

CONFERENCE OF INTERNATIONAL LAWYERS ON ISSUES RELATING TO “
“SELF-DETERMINATION AND INDEPENDENCE FOR TIBET “

LONDON, JANUARY 6-10, 1993

LONDON STATEMENT ON TIBET

1.1) Between 6 and 10 January 1993, in London, a number of lawyers from many countries, with expertise in international law, met to consider issues relating to the exercise of the right to self-determination by the people of Tibet. Also present during the conference were a number of officials and observers. The conference was preceded and accompanied by the distribution of papers written by the participants. It was conducted with a high measure of dialogue and a full and free exchange of views designed to elucidate the matters under consideration. Chief amongst these was the right of self-determination for the people of Tibet under international law, the status of Tibet, population transfer to and from Tibet as affecting the exercise of the right to self-determination of the people of Tibet and various issues concerning departures from basic human rights, including cultural and social rights, affecting the people of Tibet as whole and individual Tibetans.

INVITATION TO THE PEOPLE'S REPUBLIC OF CHINA

2.1) Prior to the conference, the chairman (Justice Michael Kirby, Australia) wrote the Ambassador of the People's Republic of China (PRC) in London inviting his participation in the conference or the attendance of a representative or expert nominated by the PRC able to express the Chinese viewpoint on the matters to be discussed, which were described to the Ambassador.

2.2) The Ambassador, by letter, declined this invitation. His letter is Annex 3. As appears, he insisted that the conference was an interference in the domestic affairs of the PRC and should be cancelled. A representative of the Chinese Embassy in Canberra, Australia, called on the Chairman to press this request. However, it was declined and, to the contrary, the chairman urged again the participation of a nominated expert able to express the Chinese viewpoint.

2.3) Notwithstanding the refusal of the PRC to participate in the conference, the Chinese Embassy in Australia provided to the conference a number of booklets and a statement setting out the PRC's position on Tibetan questions. These booklets were tabled at the conference. They were all available to participants and were referred to from time to time. A list of the booklets is Annex 4.

2.4) Amongst the booklets in Annex 4 is the white paper on Tibet--Its Ownership and Human Rights Situation, published by the Information Office of the State Council of the People's Republic of China. Copies of that White Paper were provided to participants in

advance of the conference. Also provided to all participants was the statement summarizing the position of the PRC, made available to the chairman.

2.5) The participants welcomed the involvement of Tibetans in the conference. They also welcomed the provision of the White Paper, the statement and other documents in Annex 4 as an indication of the increasing sensitivity of the PRC to international opinion about the right of peoples to self-determination and about departures from human rights norms established by international law. In particular, the participants noted an increased willingness on the part of the PRC to express and defend its position. Although this would be better achieved by face to face contact between experts and representatives of the PRC and the Tibetan people, the provision of a written argument was seen by the participants in this conference as a distinct step in the right direction. It was therefore welcomed. Out of dialogue may emerge an understanding of competing and different points of view. It may lead in time to reconciliation based upon international law and respect for the friendly relations between states and peoples.

2.6) In the course of their deliberations and in reaching the conclusions stated below, the participants have taken into account the expressions of the Chinese viewpoints and distributed documentation. The participants approached the issues under consideration rigorously, with neutrality and professionalism, basing their conclusions only upon clearly established evidence of facts and clearly established principles of international law.

EVIDENTIARY COMMITTEES

3.1) Before the conference, planning was undertaken in various countries to permit the gathering and synthesis of evidentiary material which could be placed before the participants upon the basis of which they could express their conclusions.

3.2) The first two days of the conference were devoted to the work of committees dealing with evidence relevant to what may generically be described as self-determination issues (Committee A) and human rights issues (Committee B). On each subject discussed within the committees the participants had papers setting out the position and arguments of the PRC and the opposing views, which included in many cases the views of Tibetans.

3.3) At the outset of the plenary sessions of the conference the respective chairman of each committee (Judge Grogan (A) and Justice Einfeld (B)) presented reports on the principal conclusions reached by each committee. During the plenary sessions which followed, frequent reference was made to the respective conclusions of the two committees. Those conclusions form part of the record of the conference.

3.4) In addition to statements from Tibetan participants and observers, the participants had available to them a vast collection of literature which has earlier examined self-determination and human rights issues relevant to Tibet. This has been taken into account by the participants in reaching their conclusions.

