

TIBETAN PEOPLE'S
RIGHT OF SELF-DETERMINATION

BRIEF SUMMARY

Report of the Workshop on
Self-Determination of the Tibetan People:
Legitimacy of Tibet's Case 1994/1996, India



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तिब्बती संसदीय एवं नीति शोध केन्द्र

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PREFACE

One of the main objectives of the Tibetan Parliamentary and Policy Research Centre (TPPRC) since its inception has been to analyse the rights and obligations of the Tibetan people for a mature development of Tibetan polity. In our pursuance of this objective, TPPRC convened two workshops (in October 1994 and February 1996) to examine the complex issue of the collective right of self-determination of the Tibetan people as understood under international law.

The detail proceedings of the two workshops are produced in the form of a report. The integrated report, divided into eight broad sections includes various papers presented at the meeting as well as the deliberations centered around (a) the question of the legitimacy of the Chinese authority of the Tibetan people from the legal, historical and moral point of view; (b) legitimacy of the collective human rights of self-determination of Tibetan people; and (c) the modalities of implementation of this right from an 'ought' perspective.

In this booklet, we present a brief summary of the proceedings of the 453-page report of the two workshops. We hope that through the reproduction of this summary report, the readers would be able to effectively comprehend the substance and denotation of the detailed proceedings.

We believe both this summary and the main report are of relevance to the Tibetan issue, particularly in the light of the recent proclamation of the Geneva based International Commission of Jurists (ICJ). ICJ in their

most recently released report on Tibet, "Tibet: Human Rights and Rule of Law" have described the Tibetans as "people under alien subjugation" entitled under international law to the right of self-determination. In their report they have called upon China to allow a U.N. sponsored referendum among the Tibetans to decide their future status.

This brief summary would not have been possible without the efforts of Professor Dr. R.P. Dhokalia, who took the onerous task of summarising the report. TPPRC sincerely acknowledges his contribution in the production of this summary, given the demanding and meticulous nature of the responsibility. TPPRC also appreciates the efforts of Ms. Rebon Banerjee, Mr. O.P. Tandon and Ms. Meenakshi Ganguly for their comments, suggestions and editorial assistance in the production of this booklet. A big thank you is also due to TPPRC's office secretary, Ms. Tsering Lhakyi, who painstakingly typed and retyped the manuscript.

Last but certainly not the least, we owe our gratitude to the Friedrich Naumann Foundation for their consistent commitment to the Tibetan cause.

December, 1997

Tsering Tsomo
Executive Director

PROGRAMME

TIGER DEN, SERISKA, ALWAR (RAJASTHAN)

26 October 1994

First Session: Chairman: Ali Ashraf

LEGITIMACY OF STATE AUTHORITY (A) LEGAL (B) POLITICAL (C) MORAL

Second Session: Chairman: Ali Ashraf

LEGITIMACY OF THE RIGHT OF SELF-DETERMINATION (A) LEGAL
(B) POLITICAL (C) MORAL

27 October 1994:

RIGHT OF SELF-DETERMINATION OF TIBETAN PEOPLE

Third Session: Chairman: J.M. Mukhi

LEGITIMACY OF CHINESE AUTHORITY OVER TIBET (A) HISTORICAL (B)
POLITICAL (C) LEGAL (D) MORAL

Fourth Session: Chairman: J.M. Mukhi

LEGITIMACY OF TIBETAN CLAIM: (A) HISTORICAL (B) POLITICAL
(C) LEGAL (D) MORAL

Concluding Session: Chairman: Ajit Bhattacharjea
MODALITIES AND STRATEGIES

THE HERITAGE VILLAGE, MANESAR, GURGOAN, HARYANA

23 February 1996

Inaugural Session: Inaugural Address: T.N. Chaturvedi

24 February 1996

Plenary Session: Chairman: A.P. Venkateshwaran

First Session: Chairman: Michael van Walt van Praag
STATUS UNDER INTERNATIONAL LAW

25 February 1996

Second Session: Chairman: R.P. Dhokalia
LEGITIMACY OF STATE AUTHORITY

Third Session: Chairman: Ajit Bhattacharjea
COLLECTIVE HUMAN RIGHTS OF SELF-DETERMINATION

26 February 1996

Concluding Session

TIBETAN PEOPLE'S RIGHT OF SELF-DETERMINATION

INTRODUCTION:

This brief summary report is an account of two workshops held in 1994 and 1996 under the auspices of the Tibetan Parliamentary & Policy Research Centre, New Delhi, and the Friedrich-Naumann Foundation of Germany, which is committed to the Tibetan cause and the struggle for freedom of Tibetan people. The participants at the two workshops included well-known academics, lawyers, political analysts, human right activists, parliamentarians and representatives of non-government organisations.

The original published Report has been presented in eight parts: Part one contains the addresses at the inaugural function by Prof. S. Rinpoche, Chairman of the Assembly of Tibetan People's Deputies and Mr. T.N. Chaturvedi, former Comptroller and Auditor General of India and presently a Member of Indian Parliament.

Part two comprises seven working papers followed by observations made at the first workshop held at Seriska in 1994. Parts three to seven give a selective record of discussions on a thematic basis as follows: Concept of self-determination, Legitimacy of State Authority; Legitimacy of Right of Self-Determination; Modalities and Strategies for the realisation and implication of the right of self-determination of the Tibetan people and followed by Recommendations. Part eight of the Report reproduces selective documents.

PART ONE: INAUGURATION

Self-Determination : Right or Duty?

The tone and quality of the papers and of the discussions which followed were determined by Prof. S. Rinpoche who in his opening address appealed to the participants to discuss the complex issues academically, objectively, and impartially, and to offer a just solution and a concrete work plan for the settlement of the Tibetan impasse. The questions he raised were:

- (1) What is the basic principle of the right of self-determination and whether the Tibetans are eligible to that right?
- (2) How the lofty principles enunciated in the UN Charter and its resolutions pertaining to the question of Tibet can be implemented in order to ease the suffering of humanity?
- (3) What can be a concrete action plan and strategy which can enable the Tibetan people in exile to attain their freedom and to lead to the alleviation of their suffering?
- (4) What should be the role of the UNO and the Indian government in the right of self-determination of the Tibetan people?

PART TWO: PAPERS

Summary of the Paper Presentations:

The focus of this part is on the working papers circulated in advance to the participants.

The working papers reproduced in this part have in their own way attempted to respond to the above questions and these generated very lively discussions which eventually led to a series of recommendations at

the end of the second workshop held in February, 1996 at Manesar (Haryana) a suburb of New Delhi. These papers were presented in such an order, that the Tibetan question of self-determination could be methodically discussed. First the concept of self-determination, followed by an historical perspective on Tibet's status was presented, so that the entire question could later be examined from the point of international law as well as pragmatically in the context of the present political reality.

The first paper attempts to clarify the concept of self-determination under modern international law.

PAPER ONE: Legitimacy of State Authority and of the Collective Right of Self-Determination by R.P. Dhokalia

Professor Dhokalia's paper provides conceptual clarification of self-determination as it has evolved and been recognised in modern international law. The merit of this paper lies in its conceptual clarity pertaining to the internationally recognised right of self-determination of people which is today regarded as a Pandora's box. This is because in general parlance, this right is misunderstood to necessarily mean in all situations secession and independence of the concerned people and the territory inhabited by them in any existing nation state. Since this portends anarchic fragmentation of existing states, any assertion of this right generates hostility and a challenge to the integrity of sovereign nation states.

