

# The Sino-Tibetan Dispute: Issues of Sovereignty and Legal Status

## Background Briefing Paper No.2 for Scottish Parliament's Cross-Party Group on Tibet

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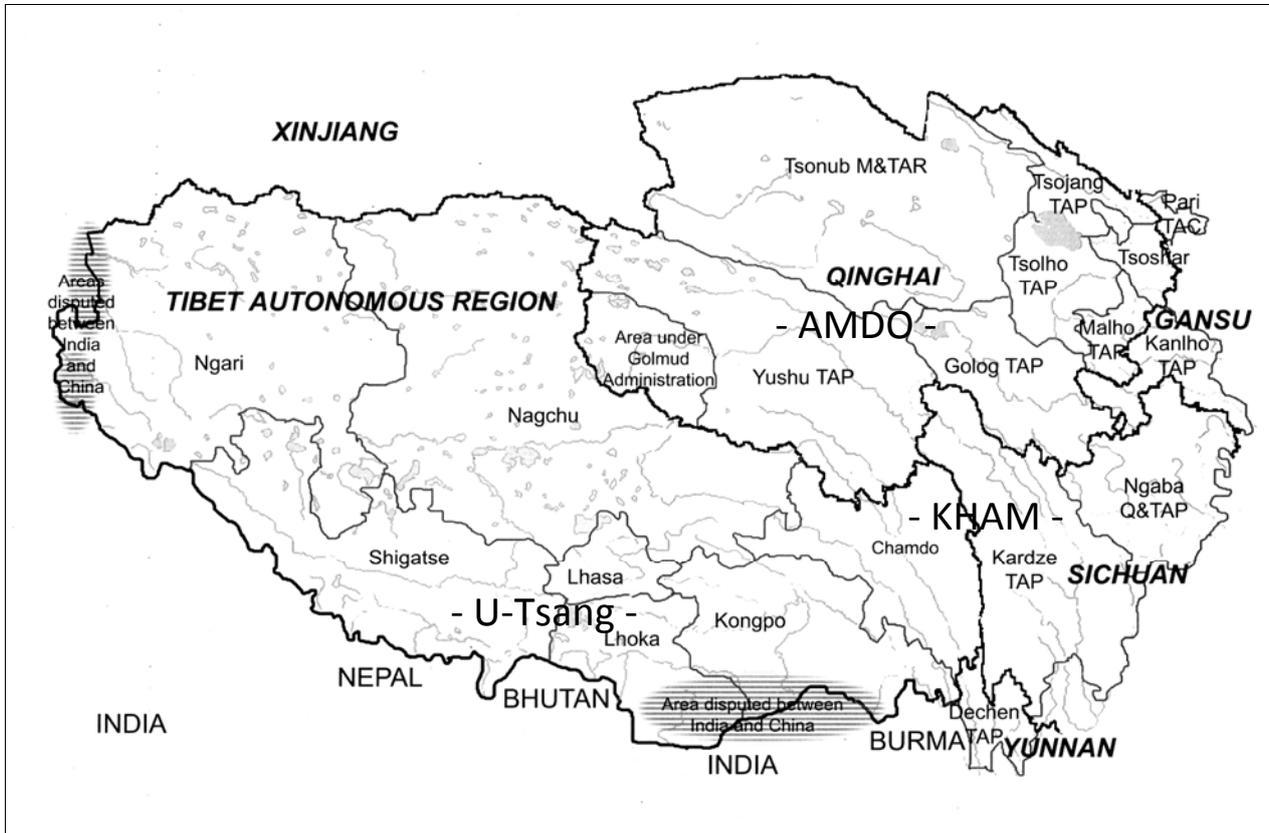


Figure 1: Map of Modern Tibet - Source: TIN Tibet 2002 Yearbook

## 1. Executive Summary

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In 1950, those areas of the Tibetan Plateau ruled by the 14<sup>th</sup> 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 neighbour. 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-20<sup>th</sup> 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<sup>th</sup> 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 18<sup>th</sup> and 19<sup>th</sup> 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 18<sup>th</sup> 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 13<sup>th</sup> 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 neighbour, 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:

(i) That the meaningful resolution of pre-20<sup>th</sup> 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.

