

OPTIONS FOR TIBET'S FUTURE POLITICAL STATUS:

SELF-GOVERNANCE THROUGH AN
AUTONOMOUS ARRANGEMENT

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1. INTRODUCTION

The purpose of this publication is to deepen the public understanding and discussion in the Tibetan community of one of the options available for the future of Tibet. The option of independence has been widely discussed. The option of self-governance short of independence has been less thoroughly explored within the Tibetan community. This option was first proposed by His Holiness the Dalai Lama in 1987, as part of His Five Point Peace Plan for Tibet, and was elaborated in His Strasbourg Proposal of 1988.

The Tibetan Government in Exile is currently exploring the possibility of negotiating for Tibet's self-governance through an autonomous arrangement with China. In November of 1999 the Tibetan Parliamentary & Policy Research Centre (TPPRC) invited international legal scholars to New Delhi to discuss issues of self-governance and autonomy, from an academic and legal perspective, with Tibetan leaders. This workshop was, in part, based on a 700-page study prepared by the International Committee of Lawyers for Tibet (ICLT) on Forms for Autonomy, which systematically examined 34 autonomy arrangements around the world. This study is available through ICLT. A record of this workshop, in the form of a book in English, can be obtained from the TPPRC. In order to expand an informed discussion on autonomy on the grassroots level in the Tibetan community, the TPPRC, together with ICLT, held two workshops in New Delhi, in September of 2000, training Tibetan teachers and settlement officers to hold workshops on autonomy in their respective settlements. Subsequently, both the teachers and settlement officers suggested that a publication on autonomy in Tibetan would be useful to an informed discussion on this issue at the grassroots level of the Tibetan community. Thus the idea for this publication was born.

This publication will focus on how self-governance could be achieved through an autonomous arrangement between Tibet and China. It will explore the Tibetan people's legal rights, the definition and practice of autonomy, and what governmental powers would need to be divided between the Tibetan autonomous government and the Chinese government to make such an arrangement work for Tibet. The goal of this publication is to support the democratic process within the Tibetan community by providing information and by stimulating discussion on the political option of self-governance through autonomy. It is expressly not the goal of this publication to advocate for or against the creation of an autonomous arrangement with China.

2. THE RIGHT TO SELF-DETERMINATION - THE LEGAL CORNERSTONE TO TIBET'S FUTURE

When the Tibetan people discuss what future they seek for Tibet, whether that is independence or some form of autonomy, it is important to first be clear about the legal basis for the Tibetans' right to make decisions on their country's political status. While most people will agree that the Tibetan struggle against China's occupation is a morally just cause, fewer people fully understand the legal basis for the Tibetan people's right to govern Tibet.

The legal case of Tibet rests on two distinct pillars. First, Tibet's historical claim, based on past independence, known in legal terms as the right to territorial integrity, and second, the right to self-determination. Both of these rights, separately, give the Tibetan people the choice to determine their future political, economic, social and cultural status. The options as to a future political status include independence, an autonomous arrangement or theoretically total integration into the Chinese state.

It is important to note, at the outset, that the right to self-determination is not an option for Tibet's political status, such as independence or autonomy, rather it is one of the underlying rights on the basis of which Tibetans are legally justified to seek independence or autonomy. Much confusion on this point was engendered by the Tibetan referendum in the 90's which gave Tibetans the choice of independence, the middle path, or self-determination. These options, from a legal perspective, were not logical because self-determination, as discussed below, is a legal right to make choices for such future statuses as independence or autonomy for Tibet. Self-determination is not a choice of political status, it is the underlying right for choices.

The first separate pillar of Tibet's legal case is the right to territorial integrity. It is the right of a sovereign nation to retain control over its territory. In other words, this is what we sometimes refer to as Tibet's historical right or claim. Thus if Tibet can show that she was sovereign prior to China's invasion, then she is entitled to continued and future sovereignty, which means she has the right to decide on her future political, social, cultural and economic status. While Chinese and Tibetan history is intertwined in several significant ways, many scholars, including the International Commission of Jurists, have come to the conclusion that Tibet's historical claim to sovereignty is valid and that Tibet, if it so chooses, is entitled to have its sovereign status restored. Other scholars, many politicians and of course China, disagree with that conclusion. Most serious scholars of law and history will agree that Tibet was a sovereign nation when it was invaded by China in 1949. This alone is sufficient to conclude that China's military annexation was unlawful. Additionally, China's theory that Tibet became a part of China during the Mongol period in the 13th century can not be legally justified, since under this type of argument China could claim most of Asia, which was under Mongol rule as well, and India could claim most of its neighbors, who were governed under a common British rule. While Manchu influence in Tibet was substantial, it was not unlike that of many protectorate relationships between sovereign nations today and, in any event, that influence had faded away by the end of the 19th century. A detailed discussion of this

history can be found in “The Case of Tibet”, a study written by ICLT and the Unrepresented Nation’s, published by the TPPRC.

The problem with historical arguments is that history can be interpreted in many different ways. Nations and peoples sometimes become interdependent, and instead of a historical picture emerging in clear blacks and whites, it comes out in shades of gray, which are subject to interpretation. China rests her case against Tibet solely on her historical interpretation that Tibet has always been a part of China and therefore concludes that Tibet has no right to determine its future. Interestingly, and for good reasons, China has been mostly silent on Tibet’s right to self-determination.

Tibet’s second legal pillar is the right to self-determination. This right is separate and independent of Tibet’s territorial, or historical claim. In other words, even if China were correct and Tibet was not independent in the past but a legitimate part of China, Tibetans today have the right to self-determination. Pursuant to that right, Tibetans today have the legal right to decide their political future. The right to self-determination is a cornerstone of the UN Charter (Chapter 1, Article 1 (2)) and is a right which applies to peoples, not individuals.

There is no genuine dispute that Tibetans are a people, which under international law is defined as a group of people with a common historical tradition, a racial identity, a shared culture, linguistic unity, religious affinity, a territorial connection and a common economic life.