According to Dhokalia, in the context of almost complete triumph of democracy all over the world, a new era has commenced which recognises democracy as a global entitlement and the international obligation of

any state authority as a proof of its legitimacy. The basic components of a democracy are: freedom of expression, the right to hold free and fair elections by secret ballot; democratic rights and fundamental freedoms including democratic participatory entitlements of people, and the rule of law. These are the criteria of a legitimate state authority and tests the validation of governance. No government can arbitrarily abridge the democratic right of people to shape their civil society by a participatory electoral process, and this right is subsumed in their general right of self-determination.

This right of self-determination, which originated after the Second World War to terminate Western colonialism, was a right of all colonial peoples and territories to be free from imperialist alien rule. However, it has recently appeared in its new incarnation of democratic development in non-democratic countries. As a normative canon, expressed by the phrase "democratic entitlement", this right of popular sovereignty provides the basis of domestic as well as external endorsement of any governmental authority in order to cope with the rapidly changing demand of the contemporary civilisation, expressed and interwoven in the texts of numerous global and regional connections, processes, procedures, institutions and systems. The texts, illustrative of inexorable evolution of a universal democratic entitlement are: the Universal Declaration of Human Rights 1948 (Article 21); the Civil and Political Covenant, 1966 (Article 25); the UN General Assembly Resolution 45/150 of February 21, 1991 stressing the Member Nations' conviction that periodic and genuine elections are necessary and indispensable element of sustained efforts to protect the rights and

interest of the governed and, as a matter of practical experience, the right of every citizen to take part in the government of his or her country. This right is a crucial factor in the effective enjoyment of a wide range of all other human rights and fundamental freedoms, embracing all the political, economic, social and cultural rights. This implies that, at an international level, legitimacy of any national government depends upon the bonafide credentials of the regime concerned.

However, because currently several self-determination movements have been promoting sub-national fragmentation and separatism in existing states, even threatening the very foundations of democracy in democratic states rather than promoting democratic development in non-democratic states, or have been linking themselves with terrorism and religious fundamentalism or other kinds of separatism, this noble concept tends to be misused to atomise the world community by formation of a plethora of mini states. Hence, the question of legitimacy of the right of collective self-determination has also been succinctly examined by Professor Dhokalia. He not only has reviewed the evolution of the right of self-determination as one of the human rights whose content has been expanding dramatically since the Universal Declaration of Human Rights (1948), but has also addressed many difficult and complicated questions related to this right and has provided a new perspective for delineation of the concept in post-decolonisation and post-cold-war era.

According to Dhokalia, the right of self-determination of people has two aspects: one is its original version prohibiting colonialism or foreign rule, and the other is its new incarnation which prohibits oppression and

arbitrary exercise of any authority, entailing responsive government or participatory democracy and respect for human rights and dignity. The first aspect relates to colonial situations demanding freedom of the colonies, and the latter to the non-colonial situations entitling people to have protection of human rights and a responsive government based on their active participation. In both situations, the collective right of self-determination of people has had a fairly long pedigree for its legitimisation as a normative entitlement of people under modern international law.

The collective right of self-determination has had three-pronged evolution: It has evolved in the last five decades, from that of a colony or non-self-governing territory to become independent and establish a state, to the entitlement of all peoples anywhere to have protection of collective human rights and the free choice to government namely, democracy. In its first phase of evolution this right evolved after the World War II under the aegis of UN Charter and numerous anti-colonial resolutions of UN General Assembly adopted in 1940s and 1950s reiterating: the inalienable right of all colonial people to be free; the legitimacy of self-determination movements and their struggle to exercise their right towards independence; and illegality of subjugation, domination and exploitation of colonial people by any alien rule. This led to liberation of colonies and coming into existence of numerous new states.

In its second phase, this right became closely linked and intertwined with collective human rights enunciated in the UN Declaration of Human Rights (1948) and the two International Covenants on Human Rights (1966), the International Conventions pertaining to Elimination

of Racial Discrimination and Suppression and Punishment of the crime of Apartheid. The regional instruments on protection of human rights in Europe, Americas and Africa recognised specific entitlements of individuals against their governments as these rights constituted internationally mandated restraints on governments.

One of the categorically stated human rights in International Human Rights Covenants is the right of self-determination of all peoples to freely determine their political status. This right, has implied even a right of revolution against the status quo and, in non-colonial situations particularly, it has acquired enigmatic character. This is because of value-based approach of the existing states, whether old or new, in situations where any cohesive group of separately distinguishable people within heterogeneous states can claim option to secede from the mother country. The abuse and misuse of this right has created complex problems for developing countries and authoritarian as well as other states with stratified socio-economic systems, widespread discriminating practices and social and economic backwardness posing serious challenge to their constitutional systems.

The third phase of the evolution of this dynamic right of self-determination relates to the emergence of global normative entitlement of people, as a collectivity wherever they are, to free expression through participatory electoral process and democratic system of government. Articles 19, 20, 21 of the UN Declaration of Human Rights (1948) and Articles 18, 19, 22 and 25 of the International Covenant on Civil and Political Rights have elaborated and strengthened this right which is further reiterated by UN General Assembly

Resolution on Effectiveness of Periodic and Genuine Elections (1991), and the Vienna Declaration and Programme of Action on Human Rights (1993). According to Dhokalia, "the symbolic linkage of democracy, human rights and self-development implies that any denial of democracy is a cognizable violation of global community standard and therefore liable to counter measures."

Dhokalia then proceeds to discuss the challenges generated by excessive self-determination as a result of the centrifugal forces of ethnic-nationalism, separatism, fragmentation, religious fundamentalism, incredible explosion of diversity, etiology of minority politicisation and foreign-engineered movements of secession. Since secession in recent times has taken a centre stage in domestic and international politics linked with excessive violence and terrorist excesses, the right of self-determination tends to pose a serious danger to pluralism and the territorial integrity of the existing states, particularly the democratic ones. This situation of potential widespread upheavals calls for questioning of the legitimising principles of self-determination because there arises a conflict between the status quo of state sovereignty and the revolution of rising aspirations of disgruntled peoples of different ethnic, religious, and linguistic sub-national groups seeking self-determination of their separate identity as the sole criterion of nationhood. Dhokalia maintains that the UN Charter unequivocally establishes the priority of the territorial integrity of states and favours cohesion of existing states, though the legitimacy of existing states is based on responsive representative character of their governments. As long as all the peoples within the boundaries of existing states have equal access to the

governments, and the government does not try to control any peoples outside of those boundaries, the requirements of the right of self-determination have been fulfilled. He draws attention to several unanswered and complex questions in respect of actual and practical application of self-determination as a rule of law which indeed poses a dilemma. On one hand, he rejects the unqualified right of secessionism and self-determination, and on the other, he favours such right in place of absolute prohibition of secession.