(ii) 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 in 1911/2, 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).

iii) 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.

iv) 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.

## 2. Introduction

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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 the 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.

## 3. Disputes Regarding The Historical Status of Tibet

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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-20<sup>th</sup> 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 20<sup>th</sup> 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.

### 3.1 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<sup>i</sup>.

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.<sup>ii</sup>

These different interpretations of pre-20<sup>th</sup> century history revolve around certain key moments of diplomatic and military exchange and co-operation between Tibetan and Chinese governments (see overleaf):

The View of the People's Republic of China	The View of the Tibetan Government-in-Exile
<p>The basis for Tibet and China's unification as a nation began in the 7<sup>th</sup> century, when marriages between Tibet's early Yarlung kings and T'ang dynasty princesses cemented the political alliance of the two territories.</p>	<p>The 7<sup>th</sup> Century Tibetan Yarlung kings expanded Tibetan territory until it encroached on Chinese imperial domains, forcing the T'ang court to sign peace treaties securing mutual borders and provide princesses in marriage as tribute.</p>
<p>Tibet has been part of China since 1247, when the Tibetan religious scholar Sakya Pandita and his nephew Phagpa accepted the military domination of the Mongol Khans, who later went on to invade and unify China under the Yuan Dynasty (1271-1368).</p>	<p>In 1247, thirty years after Genghis Khan invaded Northern China, the Tibetan religious leaders Sakya Pandita and Phagpa acceded to the military strength of Kublai Khan's Mongol forces. Phagpa entered into this agreement on the grounds of the "patron-priest" (<i>chöyon</i> in Tibetan) arrangement, which gave internal sovereignty over Tibet to Phagpa in return for acting as the Khan's religious preceptor.</p>
<p>That Yuan authority to rule Tibet was inherited by the succeeding Ming Dynasty (1368-1644).</p>	<p>In 1350, Tibetan leader Changchub Gyaltzen (1302-1364) overthrew the local inheritors of Phagpa, re-asserting Tibet's independence from the waning Mongol Yuan Dynasty, and returning to older Tibetan modes of administration and law<sup>iii</sup>. Since Tibet had previously broken away from the Mongol emperors by the time of Ming China's overthrow of Mongol rule, the claim of Ming inheritance is spurious.</p>
<p>The Ming Dynasty bestowed a number of religious titles on key Tibetan figures such as the Dalai Lamas, demonstrating Tibet's political subjugation to a unified China.</p>	<p>Since Tibet was, between 1350 and 1642, ruled by princes and kings – and not religious leaders such as the Dalai Lamas – such religious alliances with the Mongols cannot be regarded as any form of political subjugation. While relations with Ming China were cordial, and involved the exchange of titles, primary relations were with the <i>Mongols</i>. In 1642, the 5<sup>th</sup> Dalai Lama, aided by the military might of his Mongol disciple Gushri Khan, founded an independent Tibetan state at Lhasa.</p>
<p>During the subsequent Qing Dynasty (1644-1911), honorific titles were granted by the emperor to the 5th Dalai Lama and the 5th Panchen Lama, officially establishing their titles and their political and religious status in Tibet.</p>	<p>The Dalai Lama <i>exchanged</i> titles with the non-Chinese Manchu emperor in recognition of existing sovereignties as part of ordinary diplomatic practice, including the Dalai Lama bestowing the title "The Heavenly Lord Manjushri, the Great Emperor" on the Manchu emperor in 1653.</p>
<p>In the 18<sup>th</sup> century, the Qing emperors secured their rule over Tibet, defending it against the Dzungar Invasion of 1717, installing the 7th Dalai Lama, and setting up a system of imperial representatives (<i>ambans</i>) that superseded the authority of the Dalai Lamas.</p>	<p>Following 1720, the Tibetan and Manchu governments maintained a formal <i>chöyon</i> relationship that involved the Manchu in co-operation regarding the military defence of Tibetan borders. However, Tibet maintained sovereignty over <i>its domestic affairs</i> in line with the patron-priest principle<sup>iv</sup>.</p>
<p>In 1793, the emperor Qianlong instigated new regulations regarding the choice of high incarnate lamas - including the Dalai and Panchen Lamas - according to the Golden Urn system of imperial divination, and placed Tibet's foreign affairs under the authority of the <i>ambans</i>.</p>	<p>The 1793 declaration were recommendations intended to reduce further conflict: had the Tibetans disregarded them completely, the Manchu emperors threatened to renounce their 'protector' status within the <i>chöyon</i> arrangement. The Tibetans effectively ignored the Golden Urn recommendations except for diplomatic purposes; the <i>ambans</i> were merely ambassadors.</p>
	<p>While the Manchus succeeded in establishing some degree of influence in Tibet during crisis periods in Tibetan politics, their influence declined rapidly during the 19<sup>th</sup> century. Thus, Tibet fought wars against invaders from Jammu (1841-1842), Nepal (1855-1856), and British India (1903-1904) without Chinese imperial assistance. By the mid-nineteenth century, Manchu imperial involvement in Tibet was only nominal.</p>

