

lassen zumindest diverse sprachliche Unebenheiten schließen. Ihre inhaltliche Qualität erleidet dadurch jedoch kaum Einbußen.

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**Tibet: The Position in International Law**

Report of the Conference of International Lawyers on Issues relating to Self-Determination and Independence for Tibet, London, 6-10 January 1993

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The relationship of modern Tibet and China includes all the ingredients of controversy. An ancient and – in the parlance of present-day Canadian constitutionalism – 'distinct' society, Tibet was bound to the newly established Communist régime on the Chinese mainland in 1950 through a "peaceful liberation", founded on the military might of the People's Liberation Army, and forcibly subjugated in 1959 after a short-lived rebellion followed by the flight of the 14th Dalai Lama and numerous other Tibetans to exile in India. Ever since, the Peking government has maintained a tight grip on this region of roughly two million inhabitants, insisting that Tibet is a purely internal matter.

Cold-War confrontation as well as considerations of human rights issues in respect of China's treatment of Tibet and her people have kept Tibet on the agenda of various international fora. Although contemporary state practice would appear to confirm clear acceptance of Tibet's status as part of the territory of the People's Republic of China (PRC), many governments, on the evidence of their contacts with the exiled Dalai Lama who received the Nobel Peace Prize in 1989, equally seem to consider that Tibet warrants international attention and concern.

The London conference reported in the present volume was chaired by Michael Kirby, President of the New South Wales Court of Appeal in Australia, and attended by practising and academic lawyers from Africa, North America, Australia and Europe as well as representatives of the Tibetan community in exile. The PRC authorities declined an invitation to participate as they repudiated the gathering's proposed agenda indicated in the title.

The conference undertook to examine how contemporary international law on self-determination of peoples would apply to Tibet. Two "Committees on Evidence" were formed to appraise factual aspects as a basis for subsequent legal analyses. The results of these debates are contained in a "Concluding Statement" and a list of "Recommendations". Papers presented and discussion covered the issues of "Tibetans as Distinct People", "The Extent of International Human Rights Law", "Human Rights under Chinese Municipal Law", "The Content of the Right of Self-Determination", "Denial of the Right of Self-

Determination to the Tibetan People", and "Denial of Other Human Rights in Tibet". Appendices include materials considered by the "Committees on Evidence".

The detailed proceedings on each of the headings given above provide instructive insights to specialists and general readers alike on concrete facets of Tibetans' right of self-determination in the light of international law, in particular the relevant United Nations instruments. The questions are not easily formulated, let alone answered. In spite of the judicious establishment of evidentiary committees in order to secure a foundation of later conclusions, the account of the debate reflects instances where a dearth of reliable information would seem to impede any firm judgment, and some pronouncements appear, however honourably, impelled more by the heart than the head, as in assertions on Tibetan statehood and consequent entitlement to *restitutio ad integrum*, in the form of reversion to a supposed pre-1950 independence, or the conclusion that the PRC, as an illegitimate occupying power guilty of 'genocide' and other gross violations, has forfeited any claim to territorial integrity in respect of Tibet.

The "Concluding Statement", somewhat grandly styled as 'The London Statement on Tibet', is considerably more cautious on the consequences to be attached to the Tibetans' right of self-determination, eschewing any attempt to adumbrate the ambit of this right to include, e.g. full independence from the PRC. This would seem to correspond to the policy pursued by Tibetan administration in exile who have not excluded arrangements falling short of complete Tibetan sovereignty.

Tibet's plight is not, unfortunately, conveniently amenable to lawyerly solutions. The country, for a considerable period a powerful military adversary of Tang China during the 8th century AD,<sup>1</sup> missed its window of opportunity to attain true autonomy or even outright independence during the weakness of the late Qing and the ensuing power vacuum of the Republican period from 1911 until 1949. Failure to modernise the traditional Tibetan body politic and economic during this favourable interval left Tibet ill-equipped vis-à-vis the Chinese communists in 1949/59. Understandable suspicion on the part of Peking of latter-day Great-Gamesters bent on destabilising 'Red China', coupled with the more orgulous penchants of the inheritors of former 'Sons of Heaven', and the excesses of the Han-Chinese-inspired so-called 'Cultural Revolution' combined to create an environment hardly conducive to tolerant policies on the part of the PRC government. A newly prospering China is now even less likely to relinquish a strategic region whose breakaway could only provoke similar claims in the west and north of the PRC. Safeguarding the interests of Tibetans thus requires political tenacity, but as Poles, Balts, Eritreans, Kazakhs (and Quebeckers) have known all along – never say die.

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<sup>1</sup> Cf. *Christopher I. Beckwith, The Tibetan Empire in Central Asia, A History of the Struggle for Great Power among Tibetans, Turks, Arabs, and Chinese during the Early Middle Ages, Princeton, Princeton University Press, 1987.*