
TIBET'S RIGHT TO SELF-DETERMINATION: ANALYSING INTERNATIONAL LAW AND CHINA'S SOVEREIGNTY CLAIMS

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ABSTRACT

The right to self-determination is a fundamental principle of international law, enshrined in key legal instruments such as the United Nations Charter [Art 1(2)] and the International Covenant on Civil and Political Rights [Art 1(1)]. This principle is particularly contentious in the context of Tibet, where decades of Chinese sovereignty have been met with ongoing demands for autonomy and independence by the Tibetan people. This research paper critically examines the legal arguments supporting Tibet's right to self-determination, drawing on international legal precedents and treaties. It also explores the challenges posed by China's sovereignty claims, which are grounded in historical, political, and territorial arguments. The paper will seek to analyze how international law balances the right to self-determination with the principle of territorial integrity, and whether Tibet's case could be considered a legitimate exercise of self-determination under current international norms. By exploring these dimensions, this paper aims to contribute to the broader discourse on self-determination and minority rights in a globalized world, offering insights into one of the most complex and enduring geopolitical disputes of our time.

Keywords: Self-determination, nationalism, globalisation, military, independence, United Nations.

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INTRODUCTION

The question of whether Tibet can aspire to independence poses a serious and intricate question in relation to principles of international law. Competing claims of the global justice doctrine in the context of the Tibetan cause are self-determination and territorial integrity governments' rights. Tibet, a land with specific cultural, ethnic, and religious composition, which has existed historically prior to the claim of more powerful economic state of China, has a very in depth history of autonomy. And yet, since the People's Republic of China proclaimed its jurisdiction over Tibet in 1950, Tibet has since remained, part of China. This brought about vigorous international debates about the status of Tibet and its position in international law especially its right to self-determination.

Over the last century, self-determination has played an ever-increasing role as a weapon in the armory of those espousing human rights, in particular group human rights². The right to self – determination is recognized as a principle of international law in the primary international documents such as the United Nations Charter and the International Covenant on Civil and Political Rights etc. Nevertheless, its concrete use has basically been confined to colonial and post-colonial countries where subjugated nations strive towards shedding the yoke of colonialism. The situation in Tibet, on the other hand, is much more complex, not fitting into the orthodox colonial situation, which begs the question of self-determination here.

Moreover, the territorial sovereignty doctrine, which is well-established and forms the basis of international laws, conceptualizes that states have the right to govern their territories without any external forces' intervention. Territorial sovereignty and the principle of non-interference protect a state's management of its internal affairs and prevent other states from such interference. China has repeatedly claimed this doctrine to support its stance over Tibet, in that the issue of Tibet is very much internal, and should not be subjected to international jurisdiction or scrutiny.

Hence, the Tibetan case presents the conflict between two of the basic global principles of justice – the principle of a right to self-determination of a people, and the principle of sovereign equality of states – in its most acute form. Today, the Tibetans are threatened in their existence

² Rob Dickinson, Twenty-First Century Self-Determination: Implications of the Kosovo Status Settlement for Tibet, 26 ARIZ. J. INT'L & COMP. L. 547 (2009)

as a people.³ In regard to Tibet, which has a very special historical, cultural and political situation, it is necessary to analyse these principles more deeply, which raises serious issues for international law. Can the present geographic construct of international law deal with those types of conflicts, especially concerning non-colonial settings? Does international law afford any cognizable rights to the entity of Tibet? Moreover, in light of such aspirations on the part of Tibet, is it possible to respect the territorial unit of China?

Because it highlights the intricate shifts in post-colonial self-determination, state power, and the role of external states in advancing international human rights standards, this topic is crucial for the field of law and justice studies in the modern world. With a focus on Tibet, this study offers a practical implementation of the theoretical framework of global law, including statehood, state recognition, human rights, and so on, which is also evident in other regions of the world.