In his quest for normative symbiosis to provide for a just solution in domestic as well as international contexts of self-determination, Dhokalia stresses on cognizance of the needs and aspirations of the people concerned, the plurality of cultural, ethnic, religious and linguistic loyalties, the power centres within pluralistic societies, external forces engendering fragmentation of such societies, the unprecedented aggressive politics of human rights, religious fundamentalism and cultural revivalism, the global phenomenon of terrorism, and terrorist states fighting a proxy war through secessionist self-determination. He raises two crucial questions: whether a claim of self-determination of any people, seeking secession or independence from the mother country, is prohibited in case of a heterogeneous democratic or non-democratic state? and whether it is enough for a pluralist heterogeneous state to have a democratic government representing the whole population in order to be considered fully complying with the imperative principle of self-determination?

Dhokalia distinguishes between internal and external aspects of self-determination: the concept of internal self-determination emphasises self-development and self-government and availability of effective autonomy to

the people asking for self-determination. This should satisfy the aspirations of diverse peoples, of a multi-cultural or heterogeneous State comprising many ethnic/religious communities. Internal aspect of self-determination of peoples stresses more democracy, and more self rule for cultural identity, self-development and self-preservation, has legitimacy and global support. However, Dhokalia underlines four core situations in which mere promise of autonomy as internal self-determination will not be enough for the survival of people:-

- a. in case a self-defined people face persecution as a result of a deliberate pattern of government policy of discrimination and economic exploitation;
- b. if such people within a state compactly inhabiting a region confront loss of their identity as they are a victim of calculated genocide or demographic aggression;
- c. if these people are victims of blatant and deliberate violations of their fundamental and social, economic, cultural, civil and political human rights and freedoms; and
- d. if all reasonable political solutions of compromise have been arbitrarily rejected by the government concerned leaving no alternatives of survival for the people.

In the above situations, according to Dhokalia, a people are entitled to exercise the right of external self-determination in the sense of revolution and secession from the mother country in order to seek independent statehood. Dhokalia's paper thus provides a conceptual framework and parameters of the exercise of the right of self-determination in the background of which the

Tibetan case can be fruitfully examined.

This paper is followed by the second paper approaching the question of self-determination of Tibet exclusively from an international law point of view.

PAPER TWO: The Right of Self-Determination of the Tibetan People, Approaches and Modalities by Dr. B.C. Nirmal.

How this right can actually be exercised by the Tibetan people, and what can be the approaches and modalities are the questions discussed thoroughly by Dr. Nirmal.

This paper, presented in three parts, examines, from an international law point of view, the legitimacy of Tibetan right of self-determination. Part one gives definition of "self", "determination", and of "people", and the methods of implementing that right. Part two raises the issue of the Tibetan right of self-determination. Part three offers appropriate modalities and approaches of implementing the legitimate Tibetan right.

According to Nirmal, in the definition and concretisation of the "peoplehood", "peoples" are the constituent elements of the international community and subjects of international law as envisaged in the UN Charter and the Universal Declaration of Human Rights. They constitute a legal framework with a sufficiently defined collective identity and a totality of rights whose implementation is deemed necessary to ensure the dignity and full development of individuals comprising the community. From this perspective the "peoplehood" cannot be limited to the "people-state" or "nation-state" as such, but must encompass the life of diverse peoples in a territory of a given state including local communities and intermediate groups of varied nature.

This advanced notion of "people" necessarily encompasses liberty, self-government, self-development in the context of a specific reality which should ensure the pursuit of human liberation from discrimination, oppression, genocide, autocracy according to the terms and conditions of that community's aspirations. Nirmal opines that if self-determination were viewed not as a right but as a remedy against oppression, discrimination, deprivation of human rights, and anarchic rule, the complex problem of determination of the relevant "self" will be reduced to a manageable affair. This approach is generally supported by international law.

Nirmal also distinguishes between "internal" and "external" aspects of self-determination to emphasise that, as long as a state represents the whole people without any discrimination in its territory, it is immune from any legitimate claim of secession or external aspect of self-determination under international law. This distinction he applies to two distinct fact situations in Kashmir and in Tibet. In the case of the former, internal self-determination of Kashmiri people having been fully guaranteed in law and implemented in fact, Pakistani espousal of exercise of external self-determination for Kashmiri Muslims constitutes patent illegal intervention. On the other hand, in sharp contrast, the claim of the Tibetan people for self-determination with the goal of their very survival and preservation of their distinct identity, for secession, and for independence from China's autocratic rule, is a legitimate exercise of external self-determination. He refers to several historical cases and their fact-situations in different parts of the world, like Yugoslavia, Southern Rhodesia, South Africa, Cambodia, Haiti and the break-

up of the USSR, the case of Bangladesh and Cyprus. He discusses two key variables that can serve as rough predictors for normative assessment of a claim to self-determination: (i) the degree of representative government in the state; (ii) the degree of establishing effect of a given claim to self-determination. Other factors worth considering are: the identification of the group claiming the right of self-determination; its nature and scope; the underlying reasons for the claim; the degree and the extent of deprivation of human rights, the effect on the territory from which secession is sought; organisation of referendum and commitment to respect human rights of minorities and willingness to grant certain degree of autonomy to minority groups.

Nirmal then deals with the two inter-related questions: firstly, pertaining to the legitimacy of the use of force by the people asserting the right of self-determination, and, secondly, the measures states are authorised to take, in support of the struggle for self-determination of entities entitled to exercise that right outside the colonial context. Whilst secessionists are under no duty not to use force, the governments have the power to use force to impose unity and maintain their territorial integrity. Outside states are however required to refrain from organising or encouraging irregular forces or armed bands, including mercenaries for incursion into the territory of another state, and if they do so, they violate the principle of non-intervention under international law.

In parts two and three of his paper, Nirmal discusses, respectively, the case of self-determination of Tibetan people and approaches and methods of its implementation. He finds a close resemblance between the cases of Tibet and of Kuwait, as both countries

came under illegal occupation of the neighbouring states, the People's Republic of China (PRC) and Iraq respectively. While Kuwaitis could regain their statehood because of massive military action taken against Iraq under the leadership of mighty United States in pursuance of UN Security Council Resolution 678 (1990), Tibet still remains under illegal occupation of China, a permanent member of the UN Security Council. Then he draws parallels between Tibet and the Baltic Republics. Unlike Tibet, the Baltic republics succeeded in exercising their right of self-determination by attaining full statehood. China's arguments based on historical claims over Tibet have no justification in law and practice in the context of the World Court's view held in the Western Sahara case. Since Tibetans were never consulted either before or after the occupation of their territory by China, the latter's occupation remains patently illegal.

The self-determination question of Tibetan people can have four-fold approaches according to Nirmal. These are: decolonisation approach, human rights approach, international peace and security approach, and negotiation approach.

Nirmal reiterates that Tibetan people's right to self-determination is their legitimate right and that it is the duty of the international community to provide full support to them to exercise it. He maintains that such a right of liberation from colonial rule is a norm of jus cogens since the UN forbids any colonial regime and regards colonialism as a threat to world peace and stability. Though Tibet does not fall in the traditional and classic European overseas colony categorisation, it can be termed as a colony of China because of its forcible occupation and the oppressive and exploitative

relationship with dominant alien Chinese rule. The UN has itself applied the principles of decolonisation law in non-colonial situations like Namibia, Palestine, South Africa, East Timor, and Western Sahara.