At the heart of these disputes lie four historical debates:

- i) The degree to which Mongol and Manchu rulers – both of whom came from *outside* modern China, and conquered its territories as part of foreign imperial system - can be regarded as ‘Chinese emperors’.
- ii) The degree to which the tumultuous changes between the various dynasties that ruled over Chinese territory – many of which involved internal nationalist movements within China itself to throw off foreign domination – entailed a *legitimate inheritance of rule* over external Tibetan territories.
- iii) The degree to which religious alliances (such as the *chöyon* relationship) can be counted as forms of political subjugation in the modern sense, and the degree to which Tibetan religious leaders can ‘speak’ for Tibetan territories under royal, not religious, rule.
- iv) The degree to which the various imperial claims and assertions regarding Tibet that emanated from Beijing since the 13<sup>th</sup> century can be counted as evidence of effective or legitimate sovereignty over those territories.

### 3.2 The 20<sup>th</sup> 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 re-consolidated 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 assert 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. The specifics of this dispute are covered overleaf:

#### The Question of Tibet’s Borders & Extent

The Tibetan population is broadly spread over several sections of the South-West of the People’s Republic of China, with long-established Tibetan communities found in most of the administrative regions surrounding the Tibet Autonomous Region, including Xinjiang, Qinghai, Gansu, Sichuan and Yunnan (see Fig.1).

These ambiguities derive from the conditions of the PRC’s incorporation of Tibetan territories in 1950. At the time of Mao’s founding of the People’s Republic of China in 1949, the Dalai Lama’s sovereign tax-paying territories constituted only a certain section of the Tibetan Plateau, and incorporated only some 50% of the ethnically Tibetan populace of the region. Many areas, such as Amdo in the North-East and much of Kham in the East, saw Lhasa as a cultural and religious centre rather than a political one, and sought to maintain a large degree of local political autonomy.

Early Maoist policy regarding Tibet was thus based on the legal recognition of the ‘special characteristics’ of the established territories of the Dalai Lama and his government at Lhasa, and it was these territories and communities that became the present Tibetan Autonomous Region. Surrounding Tibetan areas were subsequently subsumed into surrounding Chinese provinces<sup>1</sup>.

In the period between 1950-9, the Central Tibetan territories of the Dalai Lama were largely exempt from communist reforms because of their ‘special characteristics’; by contrast, Tibetan areas to the East (referred to in the Simla Convention as ‘Inner Tibet’) received the full force of Maoist ‘democratic reforms’: the closing and destruction of monasteries, the communalisation of land, the introduction of struggle sessions against ‘class enemies’. Unsurprisingly then, it was these areas that saw the initial and fiercest rebellions against communist rule by Tibetans during the late 1950s: indeed, the most significant guerrilla insurgency against PLA forces during this period was carried out by the so-called Chushi Gangdruk (“Four Rivers, Six Ranges”) organization, a traditional name for the Kham region. These initially uncoordinated rebellions spread into Central Tibet in 1957 and eventually grew into the full-scale Tibetan Uprising in Lhasa in March 1959. While the Dalai Lama’s government at Lhasa – seeking a peaceful accommodation with the occupying PLA forces – initially disowned the rebel forces, the final March 1959 Uprising involved a final (if futile) consolidation of Khampa and Tibetan government forces.

