

THE CASE CONCERNING TIBET

**TIBET'S SOVEREIGNTY AND THE TIBETAN PEOPLE'S
RIGHT TO SELF-DETERMINATION**

UPDATE AND EXECUTIVE SUMMARY

by
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for
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In 1994 and 1996, the Tibetan Parliamentary and Policy Research Centre organized and held two conferences on Tibetan self-determination. Summaries of these proceedings are available from the TPPRC. The concrete action plan that emerged from the the 1996 conference included a recommendation to request that Dr. Michael van Walt van Praag, then General Secretary of Unrepresented Nations and Peoples Organization, assist in the preparation of a report on the legal aspects of the Tibetan people's right to self-determination. At Dr. van Walt's request, this report was prepared by Tibet Justice Center with Dr. van Walt.

In February 2013, to mark the centenary of the 1913 Proclamation of Tibetan Independence, Tibet Justice Center prepared a short update to the original report, highlighting the 1913 Proclamation, and new evidence regarding Tibet's sovereignty and the Tibetan people's right to self-determination.

I. UPDATE TO THE CASE CONCERNING TIBET: 1913 Independence Proclamation Centenary and New Information

February 13, 2013 marks the centenary of the Tibetan proclamation of independence, issued by the XIII Dalai Lama. It is a fitting anniversary on which to re-release Tibet Justice Center's report *The Case Concerning Tibet*, which clearly lays out the case for Tibet's sovereignty and the Tibetan people's right to self-determination – issues just as pertinent now as they were at the time of the report's release in 1998. It is also an opportunity to present new evidence - which only strengthens Tibet's case - that has since come to light.

A. The 1913 Proclamation

While Tibet had enjoyed de facto independence for centuries prior, the Dalai Lama formally proclaimed Tibet's independence in 1913, two years after the Manchu Qing Dynasty had been overthrown by the Chinese nationalist revolution of 1911. At that time, Tibet expelled the last garrisoned troops of the Qing Emperor and repatriated them to China in 1912. The new Kuomintang Government then invited Tibet to join the Nationalist Republic, but the XIII Dalai Lama declined. When the Kuomintang Government sent a delegation to try and convince the Tibetans, the Tibetan Government barred them from entering Tibet. In the wake of these political shifts, the XIII Dalai Lama's proclamation reaffirmed Tibet's independence, emphasizing that Tibetans had “once again achieved for ourselves a period of happiness and peace” now that the “Chinese intention of colonizing Tibet under the patron-priest relationship has faded like a rainbow in the sky.”¹ This period of both de facto and de jure independence would last for the next thirty-seven years, through

¹ [Tsepon W.D. Shakabpa](https://en.wikisource.org/wiki/Proclamation_of_Independence_of_Tibet), *Tibet: A Political History* (New Haven, 1967), pp. 246-248. Accessed at https://en.wikisource.org/wiki/Proclamation_of_Independence_of_Tibet

another Chinese regime change, until the new Chinese Communist Party's People's Liberation Army invaded Tibet in 1950².

B. New Information Since 1998

Since the publication of *The Case Concerning Tibet* in 1998, there have been a number of developments related to Tibet's sovereignty. Some refer to pre-1950 Tibet, while others concern the Tibetan Government's current political form in exile.

1. Original Tibetan text of Tibet-Mongolia treaty discovered

In 1913, shortly after the proclamation of independence, Tibet and Mongolia signed and sealed a treaty acknowledging their status as independent states.³ The absence of the original treaty texts enabled critics to shed doubt on the validity of the treaty, until 2007, when the original Tibetan text was rediscovered in Mongolia. This discovery proves that “[t]he treaty is real; it does exist and it is signed and sealed by officials acting in the capacity of Minister-Plenipotentiaries of the Dalai Lama, with full authority to conclude it.”⁴ That the Government of Tibet was able to enter into such international diplomatic relations⁵ adds weight to the argument that Tibet was rightfully an independent state at that time.

² The People's Liberation Army began their invasion of Eastern Tibet in 1949, and reached Western Tibet by 1950.