However, the UN has failed to recognise Tibet as a non-self governing territory even though it has been under alien occupation and subjugation since 1950. If recognised as such by the UN it will immediately give rise to a duty on the part of the international community to come to its aid and to take all possible steps to facilitate the exercise of the right of self-determination by the Tibetan people.

The consequences to follow will be: the UN Committee of twenty-four will then be entitled to compile information about violation of human rights of the Tibetan people, and the Chinese policy of population transfer. The committee can then orchestrate international action towards furthering the movement. UN member states will be forced to recognise the occupation of Tibet as illegal and they will not be allowed to lend support to Chinese regime as an occupying power in breach of principles of self-determination; any foreign investment involving exploitation of Tibetan people in their decolonisation struggle will be illegal; Tibet given observer status in the UN; application of meaningful UN sanction aimed towards the expulsion of the colonial aggressor regime; and, finally, to entitle the entire territory of Tibet to a right of self-determination.

Nirmal then urges the international community to contain environmental devastation of Tibetan territory by asking the UN funding agencies not to finance projects supporting population transfers of peoples; pressuring

the Chinese to cease nuclear testing and weapon production, uranium mining and dumping of hazardous wastage; and restoring Tibet's ecological balance and protecting Tibet's ecological diversity.

The Tibetan right of self-determination should be seen as a means to achieve a broader set of goals such as respect for human rights, the rule of law, democracy and autonomy; the denial of which may justify Tibetan people's right to assert self-determination as an end in itself. The worsening of human rights situation in Tibet is reflected in the state of de facto martial law, unending cycle of genocide, repression, torture, intimidation and summary executions of Tibetans, large-scale population transfer of Chinese into Tibet, etc. These have been reported by a number of distinguished human rights organisations. These are acts contrary to modern international law. China can be held responsible for creating a situation of threat to international peace, which justifies UN intervention under Chapter VII of the UN Charter. Besides, growing militarisation of Tibet and the installation of the Chinese nuclear arms in Tibet, makes the demand for self-determination a legitimate right of the Tibetan people.

However, since China has been reiterating that Tibet has always been an integral part of its territory, and that it does not contemplate any modification of this stand, and since it has failed to enter into any meaningful negotiations in good faith, it is doubtful that any reasonable solution can be arrived at by negotiations of any kind with the exile government of Tibet. This is again a violation of Article 2(3) and Article 33 of the UN Charter which imposes an obligation to negotiate settlement of all disputes.

As regards various modes of implementation of the right of self-determination viz. independence, integration, free association, or attainment of any kind of self-government, self-administration, self-management or autonomy, the Dalai Lama himself has opted for autonomy. The Chinese government too had promised autonomy to the Tibetan peoples under the Seventeen Point Agreement of 1951. But the concept of autonomy is imprecise.

According to Nirmal, there are four kinds of autonomy under international law: federal states, international territories and territories of particular international consequence, associated states, and cultural and religious autonomy. There have been many models of autonomy evolved by states as a response to the demand of the people for self-determination. It is for the people of Tibet to decide upon the appropriate model for themselves if and when plebiscite or referendum is conducted for which the framework laid down in the Strasbourg proposal may form the basis. Its main features are: foreign policy and maintaining of a restricted number of military installations by China in Tibet for defence until a regional peace conference is convened and Tibet is transformed into a neutral peace sanctuary; and a guarantee to Tibet as a self-governing democratic polity having all rights to decide on all affairs relating to Tibet and its people in association with the PRC. However, there exists no evidence of any consideration of this proposal by the PRC. Another model worth considering is giving to Tibet and the Dalai Lama, the international status of Vatican City and the Pope.

In conclusion, Nirmal maintains that Tibetan people have the legitimate right of self-determination, both

internal as well as external. It gives rise to a duty on the part of international community viz. non-recognition of the occupation of Tibet by China and doing nothing that impedes Tibetan right of self-determination. Because of its own weak nature, international law has failed to provide justice to the Tibetan people. Also, the UN has not been supportive of the Tibetan case because of its power politics. But Nirmal is hopeful that eventually the Chinese people's own yearning for democracy and freedom will cause a change in Beijing's stand towards Tibet.

This paper is followed by a presentation which throws light on the historical status of Tibet, a contribution by a very experienced and former senior diplomat of Indian Foreign Service who had also served as a Professor of Ancient History at a premier University of India.

PAPER THREE : Tibet's Right to Self-Determination by L.L. Mehrotra

The third paper in the report under review is a paper by diplomat-historian L.L. Mehrotra who examines Tibet's right to self-determination in a historical perspective, applying the criteria provided by the UN Charter, the UN General Assembly Resolutions, the UN Declaration of Human Rights and the UNESCO meeting of experts who in the 1990 document provided certain features for people to qualify as a "people".

The criteria, Mehrotra analyses and applies one by one to the case of Tibet are: a common historical tradition; racial or ethnic identity; cultural homogeneity and religious affinity; linguistic unity and literary heritage; territorial connections, and common economic life. Firstly, referring to Tibetan historical sources, he traces

the evolution of Tibetan historical tradition several centuries before the birth of Christ and the times of the Mahabharata war in India. According to the author, Tibetan sources give evidence of an almost unbroken line of kings since second century BC. The kings from the dynasty of Nyatre Tsenpo, originally from a noble family of Magadh, produced several great kings, including Songtsen Gampo, the 32nd in the line, who unified Tibet and established matrimonial alliances with China as well as with Nepal, and kept up the connections with India from generation to generation seeking religious, spiritual and cultural inspiration. Secondly, despite constant interaction with two major civilizations, Indian and Chinese, throughout Tibetan history, Tibet maintained its own ethnic and racial identity distinct from Yellow Chinese or the Indo-Aryan stock.

The Tibetan form of Buddhism, known as Lamaism too, has been distinctly based on the theory of incarnate lamas of whom the Dalai Lama is the most important. Besides, principal lamaist sects are also very special to Tibetan Buddhism which impart to Tibet a personality of its own and which has lasted more than thousand years. Thirdly, the unique culture and Buddhist faith of Tibet have passed its torch from generation to generation, the central doctrines of which are: non-violence, compassion and love of others. These have imparted to the Tibetan people a homogeneity and philosophical tradition, environmental peace, tranquillity and bliss. Fourthly, the literary heritage and linguistic unity of Tibetan people are provided by their language Bo-Ke which has one stock, though several dialects, and which is extremely rich. The language is well preserved in Tibetan monasteries, and the script is derived from

Brahmi and enriched by Sanskrit and Pali.

Tibetan territory, which is three-fourth of the size of India covering 2.7 million square kilometers, is situated at the altitude of 4000 meters in Himalayan range. Its territorial bounds are well-defined. Tibet's vast and rich natural resources; its forests, animal husbandry, dominant agrarian economy, extremely productive cropland, highly exploitable hydro-power and solar energy potential, mineral deposits, its bio-diversity, have trans-border and transnational impacts. It enjoys not only proper conditions to create a viable economy for itself, its sustainable development is of consequence to all the countries surrounding it. The author concludes that Tibetan people, numbering more than six million, comprise a cohesive body following a single faith almost in their entirety, have had common historical tradition, and enjoyed a viable economic life for centuries with a well-defined territory. They have been recognised to have a status of "a people" by several UN General Assembly resolutions namely, No. 1353 (XIV) of 1960; 1723 (XVI) of 1961; and 2079 (XX) of 1965 to entitle them to their right of self-determination.