DEFINING THE RIGHT TO SELF-DETERMINATION AND ITS APPLICATION TO TIBET

The right to self-determination is a fundamental principle that is enshrined in international law, reflecting the autonomy of peoples to establish their own political, cultural, and social structures. It occupies a prominent position. Despite its legal foundations and significance, the concept of self-determination remains complex and sometimes contentious, particularly in regions like Tibet where a state's claims to sovereignty conflict with its right to self-determination. Tibet's cause has gained prominence in the international discourse on self-determination because to its distinct history, cultural identity, and unwavering demands for independence or autonomy. This section looks at the various types of self-determination, their legal foundations, and comparative case studies to provide light on the legal issues surrounding Tibet's right to self-determination under international law. The right to self-determination plays

³ Marc Moquette, *Tibet, the Right to Self-Determination and Territorial Integrity*, 8 NETH. Q. HUM. RTS. 261 (1990).

an important role in international law since it is a fundamental concept that represents peoples' sovereignty to choose their own political, cultural, and social institutions.

Legal Foundation of Self-Determination

As a fundamental right within the contemporary international legal system, the concept of self-determination is as old as government itself⁴. According to Article 1(2) of the UN Charter⁵, the UN's primary goal is to promote the peaceful coexistence of countries and the sovereign equality of states, which includes articulating the right of peoples to self-determination. Self-determination's presence in the Charter highlights the significance of this concept in attaining global peace and stability and the freedom of peoples to choose their own political status as well as to pursue economic, social, and cultural advancement.

Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR)⁶ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁷ both further codify the right to self-determination. According to both covenants, "All peoples have the right of self-determination," which gives them the autonomy to choose their own political status and make sure that their growth aligns with their goals and requirements. Although self-determination is reaffirmed by the ICCPR and ICESCR, its applicability in non-colonial contexts is limited since they acknowledge that this right must be used within the parameters of current state borders. As a result, Tibet's situation presents a special difficulty since it does not easily fit into the colonial framework that has always supported aspirations to self-determination.

Further advice on how to interpret self-determination may also be found in the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (1970). The latter resolution, which was approved by the UN General Assembly, emphasizes that, unless a government disregards the rights of its citizens, self-determination

⁴ M. C. Van Walt Van Praag, *Tibet and the Right to Self-Determination*, 26 WAYNE L. REV. 279 (1979).

⁵ UN Charter art. 1(2).

⁶ International Covenant on Civil and Political Rights art. 1 (opened for signature Dec. 19, 1966, 999 U.N.T.S. 171).

⁷ International Covenant on Economic, Social and Cultural Rights art. 1 (opened for signature Dec. 19, 1966, 993 U.N.T.S. 3).

shouldn't compromise the geographical integrity of sovereign nations. Some academics have taken this warning—known as the "remedial secession" doctrine—to imply that a people may have good reason to seek independence in situations when they are severely oppressed or denied internal self-determination. Supporters of Tibet have said that China's regional policies, such as prohibitions on cultural and religious activities, amount to a rejection of self-determination and call for a re-examination of Tibet's rights under this theory.

Example of Relevant Cases

It is helpful to look at case studies where comparable problems have occurred in order to comprehend Tibet's claims to self-determination within the larger framework of international law. Comparative insights into how self-determination aspirations have been handled in various legal and political situations may be gained from two noteworthy cases: Kosovo and Quebec.

Quebec

Among the vivid examples of internal self-determination within a federal setting in Canada, there is a state of Quebec. Because Quebec has its own culture and ethnically different and predominantly French-speaking people, the province has demanded more control over Canada's affairs. When the Supreme Court of Canada requested Quebec right of unilateral secession in 1998 it determined that in light of international law Quebec could not advance any genuine grounds for secession. The Court stated that a people, generally, can not have a one-side 'right to external self-determination,' unless, of course, they are under colonial oppression or subjugation. Instead, another procedure was adopted: Since Canada is clearly committed to federalism and intra-federal self-determination, this has to suffice to include the identification of Quebec. This example proves that territorial integrity remained a potent factor to discourage the separation attempts and shows the tendency towards the domestic means in non-continental colonies conditions.

