

The China Committee's listserv has hosted an extraordinary discussion of the legal status of Tibet over the last several weeks. The discussion of this particularly topical and sensitive issue has focused on the question of China's claims to sovereignty over Tibet as well as Tibetan claims of independence. Members of the listserv also discussed what the legal basis under Chinese and international law might be for increased autonomy for Tibet within the PRC and the political positions of the relevant officials in both the Tibetan exile government in India and the Chinese government, as well as some consideration of the Tibetan exile community, to the extent that its positions seem to differ from official Tibetan views.

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Once started the discussion first delved into a potential legal distinction with the recognition that the relationship between China and Tibet before the PRC "was suzerainty, not sovereignty." As a response, one of the contributors attempted to put the concept of suzerainty and the origins of Tibet's status into context:

As I read and understand the term, "suzerainty" refers to a principle first seen in feudal law and later used in more modern (late 1800s) positive law in which one country is a vassal state to other. Parts of the Ottoman Empire, e.g., Egypt, Bulgaria, Romania, and others, were organized this way.

The vassal is described as an independent state that gives up some, but not all, of its autonomy to the suzerain state in exchange for certain obligations flowing back to the vassal state.

See an excellent summary of the history of the term "suzerainty" with references at <http://www.1911encyclopedia.org/Suzerainty>.

I also sketched out a partial timeline of the historical development of Tibet's legal status, as highlighted below. Unraveling the legal status of Tibet takes one through the period of British colonialism in the region and later through one or more treaties between Britain and imperial Russian, later cancelled by the Communist government, and through the 1950 invasion by China of Tibet to the present day.

One discussion, attributed to Sir Algemon Rumbold, President of the Tibet Society of the United Kingdom from 1977-1988, says that Britain treated Tibet as an independent state from 1910, but stated in 1912 and again 1943 that it acknowledged the suzerainty of China in Tibet, but on the condition that Tibet's autonomy was respected. The latter is cited Memorandum from Sir Anthony Eden to the Chinese Foreign Minister, T.V. Soong, FO371/93001 (May 8, 1943).

Some say that Tibet initially declared independence in 1912, a position apparently agreed by the British government, which treated Tibet as independent from 1910 or from 1912, depending on the commentator. Others say that that 1912 and two subsequent declarations, at least through 1965 or so, did not amount to declarations. See Alfred P. Rubin, *Tibet's Declarations of Independence*, 60 AM. J. INT'L L. 812-14 (1966).

The 1914 Simla Convention between Great Britain and Tibet established or purported to establish internationally-recognized boundaries, the McMahon Line, for an independent

Tibet. China refused that Convention, and Sir Rumbold writes that it was at that point that Tibet repudiated China's suzerainty.

On September 19, 2006, the Declaration of Independence of the Nations of High Asia: Tibet, East Turkistan and Inner Mongolia was made in Washington, D.C. at the Capitol Building.

With this background, other contributors began to delve more deeply into the historical relationship between China and Tibet, seeking to provide some additional point at which the historical measure of the relationship could be taken:

The tributary relationship between China and Tibet existed between the Yuan dynasty and the Qing dynasty. Though Yuan was arguably not Chinese rule, but Ming was. The British coin that phrase for China and Tibet's relationship, but I think Sir Charles Bell qualified as the "Patron-Priest" relationship. On some level that suggested some degree of independence on part of Tibet. However, it was well acknowledged by early British record of contact with Tibet, as well as most followed treaties, (the tri-partite treaty between Britain, Russia, and China, as well as the disputed Simla Convention), that China controlled the right to conduct foreign diplomacy for Tibet at least prior to 1914, and probably after.

While historians may have called this relationship "suzerainty", but international law typically recognized that the "right to conduct one's own foreign affairs" is THE essential element to claim of "sovereignty".

These observations brought up the first reference to one of the elements of the Montevideo Convention (the "right to conduct one's own foreign affairs") and the factors of the Montevideo Convention became a major focus of the discussion, starting with a response to the previous post.

Tibet satisfied all the requirements for sovereign statehood under the Montevideo Convention at the time Chinese troops entered Tibet in 1950-51. Tibet had a permanent population, a territory, a government exercising effective control, and the capacity to enter into international relations. On the latter point, Emile correctly refers to the Simla Convention; Tibet also attended the 1947 Asian Relations Conference as a sovereign state, issued passports recognized by states like the US, signed treaties with states like Mongolia, and maintained neutrality in World War II despite Allied overtures.

Imperial Britain did indeed use the term suzerainty, while treating Tibet in practice as a sovereign, independent state. The context was the "Great Game," where Britain worried that Tibet might ally with Czarist Russia, so the British had an interest in limiting Tibet's international status. Qing and Republican China were, to all intents and purposes, too weak to enforce any claim to Tibet, so the myth of Chinese suzerainty suited Britain well. It could deal directly with Tibet, while making it harder for Tibet to pursue an independent foreign policy of its own.

There is also the issue of the Seventeen Point Agreement that China forced on Tibet in 1951, under threat that the People's Liberation Army would march on Lhasa. Tibet agreed to "re-join the motherland," which begs the question of why this document was

needed at all (even in the eyes of the PRC government) if Tibet were already legitimately part of China.

Lastly, I would point out the related principle of self-determination for all peoples.