Mehrotra moves on to the Chinese claim that Tibet is an inalienable part of China and equally emphatic Tibetan claim to self determination with reference to the Sino-Tibetan Treaty of 821/823 A.D. The PRC claims ownership of Tibet based upon historical relations primarily of Mongol or Manchu rulers with Tibetan Lamas. According to him, the Chinese claim doesn't stand scrutiny because the Treaty of 821 was between two countries and its primary purpose was to stop Tibet's expansion towards China and to contain it within its traditional bounds. It was a sequel to the expansion of Tibetan empire under the rule of Trisong

Detsen (755-797 AD) who invaded parts of China in 763 AD and forced China to pay an annual tribute to Tibet. This Treaty was a non-aggression pact between two equals to demarcate the border between the two countries and to give a solemn commitment on the part of both parties not to interfere in each others affairs. According to the author, it was a Charter of their independence.

The paper then turns attention to the Cho-Yon relationship between the Dalai Lama and Mongol Emperors (1240-1350) used by the PRC as another instance from the pages of history to deny the people of Tibet their right of self determination and to claim the Chinese right of sovereignty over Tibet. The Cho-Yon relationship initiated by Prince Godan, the grandson of Chenghis Khan, the father of Mongol nation, was initially a religious relationship between high Tibetan priests and the Mongol patrons. It was not at all Chinese in origin. It was his son and successor, Kublai Khan, who further crystallized this relationship by embracing Tibetan Buddhism, made it the state religion, accepted the Tibetan Lama as his spiritual mentor, and, in 1254 as a mark of gratitude, conferred on him State's highest spiritual authority, various titles and full political authority, over Tibet. The establishment of the Yuan dynasty by the Mongol Empire in 1271 to rule over the eastern part of the Empire, his dependence upon the Tibetan spiritual master for providing legitimacy to rule over his subjects and to protect his soul from evil, were the outstanding features of Cho-Yon relationship. There was no attempt to rule Tibet directly by the Mongol rulers. This special relationship with the Mongol king came to an end in 1350 during the time of Jangchub

Gyaltzen who ruled Tibet from 1350 to 1364. He eliminated all Mongol influences from the Tibetan administration. However, even after the political link with Mongol kings was snapped the Cho-Yon religious relations with Tibet continued. On this basis it may be argued that it may be more logical for independent Mongols of today to claim Tibet as an integral part of their territory on the basis of the Cho-Yon relationship. In China, the Song dynasty ended in 1279 and the Chinese regained their independence of the Mongolian Yuan dynasty eighteen years later and replaced it by the Ming dynasty who did not inherit any relationship from the Mongols. Yet, the Chinese claim the Mongolian Yuan dynasty as their own in order to lay claims over Tibet and the territories of the Mongol empire.

Mehrotra's unfolding of historical background of Tibet's relationship with the Mongolian dynasty lays bare the hollowness of Chinese title on the basis of historical relationship with Tibet. He proves the wrongness of the Chinese inheritance to rule Tibet on the basis of Mongolia's special relationship with Tibet. In China, the Ming dynasty from 1368 to 1644, showed little interest in Tibet except for the bordering regions. Mehrotra refers to the reign of the first four Dalai Lama's from 1391 to 1617, the Mongolian Emperor designating Sonam Gyatso, the third Tibetan Lama, as the Dalai Lama, meaning an ocean of knowledge, wisdom, and spirituality, and Dorje Cham (Holder of Thunder Bolt); and declining the invitation from the Chinese Emperor of the Ming Court to visit China by the third as well as the fourth Dalai Lama's in succession. He then proceeds to give an account of the end of Ming dynasty in 1664 after the Manchu conquest of China which established an alien Qing dynastic rule

in China. By that time the fifth Dalai Lama, Nagwang Gyatso (1617-1682) had become the political and religious ruler of unified Tibet accepted by the Tibetan people as their Gongsa Chenpo (Supreme Sovereign). The Cho-Yon relationship between the Dalai Lama and the Manchu rulers was soon established on the pattern of the Tibetan-Mongol example, but the link so developed did not involve China. During the 18th century, Manchu forces were invited by Tibet on four occasions in order to drive out respectively invading Dzungar Mongols, in 1720 to escort the seventh Dalai Lama to the Tibetan capital; in 1728 and 1751 to restore order after civil wars; and in 1792 to meet the Gorkha invasion. In the 19th century, the Manchu influence in Tibet became insignificant when Tibet fought wars with Jammu (1841-42), with Nepal (1885-86) and British India (1903-1904).

Mehrotra refers to the merely ambassadorial status of Ambans appointed by the Manchu Emperors to look after Manchu interest in Lhasa as confirmed by the records of British foreign secretary, Mortimer Durand. The special Cho-Yon relationship of the Dalai Lama with the Manchu emperors came to an end in the early years of 20th century. The Manchu empire collapsed in 1911 after the surrender of the Manchu troops to Tibetan forces. Soon after, the 13th Dalai Lama issued a proclamation reaffirming the independence of Tibet. Imperialist Britain, in order to exclude the Russian presence from Tibet, devised the fiction of China's suzerainty over Tibet, but Tibetans rejected the treaties of 1890 and 1892 which Britain signed with China for this purpose. When Britain invaded Tibet in 1903, the Manchus did not come to Tibet's rescue and disclaimed any responsibility which is a clear proof of Tibetan

independence. The bilateral treaty of 1903 between Britain and Tibet presupposed the unrestricted sovereignty of Tibet as confirmed by Lord Curzon's categorical statement on the subject. Thus the author conclusively establishes that, between the fall of Manchu Empire in 1911 and complete occupation of Tibet in 1951 by China, Tibet functioned as a totally independent international entity. The entry of China's force into Tibet in 1949 was an act of invasion on a foreign territory.

The next paper attempts to provide another perspective on self-determination by a distinguished international lawyer actively associated with a non-governmental organization.

PAPER FOUR : The Right of Self-Determination and the De-Colonisation Process by Michael C. van Walt van Praag.

The fourth working paper by Dr. Michael C. van Walt van Praag, examines and evaluates the right to self-determination as a special expression of decolonisation process.

First, Dr. Praag shows that, despite the fact that the right of self-determination is recognised as a part of international law of human rights, consideration and enforcement of these rights by individual states and international community are extremely rare. He traces the origin and historic roots of this right since Europe's Enlightenment until its elevation as a legal right by UN instruments. Then, he throws light on this right of "peoples" as opposed to states, examines complexities of the problems of identifying a distinct people, because of the lack of precise definition of the term. The determination of peoplehood is largely a subjective

exercise. According to the author, the perception of the population should be the determining factor when it comes to defining a people for purposes of self-determination.

As spokesperson and Secretary General of the Unrepresented Nations and People's Organisation, based at the Hague, he approaches decolonisation as a special expression of the right of self-determination. He maintains that, after World War II, universality of self-determination was recognised by the UN and this was followed by decolonisation of African, Pacific and Asian colonies which provides a good example of international community action in the arena of self-determination. More recently, the examples of the exercise of the right of self-determination are provided by the constituent republics of USSR, of Yugoslavia, Belgium and Bangladesh. But there is no reason why those people, who still continue to be colonised or otherwise subjected to alien domination against their wishes by non-European powers, should not be entitled to self-determination. The example he gives is of East Timor illegally occupied by Indonesia and China's invasion and illegal occupation of Tibet.