Arguably, it was the growing conflict between 1956 and 1959 that eventually led the Fourteenth Dalai Lama’s exiled administration to seek representation for Tibetans *as a whole* (including Khampas and Amdoans), rather than the more limited interests and boundaries of the pre-1950 Lhasa state. As a consequence, Dharamsala has always tended to negotiate with Beijing from the perspective of a wider, unified Tibet - defined as the *cholkha sum*, the ‘three regions’ of Central Tibet, Kham and Amdo. This vision of Tibet stood at the heart of the Dalai Lama’s 1987 Strasbourg Proposal and Five-Point Peace Plan. It has also informed a general focus on present rather than historical questions – in particular the on-going human and cultural rights of Tibetans. By contrast, Beijing – consistent with their abiding focus on historical precedent (see above) - has generally negotiated on the grounds of the legal sovereignties of the pre-1950 Tibetan state and its leader.

View of the People's Republic of China	View of the Tibetan Government-in-Exile
<p>In 1904, after incessant imperialist endeavours to gain influence in Tibet, a British expeditionary force entered Tibet under the command of Sir Francis Younghusband, placing Tibet under British imperial influence. In response to this "incessant foreign aggression", Manchu imperial forces were sent into Tibet in 1908.</p>	<p>The 1904 Younghusband Expedition was the result of Tibet's long-standing maintenance of independence in the face of British trade expansion. The Expedition left after a year, after setting up of trade missions in Tibet as part of the Lhasa Conventions with <i>the Tibetan Government</i>. The intervention by Manchu imperial forces four years later, and subsequent endeavour to depose the Dalai Lama, constituted the end of the <i>chöyon</i> relationship.</p>
<p>The end of the Manchu Ch'ing Dynasty in 1911 transferred the right to rule Tibet to the succeeding Republic of China, as declared by Sun Yat-Sen at its inaugural ceremony on January 1, 1912.</p>	<p>Responding to the collapse of the (Buddhist) Manchu Dynasty, the 13<sup>th</sup> Dalai Lama expelled all Chinese diplomats and military forces and declared Tibetan independence in 1913.</p>
	<p>Between 1913-1933 the Tibetan Government under the 13<sup>th</sup> Dalai Lama rebuilt its diminished army, introduced a new police and postal service.</p>
<p>The enthronement of the present Fourteenth Dalai Lama in 1940 required the permission of the Chinese Nationalist Government, and the process of selection and enthronement was overseen by Wu Zhongxin, the representative of the Chinese Nationalist Government.</p>	<p>The enthronement of the Fourteenth Dalai Lama required no such permission, and his selection occurred a full year before Wu's arrival. Wu's accounts of the enthronement are fabricated, as attested by Sir Basil Gould, the British Political Officer representing British India at the event.</p>
	<p>During WWII, the Tibetan state effectively asserted its neutrality by refusing to allow war supplies and troops through its territories, despite entreaties by both the Chinese and the British, thus demonstrating its independence from both.</p>
<p>Chinese sovereignty over Tibet passed to the incoming communist administration under Mao at the founding of the People's Republic of China in 1947. This sovereignty was newly secured with the 'peaceful liberation' of Tibet by the People's Liberation Army in 1950. Representatives of the local government of Tibet ratified the peaceful liberation of the region in the 17-point Agreement in Beijing on the 23<sup>rd</sup> May 1951.</p>	<p>The entry of the People's Liberation Army into the Dalai Lama's territories in 1950 constituted foreign aggression against an independent state that had on-going diplomatic relations with a number of surrounding states. The 17-Point agreement was imposed on the Tibetan Government and people by threat of arms in the wake of the fall of Eastern Tibet; that the Tibetan delegates were "threatened with violence and virtually kept prisoner", and; that the seal of the Tibetan Government used on the document was forged in Beijing.<sup>v</sup></p>

### 3.3 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 13<sup>th</sup> 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<sup>vi</sup>. 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-12<sup>th</sup> 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 1914<sup>vii</sup>.