Tibetans are a "people" and have this right; moreover the widespread protests we are seeing in Tibet right now are indicative that the Tibetan people are demanding this right, which they do not feel they currently have. There is some debate over whether the right to self-determination refers to internal or external self-determination (autonomy or independence). His Holiness the Dalai Lama is asking only for genuine autonomy. On the other hand, the Canadian Supreme Court, in the Quebec decision, held that customary international law recognizes that self-determination can entitle a people to full independence if their rights cannot be protected other ways (similar to the Kosovo precedent). Even setting aside Tibet's history as a sovereign state, if the Chinese government cannot bring itself to reach an autonomy agreement with the Dalai Lama, international law would suggest that the Tibetan people have a right to independence.

Additional historical information was provided:

I would say that reasonable people could disagree on the exact nature of China's influence in Tibet historically. There are certainly factual evidence that supports both sides of the argument. Again, I said it is very difficult to classify the nature of that relationship.

I would, however, point out that the Dalai Lama's leadership in Tibet, and indeed, the dominant position of the Yellow Robe sect was not always so. Sectarian power game in Tibet often waxed and waned, but history showed substantial influence of first Mongolia and later China. Perhaps that is not 100% definition of "implementation". But I would argue there were "design" and purpose.

After the death of the last Tibetan King, and before the Mongol "patronage" of Tibet, Tibet was in a state of constant civil war for over 300 years. Religious loyalty was divided between the native Bon religion and Tibetan Buddhist sects. Whether Tibetan Buddhism would have flourished, and whether the Yellow Robe sect would have become dominant, without outside influence is very doubtful.

The "Kashag" government also didn't exist in Tibet, up until Qing China. Did Tibetans have the agency and ability to establish their own religious and political leadership? Prior to the establishment of 1st "Kashag" government form, Dalai Lama successions were marred by assassinations. 5 consecutive Dalai Lama's died before the age of 20. All assassinated, poisoned, by the regent of the time or by rival supporters. China and Mongolia had to send troops to stabilize the situation in Tibet. So, I cannot conclude if the Tibetans of that time had the ability to establish their own religious and political leadership.

How much influence China had in Tibet historically is the exact question.

Pro-Tibetan arguments tend to focus at the narrow slices of time at around 1949 just at the end of the Chinese Civil War, or at the height of the Tibetan Kingdom when Tibet held sway over a large territory. Pro-China arguments tend to look at the history from the time of Mongol conquest of China and Tibet.

I don't know if either are really clearly convincing.

But again, I think it still comes down to treaties and whether world nations are convinced by these arguments.

As in almost all cases in this discussion, the reply was delivered "respectfully":

I must disagree with your characterization of the Tibetan government's historical relationship with the Chinese emperor in your point number 4. "Kashag" simply refers to the Tibetan cabinet of ministers, and was not "implemented" by anyone other than the Tibetans themselves, occasional Mongol or Chinese interference notwithstanding. The Chinese government similarly likes to claim that the title of Dalai Lama flowed from whomever held power in Beijing, but this is quite a sino-centric view of the world. Did Tibetans not have the agency and ability to establish their own religious and political leadership?

For a more detailed analysis of Tibet's status under international law (including a historical analysis) from Tibet's perspective, I suggest this article:
<http://www.tibetjustice.org/reports/sovereignty/index.html>

Also, on the "race" discussion, I believe we are dealing with a difference in terminology. International law recognizes self-determination for peoples, not races. This is, in fact, similar to Lenin's thoughts on the self-determination of nations, which is one reason that the USSR -- technically -- always held out the right of secession to the constituent republics. Until recently, the PRC called its purported autonomy system "national regional autonomy." Now it has been renamed "regional ethnic autonomy," perhaps on the realization that the original term was uncomfortably close to Leninism and customary international law vis-a-vis self-determination of nations/peoples.

These comments brought an impassioned plea for reasonableness as the group, for the first time, found itself being accused of (on behalf of the United States, presumably) hypocrisy for suggesting that Tibet's independent status is anything more than a tool in international politics.

Don't you think on the one hand you are talking seriously about International Law as a "law" but on the other hand you are clear in your deeper heart that the so called law is only policy tools and diplomatic tricks played by your government, rules and concepts building of which are far from maintaining logics and integrity as they are in your domestic law system?

Official standings of the U.S or Britain as Mz Loza mentioned are only political games rather than legal rules, not to mention sources of international law. (Hopefully all of you are clear what international law is) I agree that in formation of a government or country, admissions of other countries may constitute legal evidence, but this doesn't itself promote these governments' views have been raised to the sources of international law. This is especially so when you are talking only about two countries, the U.S and Britain.

I would provide just one example: The U.S government's official stands regarding Tibet. It had dramatic changes just around the time of establishment of PRC government. Prior to the 1940s, the U.S government has always acknowledged that Tibet is one integral part of Chinese Sovereignty. Just around PRC was founded, the U.S dramatically changed its foreign policy regarding Tibet. What are the legal basis behind that? Don't you think it's all a bit too much coincidence. The doubtful changes may be established if you say that the U.S doesn't regard PRC as a legitimate government. But it's apparent that your government is having official relations with China without any doubt of its legal status.

Generally, are the U.S foreign policies changes also change the international law by itself? So that before 1949 there were not much international criticisms about Tibet's status but after that if suddenly comes that China's "invading" Tibet.