³ Sperling, Prof. Elliot, 'Tibet - Mongolia Treaty of 1913, a proof of Tibet's independence: Interview', *www.phayul.com* Nov 12th 2008

⁴ *ibid*

⁵ Tibet also signed treaties with China, the United Kingdom, Nepal, and Ladakh - the majority of which unambiguously confirm its status as an independent state. For further information, see pages 9-15 and 20-21 of the report, and Sloane, Robert. D, "The Changing Face of Recognition in International Law: A Case Study of Tibet," 16 *Emory International Law Review* (2002) 107, 146-55. The treaties are all available at www.tibetjustice.org/materials/index/treaties

2. Tibetan Passport rediscovered

In 2003, Tibetans rediscovered a Tibetan passport in Nepal, providing important insight into the way in which Tibetans were able to travel as recognized citizens of Tibet in the years preceding the 1950 Chinese invasion of Tibet. The passport had been issued in 1947 by the Tibetan government to Tsepon Shakabpa, Tibet's then Finance Minister. Friends of Tibet India, who were instrumental in the passport's recovery, note that "it has a message in hand-written Tibetan and typed English, similar to the message given by the nominal issuing officers of today's passports, stating that:

*"The bearer of this letter – Tsepon Shakabpa, Chief of the Finance Department of the Government of Tibet, is hereby sent to China, the United States of America, the United Kingdom and other countries to explore and review trade possibilities between these countries and Tibet. We shall, therefore, be grateful if all the Governments concerned on his route would kindly give due recognition as such, grant necessary passport, visa, etc. without any hindrance and render assistance in all possible ways to him."*⁶

The text and the photograph are sealed by the stamp of the Kashag [The Tibetan cabinet], and the page is dated "26th day of the 8th month of Fire-Pig year" (14 October 1947)⁷.

Through the use of this passport, Tsepon Shakabpa was recognized as a Tibetan citizen and government official by a number of different countries. The passport carries visas and entry stamps from countries, including India, the United States, the

⁶ Friends of Tibet Press Release: Shakabpa Passport Recovered, March 31st 2004, accessed at http://www.tibet.ca/en/newsroom/wtn/archive/old?y=2004&m=4&p=4_4

⁷ Ibid.

United Kingdom, France, Italy and Switzerland. Some of these visas acknowledge the passport bearer's status as an official of the Government of Tibet, through wording such as "Service Visa", "Diplomatic Visa", and "For government official"⁸.

3. UK Government Changes Position on Tibet

Since the tripartite Simla Convention of 1913 held between Britain, Tibet and China, the UK had maintained that Tibet was autonomous from China, under the vague and legally undefined concept of "suzerainty" – the idea that Tibet existed as a protectorate of some kind in relation to China, but was not a legal part of the Chinese sovereign state. However, in late October 2008, and without public debate, Britain's then Foreign Minister, David Miliband MP, made a statement in which he changed the UK's position to one that recognised China's full sovereignty over Tibet. The Simla Convention, and particularly the UK's position stemming from this, had formed the basis for the Tibetan Government in Exile's dialogues with Beijing on finding a genuinely autonomous arrangement.⁹ Britain's sudden "change of heart" significantly undermined the basis for these dialogues.¹⁰ Notably, however, the statement was ambiguous as to whether the UK intended to modify its prior view of Tibet and China's relationship to having been always one of Chinese sovereignty, or not.¹¹ The vagueness of both the UK's use in 1913 of 'suzerainty' - what was even then an outdated and legally imprecise term - and of Miliband's statement in 2008 speaks to both the political expediency for which the Convention and statement were made and the then political realities of Tibet, China and the UK. The UK's 2008 statement was

⁸ Ibid.

⁹ Barnett, Robbie "Did Britain Just Sell Tibet?" *New York Times*, Nov 24th 2008, https://www.nytimes.com/2008/11/25/opinion/25barnett.html?_r=0

¹⁰ Ibid.