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<sup>viii</sup>. 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"<sup>ix</sup>. This latter call forms the basis of what the Dalai Lama refers to as the 'Middle Way Approach' between independence and complete assimilation.<sup>x</sup>

## 4. The View of External Parties

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### 4.1 The International Commission of Jurists, 1959

In 1959, the International Commission of Jurists convened to report on the situation in Tibet following the failed Tibetan Uprising and the flight of the Dalai Lama into exile. The report's conclusions were three-fold:

- i) That "The view of the committee was that Tibet was at the very least a *de facto* independent State when the Agreement of Peaceful Measures in Tibet was signed in 1951, and the repudiation of this agreement by the Tibetan Government in 1959 was found to be fully justified. In examining the evidence, the committee took into account events in Tibet as related in authoritative accounts by officials and scholars familiar at first hand with the recent history of Tibet and official documents which have been published. These show that Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950 foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent State."
- ii) That "from 1950 onwards as a result of Chinese aggression a practically independent country is being turned by force into a province of China and the struggle of the Tibetans has been to regain their independence"<sup>xi</sup>, and that "even the terms of the 17 Point Agreement of 1951, guaranteeing broad autonomy to Tibet ... have been consistently disregarded", particularly in the form of "systematic disregard for the obligations under the Seventeen-Point Agreement of 1951; systematic violation of the fundamental rights and freedoms of the people of Tibet; wanton killing of Tibetans and other acts capable of leading to the extinction of the Tibetans as a national and religious group, to the extent that it becomes necessary to consider the question of Genocide"<sup>xii</sup>. In this last respect, "There has also been a systematic policy of killing, imprisonment and deportation of those opposed to the regime. According to reliable sources, the total number of persons so far fallen victims to the mass killing amounts to a colossal total of 65,000".
- iii) That "violation of the 1951 Agreement by China can be regarded as a release of the Tibetan Government from its obligations, with the result that Tibet regained the sovereignty which she surrendered under the Agreement ... For this reason the violations of the Agreement by China amount to more than a matter of domestic concern between Tibet and China. What is at stake is the very existence of Tibet as a member of the family of nations, and this matter concerns the whole family of nations."<sup>xiii</sup>

### 4.2 The Position of the United Nations

The United Nations position on Tibet has been dominated by broader disagreements over the interpretation of the UN Charter, specifically regarding the specific meaning of two legal concepts: (1) the self-determination of peoples; and (ii) non-interference in the affairs of sovereign nation-states.

The notion of the self-determination of peoples constitutes the foremost innovation in constitutional jurisprudence of the 20<sup>th</sup> century with regard to the relationship between states. It marks, in particular, the transition of the notion of legitimate sovereignty from that of rulers and kings (as implied since the Peace of Westphalia in 1648), which had previously held sway. The UN outlined the principle of self-determination in two primary documents:

- Chapter 1, Article 1, part 2 of the 1945 United Nations Charter (to which China is a signatory) states that purpose of the UN is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."<sup>xiv</sup>

- Article 1 in both the International Covenant on Civil and Political Rights (ICCPR)<sup>[8]</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>[9]</sup> (to which China is a signatory but has not ratified as of December 2008). Both read: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Moreover, the article further states that “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

With specific reference to the question of Tibet, the UN has been amongst a number of international bodies to explicitly assert the reality of Tibetans as a distinct people, with an attendant right to self-termination. On 21<sup>st</sup> October 1959, the 834<sup>th</sup> plenary meeting of the UN General Assembly of the United Nations passed Resolution 1353(XIV), which:

“Mindful also of the distinctive cultural and religious heritage of the people of Tibet and of the autonomy they have traditionally enjoyed; Gravely concerned at reports, including the official statements of His Holiness the Dalai Lama, to the effect that the fundamental human rights and freedoms of the people of Tibet have been forcibly denied them ... Calls for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.”