Given that Tibetans are a distinct people, there is no legal dispute that they have the right to self-determination. Even the United Nations General Assembly, repeatedly, in 1961 and 1965, explicitly recognized the Tibetan peoples’ right to self-determination and called on China to respect this right. Tibetans thus stand on firm legal ground when they insist on the exercise of their right to self-determination. At the same time, because the Tibetan case is based on this internationally recognized right, China is legally incorrect when it claims that all matters concerning Tibet are Chinese domestic affairs. The advantage of using the right to self-determination as the basis for Tibet’s case thus is many-fold. It avoids the slippery slope of historical interpretation. By removing the historical debate, it makes the deeply ingrained beliefs of many Chinese people that Tibet always was a part of China irrelevant and has the benefit of a face saving solution. Further, it internationalizes the Tibetan issue and legitimizes the requests of internationals that China comply with its international legal obligations vis-a-vis Tibet.

In some situations a conflict can arise when a people seeks independence, based on the right to self-determination, and when the state involved tries to prevent a loss of territory by claiming that it is entitled to keep its territory in tact, based on the right to territorial integrity. In some situation such a conflict may mean that the people are entitled to self-governance through an autonomous arrangement only, but are not legally entitled to full independence. However, when a state has not fulfilled its duties to a people but has suppressed their human rights, and when a state has prevented the people from democratically electing its political representatives, then the state can not use the right to territorial integrity to prevent the people from obtaining independence.

In other words, when a people's human rights have been violated by the state, then the right to self-determination allows the people to freely choose their political status, without limitations, including independence and autonomy.

Therefore, from a legal point of view, Tibetans should be allowed, by virtue of their right to self-determination, to freely choose their future political status, including independence. This conclusion, in summary, is based on the following grounds:

1. Tibetans are a distinct people;
2. As a people, they have the rights to self-determination and
3. This right should trump China's conflicting claim to territorial integrity because:
 - a. China, by repressing Tibet, has not conducted itself as the legitimate government of the Tibet people; and
 - b. China has not allowed Tibetans to freely select their political representatives.

Given that Tibetans are legally entitled to fully exercise their right to self-determination, the next question is what choices does this entail for the Tibetan people. There are three basic options:

1. Total integration into the Chinese state, on the one extreme, or
1. Independence, on the other extreme, or
3. Autonomy or self-governance within the Chinese state ("the Middle Way")

Total integration into the Chinese state is an option advocated by few, if any, Tibetans. As most Tibetans know, the major obstacles to independence are not legal but political. Many Tibetans and Tibetan NGOs, such as the Tibetan Youth Congress, strongly favor this option despite the so far unsurmountable political obstacles. They believe that any solution short of independence will not do justice to Tibet. The third option for self-determination is an autonomous arrangement between the Tibetan people and China, or in His Holiness's words, an arrangement for genuine self-governance. His Holiness's position responds to the late Deng Xiaoping's comments that everything is negotiable, except for independence, and is based on His Holiness's assessment that time is running out for the Tibetan culture's survival in occupied Tibet. No doubt, His Holiness's decision to seek a resolution short of independence is strongly influenced by His evaluation of the relative political and economic strengths of China and Tibet and the international community's long-standing failure to stand up for Tibetan independence.

To evaluate the option of self-governance through an autonomous arrangement, which is the purpose of this publication, it is necessary to understand what autonomy means and how autonomous arrangements can be structured.

3. SELF-GOVERNANCE THROUGH AN AUTONOMOUS ARRANGEMENT

During the course of the 20th century, many conflicts between peoples and states have been successfully resolved through negotiated arrangements for autonomy. The word “autonomy”, according to the Random House Dictionary, is defined as independence, freedom and as the right to self-government. When we speak of “academic autonomy”, for example, we generally refer to the independence of universities to teach and conduct research, free from government interference and corporate influence. “Individual autonomy” usually refers to an individual’s right to make her or his own decisions. Autonomy of a people (such as the Tibetans) refers to a form of self-government, within the framework of a larger state, usually, but not always, short of complete independence.

Despite the fact that well over 40 autonomous arrangements have been created in the 20th century, the term “autonomy” has no generally accepted meaning in international law. This is not astonishing because one autonomous arrangement can be completely different from the next. Autonomy is a vague, if not meaningless concept, unless and until it is defined, on a case by case basis, as a particular distribution of governmental powers between two governments: The government of the people who seek self-government, usually referred to as the autonomous government and the government of the sovereign or larger state, referred to as the state government. Some of the major governmental powers which must be divided and allocated between these two governments in the drafting of an autonomous agreement are the powers to control:

- Cultural affairs
- Education
- Official language
- National symbols
- Health and social Services
- Economy
- Taxation
- Natural resources
- Environmental policy
- Transportation
- Postal and telecommunications systems
- Law and order
- Administration of justice
- Currency and monetary policy
- Determination of citizenship
- Foreign policy
- Defense
- Customs, border control, immigration

In deciding whether an autonomous arrangement will meet a particular people’s needs, it is necessary to carefully examine the distribution of these governmental powers between the autonomous government and the state government. Taking a position for or against autonomy is somewhat meaningless, unless the autonomy proposed or opposed is specifically defined as a particular distribution of governmental powers. Depending on how these powers are divided, an autonomous arrangement either results in negligible self-governance or substantial self-governance. The current Tibet Autonomous Region (TAR) is an example of negligible self-rule. Very few governmental powers are controlled by the TAR government and even those powers it nominally controls become often meaningless because the TAR government is controlled by the central Communist Party. Examples of substantial self-governance include

Liechtenstein, which has an autonomous arrangements with Switzerland, and Greenland which has an autonomous arrangement with Denmark. Another example is His Holiness's Strasbourg proposal, which allocates most governmental powers to Tibetans and would give to China only defense and some foreign affairs powers.

The following brief summary focuses on the major governmental powers which must be considered in negotiating an autonomous arrangement. It also highlights how other peoples have resolved the allocation of these powers between their autonomous government and the state government. Please see Appendix "A" for a glossary and Appendix "B" for a map of the location of the autonomous arrangements referred to below.

CULTURAL AFFAIRS

Cultural preservation lies at the foundation of almost every struggle for self-determination. The power over cultural affairs is the only governmental function over which virtually all autonomous governments have control. In some cases, however, such as the TAR and the nearby Xinjiang Uighur Autonomous Region (East Turkestan, also under China's control), this control is a matter of right, but not of practice.