As it's not academic paper I don't think I need to give detailed quotations here but I can still give you some hints, official reply from governmental official (Mrs Bacon) of your own countries states that in the U.S wording, no distinct line between Suzerainty and Sovereignty as two terms differentiated in the Britain English. Taking this into account, before 1940s, the U.S had always acceded that Tibet is integral part of China. Foreign Relations of the United States. 1949.China. [Z].Washington D C. United States Government Printing Office.1973.P1066. This was also demonstrated in Tieh-Tseng Li. The Historical Status of Tibet. [M]King's Crown Press. Columbia University. New York.1956.P215.

[The] mention of "invasion" to Tibet in 1950 --see below: I just want to ask whether this is an official view or a view that has any reasonable support. Supposing it's true under this logic, then the whole China was invaded after world war 2 by the PRC forces, making the whole government an illegal one. Because Tibet before 1950 was in basically the same conditions as any other part of China being under control of Republic of China. PRC took over from Republic of China each part of the country with totally the same art: revolution and domestic war. Tibet is no exception in this regard and has nothing different from the land of Shanghai talking of their being taken over from one government to the other.

I just wonder as scholars or legal professionals why it's yet so difficult for you to keep a neutral mind. Why is it so hard for you to try to jump out of benefits of your own country and look at issues from really "international" stand. Were you in China before or how many times and how long? Do you really understand China or Chinese? Do you really understand even a little bit part of the 5000 years history of the people that never ceases in China? Do you even know meaning of Chinese when you are talking about such a historical and complex political issue? I feel really disappointed that as so called open and democratic cultural people, you still are caring about your own benefits so much and try every effort to make facts distorted or reasonings illogically logical looking in order to protect so called national benefits. If you can not rebut that those never were in the utmost mind and egoistic,I would hold that my feelings are reasonable. Sorry for possible offending because I'm really upset and aroused by such one-way inclining discussions.

Thus followed a plea for reasonableness given that messy reality that does not match the neat forms lawyers often find lacking.

It seems to me that increasing passion may be in danger of obscuring reason in this debate.

International "law" is full of examples where more than one culture is subsumed in one nation, and where one culture is divided among many nations. Let's take North America, for example. By any standard, the absorption of lands held by Mexico as well as those held by native peoples by the US government during the 19th century failed to meet the standards of civilized behavior which the international community now expects of its members. Yet no one is seriously suggesting their return to their original owners and their status as US territory is secure under international law. By the same token, Canada – which draws its culture from the same English well as does the United States (leaving Quebec aside for the moment) – is secure in its status as a sovereign state.

Whatever its stage of democracy, China surely is a sovereign state, comprising a territory that without a doubt includes Tibet. Just as moral arguments won't restore parts of the US to their former owners, moral arguments are not sufficient to create an independent Tibet. Rather, autonomy for the Tibetan people must come, if at all, from within the structures of the Chinese state, as the Dalai Lama himself recognizes. As foreign observers, our role can only be to support and encourage this process, not to dictate from an imaginary position of moral superiority. And we must realize that the Chinese government needs to manage much more than Tibetan autonomy. No large country on earth has changed as quickly as China has in the last generation. The economic, cultural and political changes that have resulted present the government with numerous difficult challenges, of which the Tibetan situation is but one among many.

In a return to the understandings of lawyer as advisor, the debate was reframed in the following terms:

- What, if pursuant to international public law Tibet were indeed an independent state? - This is a question each litigator would raise before starting a trial: how do you want to enforce it?
- What, if pursuant to international public law Tibet were part of China? – We are still in the middle of the same mess we are in.

As legal professionals, the sensible contribution we can make is, perhaps, to discuss about feasible solutions.

The problem will finally be solved through dialog (as a Chinese born Swiss national, I dare say that the Chinese people would vote against the presence of US armed force in China J), and the solution will be implemented in detailed rules (law!). Some more significant rules may be subject of negotiation.

The negotiation basis is theoretically given, since the Dalai Lama declared that he did not want to separate Tibet from China (though he has not expressly defined the term "genuine autonomy" , I've understood from his speeches and scripts that he has given up the claim of own right of diplomacy and own defense force).

Suppose you are the legal consultant of Dalai Lama, what would you suggest? Some of you might prefer to be the legal consultant of Chinese government, and what would you suggest?

The Tibetan perspective was provided:

You say that Tibet was no different than Shanghai, with the CCP taking over both. I can think of two differences. First, China signed the 17 Point Agreement with Tibet in 1951. This was fundamentally a surrender treaty, incorporating Tibet into China. No other region or province (even Xinjiang or Hainan) had a similar treaty, showing how unique Tibet was even to the CCP.

Second, Shanghai or other Chinese regions may have been under the control of local warlords, but the people still considered themselves Chinese. Tibetans considered (and still consider) ourselves Tibetan. It is instructive to look at the Tibetan language to see: the Tibetan word for Tibet ("bod") is not the same as the word for China ("gyana" meaning "black expanse"). The Tibetan word for India is "gyakar", meaning "white expanse," suggesting Tibetans as being from the land between these two great civilizations. There was never a Tibetan word for a China that included Tibet, and today Tibetans inside Tibet say "chongguo" (which is obviously an imported Chinese word)

when they talk about the current borders of the PRC including Tibet. "Gyana" still refers to China proper, not including Tibet.