Dr. Praag proceeds to discuss the scope of the right of self-determination and its parameters in the light of the UN General Assembly Resolution 1541. According to it, the right of self-determination can be realised through the establishment of a variety of political entities or relationships viz. establishment of sovereign and independent states, the free association or integration with an independent state or the emergence into any other political status freely determined by the people concerned. He gives examples of the variety of political arrangements like, the "associated state", the status of

New Zealand and the Cook Islands; "regional autonomy" of the Tyrolians in Italy's northern region; Greenland's relationship with Denmark; Gagauzia's autonomy with Moldova; Tatarstan's unique status within the Russian Federation; the status of the Aland Islands; and the various arrangements with Swiss and other Federal constitutions. These can all represent a successful exercise of a people's inherent right of self-determination which according to the author focus on the voluntary nature of the decision-making process rather than on the substantive result. The right only guarantees a people the right to make a choice about the type of political system that they want.

Praag also refers to two distinct approaches: the historical approach of recreating states that existed in the past, and the human rights approach that views the right as belonging to living groups for the preservation of cultural integrity and protection of their human rights. He observes that, since none of the rights can be absolute and are subject to limitations, the right of self-determination of people, as well as a state's right of territorial integrity, or continued existence, are also not absolute. In case of conflict between the two an all relevant factor require to be looked into, along with balancing of the needs of the entire population of the state concerned against those of the aggrieved people and then analysing of the impact of a successful exercise of the people's bid to self-determination on intra-state, regional and international affairs. In this regard he cites the relevant paragraph of the UN General Assembly Resolution 2625 (xxv), and the Declaration of Friendly Relations, for proper guidance. According to him, the oppressive governments have no legitimate right to invoke the principle of territorial

integrity with regard to disenfranchised section of the population. In the case of Tibet, he is convinced that Tibet forms the perfect example of a nation and people entitled to the exercise of the right of self-determination including the right to independence.

This is followed by a paper focusing on the religious liberty of Tibetans. It is by American scholars working in an Institute of Religious Freedom in USA.

PAPER FIVE: Religious Liberty in Tibet: A Historical and Legal Approach by Dr. Pedro C. Moreno and Tonya Hairston

The next working paper, titled "Religious Liberty in Tibet: A Historical and Legal Approach" by Dr. Pedro C. Moreno and Tonya Hairston, besides dealing with the two-fold approaches given in the title, discusses constitutional provisions and legislation related to religion and enumerates specific cases of religious persecution and oppression perpetuated by PRC in Tibet.

The paper begins with an analysis of Tibet vis-à-vis China with historical and legal perspective. They briefly give the historical background of Tibet-China relations or interactions dating back since 763 AD when Tibetan ruler Trisong Detsen (755-797) invaded China for expansion purposes, followed twenty years later by a Treaty establishing borders between the two states. They cover the Sino-Tibetan interaction during 13th, 14th, and 17th centuries, discussing conflicting Chinese and Tibetan interpretation of the special relationship (Cho-Yon) of Tibet with Mongol and Manchu dynasties since 1249. They present the interpretation and arguments of the Chinese side as well.

Whilst China claimed to liberate Tibet in 1950, the

Tibetans called it annexation. The authors refer to the Seventeen Point Agreement and the replacement of the provisions for Tibetan autonomy in the New Chinese Constitution in 1954 and supplanting of Tibet's government with a Preparatory Committee for Autonomous Region of Tibet. They discuss the rebellion by Tibetan people leading to the flight of Dalai Lama in 1959 to India along with a large number of Tibetan refugees.

The paper then refers to Dalai Lama's Five Point Peace Plan of 1987 in Washington DC; his Strasbourg Proposal of 1988, democratisation of the Assembly of Tibetan People's Deputies (Parliament-in-exile) in May 1990 and its transformation as a full-fledged parliamentary body with effective powers over the executive.

Giving the religious background of Tibetan Buddhism since the seventh century, and the spiritual and temporal leadership of the Dalai Lama in Tibet since 1578, the paper underlines the distinctive theocratic character of Tibetan Buddhism with an unusual connection between religion and government, a fact which causes Tibetans to see China's rule over Tibet as an assault on their identity as a distinctive Buddhist society. Tibetans feel betrayed that point seven of the Seventeen Point Agreement that guaranteed religious freedom has not been honoured by the Chinese. This was confirmed by the International Commission of Jurists in 1960 who concluded that the Chinese have systematically eradicated religious belief in Tibet. The paper refers to increasing China's control over religion in Tibet since 1965. Since 1972, the Chinese have permitted some freedom of religion in Tibet, but they do not allow any religious activity that would advocate

Tibetan independence.

The paper cites relevant constitutional provisions and laws relating to religion, viz. Article 36 of the Constitution of the PRC (1982), Article 17 of the Constitution of Tibet (1963); Penal Code of the PRC (Article 147); and other laws and regulations pertaining to religious activities of foreign nationals, functioning of places of worship, democratic management of temples and protection of relics. The document describes policy on the religious question during the country's socialist period as well as the function of government departments like the United Front Work Department and State Council, to provide a glimpse of Chinese attitude towards religion. The paper concludes with a listing of several reported authentic cases of religious and political intolerance.

The following two papers are really comments on the preceding papers circulated to the participants in advance.

PAPER SIX : Tibet's Right to Self-Determination by Dr. Cyriac Maprayil

Cyriac Maprayil's paper, while reacting to other working papers, mainly those by Dhokalia and Nirmal, further elaborates on issues relating to the status of Tibet from a historical and legal perspective. However he approaches the problem with the human rights approach as an argument against Chinese rule. He concludes with a presentation of an action plan to create global public opinion and lobbying for support by governments and the UN. As to the status of Tibet, the author gives historical background of British Government's policy in their treaties with China in 1876, 1890, 1893 and 1906, and the 1904 agreement

declaring Tibet a protectorate.

Following the fall of Manchu Empire in 1911, Tibet expelled all Chinese officials and in 1913 entered into a treaty with Mongolia as a result of which Tibet and Mongolia proclaimed their independence from China. Tibet remained fully independent in theory as well as in practice until the invasion by PRC. According to the author, when Tibet approached the UN against violation of its independence, the conduct of both Indian and British Governments amounted to an evasion of their moral duty which required them to categorically maintain that there was no legal justification for the Chinese invasion of Tibet.

From a legal point of view, after annexation, China forced Tibet to sign the 1951 Treaty against her will and the Dalai Lama rightly repudiated it in June 1959. The paper refers to the violation of UN Charter Article 2(4) and Article 52 of the Vienna Convention on the Law of Treaties. From human rights perspective, the author propounds the view that the Chinese rule in Tibet has been a systematic abuse of human rights, discrimination in housing, employment, health care and education, denial of freedom of expression including the right of thought and conscience, denial of freedom of assembly and association of practice of religion and travel; arbitrary detentions, torture in custody and execution for peaceful protest. This is further evidenced by UN General Assembly resolution expressing grave concern at human rights violations as suppression of distinctive cultural and religious life of the Tibetans.