EDUCATION

In the great majority of the autonomous arrangements, education is entirely controlled by the autonomous government. Most autonomous governments insist on controlling education in order to guarantee survival of the native language and the cultural identity of their people.

For example, the Swedish speaking Aland Islands, an autonomous province of Finland under the 1991 Act of Autonomy for Aland, administer their own schools, where instruction is in Swedish, with English as a second language. Finish is offered as an optional language.

Several examples underscore the importance of providing sufficient second language instruction to give students access to a university education. This is especially true in remote regions of the world. In the Federated States of Micronesia, an associated state of the United States (US) under the 1982 Compact of Free Association, located in the Pacific, education is within the exclusive jurisdiction of the autonomous government. Students are taught in each of the applicable Micronesian languages and English is required as a second language. Due to the geographical isolation and the low quality of some of the English instruction, however, many Micronesians graduate without proficiency in English. Because relatively few books are available in the Micronesian languages, educational levels remain low and students are not adequately prepared for a college education, which is only available abroad.

South Tyrol, a German speaking autonomous province of Italy under the Autonomy Statute of 1972, also controls education. Elementary and secondary education are provided in the child's mother tongue, German or Italian. Instruction in the province's other language is also mandatory. All teachers must speak both languages and must be native speakers of the school's primary language.

The TAR is one of the few examples where the autonomous government does not have ultimate control over education. It may plan and implement educational programs but does not have ultimate control because all such programs must comply with Chinese state guidelines.

OFFICIAL LANGUAGE

Language is a key component of cultural identity and control over language is often critical to effective self-governance. In some autonomous arrangements the state's language is the sole official language, as in the TAR, where the official language is Mandarin. In others, the language of the people is the only official language. For example, in Quebec, a French speaking autonomous province in the South of Canada, the official language is French, even though the rest of Canada is English speaking. In some cases, such as the Aland Islands, the people's language is the official language, but translation from and into the state's language is available for certain official business. Many autonomous arrangements provide for several official languages, so as to meet the needs of the people and the state. Such arrangements are found, for example, in Hong Kong, Micronesia and Greenland.

NATIONAL SYMBOLS

To many peoples, national symbols, such as flags, seals and anthems, are a vital and critical part of their identity. Therefore, most peoples do have their own national symbolism. Prohibitions of national symbols are found only rarely, but include the Chittagong Hill Tracts, which entered into a peace agreement with Bangladesh in 1997, the TAR and Northern Ireland, an island located next to England.

HEALTH AND SOCIAL SERVICES

In many cases, health care and social services are provided by the people's autonomous governments. For example, Hong Kong, Liechtenstein and South Tyrol have exclusive control over these functions. An unsuccessful example of people's control over health care is found in Zanzibar, in East Africa, which has an autonomous arrangement with Tanzania, since 1964. While Zanzibar has exclusive control over health care, it has insufficient funds to adequately provide for its population's needs. As a result there have been outbreaks of epidemics, due to lack of potable water and inadequate sewage and electrical systems.

While health care and social services are inherently internal affairs issues, in many cases they are a function of the state, in part, for financial reasons. In Quebec health care is within the autonomous government's jurisdiction but Quebec has transferred responsibility for health and social services to the Canadian federal government, because the financial burden was too large for the autonomous government. Others, including the people of the Aland Islands, Chittagong Hill Tracts, Micronesia and Northern Ireland, have sole control over health care delivery but with the support of the state, by way of subsidies.

ECONOMY

Many autonomous governments have sole or substantial control over their economy. Development of and control over the economy is essential to building economic wealth and a financial base for self-governance.

A good example is Tatarstan, an autonomous member of the Russian Federation. Tatarstan's oil reserves and strong military industry positioned Tatarstan to successfully negotiate a bilateral treaty with the Russian Federation, which guarantees to Tatarstan substantial powers of self-governance not enjoyed by other members of the Russian Federation. Liechtenstein, though one of the smallest European countries, has highly profitable electronics, metal, pharmaceutical, ceramics and textile industries, as well as lucrative tourism. It is a sovereign state which has chosen a mutually beneficial associated statehood relationship with Switzerland since 1923.

Economic power can also be successfully shared. In Quebec, for example, intra-provincial business is controlled by Quebec, while inter-provincial trade is controlled by the federal government. In the Basque Country, an autonomous region of Spain, Spain exercises control over foreign trade, banking and insurance, while the Basque autonomous government controls all other aspects of the economy. In some cases state subsidies provide autonomous governments with substantial economic control. The Aland Islands, for example, control their port and shipping industry but require and receive substantial economic aid from Finland.

Lack of a viable economy leads to dependency in many other areas, as demonstrated by the case of the Navajo Nation, located in the South West of the United States. Similarly, in the TAR, where the economy is controlled by the state, lack of local control over the economy, a weak economy and a low level of autonomy go hand in hand.

TAXATION

The power to tax is vital to the control of the economy and government services. There is a strong correlation between taxing powers and substantial autonomy. Many autonomous governments, such as Hong Kong, Micronesia, Liechtenstein and Greenland have exclusive taxing powers. Some autonomous governments may levy taxes with respect to matters within their jurisdiction, while states often reserve the powers to tax on matters of state-wide interest. In an interesting twist, some autonomous governments use their taxing power to attract commerce by creating tax-free heavens within their jurisdiction. This is the case in Andorra, an autonomous province of Spain. The TAR is one of the very few examples where virtually all taxing powers are within the control of the state. The TAR has the limited authority to grant tax exemptions and reductions in special situations.

NATURAL RESOURCES

Control over natural resources is an important factor in controlling one's economy and environmental integrity. Natural resources are the main source of actual or potential wealth for many peoples. By the same token, states desire full access to these resources and it is often difficult to persuade states that it is in their best interest to allow an autonomous government control over natural resources. However, the economic

viability of the autonomous people is generally in the state's best interest. State concerns over potentially unsound management of natural resources can be addressed through joint regulation of natural resources, linked to international standards and best practices.

Many of the highly autonomous peoples examined have control over substantial natural resources. The Aland Islanders, for example, control ownership over their land and the resources it contains and their government controls all natural resources. Such arrangements are also found in the Federated States of Micronesia. Scotland, an autonomous part of Great Britain has control over its natural resources, except for oil and gas. Greenlanders have substantial control over their natural resources. However, the study, prospecting and exploitation of natural resources is jointly regulated by Denmark and the Greenland government. The people of the TAR have no control over their natural resources. This has deprived them of potential wealth and has led to environmental mismanagement.