3.5) The conclusions of the conference were reached by consensus of the participants.

TIBETANS AS A PEOPLE ENTITLED TO THE PEOPLES' RIGHT TO SELF-DETERMINATION

4.1) In international law there has been a controversy about "peoples" rights" and about who constitute a "people" for the exercise of such rights in international law, which binds all states and peoples.

4.2) Nevertheless it is clear that international law recognises the peoples' right to self-determination. The principle of self-determination of peoples is expressly recognised in the United Nations Charter. The "right of all peoples to self-determination" is also recognised in the International Covenants on Human Rights and in numerous other international instruments and writings.

Manifestations of the exercise of the people's right to self-determination--peaceful and non-peaceful--can be seen in all parts of the world at this time. Accordingly, if the Tibetan people are a "people" for the purposes of the peoples' right, then, within the context of that right, they are entitled, by international law, to exercise the right to self-determination, which belongs to them.

4.3) There is no universally accepted definition of who are a "people" entitled, by international law, to enjoy the peoples' right to self-determination recognised by that law. However, a useful description of the criteria commonly taken into account in declaring that a group of individuals is a "people" for this purpose is contained in the conclusion of the UNESCO meeting of Experts on Further Study of the Rights of Peoples (Paris, February 1990). The conclusions referred to the following characteristics:

"A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

1) A group of individual human beings who enjoy some or all of the following common features:

- (a) A common historical tradition;
- (b) Racial or ethnic identity;
- (c) Cultural homogeneity;
- (d) Linguistic unity;
- (e) Religious or ideological affinity;
- (f) Territorial connection;

(g) Common economic life.

2) The group must be of a certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a State;

3) The group as a whole must have the will to be identified as a people or the consciousness of being a people--allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness; and

4) Possibly the group must have institutions or other means of expressing its common characteristics and will for identity."

4.4) Various other criteria have been suggested from time to time, and were discussed during the conference. These include economic viability, a measure of international recognition, willingness to submit to a referendum to ascertain the will of the "people" involved and willingness to respect fundamental human rights and peoples' rights. However, for the purpose of these conclusions, the participants accepted the UNESCO Committee's description.

4.5) By the application of those criteria, the participants concluded that the Tibetan people satisfied the requirements and are a "people" for international law purposes. Indeed, it was noted, to some extent at least, by the constitution, legislation and practice of the PRC, the Tibetan people have been treated as separate and distinct within the Chinese state. Under the law of the PRC the "autonomy" of the "Tibet Autonomous Region" is based upon the distinct nationality of the Tibetan people.

4.6) Furthermore, three Resolutions of the United Nations General Assembly (Nos. 1353, 1723 and 2079) have recognised the status of Tibetans as a "people". Resolutions No. 1723 (reaffirmed by Resolution No. 2079) expressly refers to the right of the Tibetan people to self-determination.

4.7) The PRC and its organs of state power which exercise de facto control over the territory of Tibet deny the people of Tibet the exercise of their right to self-determination.

4.8) The PRC, by its publications and statements, denies both the entitlement to and claim for self-determination by the people of Tibet. These denials are unconvincing. So far as the entitlement is concerned, this rests upon international law once it is established that the Tibetans are a "people" for International law purposes. If it is not for the state apparatus of the PRC, or any other nation or state, to deny the Tibetan people's right to self-determination. This belongs to the Tibetan people, not to a nation or state.

4.9) So far as the denial of the claim to self-determination is concerned, the PRC's assertion that "separatism" is the wish of no more than a handful of Tibetans, members of the Dalai Lama's "clique", would be more credible if it were submitted to the freely expressed wishes of the Tibetan people--by referendum or other appropriate process.

According to the evidence, there is no such facility of free expression on the part of the Tibetan people.

4.10) The preponderance of evidence suggests the abiding desire of the Tibetan people for:

- * the free return from exile of the Dalai Lama;
- * the end of Chinese control;
- * the cessation of human rights abuses;
- * the establishment of an independent Tibetan state.

4.11) The participants analysed various legal means and alternative structures by which these desires could legitimately be achieved. The participants considered the principles of national unity and territorial integrity of states. However, they concluded that these principles are compatible, in the particular case of Tibet and having regard to its long history of separate existence, with their exercise of the right to self-determination. They therefore concluded that the Tibetan people are entitled, in the manner and to the extent allowed by international law, to the exercise of the right to self-determination.