Kosovo

This, however, is the only case at the present time that external self-determination is recognized outside of colonial context in Kosovo. The Kosovo declared its independence in 2000 after enduring a long period of suffering from ethnic discriminations by the Serbians. Taking into consideration this statement made by Kosovo, the ICJ came to the conclusion that actions of

Kosovo do not violate international law as such. Nevertheless, instead of proclaiming an unconditional right of unilateral secession the Court confined its decision to the Kosovo case only. Altogether, Kosovo case has had effects on other regions despite the fact that ICJ decision was restrictive at this regard; it means there is inevitably a point where extreme persecution could lead to external self-determination.

These examples demonstrate the potential and constraints of international law for Tibet. The Quebec case supports the notion that Tibet's rights may be met by significant autonomy inside China by indicating that international law supports internal self-determination in non-colonial circumstances. However, as the Kosovo instance shows, external self-determination may be a plausible alternative in severe situations when internal self-determination is impractical. Tibet supporters contend that Tibet's right to external self-determination is justified since China's practices, such as political and cultural persecution, are comparable to what Kosovars endured under Serbian control.

ASSESSMENT OF TIBET'S RIGHT TO SELF DETERMINATION

“The embodiment of the right of peoples to self determination in the Declaration on the granting of independence to colonial countries and peoples is of historic importance”⁸. The question of Tibet's right to self-determination within international law is a complex one, as it touches on the intricate relationship between the principles of self-determination and territorial sovereignty. Tibet's advocates argue that the region has a legitimate claim to self-determination based on its historical autonomy prior to Chinese control, its distinct cultural and ethnic identity, and international legal frameworks supporting people's rights to determine their political status. These arguments are as stated earlier grounded in Article 1(2) of the UN Charter⁹ and Article 1 of both the International Covenant on Civil and Political Rights

⁸ Aureliu Cristescu, The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments, U.N. Doc. E/CN.4/Sub.2/404/Rev. 1 (1981).

⁹ *Supra* note 4

(ICCPR)¹⁰ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)¹¹, which affirm the right of all peoples to self-determination.

However, China's position counters that Tibet has been an integral part of Chinese territory since the Yuan Dynasty, reinforcing its sovereignty over the region. China maintains that Tibetans are a minority within China, eligible only for internal self-determination, which it claims to respect through policies allowing cultural autonomy under Chinese governance. "Tibetans stand out as an entity with their own history, language, culture and tradition that show quite distinctly that they are neither Chinese nor part of any other group of people,"¹² The issue is further complicated by Tibet's own push for independence or broader autonomy, which some interpretations of international law support only in cases of colonial or foreign domination—criteria that China argues do not apply in Tibet's case. This legal tension exemplifies the challenge of balancing the aspirations of minority regions with state sovereignty within the global legal framework.

Implications for International Law and Self-Determination Norms

Tibet's case illustrates critical limitations in international law concerning minority rights and autonomy movements. Existing frameworks often struggle to reconcile self-determination rights with the sovereignty of established states, especially in cases where separatist aspirations stem from cultural and ethnic distinctiveness rather than colonial subjugation. Although the right to self-determination is acknowledged by international law, there are no explicit procedures in place to deal with situations in which this right is asserted within the boundaries of an existing state, as is the case with Tibet, Quebec, and Catalonia.

In addition, the failure of international law to address the issue of how to address internal demands for autonomy reflects an untapped gap. Thus, the self-implementation of self-determination to allow minority groups with significant desires for autonomy is limited by conventions of self-determination, which mostly advocate the maintenance of the existing state borders. Consequently, the experience of Tibet suggests the need for change in the existing

¹⁰ *Supra* note 5

¹¹ *Supra* note 6

¹² Alan Brouder, Self-Determination for Tibet: Prospects in International Law, 5 TRINITY C.L. REV. 172 (2002)

international law to address such claims and, in particular, where political and cultural rights are involved. Better legal frameworks could lead to additional more sophisticated solutions which will take into consideration nations' territory borders and minorities' rights within such states.