ENVIRONMENTAL POLICY

Sound environmental policies are essential for a sustainable economy and for all beings within a territory. Further, environmental policies are of great importance to the larger state because environmental devastation often knows no boundaries. For these reasons both the people and the state usually have a stake in environmental policy.

South Tyrol, Greenland, Zanzibar, Andorra and Scotland enjoy complete control over their environmental policies. Similarly, in Hong Kong jurisdiction over environmental policy is vested in the autonomous government. In the TAR, on the other hand, the central PRC government controls environmental policy. Some autonomous arrangements, such as the Interim Agreement between Israel and Palestine, in the Middle East, provide for adherence to international environmental standards and joint environmental impact assessments. Joint control is therefore not necessarily counterproductive, so long as it is tied to specific international standards.

TRANSPORTATION

Roads and other aspects of transportation can be of strategic and military importance and of vital importance to the economy. State participation in transportation may be beneficial to an autonomous government which lacks necessary financial and technological resources. However, issues of ultimate control over transportation must be considered very carefully because transportation and population influx often go hand in hand.

South Tyrol, Liechtenstein, the Aland Islands, Micronesia, Andorra and the Cook Islands, for example, have exclusive power over transportation. Transportation is controlled exclusively by the state in the Navajo Nation, Northern Ireland and Scotland. Examples of shared control are found, for example, in the Basque Country where the autonomous government has control over railways and highways which run completely within its territory.

POSTAL AND TELECOMMUNICATION SYSTEMS

Most states seek control over postal and telecommunications systems as they may have strategic and military significance. While most autonomous governments chose not to control these systems which are expensive to run, some exceptions exist. Hong Kong for example controls its own postal and telecommunications systems. San Marino, a tiny state in the middle of Italy shares a postal union with Italy, but San Marino issues its own stamps which are collectors' items due to their small circulation and thus a major source of income.

LAW AND ORDER

Control over policing is essential, especially when the relationship between the people and the state has historically been hostile. In most autonomous arrangements, the people alone or jointly with the state control policing and law enforcement. For example, the Aland Islands have sole jurisdiction over their police forces and public order. So do Micronesia, Liechtenstein, Scotland and Andorra.

The Faroe Islands, an autonomous part of Denmark, have joint jurisdiction with the Danish government over law and order. The Faroe Islands government maintains a small police force and coast guard. The Basic Law provides Hong Kong with exclusive jurisdiction over law and order within its territory.

ADMINISTRATION OF JUSTICE

In most autonomous arrangements ultimate judicial control rests with the state. Sometimes, the people have jurisdiction over a limited area of justice administration. Only Micronesia, Andorra and Liechtenstein have an independent judiciary of their own with complete jurisdiction over all civil and criminal matters.

Some autonomous governments have their own judiciary which is linked in various ways to the state. One such example is Puerto Rico, an island south of the United States in the Caribbean Sea, which has an autonomous arrangement with the United States. Puerto Rico has its own court system based on Spanish law, rather than the English law on which the US judicial system is built, but the US retains some control by allowing final judgments of the Puerto Rican court to be appealed to the US Supreme Court.

In Hong Kong, judicial powers are vested in an "independent" judiciary based on English common law. Hong Kong's judiciary, however, is not truly independent since the decisions of its highest court are reviewable by China's National People's Congress.

In some arrangements jurisdiction is divided. For example, the Inuit, a native people in the North of Canada, sometimes referred to as Eskimos, under the 1991 Nanavut Land Claim of Canada, have control over the trial and appellate courts, while the Canadian Supreme Court has final appellate jurisdiction. Similarly, Scotland has civil and criminal courts but the highest level of civil appeals lies with the British court. In the TAR, the judiciary is entirely controlled by the PRC.

In negotiations for judicial powers, consideration must be given to the quality of the

judicial system of the state and to the traditional judicial system of the autonomous people. In other words, the legal system's process, its neutrality and its independence from political forces may be of more importance than the issue of who controls it.

CURRENCY AND MONETARY POLICY

Most peoples use the currency of the state. However, as with postage stamps, currency may be of symbolic significance. Some peoples have a separate currency which may be used interchangeably, at the same value, with the currency of the state, which controls the monetary policy. This includes the Holy See, which is the Catholic Churches autonomous entity in the middle of Rome, Italy, as well as Scotland, Liechtenstein, the Faroe Islands and Gibraltar, which is part of the United Kingdom. Hong Kong has its own currency, which is independent of Chinese currency.

DETERMINATION OF CITIZENSHIP

Citizenship can be of symbolic importance and can also be linked to other important issues such as immigration, landownership, voting rights and access to state schools.

With few exceptions, autonomous arrangements provide that the autonomous people are citizens of the state. However, Tatars are citizens of Tatarstan and citizens of the Russian Federation. Similarly, the people of Zanzibar are citizens of both Zanzibar and Tanzania. Aland Islanders are dual citizens of Aland Islands and Finland. Hong Kong citizens and the people of the TAR are citizens of the PRC.

FOREIGN POLICY

Foreign policy powers can be held exclusively by the autonomous government, by the state or they can be shared. While there is often an assumption that all foreign affairs powers are matters of exclusive state concern, experience shows that foreign affairs powers can be successfully divided and shared. The interests of the state and the autonomous governments can best be met if foreign policy powers are divided in a practical manner, so as to give the state and the autonomous government those foreign policy powers which complement the other governmental powers they each hold. Autonomous governments which enjoy a high degree of internal self-governance have a substantial interest in participating in matters of foreign policy which affect their areas of self-governance. By the same token, a state may have little interest in an area of foreign policy that is related to a governmental function within the control of the autonomous government. Thus, for example, where the state has no involvement in the economy of the autonomous people, it may have little interest in the power to enter into trade treaties affecting the autonomous territory.

San Marino, Liechtenstein, the Cook Islands, Micronesia, Andorra and Tatarstan, all are economically strong entities and enjoy the highest level of control over foreign policy within the entities studied. Liechtenstein, for example, is a sovereign state but through an autonomous arrangement has authorized Switzerland to conduct most of its diplomatic affairs. It retains, however, ultimate power over its foreign policy.