TIBET AS AN INDEPENDENT STATE UNDER OCCUPATION

5.1) It is important for the issue of self-determination and also for other purposes of international law to consider the status of Tibet prior to 1949-50 when it was entered by forces of the People's Liberation Army (PLA) of the PRC.

5.2) According to the PRC, the PLA in 1949-50 "peacefully liberated" Tibet, with the concurrence of its people and institutions restoring them to the fully integrated status which the PRC claims had existed for centuries prior to the temporary weakness of China during the period 1911-1950 before the establishment of the PRC.

5.3) According to the Tibetan Government in Exile, the PLA is an army of occupation. They entered Tibet which was then an independent state for purpose of international law. They thereby committed an act of aggression. They have remained ever since in occupation of Tibet against the wishes of its people. They have thereby breached international law and, as one consequence, have continued to deny to the people of the sovereign state of Tibet the right to self-determination formerly enjoyed by Tibet prior to the act of aggression. Much material and evidence placed before the participants supported this view.

5.4) As has recently been acknowledged by the Verdict of the Permanent Peoples Tribunal (session on Tibet, Strasbourg, November 1992) there are indications which support and some which cast doubt upon--the claim that Tibet was, before 1949-50 an independent state for the purposes of international law.

5.5) By consensus, the participants of this conference reached the conclusion that the attributes of sovereignty were sufficiently present at that time, in the context of a nation such as Tibet and given its history, to sustain the Tibetan argument as the preferable one. In doing so they took fully into account the arguments of the PRC concerning the historical relationship between China and Tibet.

5.6) Two considerations of particular importance reinforce the foregoing conclusions.

* The relationship of a tributary--sometimes contended for by China--necessarily implies the separate identities of the tributary and the dominant state. It is therefore inconsistent with a claim that Tibet was an integral part of China in the period prior to 1911; and

* The fact that, upon the establishment of the Republic of China, Tibet was invited to "join" the new republic. It was not asserted--at least until the military action of 1949-50 and the later military action of 1959--that Tibet was already part of the Republic. The invitation to join the Republic was an acknowledgment by the Republic of China that Tibet was not, as such, a part of the Republic and would need an act of self-determination to join it.

5.7) No such act of self-determination has ever occurred. On the contrary, by reason of the act of aggression and military occupation the Tibetan people's right to the exercise of self-determination has been denied. Since the military action of 1949-50, Tibet has been under the alien occupation and domination of the PRC and has been administered with the characteristics of an oppressive colonial administration.

TIBETAN TERRITORY AND POPULATION TRANSFER

6.1) The participants concluded that part of the traditional territory of Tibet has been purportedly included in neighbouring provinces of China. The map of Tibet has been redrawn by the PRC. The boundaries of Tibet certainly extend beyond the "Tibetan Autonomous Region". Without an act of self-determination on the part of the Tibetan people involved, this alteration of their traditional territory does not conform to international law.

6.2) Following the PRC's military action of 1949-50 significant settlements of non-Tibetans from China have occurred in the traditional territory of Tibet without the free consent of the Tibetan people. These settlements have been actively encouraged by the policies of the PRC. According to the evidence, this has had, and is having, serious consequences for Tibetans culture, religion, institutions and national identity. It poses a serious threat to the survival of the Tibetan people. There are other serious consequences for the environment.

6.3) To the extent at least that such population transfers have occurred for the purpose, or with the effect, of diminishing the exercise by the Tibetan people of their right to self-determination and of other basic rights belonging to them by international law. They

should cease at once. Peaceful and lawful steps should be taken to reverse them with due regard to the wishes and needs of all of the peoples concerned.

ABUSES OF INDIVIDUAL HUMAN RIGHTS

7.1) The evidence before the participants demonstrates that there is a consistent pattern of serious violations of universally recognised human rights in Tibet.