But putting this aside, lawyers are problem-solvers and not just scholars. Looking at the Tibet issue, the gap between the Chinese government and the Dalai Lama is not so wide, when viewed objectively. As the Dalai Lama has repeatedly stressed, Tibetans' dispute is not with the Chinese people, but with a few people at the top of the CCP leadership. His Holiness has also said that he is not seeking independence for Tibet, but wants to work with the Chinese government to implement genuine autonomy for Tibetans under China's sovereignty. This is a huge concession from the Tibetan perspective, and is based on the 17 Point Agreement and China's own laws on national regional autonomy and special administrative regions. The problem has been lack of trust on both sides and lack of political will from Beijing.

Unfortunately, the Chinese government has chosen to vilify the Dalai Lama in words that seem like they are out of the Cultural Revolution: a "wolf in monk's robes" with the "heart of a beast." That's not helpful, and does not make the Chinese government look mature and reasonable. If we are to "seek truth from facts" as Deng Xiaoping urged, the Dalai Lama is not the root cause of the unrest in Tibet, whatever he may be accused of. The root cause is, ultimately, that the Tibetan people (like any people would) resent being unable to control their own lives and society and religion.

I know that in China, Xinhua is portraying Tibetans as "terrorists" and "rioters." There were two days of violence in Lhasa, which is sad. But Xinhua is not reporting on protests that occurred all over Tibet, mostly nonviolent, involving tens of thousands of Tibetans.

Fundamentally, the question must be asked: why the unrest in Tibet? Is it because we Tibetans are savage terrorists, or we enjoy being shot by People's Armed Police, or are stupid and easily fooled by foreign "anti-China forces"? Or is it because we Tibetans feel pain and anger at what we see as having our homeland stolen from us?

Whatever one might think about Tibet's history, whatever one might think about the correctness or incorrectness of China's claim to Tibet, if one looks at the situation objectively one should recognize that there is a problem when a people perceive themselves to be under foreign occupation. This problem must be addressed, or there will not be true stability and harmony. Every Tibetan I know inside and outside of Tibet considers themselves Tibetan, not Chinese. Any solution has to recognize that feeling, and the Chinese (of all people) would hopefully sympathize as to what it feels like to be under foreign rule. I am not saying that Chinese people have to agree, but just to recognize the strength of Tibetan feeling in this regard.

I think if there were a recognition by the Chinese government of this fact, we would see a more constructive, confident and mature approach toward the Tibet issue. Military force and foreign-designed economic development alone cannot address Tibetans' grievances, when the root grievance is lack of self-rule. Fortunately, if the Chinese government is courageous, it has in the Dalai Lama a conciliatory negotiating partner willing to take into account China's concerns about sovereignty. I hope in this urgent time, the leadership in Beijing can take this opportunity to do the right thing.

The Chinese side was represented:

I would disagree with some of your assessments.

(1) The 17 point agreement does not stand alone. It is not the core of Chinese claim on Tibet, and its absence does not mean a lack of Chinese claim of Tibet. As stated before,

pre-1949 treaties with other nations established China's sovereignty over Tibet. Since China's sovereignty over Tibet were previously established by other treaties, the 17 point agreement is not a treaty. The 17 point agreement, can be best characterized as an "agreement for autonomy". The 1st clause stated, "The Tibetan people shall return to the big family of the motherland - the People's Republic of China." Even if this implies incorporation by surrender after a military conflict, not all military conflicts are between 2 sovereigns. US Civil War for example, ended through a "surrender", but it does not mean that the conflict was necessarily between 2 nations. In a civil war context, 1 side may seek to declare its independence, as in the case of the Confederation. But that does not mean that sovereignty is automatically obtained. Civil War may indeed be a conflict over secession. 2 sides of a civil war may also be very markedly different. But that again does not imply that the 2 sides are separate.

(2) In a different point of view, take a hypothetical. If the Dalai Lama's exile government and China does reach an agreement today, there would be a formal drafting of an "agreement for autonomy", which both China and the Dalai Lama will sign. And it may very well incorporate 10 points, 17 points, or 23 points of items. But this hypothetical new agreement would not be called a "treaty", because China's sovereignty over Tibet is already acknowledged prior to the "agreement". It is merely an agreement between a sovereign and an local organization (that does not imply any authority of local organization). In that sense, it is a political contract, where both parties would agree to some specified manner of conduct.

(3) Objectively, some distrust from the Chinese side is not isolated to the Chinese leadership. In the past 49 years or so, Dalai Lama has only adopted the "non-violent Middle Road" about 20 year ago. (Frankly, it is well documented that the Tibetan Exile Government was on the CIA payroll directly and indirectly.) Even the Tibetan Exile Government's constitution was not adopted until 1991. All of this makes it extremely difficult for the Chinese leadership to know whether they should even negotiate with the Dalai Lama or trust him (in terms of legal binding force). It was also very recent (in one of the last rounds of informal talks) that the Chinese side asked for some guarantees that if "autonomy" is granted, that the Tibetans will not seek to push for "independence". The Dalai Lama flatly said that his "signature would mean nothing".