¹¹ Mills, Dr. Martin 'The Sino Tibetan Dispute: Issues of Sovereignty and Legal Status' Background Briefing Paper No.2 for *Scottish Parliament's Cross Party Group on Tibet* 2008

certainly a political loss for Tibetans, but it cannot re-write history. The UK's view of the matter does not change the fact, agreed upon by the International Commission of Jurists¹² and many other scholars, that between 1911 and 1950, Tibet was a sovereign state independent from China.¹³

4. Dalai Lama No Longer Head of State

The XIV Dalai Lama served as Tibet's political and spiritual leader from 1950, when the Chinese invaded Tibet, until 2011. Having moved the Government of Tibet to India in 1959, and led it through a democratization process, the Dalai Lama proposed on March 10, 2011 to amend the 1991 Charter for Tibetans in Exile in order to devolve his formal political authority.¹⁴ On May 29, 2011, the amendment was approved, vesting full political authority in the Tibetan Government in Exile and its democratically elected representatives, headed by a Sikyong (Tibetan: Political Leader).

This new information, and these political changes, matter in part for the light they shed both on Tibet's status before 1950 and current geopolitical dynamics. Of paramount importance, given the crisis situation in Tibet with 99 self-immolations since February 2009, and as a result of China's continuing repression of the Tibetan people, is that the Tibetan people's legitimate right to self-determination is more robust than ever¹⁵.

¹² International Commission of Jurists 'The Question of Tibet and the Rule of Law' (1959)

¹³ As Michael van Walt van Praag observed in his authoritative study of Tibet's legal status, "Few scholars seriously challenge the notion that Tibet possessed actual independence at least between 1911 and 1950." Michael C. van Walt van Praag, *The Status of Tibet: History, Rights and Prospects in International Law* 140 (1987)

¹⁴ *The Economist* 'So Long, Farewell: The Dalai Lama Resigns' March 14th, 2011
http://www.economist.com/blogs/banyan/2011/03/dalai_lama_resigns

¹⁵ For the legal argument on this, see *In re Secession of Quebec*, [1998] 2 S.C.R. 217. By continuing to deny the Tibetan people genuine autonomy and human rights - including the rights for minority groups,

II. EXECUTIVE SUMMARY OF ARGUMENT

A. Tibet Was Fully Independent Prior To 1951

Tibet was an independent, sovereign nation when the armies of the People's Republic of China ("PRC") entered Tibet in 1950. Tibet at that time presented all the attributes of statehood. Even the PRC does not dispute that the Tibetans are a distinct people who in 1950 occupied a distinct territory. Tibet also had a fully functioning government headed by the Dalai Lama. That government, free from outside interference, administered the welfare of the Tibetan people through civil service, judicial and taxation systems, as well as through a postal and telegraph service, and a separate currency. The government controlled the borders and issued passports to its people, which were recognized internationally. It entered into treaties as a sovereign with other states, including Great Britain, Ladakh, Nepal and Mongolia. Tibet also negotiated as an equal sovereign with China and Great Britain at the Simla Conference of 1913-14.

The Seventeen Point Agreement of 1951, which the PRC claims resolved Tibet's status, is not a legally binding agreement. The Agreement was signed when armies of the PRC occupied large parts of Tibet, the Tibetan representatives did not have authority to sign the Agreement on behalf of Tibet, and it was signed under threat of further military action in Tibet. A treaty concluded under such circumstances is legally void and of no effect.

Once a state exists, it is legally presumed to continue as an independent state unless proved otherwise. The historical evidence not only fails to prove otherwise,

as described in Article 27 of the ICCPR - China bars Tibetans from exercising "internal" self-determination, thus legally strengthening Tibet's claim to "external" self-determination, that is, the right to choose independence, associated statehood, or integration with an existing state based on a free and fair referendum.

but affirmatively demonstrates that Tibet has always been an independent state, despite periods during which it was influenced to varying degrees by foreign powers.

Tibet indisputably was an independent state before the 13th century. Tibet was the most powerful nation in Asia in the 8th century and entered a treaty with China in 822. For the next 300 years, there was no official contact between Tibet and China. In the 13th century, Tibet came under Mongol dominance several decades before the Mongols conquered China militarily and established the Yuan Dynasty. Tibet was not part of China before the Mongol conquest and during the Yuan Dynasty was administered separately by the Mongols through local Tibetan rulers, in contrast to China, which the Mongols ruled directly. The present government of China, therefore, cannot claim sovereignty over Tibet as a result of their separate dominance by a third power. Nor did Tibet lose its sovereignty during this period. The relationship between Tibet and the Mongols was a unique priest-patron relationship known as *cho-yon*. Tibet received protection from the Buddhist Mongol emperors in return for spiritual guidance from the ruling lamas of Tibet. The relationship involves a reciprocal legitimation of authority.