7.2) The serious abuses include the following:

(1) Interference in the practice and teaching of Tibetan Buddhism and restrictions on freedom of religion;

(2) A lack of due process of law;

(3) A lack of an independent judiciary;

(4) Loosely defined and oppressively enforced criminal and security laws--including punishment for such offences as:

i) The writing of letters to the United Nations;

ii) The collection of the names of detainees;

iii) Publication of documents including the translation into the Tibetan language of the Universal Declaration of Human Rights;

iv) teaching "reactionary" songs;

v) Possession of a Tibetan flag;

(5) denial of the rights of freedom of association and freedom of assembly;

(6) Torture of detainees and prisoners and the practice of cruel punishments in a harsh penal system;

(7) Oppressive censorship, obstruction of the free flow of information and undue limitations on freedom of expression;

(8) Limitations upon free movement both within and outside Tibet;

(9) Forced sterilizations and unconsensual abortions; and

(10) Unequal access to, and discrimination in, housing, education, health, employment, political office and cultural rights.

7.3) Such violations of fundamental human rights are contrary to international law. The PRC is the state responsible for such violations. The violations should cease forthwith.

7.4) Harsh violations of fundamental human rights typically accompany attempts to deny a people the exercise of their rights to self-determination. Such is the case in Tibet. In this way, the denial of basic human rights is indissolubly linked to the denial of the right to self-determination. Only by the establishment of conditions in which the latter right may be freely exercised will the fundamental causes of grave human rights violations be removed.

7.5) The PRC is required by international law to ensure the respect of the fundamental human rights of the Tibetan people. It cannot evade that legal requirement by an appeal to its domestic jurisdiction. On the contrary, the violation of fundamental human rights is an additional justification for the demand by the Tibetan people for the exercise of their right to self-determination.

RECOMMENDATION

This Conference:

8.1) Urgently invites the United Nations General Assembly to pass a resolution renewing its call for the respect for human rights in Tibet, in particular, renewing its call for the implementation of the right to self-determination of the Tibetan people as contained in its Resolutions numbers 1723 and 2079;

8.2) Recalling Resolutions 1991/10 of the Sub commission on Prevention of Discrimination and Protection of Minorities, urges the United Nations Commission on Human Rights to appoint a Special Rapporteur on Tibet as a matter of urgent priority;

8.3) With full realization of the unique position of the Tibetan people and drawing on its experience from a study of the case of Tibet:

8.3.1) Calls in the United Nations General Assembly to expand the mandate of the Special Committee on Decolonisation to include Tibet in its mandate and to include the regular review of the situations of distinct peoples within existing states;

8.3.2) Requests the International Law Commission to continue its work on a draft code of crimes against peace and security of mankind;

8.3.3) Urges the International Bank of Reconstruction and Development (World Bank) and other multilateral and bilateral financial institutions not to fund projects supporting population transfer of peoples;

8.3.4) Suggests the study of an enlarged jurisdiction of the International Court of Justice relevant to the right to self-determination;

8.4) Requests the relevant organs of the United Nations and those participating in the World Conference on Human Rights to ensure that the issue of the rights of people is included in the agenda of the World Conference on Human Rights in Vienna in June 1993;

8.5) Requests the United Nations Sustainable Development Commission at its first session to consider the problem of deforestation having regard to evidence of the special problem of deforestation in Tibet;

8.6) Requests the International Commission of Jurists to conduct a new high level mission to Tibet by independent experts of unquestioned integrity. The Conference requests the Government of the People's Republic of China to receive and cooperate with such a mission;

8.7) Endorses the proposals for investigation and dialogue proposed by the Permanent Tribunal of Peoples in its Verdict (1992) including the proposal for an international conference on Tibet to be convened in 1993-1994;

8.8) Requests the Government of the People's Republic of China, at the earliest possible time, to extend an invitation to International Committee of the Red Cross for the purpose of inspecting places in which Tibetan persons are held under detention;

8.9) Calls upon the Government of the People's Republic of China and the Tibetan Government in exile, without further delay and without conditions, to commence genuine negotiations to facilitate the exercise of the Tibetan people's right to self-determination;

8.10) Calls on governments, in their bilateral relations with the People's Republic of China and in multilateral fora, to take up the question of Tibet, in particular the implementation of the Tibetan people's right to self-determination;

8.11) Directs that these conclusions and recommendations be drawn to the attention of

- * the Secretary-General of the United Nations;
- * the Government of the People's Republic of China;
- * the Tibetan Government in Exile;
- * other government; and
- * relevant inter-governmental and non-governmental organizations so that the findings and recommendations of the conference can be acted upon without delay.