(4) The impression to the Chinese side thus far is that the Dalai Lama either has no real power to negotiate for his people in Exile, or that he is not serious. Most objective evidence point to that the Dalai Lama perhaps has lost his political authority. (The Exile movement is obviously very dependent financially and resource wise on foreign organizations.) But even if we are to ignore the financial dependency, it is evident that the Tibetans in Exile largely do not agree with the Dalai Lama's "middle road" policy. Regardless of what the Dalai agrees to, most of the Exile Tibetans still want "independence" for "Greater Tibet". In that case, there is little practical value for China to negotiate with the Dalai Lama.

(5) Objectively also, "Tibetans" are obviously not an unified voice. (evident from divergence of the Tibetan Exiles from the Dalai Lama's policies). (Additionally, there was that whole "shugden dorjee" sect persecution controversy around the Exile Government around 2000, when sectarian violence got so bad in the Exile community that the Indian Police had to declare curfew in a town to prevent Tibetans from stoning other Tibetans.) Also evident from history, the Tibetan society was volatile and sectarian. The 13th Dalai Lama himself was only able to hold onto a territory roughly coinciding with the current Tibetan Autonomous Region (TAR), and was never able to expand his authority to the "Greater Tibet". The Tibetan sects historically competed for religious influence among the Tibetans. Doubtless, some Tibetans are genuinely loyal to the Dalai Lama, but I do not think that can be easily extrapolated to all Tibetans and all

Tibetan sects. Doubtless also, that after the Dalai Lama's exile, some sects have benefited more than others in Tibet. I do not think the protests in Tibet are as widespread as some believe. Rather, most evidence suggest that the protests are largely concentrated in areas closest to the Yellow Robe Sect major monasteries.

(6) Religious freedom is certainly undisputed, but there is the touchy matter of "separation of Church and State". For this reason alone, negotiation with the Dalai Lama would be rather difficult. To legally recognize the political authority and autonomy of a religious leader in this sense would be well beyond US legal framework, let alone Chinese legal framework. (Feelings or not, lawyers are still bound by the legal frameworks to construct their arguments and solutions. And on this point, abolition of "separation of Church and State" just for Tibet would be illogical and dangerous for the entire Chinese legal framework.) (Religious freedom is not a total exemption from political and legal frameworks in a country, not even in US. Oregon State laws criminalizing religious use of the drug peyote by Native Americans upheld by the US Supreme Court, in *Employment Division, Department Human Resources of Oregon v. Smith*, 494 U.S. 872.)

(7) As for practical solutions, I would suggest that there is enough politically charged slogans and accusations from both sides. If negotiations are to go forward, both sides must stop the drumbeating. China should refrain from the personal accusations. But I would say that the Dalai Lama and the Tibetan Exile Government's continual accusation of "Cultural Genocide" does not help the situation either. Neither slogans move the discussions any further, they only invite more charged accusations. (and I note, China upgraded the "separatists" to "terrorists" only recently.) But practically speaking, objectively speaking, I think that both sides have gone too far down the road of the yelling match, and neither side is willing to calm down and consider the other side's feelings.

In responding to these assertions on a point-by-point basis, the group learned a significant amount about the circumstances that would guide any determination of Tibet's legal status.

1. At a minimum, it seems we recognize that the 17 Point Agreement acknowledges that Tibet was de facto not under the Chinese government's control pre-1951, whether one characterizes that as being a separate country or a secessionist province during a civil war. I understand how Chinese might favor the civil war view, since China was actually under civil war between the KMT and the CCP. However, Tibet wasn't involved in China's civil war. No Tibetan I know inside or outside of Tibet would say that Tibet was part of China pre-1951, so certainly from the Tibetan perspective the view would favor being a separate country that was coerced into signing the 17 Point Agreement after the People's Liberation Army defeated the Tibetan army at Chamdo. Professor Elliot Sperling had this recent op-ed in the New York Times, where he critiques both Tibetan and Chinese perspectives, but then concludes on balance that Tibet was not "Chinese" until the PLA marched in and made it so:

<http://www.nytimes.com/2008/04/13/opinion/13sperling.html?scp=1&sq=sperling&st=nyt>

2. Going forward, I would concur that a future agreement providing Tibet with autonomy would not implicate questions of China's sovereignty, if one starts from the perspective that Tibet is legitimately part of China rather than an occupied country under international law -- a question that has already been addressed here. From that perspective, it would be no different than Britain's devolution of authority to the Scottish Parliament. Frankly, something like that in Tibet would be an amazing development that would reflect incredibly well on the Chinese government's confidence and political maturity.

In this respect, I would point you to an editorial by Cao Xin in Southern Weekend (Nanfang Zhoumo) in early April. He said that the recent protests in Tibet demonstrate that many Tibetans still revere the

Dalai Lama and show that Tibet is a special case. He wrote that policies adopted in other autonomous regions are perhaps not appropriate in Tibet and that "genuine regional autonomy" is the answer.

3-5. The Chinese government vacillates on how much power the Dalai Lama has, largely to suit its propaganda needs. Wen Jiabao recently in Laos called on the Dalai Lama to use his "influence" to calm the situation in Tibet, blaming His Holiness as the instigator of all the troubles in Tibet. Zhang Qingli, the hard-line party secretary in Tibet, on the other hand, says the Dalai Lama is irrelevant in Tibet. (He also said that the communist party was the "real Buddha" for Tibetans; if this is the sort of insensitive viceroy Beijing sends to rule Tibet, no wonder they have an uprising on their hands). His Holiness is looked to by every Tibetan I know as the religious head but also the head of state, the symbol of the country. As you suggest, His Holiness' control over Tibetans is not absolute, nor does he seek to wield dictatorial powers, so there is a limit to how much he can single-handedly control the situation. Tibetans are not sheep, and have pain for the loss of homeland. If you prick us, do we not bleed? Isn't it natural that a people will feel anger and resentment at foreign occupation?