Two years later, on 20<sup>th</sup> December 1961, Resolution 1723(XVI) stated that the UN General Assembly:

“Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life which they have traditionally enjoyed; Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighbouring countries; Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, *including the principle of the self-determination of peoples and nations* ... Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination” (emphases added).

This appeal was re-affirmed on 18 December 1965 in Resolution 2079(XX).

Resolutions concerning Tibet by the UN General Assembly do not postdate the recognition of the People’s Republic of China to the General Assembly and Security Council of the United Nations.

### *4.3 The Position of the Government of the United Kingdom*

The British Government’s position regarding the status of Tibet has, until late 2008, been dominated by the 1913-14 Simla Conventions, in which representatives of the British, Tibetan and Chinese governments met at the Indian hill station of Simla to settle on-going disputes over the Sino-Tibetan border and come to some resolution as to the political status of Tibet in the wake of the fall of the Manchu Dynasty (see above). Whilst almost 100 years ago, the Tibetan and Chinese representatives presented positions remarkably redolent of today’s disputes:

- Lönchen Shatra, the Tibetan delegate, asserted in his original position paper that “Tibet and China have never been under one another and will never associate with one another in future. It is decided that Tibet is an independent state and that the Precious Protector, the Dalai Lama, is Ruler of Tibet, in all temporal as well as spiritual affairs ... In future, no Chinese officials and troops will be allowed to stay in Tibet. Their staying there is only an expense to the Chinese, who obtain no revenue from Tibet. In order therefore to ensure peace between the two countries in future no Chinese Amban or other officials and no Chinese soldiers or colonists will be permitted to reside in Tibet”<sup>xv</sup>.
- I-fan Chen, the delegate for the Republic of China, asserted by contrast that, since Tibet had been part of China since the time of Genghis Khan, “that Tibet forms an integral part of the territory of the

Republic of China, that no attempts shall be made by Tibet or by Great Britain to interrupt the continuity of this territorial integrity”<sup>xvi</sup>

At the same time, the Chinese plenipotentiary agreed that “The Republic of China engages not to convert Tibet into a Chinese province, and Great Britain engages not to annex Tibet or any portion of it”, and provided maps for the final frontier between Tibet and China<sup>xvii</sup>.

Britain’s suggested solution to this dispute was strongly informed by its own colonial interests in Tibet and the border areas to the north of British India: lacking any desire for a fully independent Tibet, but equally unwilling to allow full Chinese sovereignty in the region<sup>xviii</sup>, the British utilized the ambiguous (and now legally anachronistic) notion of ‘suzerainty’. This involved dividing Tibet into two distinct areas: Inner Tibet (modern day Kham and Amdo), which came under direct Chinese sovereignty but over which the Dalai Lama maintained religious authority; and Outer Tibet (roughly coterminous with the modern Tibetan Autonomous Region) whose governmental system was dominated by the Dalai Lamas’ government at Lhasa, but over which China maintained a nominal ‘suzerainty’<sup>xix</sup>. China was to take no hand in the administration of Outer Tibet (which would be under the Dalai Lama’s Government), and neither region were, according to the Simla Accords, to be converted into a “Chinese province”<sup>xx</sup>; Britain, in turn, asserted the right to deal directly with the Tibetan Government on trade matters.

This somewhat ambiguous rendition of Tibet’s status – itself a reflection of the British Empire’s own imperial ambitions and mindset at the time - remained in place for almost a century, until October 2008. In a statement by the Foreign Secretary, David Milliband MP, on 29/10/2008, included the following key passage:

“[The British Government’s] ability to get our points across has sometimes been clouded by the position the UK took at the start of the 20th century on the status of Tibet, a position based on the geo-politics of the time. Our recognition of China’s “special position” in Tibet developed from the outdated concept of suzerainty. Some have used this to cast doubt on the aims we are pursuing and to claim that we are denying Chinese sovereignty over a large part of its own territory. We have made clear to the Chinese Government, and publicly, that we do not support Tibetan independence. Like every other EU member state, and the United States, we regard Tibet as part of the People’s Republic of China. Our interest is in long term stability, which can only be achieved through respect for human rights and greater autonomy for the Tibetans.”