Some autonomous arrangements provide for limited participation of the autonomous

government in foreign policy matters. In Hong Kong, for example, foreign affairs powers are vested in the PRC. The PRC nonetheless has authorized Hong Kong to conduct certain external affairs on its own in accordance with the Basic Law. Thus, under the name of Hong Kong China, Hong Kong may develop, maintain and conclude relations and agreements with foreign states and international organizations in the areas of trade, shipping, communications, tourism, monetary affairs and culture. Hong Kong is a distinct member of a number of international organizations, including the World Trade Organization, the International Monetary Fund and the Asia Pacific Economic Co-operation.

Palestine, though not yet independent from Israel has diplomatic relations with over 100 states and enjoys UN observer status. However, the Interim Agreement of 1995 limits the foreign affairs powers of the PLO to the areas of economic, cultural, scientific and educational agreements with other states. Greenland and the Faroe Islands are subject to Denmark's exclusive jurisdiction over foreign affairs but Greenlanders and the Faroe Islanders have the right to enter into their own trade agreements.

In many other situations, however, the autonomous government does not share in foreign policy powers on a decision making level. Some people have the right under their respective autonomy arrangements to join relevant international organizations. The Inuit, for example, are a member of the Circumpolar Conference and the Aland Islanders and the Faroe Islanders send their own separate delegations to the Nordic Council, a regional organization of parliamentarians from the Nordic States. This type of involvement allows the people concerned to contribute their input and views to matters of foreign relations.

In the TAR and the Xinjiang Uighur Autonomous Region, foreign policy powers are held exclusively by the PRC's central government, with no involvement by the autonomous governments.

DEFENSE

In virtually all the autonomous arrangements the power of defense is within the exclusive jurisdiction of the state. Hong Kong and the TAR are examples of exclusive state control over defense. Some arrangements provide for demilitarization of the territory inhabited by the people. A major provision of the 1991 Act of Autonomy of Aland, for example, provides that the Aland Islands will remain demilitarized. Similarly, Liechtenstein has been a neutral country since 1866 and is a demilitarized zone. Other autonomous arrangements provide for a reduction in military presence.

PASSPORTS/VISAS

Control over visas may have effects on economic development and tourism. Passports may be connected to issues of immigration and also may have symbolic significance for the autonomous people. Passports and visas are mostly controlled by the state. Exceptions are found in the Aland and Faroe Islands, where passports identify the people as citizens of the autonomous government and of the state. Citizens of the Federated States of Micronesia carry their own passports as Micronesian citizens. Hong Kong issues its own visas and passports, though Hong Kong citizens have become PRC

citizens. The TAR, on the other hand, has no control over passports or visas.

CUSTOMS, BORDER CONTROL AND IMMIGRATION

In the great majority of autonomous arrangements, the state controls customs, borders and immigration of foreign citizens. These powers, though, can be exercised jointly or can be divided between the state and the autonomous government. Special attention must be paid to internal immigration and to residency requirements because immigration can have a profound impact on culture and can lead to cultural destruction, especially when citizens of the larger state immigrate into the autonomous territory.

The Holy See and the Federated States of Micronesia are exceptions as they have full control over customs, borders and all aspects of immigration. While Canada has power over borders and customs on Inuit land, the Inuit may exclude non-Inuits, Canadians and foreigners from entering their territory. Canadian military exercises on Inuit land require Inuit agreement. Further, the Inuit have exclusive jurisdiction over deciding who is Inuit. Similarly, the Navajo Nation controls entry into its territory as well as who may reside there.

In some situations these powers are divided between the state and the people. For example, in Palestine, Israel and Palestine jointly control the borders. The Hong Kong government administers and controls customs and immigration, subject to the ultimate jurisdiction of the PRC, while the PRC administers and controls these matters in the TAR.

POLITICAL RIGHTS

Whether the people living in the autonomous region enjoy fundamental freedoms and human rights can be seen as a test of whether an autonomous arrangements is working out.

In the majority of cases where the autonomous people hold substantial control over governmental powers international human rights standards are adhered to. Some newly independent states and autonomous arrangements, including the Cook Islands, Andorra and South Africa, have taken a preventive approach by expressly incorporating international human rights standards into their constitutions. Similarly some autonomous statutes require the autonomous government to protect and promote human rights.

On the other hand, where the basic needs of the people are not met and where the cultural identity of the people is not furthered by the autonomous arrangements, political instability and human rights violations are prevalent. The TAR, which holds virtually no ultimate control over governmental powers, unfortunately exemplified this problem all too clearly.

CONCLUSION

As can be seen from the above discussion, the division and allocation of governmental

powers between an autonomous government and a state government is the key to achieving meaningful self-governance for a people. Depending on this allocation, autonomy will either be negligible or substantial. The task for the Tibetan people therefore is to carefully examine which governmental powers must be under Tibetan control for Tibetans to have meaningful control over their affairs.

4. LEGAL STRUCTURES FOR AUTONOMOUS ARRANGEMENTS

The relationship between an autonomous government of a people and a state can take different legal forms. The most important of these are autonomous provinces, federations and associated states:

AUTONOMOUS PROVINCE OR REGION

Autonomous provinces are created by the larger state, which authorizes an autonomous government to control local affairs subject to centralized authority of the state. The degree of autonomy in such arrangements can be slight or more substantial, depending on the distribution of governmental powers. Examples include Basque Country, Hong Kong, TAR, Xinjiang, South Tyrol and Chittagong Hill Tracts. Generally, autonomous provinces do not have the right to obtain independence without the approval of the larger state. Generally, the people in an autonomous province have little control over the government of the state.

FEDERATION

In a federation, two or more parties enter into an agreement to establish one central or federal government and several provincial or autonomous governments. Governmental powers are divided between the federal and provincial governments. The federal government generally has more power over issues which affect all of the people, such as foreign affairs, defense and environmental protection, while the provincial governments have more power over local issues, such as education, cultural matters and social services. Often this division of power is set forth in the federation's constitution. One of the best known examples is the USA. Other examples include Canada (Quebec), the United Kingdom (Scotland) and the Russian Federation (Tatarstan). People living in a federation, have some control over both the provincial and the federal governments.