But it would be disingenuous for the Chinese government to claim that, just because the Dalai Lama doesn't absolutely control Tibetans, there is no use in negotiating with him. He is the only person who could convince Tibetans to settle for autonomy, after all we've been through for the past 50 years. The way I look at it, passions among people on both sides are up to the respective leaderships to reign in, but His Holiness cannot ask Tibetans to give in for nothing in return. It is not enough to say that people among one side are too vociferous so there is no point in talking. That is what leadership is about. The Chinese government can try to accommodate legitimate Tibetan grievances under the Canada/Quebec/Nunavut and Britain/Scotland model, or it can try to use repression and apply the Russia/Chechnya and Serbia/Kosovo model. Putin was successful but at a great cost, and Milosevic lost power and lost Kosovo too. I hope Hu Jintao can be more enlightened than Putin or Milosevic.

Lastly, I think your emphasis on Tibetan exiles might be misplaced (I say this as a Tibetan-American too). The key issue is the wishes of the 6 million Tibetans inside of Tibet. Tibetans on the outside are politically active because Tibetans inside Tibet lack a voice. You say the protests in Tibet may not have been as widespread as reported. Here is a map of major recent protests, including at places like Sakya that are centers of power for other sects besides the Gelukpa (Yellow Hat): http://www.savetibet.org/images/images/protests_map_404_LARGE.jpg and this doesn't include vigils bravely held by Tibetan university students in Beijing and Chengdu.

Considering the penalty for protesting in Tibet can include getting shot by the PAP or arrested and tortured, this seems fairly widespread to me. Of course you'd be right to suggest this isn't the same thing as having a referendum, which I would completely support. I have a feeling the Chinese government wouldn't be so enthusiastic, after seeing what happened in East Timor.

6. As I mentioned, His Holiness is more than a religious leader, he is seen as the head of state of Tibet as well. China had no problem dealing with him as a political leader before, whether under Mao, Deng or Hu Yaobang. His Holiness has repeatedly said that in a future Tibet, he will have no political authority, which will be reserved for the Tibetan government. So there really is no problem of separation of church and state. Anyway, it would be funny for the CCP to make a fuss about this Western concept, since

to the CCP everything is about the state, even the church (e.g. the patriotic catholic association controlled by the CCP).

7. On the "drumbeating," sometimes parties have to make a decision about whether to negotiate despite perceived provocation by the other side (Israel/Palestine, for instance). It would be hard to expect Tibetans to completely cease protesting, since Tibetans feel that as the people under occupation, it is an unaffordable luxury to sit back and assume that the Chinese government will negotiate in good faith without pressure. It's not as if Tibetans are blowing up noodle shops in Beijing; Tibetans have been incredibly restrained considering what we've been through. It would be great if the rhetoric could be toned down, but China is the party with all the guns... surely the powerful Chinese government can afford to weather a few protesters?

Finally, I have a question. I never understood why many Chinese people are so convinced that Tibet "was, is, and always will be" part of China, but don't feel the same way about Mongolia. Mongolia if anything was MORE under the control of the Qing and Yuan Dynasties than Tibet ever was, and the KMT purported to rule both Tibet and Mongolia through the same Commission (of course this rule was a fiction). If Tibet is a sacred part of Chinese territory because of its relationship with old Chinese empires (regardless of what the Tibetan people may feel), then why not Mongolia as well? This is an honest question, which I have never understood.

Another response in this line of debate:

1. Tibet's de facto "self-control" was largely a result of the disintegration of Qing Dynasty. Thus it cannot be said that Tibet wasn't involved in the Chinese Civil War, which stretched back to the Warlord period in the early period of Republic of China. It was well documented that Tibetan military forces engaged in small scale territorial battles with Muslim Chinese Warlords in the provinces of Sichuan, Qinghai, and Gansu. It was also well documented that the Tibetan military harassed the Communists as they embarked on their Long March north through Sichuan. Neutrality of Tibet during that time is doubtful. Even if Tibet was neutral, "neutrality" does not automatically translate into sovereignty. Mere de facto "self-control" and neutrality is not equal to independence.

a. Again, the treaties prior to 1949 recognized Tibet as part of China. A central government may indeed lose control when it disintegrates, and local warlords always benefit in gaining more self-control in the absence of the central government, but that does not imply that the local warlords are automatically their own countries, even if some of the warlords chooses to stay "neutral". And "coercion" is always used to end Civil wars. The mere part that Tibetan military tried to expand their territory after the fall of the Qing Dynasty means that Tibet was a participant, and benefitted from the ongoing chaos.

b. Culturally distinct self-identity is one thing, political and legal identity is another. (Otherwise, immigration would be illogical, if Cultural identity implies legal identity.) Culture may be a reference in determining historical boundaries between sovereign nations, but it is not a presumption of sovereignty. Again, treaties and history are the usual major indicators.