Given the scale and persistent perpetuation of Chinese atrocities in Tibet and continuous and active resistance of the Tibetan people, unless China completely

withdraws from Tibet, the Tibetan people will be permanently deprived of their human rights. The large scale Chinese settlements in Tibet pose a threat to Tibetan civilization and nationhood. This gives them legitimate right to realize their inalienable right of self-determination. If Tibetan people are to be rescued from the oppressive Chinese rule, then an action plan is required, the ingredients of which have been enumerated in the concluding part of the paper viz.; setting up of the support groups in every country, creating of lobby groups in legislatures in support of Tibetan cause, and creating of intellectual public opinion etc.

PAPER SEVEN : Self-Determination for the Tibetan People: A Political Argument by Mira Sinha Bhattacharjea

The last working paper by Mira Sinha Bhattacharjea is based on the verbal presentation during a discussion on the proceeding papers. It presents exclusively a political argument. According to the author, if a discussion on the subject ignores the political dimension, it will be unrealistic. Unless State interests and government policy are involved, criticism of China cannot become strident. It is since September 1987, after the Dalai Lama's Five Point Peace Plan, that the Tibetan cause has generated active response on the issue of human right violations which is similar to the concerns of the international community expressed during 1950-51 and 1959-65. The right of self-determination of Tibet and the purposes for which it is invoked, belong entirely to the realm of politics.

According to the author, China's views on the question has two dimensions. First, the PRC's assessment and

understanding of the prevailing discontent among the Tibetan people with the Chinese Tibet policy, and, second, China's sensitivity to foreign interests in Tibet, which is perceived as a threat to its territorial integrity. Hence, China rebuts their reading of history and denies Tibet the right of self-determination. From China's view point, Tibet has been continuously a part of China since the 13th century except for brief interludes between 1913-51, and so was never recognised as a sovereign state by any State including Britain. In 1950, Tibet was not invaded but liberated from external manipulation as well as from its domestic feudal forces.

In the view of the author, both sides are mustering arguments on either that Tibet is independent, or is an integral part of China, and this leads to a confrontational and a zero-sum game. She notes that in this situation, it is worthwhile to look for a third alternative of autonomy. On the Chinese side, the PRC did offer to Tibetans wide powers of self-governance. In Beijing's analysis, the key player in the political game is the USA which uses Tibet, the Dalai Lama, and other issues like human rights, to weaken, infiltrate and sabotage China's social and political fabric.

The author goes on to show the steps China has taken to counter the threat by its ambitious plan for Tibet initiated in 1994 to heal the wounds of the cultural revolution accompanied by a much harsher attitude towards the Dalai Lama and his supporters and tightening of control over the Tibetan Autonomous Region.

In the opinion of the author, as long as the power relations between China and Tibet, and between China and the countries of the developed world particularly

the US, remain unchanged, no legal, historical or moral arguments can advance Tibetan cause. Meanwhile the Chinese policy of modernisation of Tibet and the secularization of the monks, nuns and Tibetans in the Tibetan Autonomous Region will continue.

The issue according to Bhattacharjea, is not whether or not Tibetans have the right to self-determination, but whether this right is inevitably invoked in a political context, for a political goal of self-determination and that it can be exercised only by political means; whether violent or non-violent. The issue in her opinion, is when, how and why the right is to be acted upon. The question is also, what exactly this right means in the case of Tibetan sovereignty and nationhood, or merely as a measure of self-governance for Tibetans within China, for the preservation of the Tibetan spiritual, religious and cultural identity etc. The appropriate strategy to be adopted depends upon the exact meaning of self-determination.

Mrs. Bhattacharjea then goes into the history of the evolution of the right of self-determination in the 20th century from its colonial context of anti-imperialism to post colonial period of the victory of democracy as a global political norm and a model for all societies everywhere that Fukuyama termed "the end of history". In keeping with this model, the right of self-determination has taken a new meaning for meeting the demands of sub-national identities which threaten the integrity of existing states. She gives examples of the break up of USSR, Yugoslavia and elsewhere.

The right of self-determination of Tibetan people belongs to the new context and not to the post war process of decolonisation and political independence.

Yet, it is a unique case in many ways, having universal dimension as a fore runner of many sub-national groups. It is a unique case also because of Buddhism and the religious nature of Tibetan people and non-secular organisation of their society and government. Tibet also has a leadership of the Dalai Lama who stands as a symbol for the new age.

For this reason of uniqueness, the solution Tibetans choose will constitute an influential precedent. Tibetans should not seek confrontation with China and should revive the aborted negotiating process and explore the full possibilities of the provision of autonomy under China's nationality policy. For this, the two necessary conditions missing according to the author are: the lack of trust in China and the absence of an innovative satyagraha movement of Tibetan people led by the Dalai Lama for the promised civil rights. A struggle on these lines may bring about a profound inner change in the Tibet-China relations. She concludes that a movement based on civilized and cultural values and those of Buddhism could perhaps be the only way to bring about a spiritualisation of politics and lead to a non-violent future.

Observations of the First Workshop

This part of the Report, after reproducing the seven working papers summarised above ends with giving a resume of the observations made and modalities recommended at the First Workshop held at Seriska in 1994 for consideration of the next workshop. These oral comments and observations were frequently repeated at the second workshop too during the course of discussions at length and these form part of Part III to VI of the Report.

PART THREE TO SIX : DISCUSSIONS

Part III to VI of the Report deals with the more considered and comprehensive discussions followed at the Second Workshop held in 1996 at Manesar. These are verbatim reproduced thematically under the following headings:

- (1) The concept of Self-Determination.
- (2) Legitimacy of State Authority- the historical, legal, political and socio- economic perspectives.
- (3) Legitimacy of the Right to Self-Determination: the historical, legal, political, and socio-economic perspectives.
- (4) Modalities and Strategies for the Realization and Implementation of the Right of Self-Determination of the Tibetan People.

PART SEVEN contains the RECOMMENDATIONS as follows:

1. The workshop participants studied the papers presented at the first workshop of October 26-27, 1994, and the proceedings of that meeting. They heard the presentation of a number of new papers and commentaries to the first workshop papers.
2. Workshop participants discussed at length three topics:
 - (a) The status of Tibet (past and present) and of the Tibetan Government in Exile;
 - (b) The issue of legitimacy of the Chinese authority's rule over Tibet and of the authority of His Holiness The Dalai Lama and his government; and

(c) The collective human rights of the Tibetan people to self-determination.

General conclusions were reached on all these interrelated subjects. Recommendations and an action plan were agreed upon. It was emphasized that the conclusions, in particular as they related to self-determination, pertain only to the very specific situation of Tibet and should not be interpreted as general conclusions on the broader applicability of the principle.

3. Participants found that at the time of the military invasion of Tibet (1949-50), Tibet was an independent state, possessing all the attributes of statehood required under international law. The invasion of Tibet constituted an act of aggression and an illegal status of territory, in violation of the Charter of the United Nations and the Pact of Paris. Since the PRC imposed the terms of the so-called "17-Point-Agreement for the Peaceful Liberation of Tibet" on the Tibetan government in 1951, through the use and threat of force in violation of international law (including the Vienna Convention on the Law of Treaties), this agreement was devoid of any validity ab Initio. It could not, therefore, have acquired any validity. Later, in 1959, the repudiation of this agreement was a reaffirmation of this fact.
4. Since 1950, nothing has occurred to alter the legal status of Tibet by transferring legal title of sovereignty to China. This means that today Tibet is not a part of China, but remains a territory under illegal occupation. This imposes on other

states an obligation not to engage in acts which imply recognition of China's annexation of Tibet.