This position has been criticized for ‘re-writing history’ by, amongst others, Free Tibet<sup>xxi</sup> and as undermining the Dalai Lama’s negotiating position vis-à-vis Beijing. In practice, this last part may well be true, and the UK’s new position certainly appears to have been welcomed by Beijing. However, certain detailed aspects of the statement are worthy of comment:

Firstly, in renouncing outdated legal vocabulary such as ‘suzerainty’, the UK (in this context at least) has moved out of the penumbra of its own imperial history - a move which in the modern world can only be commended. This has at the same time required the UK to recognize the reality of the PRC’s clear *de facto* sovereignty over present-day Tibet. With regard to Tibet’s *present* status, it is worth noting that its new position closely (although not precisely) matches that of the Dalai Lama’s administration, which also recognizes that *de facto* sovereignty.

Secondly, the statement makes a representation for greater internal autonomy for Tibetans today, re-iterating an emphasis on the present status and rights of Tibetans across Tibet, rather than concerning itself with historical questions of imperial or theocratic sovereignty. In this respect as well, it is similar in stance to the position of the Fourteenth Dalai Lama, who renounced claims to independence in 1988, seeking instead a ‘genuine autonomy’ for Tibetans that concentrated less on points of sovereignty than on “the welfare and ultimate happiness of the Tibetan people”<sup>xxii</sup>, both inside and outside the TAR (see below).

Finally however, the 2008 statement remains nonetheless unclear on the crucial historical question of *the status of Tibet between 1913 and 1950*, as understood within the context of the new framework. In particular, the statement elides the question of whether this ‘updating’ of the UK position constitutes a repudiation of the historical validity of the 1913 Simla Accords. As noted above, this question is one of more than historical

importance, speaking not just to the *de facto* sovereignty of the People's Republic of China over Tibet, but to the ultimate *de jure* legitimacy of that sovereignty.

## 5. Analysis and Recommendations

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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.** These genuine, protracted and long-felt disagreements between Tibetan and Chinese governments over the nature and significance of political sovereignty point towards a deep cultural divide between two profoundly different but contemporaneous and neighbouring constitutional systems.
- **Secondly, that the pre-20<sup>th</sup> 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 20<sup>th</sup> 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.** Neither Chinese notions of imperial vassalage nor Tibetan notions of religious patronage (*chöyon*) translate well into the modern framework of international law and statehood, nor do they obviously equate well with one another, thus underscoring the necessity of a common and more modern frame of reference when discussing present claims.
- **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 20<sup>th</sup> 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.** The fact that such transformations were not recognized by the British authorities of the early 20<sup>th</sup> century is regrettable, but understandable in the context of the increasingly post-imperial context.
- **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 Chinese 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<sup>xxiii</sup>, and; the Tibetan government's successful assertion of neutrality and ban on using its territories for military purposes during WWII, 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 rest less on minutiae of history than on *the on-going quality, justice and equity of that governance*.

- Prepared for the Cross-Party Group by Dr. Martin A. Mills, University of Aberdeen (Member, Scottish Parliament's Cross-Party Group on Tibet), January-April 2009.

## Notes and References

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<sup>i</sup> Much of what follows regarding the PRC's position derives from *Tibet -- Its Ownership and Human Rights Situation*. PRC Government White Paper, [www.china.org.cn/e-white/tibet/9-1.htm](http://www.china.org.cn/e-white/tibet/9-1.htm).

<sup>ii</sup> Much of the following position is taken from *The Status of Tibet*, a response to the above White Paper, on the Dalai Lama's Central Tibetan Administration website: [www.tibet.net](http://www.tibet.net).