2. On genuine autonomy, I would refer to my previous message on how Tibetans in Exile really feel.

3. On China's view on the value of negotiating with the Dalai Lama, the concern is a practical one and a legal one. Negotiations is about reaching a legally binding solution. It might be helpful to get the Dalai Lama to "agree to help" China to persuade the Tibetans in Exile, but ultimately, the agreement with the Tibetans in Exile must be somehow binding on both sides. Some body on the Exiles side must be able to do more than try to convince.
4. I think the Tibetans in Exile's activities render it questionable the real feelings of 6 million Tibetans in China. (As it was questionable whether the 1959 uprising was due to real grievances or incitement by CIA, or a little of both.) (It's the chicken and the egg problem. We don't know which one is causing which.) But I would say, realistically, if all 6 million Tibetans in China feel that strongly about it, even the PAP would not be able to keep them under control.
5. Referendum may be a future solution, but I doubt any reasonable government would allow referendum to be carried out under heavy external influence and internal disorder. That, frankly would render the "referendum" completely meaningless.
6. So far, all the negotiations with the Dalai Lama, after the Exile, have been informal. Neither side promised anything, and that unfortunately will not change, unless the basic problem of legal binding authority and "separation of church and state" question are answered. And the Chinese legal framework of "separation of Church and State" involves heavy State monitoring of Religious organizations to prevent political activities. Right or wrong, it is the Chinese legal framework, and it is based upon concerns for historical rebellions based upon religious organizations, such as the Taiping Rebellion which caused 20 million deaths in China. You may not agree with it, but then again, we may not agree with the French government banning Muslim head scarves in schools. It's inherently not supposed to be the same as the US system of "separation of Church and State".
7. On weathering the protesters, I saw a recent comparison of the crackdown. Post-LA riot, over 3000 arrests. Post Lhasa riot, over 1000 arrests. Laws may weather the protesters, but the protesters must also weather the laws, by proportions. Even Civil Disobedience in US will mean often some jail time. Violent protests are violence, no matter where they are. Would we condemn these protests less if they happened in US? I do not think the law would weather it by ignoring it out of sympathy.

Mongolia was actually part of ROC under a treaty with Russia. Once the Soviets took over Russia, they helped Mongolia rebel against the ROC forces. PRC might have a problem with Mongolian independence, except for several reasons: (1) USSR backed Mongolian independence, (2) Mongolia was by 1949 no longer theocratic but rather Communist, (3) Mongolia did not claim "inner Mongolia", and (4) Mongolia had helped China in her fight against Japan during WWII.

Some of these reasons were geopolitical, some are political, and some are just practical. Mongolia was a Communist ally of PRC during WWII. USSR used Mongolia as a base to launch offensives against Japan in China, and Mongolian communist army participated.

In order to further the debate, a contributor asked the following questions:

Based on previous discussion, I throw more questions to this list serve

1. How to solve Tibet issue?

2. Does boycotting Beijing Olympic for alleged human rights violation conform to the concept of "sovereignty" of international law or not?

3. Should China Committee get involved to solve this issue or not? If so, how? If not, why?

4. What can China Committee do to promote healthy Sino-US relationship in this politically sensitive time?

I hope to hear the answer from you especially from our respectable co-chairs. There is one thing we need to keep in mind that everyone has freedom of speech. We do not need to get upset because some one else's opinion is different from ours. I fully trust your professional attitude.

which generated this response:

(1) Tibet is perhaps too great of an issue to "solve". Chinese historians tend to take a long view of history, full of rise and fall of nations and stabilities. As Zhou Enlai once remarked to Nixon on the historical significance of the French Revolution, "It's too early to tell." Oddly enough, Defense Secretary Rumsfeld recently adopted a similar attitude, in remarking that only history can tell if the Iraq War was a success. Tibet perhaps will join the other "unsolvable" issues of history and politics. "Unsolvable" by man's actions, but perhaps reconciled by time, which heals all wounds.

(2) I believe, boycotting is a right of individuals to refuse commercial transactions for political reasons. It is perfectly legal when done by individuals, even government officials. Collectively done boycotts, may occasionally violate national laws, under the theory of "Interference of contract" and antitrust (when boycotting against a government). If boycott is organized by legislation, it is still a choice. No country is required to attend the Olympics.

a. But that said, boycotting the Olympics has been historically wasteful and pointless exercise.

(3) I think the China Committee could get involved, but the issue of Tibet may prove to be too politically charged. Many members have personal financial interests in China, US, and Europe. The committee may be able to make non-partisan investigations and reports on Tibet, but the results may be tainted by personal biases, and possibly subject the committee to public admonishment. But I would say, personal visits to Tibet may enlighten ourselves individually. I myself intend to visit Tibet as soon as convenient. I have always wanted to visit Tibet, just haven't had the time. One note of caution, however: like most places, Tibet is often in the eyes of the beholder, people see what they want to see. I would also say that visit to the Exile Community in India might also be helpful.

(4) US-China relationship is always politically sensitive. That's why we are all here. That's what makes the China Law Committee great, in my opinion. We are all, by the definition of "lawyers", students of law. We study different areas of law, history of laws, historical background that changed laws. We talk to each other across borders, across cultures, NOT because we are paid by our governments to do so, but by our own intellectual curiosity and our need for diversity of opinions.