The success of a federation depends on a number of factors. First and foremost, the federation must be based on the consent and authority of each entity or people involved.

In the case of Zanzibar, for example, the Declaration of Union which resulted in the creation of Tanzania did not enjoy the popular support of the people of Zanzibar, nor of the people of Tanganyika, neither of whom were consulted before the signing of the Declaration. The result of this arrangement has been political unrest, and at times, violence and widespread human rights violations.

Second, in order to avoid overreaching by the stronger governments within the federation, a successful federation requires a supreme constitution which can only be amended, by consensus or majority consent of all constituent units. The constitution must clearly delineate the division of power among the governments within the federation. Lastly, the federation must have an independent supreme court to interpret and enforce the constitution and to decide disputes between the various governments of the federation.

A further question which a federation must address is whether or not its component parts have the right of secession, that is to leave the federation and become

independent. The former Soviet Union's constitution provided for the right of secession of the individual republics within the federation. It was this right which helped make the peaceful dissolution of the Soviet Union possible in 1991.

ASSOCIATED STATE

In an associated state relationship, the autonomous people or smaller entity is linked to a larger state and has substantial self-governance, with little participation by the larger state. Generally, the smaller state has no influence over the government of the larger state. Usually either party may dissolve the relationship unilaterally. These arrangements, based on consent and mutual benefit, are often beneficial to both sides. For example, Micronesia is of strategic importance to the US, while its virtually non-existent economy makes the association very attractive to the islanders. San Marino, which is very small and landlocked in the middle of Italy benefits from Italy's "protective friendship", a postal union, the Italian currency and the Italian telecommunications system. Its neutrality and open borders to Italy benefit Italy. Other examples are Liechtenstein, Holy See and the Cook Islands.

5. POST-AGREEMENT IMPLEMENTATION ISSUES

The best autonomous agreement is worth very little if it is not implemented or violated by the state. Therefore, one of the major concerns in negotiating an autonomous agreement is to structure it in such a way as to minimize future violations and non-compliance by the state. By considering implementation issues up front, future problems may be lessened and or avoided. Some of the points to consider include the following:

MEET THE NEEDS OF BOTH SIDES

It is essential that the autonomous agreement meets the essential needs of both sides. If it does not, one or the other side may not have the necessary motivation to honor the agreement. This is true for both the people and the state.

SPECIFICITY OF THE AGREEMENT

When agreements are vague or fail to specifically address vital issues, conflicts tend to arise over the meaning and interpretation of the agreement. It is therefore essential that autonomous arrangements are written with great specificity and clarity.

ADDRESS EFFECT OF VIOLATIONS UP FRONT IN THE AGREEMENT

As a general rule of contract, when one party substantially fails to comply with an agreement, the other party may rescind the agreement, that is terminate the agreement.

It is possible to write provisions into an agreement, by which the consequences of specific violations of the agreement are spelled out in advance. This can encourage and contribute to compliance.

THIRD PARTY GUARANTEES

It is possible to involve third parties, such as other states or the UN, in an agreement by making them guarantors. For example, when the Aland Islands were made a part of Finland, it was agreed that the Islands would be a demilitarized zone. Sweden and Russia guaranteed this provision, making it far less likely that Finland would decide to station troops in the Islands, in violation of the agreement.

DEMILITARIZATION

In negotiating an autonomous agreement, it may be desirable, as suggested by His Holiness the Dalai Lama, to demilitarize the autonomous region. Alternatively it may be helpful to agree to a specific reduction of troops and state police forces in the autonomous region.

PEACEKEEPING AS PART OF THE AGREEMENT

The 1992 UN Peace Agenda recognizes that peacekeeping is just as important as peace making. It encourages the creation of support structures designed to strengthen and solidify peace, in order to prevent relapse into conflict. In negotiating an autonomous agreement, it is possible to agree to implementation measures in the form of the creation of specific institutions, processes or mechanisms. For example, it is often helpful to create institutions such as a judiciary, police force, prosecutors's and defense,

which are in compliance with international law. Similarly, law reform projects can be identified and human rights education can be instituted. Technical assistance and training can be obtained from third parties, such as the UN, states or non-governmental institutions (NGOs).

MONITORING

Monitoring the implementation process of an agreement is very important. An agreement can provide in advance for specific monitoring parties, processes and time lines. Knowing that a third party is observing the process and will be reporting shortcomings, is a powerful motivation for the parties to implement an agreement. This was done in Guatemala, for example, where a peace agreement was reached between the state and the indigenous people. Spain, the USA, Mexico, Columbia, Venezuela and Norway agreed to monitor the implementation of the agreement.

CONFLICT RESOLUTION

An autonomous agreement can also specify a conflict resolution process to be used, should either party violate the agreement. This can include international mediation, a process by which a designated third party would assist Tibet and China to reach an agreement on how to resolve a conflict over implementation. Additionally, a body could be set up with representatives from Tibet, China and neutral states, which would be empowered to resolve the conflict. Alternatively, it could be agreed in advance that conflicts be submitted for binding decision to a specific regional or UN body.

While it is impossible to guarantee that an agreement will be honored in all of its aspects, using some of the ideas set forth above can help in minimizing the danger of substantial violations. It is therefore important to incorporate implementation and conflict resolution issues into the negotiation process for an autonomous agreement.

STRASBOURG PROPOSAL

On June 15, 1988, His Holiness the Dalai Lama presented a proposal for the future of Tibet to the European Parliament in Strasbourg, which if implemented, would provide substantial autonomy for Tibet. The proposal would provide autonomy to all of Tibet, not just the TAR and would allow Tibetans control over all governmental powers, except defense and some aspects of foreign affairs. The proposal reads in part:

“The whole of Tibet known as Cholka-Sum (U-Tsang, Kham and Amdo) should become a self-governing democratic political entity founded on law by agreement of the people for the common good and the protection of themselves and their environment, in association with the People’s Republic of China.

The Government of the People’s Republic of China could remain responsible for Tibet’s foreign policy. The Government of Tibet should, however, develop and maintain relations, through its own Foreign Affairs Bureau, in the fields of religion, commerce, education, culture, tourism, science, sports and other non-political activities. Tibet should join international organizations concerned with such activities.