<sup>iii</sup> Shakapa, Tsepon W.D. (1981) "The rise of Changchub Gyaltsen and the Phagmo Drupa Period" in *Bulletin of Tibetology*, 1981 Gangtok: Namgyal Institute of Tibetology.

<sup>iv</sup> See Norbu, D. 2001. *China's Tibet Policy*. London: Curzon Press. Ch. 6.

<sup>v</sup> *Official Tibetan and Chinese Positions on the Issue of Tibet*, Directorate of Information and International Relations, Central Tibetan Administration, Dharamsala, 1994.

<sup>vi</sup> See <http://www.un.org/aboutun/charter/chapter1.htm>, in particular Articles 2(4) and 2(7)..

<sup>vii</sup> Goldstein, M. 1991. *A History of Modern Tibet, 1913-1951*. University of California Press, p.71-3.

<sup>viii</sup> Goldstein, M. 1991. *A History of Modern Tibet, 1913-1951*. University of California Press, p.68-71.

<sup>ix</sup> The Dalai Lama, "Address to Members of the European Parliament". *Tibet Bulletin*, Vol. 19, No.2 (May-June 1988), n. 14, p.2.

<sup>x</sup> Both the "Five Point Peace Plan" and the Strasbourg Proposal were rejected by the Chinese leadership in 1990 after an extensive critique in the 19 February edition of the *Beijing Review*.

<sup>xi</sup> International Commission of Jurists, [http://www.icj.org/news.php?id\\_article=3415&lang=en](http://www.icj.org/news.php?id_article=3415&lang=en), February 2009.

<sup>xii</sup> International Commission of Jurists, *The Question of Tibet and the Rule of Law*. Excerpts from section: "The Position of Tibet in International Law".

<sup>xiii</sup> Ibid.

<sup>xiv</sup> Charter of the United Nations, [www.un.org/aboutun/charter/chapter1.shtml](http://www.un.org/aboutun/charter/chapter1.shtml)

<sup>xv</sup> Goldstein, M. 1991. *A History of Modern Tibet, 1913-1951*. University of California Press, p.70-1.

<sup>xvi</sup> Anon, 1940. *The Boundary Question between China and Tibet: A Valuable Record of the Tripartite Conference between China, Britain and Tibet held in India, 1913-4*. Peking. Cited in Goldstein 1989: 73.

<sup>xvii</sup> Ibid. p.7-11. In response to the British position, China repudiated the Simla Agreement, leaving the Agreement to be signed by Tibet and Britain.

<sup>xviii</sup> Britain at the time was involved in complex competition, in particular with Russia, over trade routes within Tibet. An independent Tibet would have been at liberty to engage with Russia, and hold back British interests in the region. At the same time, British officials were fully aware of Chinese animosity to their presence in the region. See Strong, A. 1912. Some Aspects of the Tibetan Problem. *Contemp. Rev.* 102: 527-533.

<sup>xix</sup> Goldstein, M. 1991. *A History of Modern Tibet, 1913-1951*. University of California Press, p.74. The concept of suzerainty was an important component of diplomacy in the pre-World War Two context, when the present system of clearly bounded and internally-sovereign states (enshrined by the United Nations and modern international law) did not fully apply. Under such conditions, many states and territories were recognized as being under mandate or protectorate relations with (and thus under the suzerainty of) other states, without at the same time being fully and inalienably subsumed into them.

<sup>xx</sup> Article 2, *The Simla Agreement of 1914*

<sup>xxi</sup> <http://www.freetibet.org/newsmedia/060508>, accessed 16 November 2008. See also Robbie Barnett, *New York Times*, 24 November 2008, "Did Britain Just Sell Tibet?".

<sup>xxii</sup> The Dalai Lama, 1980. *Collected Statements, Interviews and Articles*. Dharamsala: The Information Office of His Holiness the Dalai Lama, n.4, p.59.

<sup>xxiii</sup> Sinha, N. 1965. "Tibet's status during the World War". *Bulletin of Tibetology*, No.2: 31-35.