CHINA'S SOVEREIGNTY CLAIMS

Historical, political, and legal justifications have supported the Hina claim to Tibet. The notion that Tibet has been an essential component of China for millennia and that its sovereignty has been established via both historical linkages and contemporary accords is at the heart of these assertions. In addition to having their roots in China's territorial integrity, these arguments are also a part of the larger "One China" policy¹³, which has grown to be a pillar of Chinese internal security and diplomatic strategy. In order to understand how China governs Tibet and opposes any claim of Tibetan self-determination, this section analyzes China's historical defenses, political rationales, and adherence to international territorial integrity norms.

Historical Claim to Tibet: Analysis of China's Historical Arguments

China's sovereignty claim over Tibet is largely built upon a historical narrative that situates Tibet within the framework of Chinese empires and centralized rule. Chinese historians argue that Tibet has been under Chinese suzerainty since the Yuan Dynasty (1271-1368), when the Mongol-led Yuan rulers established control over Tibet as part of their vast empire. Although Tibet maintained local governance, it was under the ultimate authority of the Yuan, symbolizing an early connection between Tibet and the Chinese imperial structure. This connection persisted, according to Chinese accounts, through successive Chinese dynasties, particularly the Ming (1368-1644) and Qing (1644-1912), each of which maintained varying degrees of control and influence over Tibetan affairs.

The Qing Dynasty, in particular, is often cited by Chinese scholars as evidence of direct Chinese authority over Tibet. The idea that Tibet was a part of the Chinese Empire was strengthened in the 18th century when the Qing emperors designated Ambans, or imperial

¹³ Stephen McDonnell, China's Pressure and Propaganda – The Reality of Reporting on Tibet, BBC News (Dec. 12, 2016), <https://www.bbc.com/news/world-asia-china-38285354>.

delegates, to supervise Tibetan government and uphold law and order. Chinese academicians argue that this historical precedent justifies China's current sovereignty over Tibet, asserting that local Tibetan leaders were under the general jurisdiction of the Chinese emperor even when they were in command.

China invaded the de facto independent province in 1950 and forced an agreement on the Tibetans in 1951 that established Chinese rule¹⁴. The 1951 17-Point Agreement solidifies China's historical claim to Tibet. When the People's emancipation Army invaded Tibet in 1950, this agreement protected Tibetan autonomy, established Chinese sovereignty, and protected religious and cultural traditions, establishing Tibet's "peaceful liberation." The deal, according to Chinese officials, signifies Tibet's acceptance of Chinese sovereignty and admission into the People's Republic of China (PRC). But detractors contend that the agreement was signed under duress, citing to accounts of Tibetan delegates being coerced into signing it by Chinese armed forces. Despite these objections, the 17-Point Agreement remains a cornerstone of China's historical and legal claim, portraying Tibet's admittance to the PRC as a mutually acceptable outcome. Chinese academics say that this historical precedent supports China's current sovereignty over Tibet since, even in the past, local Tibetan authorities were subject to the Chinese emperor's overall authority

The “deal”, according to Chinese officials, signifies Tibet's acceptance of Chinese sovereignty and admission into the People's Republic of China (PRC). But critics contend that the agreement was signed under duress, pointing to stories of Tibetan delegates being coerced into signing it by Chinese armed forces. Despite these objections, the 17-Point Agreement remains a cornerstone of China's historical and legal claim, portraying Tibet's accession to the PRC as a mutually accepted outcome. The Chinese violated the Agreement when it instituted communist-style reforms and repressed the Tibetan peoples' religious freedoms.¹⁵

China's claim that Tibet has always been a territory with close links to China rather than an autonomous state is supported by these historical considerations. Chinese academics and authorities contend that these historical ties are unrelated to Tibet's status since they predate the concepts of self-determination found in modern international law. These historical

¹⁴ Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination and the Movement Toward Smaller, Ethnically Homogenous States*, 47 Drake L. Rev. 209, 270 (1999).