5. The criteria for the legitimacy of states and their governments are the performance by the government of three fundamental functions:
 - (a) The protection of the people,
 - (b) The promotion of their social, economic and cultural welfare,
 - (c) The representation of their interest externally. In the case of Tibet, the promotion of the Tibetan people's spiritual welfare must also be recognised as a particularly important criterion.

China has failed to perform the functions of a state under these criteria in Tibet. By China's violent aggression and occupation of Tibet; its persistent gross violations of the human rights of the Tibetans; its repression of religious freedom; and its attempts to destroy the national identity of the Tibetan people; and its misrepresentation of the Tibetan peoples situation and aspirations internationally, China lacks legal, moral, or political legitimacy to govern Tibet.

There has been no act of democratic consent by the Tibetan people which could serve as a legitimisation of Chinese rule.

On the other hand, His Holiness the Dalai Lama, as Head of State and Spiritual Leader of Tibet and the Tibetan people and his government do possess the legitimacy to govern and represent the Tibetan people. The Dalai Lama and his government, now in exile, derive this legitimacy from the 15th century installment of the Ganden Podrang government of Tibet, whose continuity has

since been unbroken. Moreover, it is evident that the Tibetan people regard His Holiness the Dalai Lama as their legitimate leader. Therefore, His Holiness and the Tibetan Government in Exile must be recognized and treated as the legitimate representatives of the Tibetan people and given full opportunity to exercise the responsibilities of a legitimate government, to the extent that this is possible in exile.

China's detention of the young Panchen Lama who was recognized by His Holiness the Dalai Lama in accordance with age old established religious tradition, and their appointment of a different person to be the Panchen Lama, is a serious violation of the spiritual authority of the Dalai Lama and of the spiritual rights and freedoms which Tibetans have always enjoyed.

6. China's unilateral change of borders following its illegal seizure of Tibetan territory, its exploitation of Tibet's natural resources, its practice of population transfer, its systematic violation of human rights, destruction of Tibetan culture and identity, all of which threaten the continued existence of the Tibetan people, constitutes serious violations of the Geneva Convention (1949), the Genocide Convention, the Universal Declaration of Human Rights and numerous Human Rights treaties.
7. Consistent with the Resolutions 1723 (xvi), New York and 2079 (xx) (1965) of the General Assembly and with the conclusions reached by the Conference of International Lawyers on "Issues Relating to Self-Determination and Independence for Tibet" (1993), and by the Permanent People's

Tribunal, sitting in Strasbourg in 1988, the workshop unanimously found that the Tibetan people possess the full right to self-determination, including that of external self-determination. By reaching this conclusion, the following factors were given special importance:

- (a) Tibetans are a "people" with the right to self-determination under the definition adopted by the UNESCO Committee of Experts on the Rights of Peoples;
- (b) Tibetans had their own state and governed themselves for centuries before the Chinese invasion;
- (c) China's aggression and occupation of Tibet constitutes a violation of the UN Charter, the Declaration on Friendly Relations and other international instruments;
- (d) The Chinese Communist Party, in its successive resolutions before coming to power in China, recognized the right of Tibetans to self-determination;
- (e) China's present treatment of Tibet is that of a colonial master over its colony. Colonialism exists where there is political oppression and economic exploitation by an alien power. Under these criteria, Tibet is effectively a colony of China.
- (f) The United Nations Special Rapporteurs, human rights organisations, and Tibetan witnesses, all testify to the fact that there are systematic and gross violations of human rights in Tibet. They are of such a nature and scale that Tibetans continuously experience a state of persecution.

- (g) Peace and stability of Tibet, and of the region, continues to be threatened by the Chinese massive military and civilian presence in Tibet. Whereas the creation of a "Zone of Ahimsa," as proposed by His Holiness the Dalai Lama, would enhance peace and security.
 - (h) The non violent character of the Tibetan struggle for freedom, sets an important example to the rest of the world and must not be ignored. Recognizing that the exercise of self-determination is a prerequisite to the enjoyment of other human rights, it is imperative that the international community provide active support to the Tibetan people and their government in their efforts to achieve self-determination, in accordance with the principles of the Charter of the United Nations and of the UN Declaration on Friendly Relations (1970).
8. The participants of the workshop are convinced that earnest negotiations between the Government of the People's Republic of China and His Holiness the Dalai Lama and his government provide the best possibility for a lasting solution to the question of Tibet and for the attainment of the aspirations of the Tibetan people. They expressed support for the initiatives taken in this regard by the Dalai Lama and took note of the commitment to negotiate expressed by Mr. Deng Xiaoping and the Chinese government.

Recommendations :

The participants in the workshop proposed the following recommendations:

- A. *To the Government of the People's Republic of China*
 - 1. To respond positively to the initiatives taken for negotiations by His Holiness the Dalai Lama and to enter into negotiations with him or his representatives without preconditions, in order to seek a comprehensive practical solution.
 - 2. To put an end to the population transfer of Chinese into Tibet, and to adopt legislation prohibiting the acquisition of land or other real property by non-Tibetans in Tibet.
 - 3. To reunite the three provinces of Tibet, U-tsang, Kham and Amdo, (Cholkha-Sum) into one administrative region.
- B. *To the International Community of State Government's, the United Nations and other International Organisations, NGO's and Business Corporations:*
 - 1. To receive His Holiness the Dalai Lama and officials of his government as the legitimate representatives of the Tibetan people, and provide them with effective support in their nonviolent struggle for self-determination, human rights and democracy;
 - 2. To cease and/or withdraw funding from any project in Tibet likely to result in population transfer;
 - 3. To impress upon the Chinese government and people the importance of starting negotiations with His Holiness the Dalai Lama or his representatives, without preconditions, in all their bilateral or multilateral contacts with officials of the government or with other

Chinese persons;

4. To convey to the Chinese government and people all aspects of the question of Tibet as reflected in this document and to impress upon them the need to restore the status-quo-ante in accordance with the requirements of international law with respect to the illegal seizure of territory by China, and the population transfer.

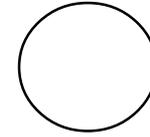
PART EIGHT: DOCUMENTS

Part VIII at the end of the Report reproduces relevant excerpts from important Documents which are relevant and concerned with the issues on the subject under discussion. These include resolutions of the UN General Assembly and UN Sub-Commission on Prevention of Discrimination and Protection of Minority Rights, the extracts of Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, the UN Security General's note of June 1993 on "Situation in Tibet submitted to ECOSOC in 1992, the Strasbourg Proposal of 15 June, 1988. The Dalai Lama's letter of 11 September, 1992 to Deng Xiaoping, statement of the Indian Government at the United Nations, 1965 and the verdict of the Permanent Tribunal of People's Session on Tibet, Strasbourg, 1992.

TIBETAN PEOPLE'S RIGHT OF SELF-DETERMINATION

BRIEF SUMMARY

Report of Workshop on Self-Determination of the Tibetan People



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