During Tibet's "Second Kingdom," from 1349 to 1642, Tibet was a secular kingdom free of both Mongol and Chinese control. Emperors of the Chinese Ming Dynasty nominally granted titles to certain Tibetan officials but exercised no effective control over Tibetan affairs or over the successive changes in the Tibetan government. Nor did the Ming Emperors exercise any effective control over the Dalai Lamas, who later took control of Tibet.

During the Qing Dynasty, the Dalai Lamas and the Manchu Emperors reestablished the *cho-yon* relationship. During the 18th century, the Emperor's protection was invoked four times under this relationship. The Emperors'

representatives in Lhasa, the *Ambans*, initially served only as liaisons to the Emperor. In 1793, the Emperor purported to grant the Ambans power to exercise control over Tibet's external affairs, but this was presented to the Eighth Dalai Lama as a suggestion, not an exercise of Imperial power. Moreover, within a few decades, the Ambans exerted virtually no influence in Tibet and the Qing Emperors stopped providing the protection that was their side of the *cho-yon* relationship, effectively ending it.

Tibet formally expelled the last garrisoned troops of the Qing Emperor in 1911, an unmistakable act of sovereignty, and repatriated them to China in 1912. The Kuomintang Government invited Tibet to join the Nationalist Republic, but Tibet declined. The Nationalist Government attempted unilaterally to assert control over Tibet until 1918 and then again beginning in 1931, but failed. In 1949, Tibet expelled the last remaining Chinese representatives.

Tibet was an independent country at the time of the Chinese invasion in 1950 with a government headed by the institution of the Dalai Lama. The State of Tibet continues, despite the illegal occupation, through the existence and activities of the Tibetan Government-in-Exile. The Dalai Lama remains the Head of State with executive functions organized under the cabinet, or *Kashag*. Under a draft constitution, legislative authority rests in an elected parliament, and an independent judiciary has been established. The Tibetan State therefore continues to exist, represented by its legitimate Government-in-Exile in Dharamsala.

B. The Tibetan People Are Entitled To Self-Determination

Even if Tibet had not been an independent nation in 1950, the Tibetan people would nonetheless be entitled to exercise their right of self-determination.

International law recognizes the right of peoples to self-determination; that is, “the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.” The Tibetans are unquestionably a “people” to whom the right of self-determination attaches. They are entitled to choose independence from the PRC, autonomy with the PRC, or any other political status.

The Tibetans are entitled to exercise their right of self-determination as against the PRC’s claim of territorial integrity because the PRC has not acted as the legitimate government of the Tibetan people. A government’s legitimacy derives from a people’s exercise of the right of self-determination and from its conduct in accordance with its obligation to protect and promote the fundamental human rights of all of its people, without discrimination. The PRC’s government in Tibet was imposed on the Tibetans by force, not by an exercise of self-determination. Moreover, the PRC has persistently and systematically abused the human rights of Tibetans through repression of religion, population transfer, birth control policies, discrimination, destruction of the environment, involuntary disappearances, arbitrary arrest, torture and arbitrary executions. The PRC is therefore not the legitimate government of the Tibetan people and has no claim of territorial integrity to assert against the Tibetans’ right of self-determination.

A balancing of the fundamental values of the international community also weighs heavily in favor of enforcing the Tibetans’ right to self-determination. A non-militarized independent Tibet would enhance peace and security in the region by serving as a buffer zone between the two most populous nations in the world -- India and China -- who have only gone to war since the PRC stationed troops in Tibet along the Indian border. The Tibetans’ exercise of self-determination will also promote the

international values of respect for human rights and fundamental freedoms. The PRC has openly and officially abused Tibetan human rights in an apparent effort to marginalize the Tibetans as a people. Only the exercise of self-determination by the Tibetans will restore respect for the Tibetans' human rights and fundamental freedoms.