Above said, on the Tibet issue, I see some clear problem areas that present themselves as major obstacles to resolution:

(1) The Chinese government's reactions are, needless to say, predictable, even if uncertain as far as extent. But it is not surprising for any government, Civil disorder always bring about heavy crackdown by law enforcement and even military. US deployed National guards during the LA riot. It would not be logical to expect China to react otherwise. This policy will not change. There is no reason to expect it to.

(2) Chinese counter protests world wide. Some in the Western nations choose to view the recent surge of Chinese counter protests as "Chinese Nationalism". This is a serious misunderstanding of the genuine dissatisfaction with the West within ethnic Chinese population world wide. There are many ethnic Han Chinese who live near ethnic Tibetan areas, and over the past 2 decades, the social interactions have increased significantly, hence occasional ethnic conflicts. Tibetans frequent Muslim Hui Chinese restaurants and hotels. There was even a case of a riot few years ago because of a number of cases of food poisoning of Tibetans in a Hui restaurant. Ethnic divide is not as wide as some have portrayed it. Great many ethnic Tibetans work along other Chinese in variety of occupations, including government and academic and commercial. (Recently, Norwegian Inge Solheim symbolically flew a Tibetan independence flag at the North Pole. Ironically, in 1999, Penba Tsering, a weather engineer, became the 1st Tibetan to reach the South Pole, sent by a Chinese scientific research mission. Penba Tsering has also climbed the peak of Mt. Everest, the 3rd pole of the world. And he is expected to reach the North Pole in some future expedition.)

(3) That said, there is an ethnic divide in some parts of TAR. Part of it is due to economics. Tibet is remote. Income from Tourism is still slow to generate. The recent riot certainly does not make things better for the ordinary Tibetans. (Foreseeably, foreign tourists to Tibet will decrease, as China tightens visa requirements. Chinese tourists to Tibet will likely increase in the long run.)

(4) The Wild card, unfortunately, is the Tibetan Exile Movement, which I have to say, is baffling, but expectedly so. In this sense, there is a fundamental intellectual difficulty to communicate and negotiate a resolution with it. Fundamentally, it is disjointed with confusing hints and suggestions and contradictory public statements.

a. While the Dalai Lama publicly states his hope for "genuine autonomy for greater Tibet", he compares Kosovo to Tibet and Taiwan. Not only does that signal a threat to the Chinese government that he intends "Kosovo like" independence, it hints to his followers in the Exile community that "it really is about independence". (This also hurts Kosovo's independence, since China has more reasons to reject it in UN.)

b. On the recent claims by China that some Tibetans were arrested for bombing a government office in China, the Dalai Lama publicly rejected the accusation. Yet, in a 1998 interview with NY Times, <http://query.nytimes.com/gst/fullpage.html?res=9A01E7DC123EF932A35756C0A96E958260>, the Dalai Lama publicly acknowledged that bombing had been going on in Tibet by Tibetans, 9 times in the 1st 4 months, all targeting government buildings. He clearly knew these acts of terrorism were going on. Yet he has chosen public plausible deniability. That only incenses the Chinese government to further accuse him of planning the bombings. (which may or may not be true) (I can only guess that such an admission of bombing of "buildings" would remind the Western public of 9/11, and cause a public backlash against the Dalai Lama)

c. On April 2, 2008, in an interview with Radio France International's Chinese language program, Dawa Tsering, an Additional Secretary in the Department of Information and International Relations of the Tibetan government-in-exile, answered a

question about why the Dalai Lama has not condemned the violent actions of rioters during the unrest. Speaking in Chinese, Dawa Tsering stated that:

First of all, I must make it clear that the Tibetan (rioters) has been non-violent throughout (the incident). From Tibetans' perspective, violence means harming life. From the video recordings you can see that the Tibetans rioters were beating Han Chinese, but only beating took place. After the beating the Han Chinese were free to flee. Therefore [there were] only beating, no life was harmed. Those who were killed were all results of accidents. From recordings shown by the Chinese Communist government, we can clearly see that when Tibetan [rioters] were beating on their doors, the Han Chinese all went into hiding upstairs. When the Tibetan [rioters] set fire to the buildings, the Han Chinese remained in hiding instead of escaping, the result is that these Han Chinese were all accidentally burnt to death. Those who set and spread the fire, on the other hand, had no idea whatsoever that there were Han Chinese hiding upstairs. Therefore not only were Han Chinese burnt to death, some Tibetans were burnt to death too. Therefore all these incidents were accidents, not murder.

This plainly admitted that the "beatings" and arson were going on in Lhasa, yet it redefined it as "non-violent". The logic of this explanation completely escapes me. If this was the Exile Government's position on "non-violence", there is some serious disconnect with its Western supporters.

(5) While I hope still that the Dalai Lama truly believes in "peaceful" autonomy solution for Tibet, I do not see a strict adherence to that principle. While it is true that some extremists exist on every issue, I think it is also clear that the Exile Government has chosen to keep its eyes wide shut, and indeed publicly rationalized extremist behavior. Even if some peaceful solution comes, China or the Dalai Lama must deal with the Extremists, with force of law if necessary.

(6) Foreign interests in Tibet. Noble as "human rights" interests are, a negotiation between 2 parties can be hopelessly bogged down and confused by interests of uninvolved 3rd parties. That much most lawyers would appreciate. As long as the Exile Government continues to receive funds from well meaning Western countries, it presents itself as a problem with furthering the negotiations. (My suggestions for a possible solution would be too political to mention.)