¹⁵ China's Unlawful Control Over Tibet: The Tibetan People's Entitlement to Self-Determination,

arguments serve to support China's assertion that Tibet has never been an independent state but rather a region with longstanding ties to China.

Political Claims by China

"The relationship between the Chinese emperor and the Dalai Lama is hard to understand when the European concepts of public international law are applied."¹⁶ China's political justifications for its sovereignty over Tibet are closely intertwined with its "One China" policy, a core principle that underscores the indivisibility of Chinese territory. The "One China" policy is fundamental to China's national identity and political stability, framing any separatist aspirations as threats to state unity. Under this policy, China views Tibet as an inseparable part of its territory, alongside other regions with unique cultural identities, such as Xinjiang and Taiwan. Any group that wants Tibet to be independent is seen as a direct threat to the unity of the Chinese state, which is something the Communist Party sees as necessary to keep control of China's large and diverse people.

Control over Tibet also helps China to watch and protect its borders, especially given ongoing tensions with India over contested regions. Additionally, Tibet serves as the source of many major rivers that run into nearby countries, giving China a crucial part in controlling regional water resources. The strategic value of Tibet therefore goes beyond cultural or historical factors, affecting China's wider military and security policies.

Nevertheless, China's political arguments highlight the benefits of security and unity, depicting its authority in Tibet as good both for Tibetans and the country as a whole. Chinese officials believe that establishing any sort of Tibetan freedom may create a template for other places, perhaps leading to a "domino effect" where rebel groups in Xinjiang, Inner Mongolia, or even Hong Kong could garner support. This fear of separation is profoundly embedded in China's governance approach, leading the authorities to preserve strong control over Tibet. "From China's standpoint, these rebel dangers justify its policies in Tibet, which are portrayed

¹⁶ Karl Josef Partsch, *New Findings on the Right of Self-Determination for Tibet*, 36 GERMAN Y.B. INT'L L. 524 (1993).

as necessary actions to avert unrest and maintain national security. movement rather than to educate toward the child's well-being.”¹⁷ China's invasion and occupation of Tibet is termed a liberation from traditional Tibetan society¹⁸. However, this justification for liberation is unacceptable¹⁹. In support of this approach, China has adopted several socio-economic development projects in Tibet, characterizing them as measures to improve the quality of life for Tibetans and bring them more completely into the Chinese economy. While Chinese authorities tout infrastructural development and poverty reduction as desirable effects of their rule, opponents contend that these programs are intended at assimilating Tibetans and eroding their cultural uniqueness.

TENSIONS BETWEEN SELF-DETERMINATION AND SOVEREIGNTY IN TIBET’S CASE

The problem of Tibet is a major matter under international law because to the persistent conflict between the ideals of self-determination and state sovereignty. Tibet’s claim for self-determination originates from international human rights frameworks that advocate the right of all peoples to freely select their political status. However, Chinese position focuses strictly on its sovereignty attitude, which denies the Tibetan autonomy and informs strongly that Tibet is an inherent and inalienable region of China. This question raises deep concerns for international law, and it is while striving to link together the stakes inherent in the right of peoples to self-determination and the obligations to respect state unity. This section looks at the legal ground on which Tibet’s self determination argument rest, various stand of the international community on the Tibetan issue and legal obligation of United Nation and other human right body concerning Tibet.

