly influenced the Dalai Lama's negotiating proposals over the last twenty years. In September 1987, after sending four fact-finding expeditions to Tibet and engaging in two rounds of exploratory talks with the Chinese leadership in Beijing, the Dalai Lama presented his "Five Point Peace Plan for Tibet" to the US Congressional Human Rights Caucus. This included the following proposals:

- The transformation of the whole Tibetan Plateau into a de-militarized 'zone of peace', intended to act as a buffer-zone at the heart of Asia.
- Abandonment of China's population transfer policy to Tibet.
- Respect for Tibetans' fundamental human rights and democratic rights.
- Restoration and protection of Tibet's natural habitat, and ending of its use as a site for the production and dumping of nuclear materials.
- Commencement of earnest negotiations on Tibet's future status.

Nine months later, in June 1988, this position was superseded the Dalai Lama announced his "Framework for Sino-Tibetan Negotiations" at Strasbourg. In this he formally renounced Dharamsala's previous demands for independence, conceding that the People's Republic of China should be responsible for Tibet's foreign relations and defence, whilst simultaneously calling for greater autonomy for Tibetans in running their domestic affairs. Here, the Dalai Lama sought a situation in which "the whole of Tibet, known as the Cholkha- Sum (U-Tsang, Kham and Amdo) should become a self-governing democratic political entity founded on agreement with the people in association with the People's Republic of China". This latter call forms the basis of what the Dalai Lama refers to as the 'Middle Way Approach' between independence and complete assimilation.

Analysis and Recommendations

The complex and occasionally arcane historical debates involved in the Sino-Tibetan debate can serve more to obscure the more concrete and urgent issues at stake than illuminate them. In this regard, while the primary purpose of this background paper is to provide information and analysis on these historical and legal claims, certain points of interpretation are recommended to the Group:

Firstly, that Sino-Tibetan disputes over sovereignty, while rendered most acute by the arrival of Chinese communist forces in Tibet in 1950, clearly pre-date this moment by decades, if not centuries.

Secondly, that the pre-20th century period – whilst important for historians of Tibet, is of little consequence regarding the adjudication of modern claims regarding legitimate sovereignty and governance in the region, particularly in comparison the events of the 20th Century itself, during which both Tibetan and Chinese governments, like many, sought to engage the world in the terms of the modern international system of states.

Thirdly, it is suggested - with the clarity provided by historical and political distance, and in line with the implications of the UK Foreign Office's recent statement - that the deployment of the notion of suzerainty within the Simla negotiations was, even at the time it was penned, both outdated, legally ambiguous and inappropriate to the emerging political context of early 20th century Asia, whether in the form of the Chinese repudiation of its imperial past in favour of a Republic, or the Tibetan renunciation of the theocratic chöyon arrangement in favour of sovereign independence

Fourthly, it is recommended - in line with the UK's recent recognition of de facto realities, and questioning of outmoded imperial terminology, and notwithstanding its non-recognition by the Chinesen authorities - that the Cross-Party Group support the view of the International Commission of

Jurists in recognizing Tibet as a functioning independent state between 1913-1950. This is demonstrated by, amongst other events, the Thirteenth Dalai Lama's expulsion of Chinese troops and declaration of independence in 1913; the subsequent augmentation and modernization of its army; Tibet's continued relations with Britain during this period, most particularly in the form of granting British trade agents extra-territorial legal rights within Tibetan territories, despite Chinese Government ordinances ending all such rights "in the territory of China" in 1929, and; the Tibetan government's successful assertion of neutrality and ban on using its territories for military purposes during, despite considerable pressure from Britain, America and China.

Finally, and in concurrence with the articles of the United Nations Charter noted above, it is recommended that the Group support the primary principle of the self-determination of peoples (rather than histories of imperial or theocratic alliances or dominions) as the basis for determinations of legitimate governance. Whilst the assertion of self-determination cannot necessarily be equated with a requirement for independence, it does equate with a people's right to meaningful participation in their political, economic and legal life and future, and in particular to a meaningful right to a culture, religion and language of their own. In this last sense therefore, where a people's right to self determination is the central principle, any discussion of the question of legitimate governance must restless on minutiae of history than on the on-going quality, justice and equity of that governance.

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