The Government of Tibet should be founded on a constitution of basic law. The basic law should provide for a democratic system of government entrusted with the task of ensuring economic equality, social justice and protection of the environment. This means that the Government of Tibet will have the right to decide on all affairs relating to Tibet and the Tibetans.

As individuals freedom is the real source and potential of any society’s development, the Government of Tibet would seek to ensure this freedom by full adherence to the Universal Declaration of Human Rights, including the rights to speech, assembly and religion. Because religion constitutes the source of the Tibetan national identity, and the spiritual values lie at the heart of the Tibetan culture, it would be the special duty of the Government of Tibet to safeguard and develop its practice.

The Government would be comprised of a popularly elected Chief Executive, a bi-cameral legislative branch, and an independent judicial system. Its seat should be Lhasa.

The social and economic systems of Tibet should be determined in accordance with the wishes of the Tibetan people, bearing in mind especially the need to raise the standard of living of the entire population.

The Government of Tibet would pass strict laws to protect wildlife and plant life. The exploitation of natural resources would be carefully regulated. The manufacture, testing and stockpiling of nuclear weapons and other armaments must be prohibited, as well as the use of nuclear power and other technologies which produce hazardous waste. It would be the Government of Tibet’s goal to transform Tibet into our planet’s largest

natural preserve.

A regional peace conference should be called to ensure that Tibet becomes a genuine sanctuary of peace through demilitarization. Until such a peace conference can be convened and demilitarization and neutralization achieved, China could have the right to maintain a restricted number of military installations in Tibet. These must be solely for defense purposes....”

APPENDIX A: GLOSSARY OF AUTONOMOUS ARRANGEMENTS

The following is a short glossary of autonomous arrangements referred to in the text of this publication. For a detailed study of each of these arrangements please see *Forms of Autonomy* (700 pages), published by the International Committee of Lawyers for Tibet. Selected abbreviated case studies can also be found in Appendix C.

ALAND ISLANDS (Finland)

The Aland Islands, previously under Swedish and then Russian control, became a part of Finland in 1917. The Aland Islanders are a Swedish speaking. Under the Autonomy Act of 1991, Finland granted the Aland Islanders substantial autonomy in matters relating to their economy, natural resources, cultural affairs, education and health care services. The Islands benefit from significant financial assistance from Finland. The Islands enjoy a demilitarized status which is guaranteed by Sweden and Russia.

ANDORRA (Spain and France)

For the past 700 years, Andorra, which is located between France and Spain, has been jointly ruled by Spain and France. Since 1993 it is an independent nation and is a member of the United Nations. However, the ceremonial heads of state are still the co-princes, the president of France and the Spanish co-prince. While Andorra controls most of its own affairs, defense is delegated to Spain and France.

BASQUE COUNTRY (Spain)

The Basque people are one of the oldest people of Europe. In 1979 the Basque Country became an autonomous region of Spain, which grants the Basque people a significant level of autonomy. For example, they control their own economy, taxation and police. A strong independence movement continues to fight for full independence of the Basque Country.

CHITTAGONG HILL TRACTS (Bangladesh)

The people of the Chittagong Hill Tracts are of Sino-Tibetan descent and are predominantly Buddhist, in contrast to the majority population in Bangladesh, which is Muslim. In 1991, a peace accord between the Chittagong Hill Tracts people and Bangladesh sought to end several decades of armed conflict by granting limited autonomy to the Chittagong Hill Tracts people. The implementation of the peace accord remains problematic.

COOK ISLANDS (New Zealand)

The Cook Islands in the South Pacific govern themselves in most respect but have an autonomous arrangement with the economically stronger state of New Zealand. They share foreign affairs powers, while New Zealand controls defense. The Cook Islands receive substantial financial assistance from New Zealand. Under the current arrangement, which was agreed to in 1965, the Cook Islanders have the right to unilaterally declare their independence.

FAROE ISLANDS (Denmark)

The Faroe Islands are located in the North Atlantic between Iceland and Norway. They have been part of Denmark for approximately 700 years. Under the 1948 Home Rule Act of Denmark, the Faroese were assigned responsibility for most of their own internal governmental affairs. Though they have extensive control over many governmental functions, the Faroese have chosen to jointly control a number of matters with Denmark to take advantage of its technical and financial resources.

GIBRALTAR (United Kingdom)

Gibraltar is strategically located at the southern tip of Spain, facing Africa. Although it was controlled by Spain for centuries, it became a British colony in 1830. The status of Gibraltar has been a subject of dispute between the United Kingdom and Spain ever since. In a referendum in the 1960s the people chose to be a dependent territory of the United Kingdom, rather than association with Spain. The resulting constitution of Gibraltar gives the people of Gibraltar extensive control over their own economy, judicial system and social services. While defense and most foreign affairs powers are in the hands of the United Kingdom, Gibraltar recently joined the European Community.

GREENLAND (Denmark)

Greenland, with over 2 million square kilometers of land, is the largest island in the world, located northeast of Canada. It has been under Danish control for most of the last 900 years. Under the Greenland Home Rule Act of 1979, Greenland enjoys its own government with substantial self-rule, as well as, shared rule with Denmark.

HOLY SEE (Italy)

The Holy See is the sovereign entity of the Roman Catholic Church. The Vatican City State of .44 square kilometers, located in the middle of Rome, is the territorial entity of the Holy See. Despite its miniature size, the Holy See has observer status at the United Nations. It yields much political power as a result of its large Roman Catholic constituency, living all over the world. Governmental powers are divided between Italy and the Holy See.

HONG KONG (China)

Hong Kong has been a part of China since ancient times. Between 1840 and 1997, it was under British control. Pursuant to the 1984 Sino-British Joint Declaration, China resumed sovereignty over Hong Kong in 1997 through an autonomous arrangement modeled on the principle of “one country, two systems”. Hong Kong enjoys substantial self-rule, controls most aspects of its economy and participates in foreign affairs.

LIECHTENSTEIN (Switzerland)

Liechtenstein, located next to Switzerland, is an independent monarchy, which has maintained an associated statehood relationship with Switzerland since 1923. It is a small but economically vital country, which profits from its association with the larger state of Switzerland. Switzerland conducts Liechtenstein’s routine diplomatic affairs. Liechtenstein uses the Swiss Franc and the two countries maintain uniform customs, border and immigration policies.

FEDERATED STATES OF MICRONESIA (USA)

The Federated States of Micronesia (Micronesia) is a group of island states in the North Pacific. The US administered Micronesia as UN strategic trust territory from 1947 until 1986, at which time Micronesia become an independent state, associated with the United States. This association allows Micronesia self-rule over most matters and guarantees ample US subsidies for the Micronesians economy and its social service system. The US controls matters of defense.

NAVAJO (USA)

The Navajo Nation is the second largest Native American nation in the United States. The Navajo Nation has limited self-rule over purely local and cultural matters. The Navajo control who may enter their territory. They control their local economy and natural resources. Tribal courts administer justice on internal tribal issues only. All other governmental powers rest with the USA.

NORTHERN IRELAND (United Kingdom)

Northern Ireland is the northern part of an island west of England. The United Kingdom of Great Britain united England and Ireland in 1801. In 1921, the southern part of the island of Ireland became an independent state, the Republic of Ireland, with a mostly Catholic population. Northern Ireland remained a part of the United Kingdom of Great Britain. Conflict arose between the Protestant majority and the Catholic minority in Northern Ireland, which lead to violence and a separatist movement on the part of the Catholic minority, commencing in 1968. This in turn lead to British rule over Northern Ireland in 1972. Currently, all parties concerned are trying to implement the Good Friday Agreement of 1998, mediated by the United States, under which new bodies were created for the self-rule of Northern Ireland, as well as, joint bodies comprised of the Republic of Ireland, Northern Ireland and the United Kingdom.

NUNAVUT (Canada)

The Inuit, an Eskimo people, inhabit the arctic region of northeastern Canada. After 20 years of negotiation, the Inuit people and Canada entered into the 1993 Nunavut Land Claims Act, which creates an Inuit homeland, or “Nunavut”, with some self-rule for the Inuit people.

While most major governmental powers are controlled by the federal Canadian government, the Inuit control entry into their territory and their own court system. Natural resources are administered by a joint body of federally and Nunavut appointed commissioners.

PALESTINE (Israel)

Palestine comprises two Arab areas, the Gaza Strip and the West Bank, occupied by Israel since the war of 1967. Following the occupation, the Palestinian Liberation Organization (PLO) was created, which today enjoys UN observer status. The PLO is recognized by over 100 countries as the legitimate representative of the Palestinian people. In 1993, after much violence, Israel and the PLO signed the Interim Agreement which provides for Palestinian self-governance. The conflict over its implementation and the future status of Palestine continues to date, despite much international

mediation.

PUERTO RICO (USA)

Puerto Rico is a small island in the Caribbean Sea, south of the United States. It was colonized first by Spain and later by the United States. Puerto Rico is a commonwealth, or a freely associated state with the United States. Puerto Ricans hold US citizenship but have no voting rights in the USA. They govern most of their internal affairs, while matters such as foreign affairs, defense, customs and some economic powers are controlled by the USA.

QUEBEC (Canada)

Quebec, a French speaking autonomous province of Canada, comprises one quarter of the Canadian population. Quebec was originally a French colony and French culture and language continue to be dominant. Quebec controls its own cultural affairs, official language, taxation, natural resources and many aspects of its economy. The movement for independence remains very strong and was narrowly defeated by a recent referendum.

SAN MARINO (Italy)

San Marino is very small independent state, located in Italy. Its independence dates back to the year 301. In 1862 Italy and San Marino entered into the Convention of Friendship and Peaceful Coexistence. San Marino controls its own affairs but has a postal, customs and currency union with Italy. San Marino however issues its own stamps, which, because of their small circulation, are highly valued by collectors and constitute one of San Marino's main sources of income.

SCOTLAND (United Kingdom)

Scotland, located to the north of England, is a part of the United Kingdom of Great Britain. It enjoys substantial self-rule. It issues its own currency, which is linked in value to the British pound. It controls most issues of taxation and has the power to control some of its natural resources and some aspects of its economy. A Scottish nationalist movement hopes to create an independent Scotland to be supported by its oil resources in the North Sea.

SOUTH TYROL (Italy)

South Tyrol is the northernmost province of Italy, which historically was part of the German speaking Habsburg Empire. It became a part of Italy in 1919. The majority of South Tyroleans are still German speaking. Pursuant to the 1972 Autonomy Statute, South Tyrol enjoys substantial autonomy over matters of culture, education, language, and health and social services. It has control over some of its natural resources, some aspects of law and order and administration of justice.

TATARSTAN (Russian Federation)

Tatarstan is an independent state in the eastern part of the former Soviet Union. It is a

member of the Russian Federation. In 1994, Tatarstan was able to negotiate a bi-lateral treaty with the Federation under which Tatarstan enjoys more autonomy than the other members of the Federation. The constitution of Tatarstan expressly rejects violence and war, as a means of settling disputes among states. Interestingly, Tatarstan's political strength is, in large part, the result of its strong economy, which includes extensive production of military equipment for the Russian Federation.

TIBET AUTONOMOUS REGION (China)

Tibet has been under Chinese control since China's invasion in 1949/50. The TAR was created in 1965. The TAR government holds very few governmental powers. Most matters are controlled by the central government of China.

XINJIANG UIGHUR AUTONOMOUS REGION (China)

Xinjiang, formerly East Turkestan, came under Chinese control in 1948. The major population groups are Uighurs, Kazakhs, Kirghiz and Uzbeks. Xinjiang is of major importance to China because of its border with the former Soviet Union and because of its natural resources, including substantial oil reserves. Most governmental powers are held by central government of China.

ZANZIBAR (Tanzania)

Zanzibar consists of a number of Islands off the coast of Eastern Africa. In 1963, Zanzibar and Tanganyika united to form the United Republic of Tanganyika and Zanzibar, known as Tanzania. Zanzibar retains some degree of control over its own affairs within this arrangement. It collects taxes within its territory and controls its own economy, natural resources, transportation, education and health services.

APPENDIX B: MAP OF AUTONOMOUS ARRANGEMENTS

APPENDIX C: SELECTED CASE STUDIES