Tibet’s claim to self-determination is grounded on significant international legal frameworks, notably those developed following World War II. Article 1(2) of the United Nations Charter stresses the ideal of self-determination as important to world peace. Furthermore, Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International

¹⁷ Regina M. Clark, China's Unlawful Control over Tibet: The Tibetan People's Entitlement to Self-Determination, 12 IND. INT'L & COMP. L. REV. 293 (2002)

¹⁸ CENTRAL TIBETAN ADMINISTRATION, TIBET: PROVING TRUTH FROM FACTS 40 (1996)

¹⁹ *Id*

Covenant on Economic, Social, and Cultural Rights (ICESCR) affirms that all peoples have the right to self-determination, which Tibetans argue should entitle them to autonomy or independence. Tibetan advocates cite the principle of “external self-determination,” which applies when a people is under foreign domination, severe oppression, or human rights denial. They argue that Tibet meets these conditions due to its historical autonomy and its periods of self-rule before the incorporation into the People’s Republic of China (PRC). Before the 1950 Chinese intervention, Tibet ran with its own government, culture, and religion institutions. This past serves as proof, according to proponents, that Tibet counts as a separate people under international law and thus justifies the right to external self-determination for autonomy or independence.

China, however, claims that Tibet’s position does not meet international standards for foreign self-determination, seeing Tibet as a historical part of China going back to the Yuan Dynasty. From China’s viewpoint, any call for Tibetan freedom would break its geographical unity. China promotes an interpretation of “internal self-determination,” where Tibetans, as a recognized minority, are entitled to cultural rights but not political independence. Beijing claims it has met its responsibilities by giving Tibetans cultural autonomy within a unified China, framing self-determination as achieved through policies that allow cultural expression but not split.

These differing views of self-determination are at the core of the legal tension between Tibet and China. Beijing claims it has met its responsibilities by giving Tibetans cultural autonomy within a unified China, framing self-determination as achieved through policies that allow cultural expression but not split.

CONCLUSION

This study has examined the tensions between Tibet’s claim to self-determination and China’s statements of geographical authority, showing the complex mix of international law principles involved. Tibet’s supporters say that its past autonomy, unique cultural identity, and the right to self-determination under international law back its case for either independence or increased

autonomy. Central to these claims are Article 1(2) of the UN Charter²⁰ and Article 1 of the International Covenants on Civil and Political Rights (ICCPR)²¹ and Economic, Social, and Cultural Rights (ICESCR)²², which support the right of all peoples to self-determination. Tibet's case is particularly boosted by past times of de facto freedom before China's full integration attempts in the mid-20th century.

China, on the other hand, insists on its authority over Tibet, saying that the area has been part of China since the Yuan Dynasty and categorizing Tibetans as an ethnic group within a united China. China frames its rule as keeping with the "One China" principle and claims that Tibetans are given adequate authority through culture and regional policies under Chinese law. From China's viewpoint, Tibet's right to self-determination is met by limited domestic authority, which protects China's geographical unity and supports security. The 17-Point Agreement of 1951, wherein Tibetan leaders apparently accepted Chinese authority, is often mentioned by China as proof of Tibet's integration, though many Tibetan supporters consider this agreement forced and thus useless.

Implications for International Law and Policy

These and many more continue to characterize the future of the questions posed to the international law in its efforts to uphold Unitary self-determination against state autonomy and as the case of Tibet remains today as a testimony. The Tibetan case thus illustrates constraints within present international law regimes, especially as regards special status populations with otherwise plausible rights to self-determination but not of the conventional colonization sort

While admitting the right of the people to self-determination of their political status; in general the law delimits borders with no evident guidance to lend the Tibetan's desire of autonomy or independence. This case typifies the general issue of self-determination as a quest to maintain geographical cohesion especially when the demand is made by a group of people in a state..

In sum, the Tibet case illustrates the wider need for international law to change in response to the pressures of a worldwide world. Cases like Tibet's show that the current structure of

²⁰ *supra* 4

²¹ *Supra* 5

²² *Supra* 6

international law may not fully address the difficulties of modern self-determination claims, especially as global knowledge of minority and cultural rights continues to grow. For international law to stay relevant, it may need to take more complex methods to self-determination and sovereignty, supporting flexible frameworks that address the rights of ethnic communities within bigger state systems. Tibet's ongoing battle thus underscores the need for creative legal standards that address the realities of mixed states and offer realistic answers to minority claims in an increasingly interconnected world.

6.2: Potential Recommendations for Policy and Legal Frameworks

In the case where a middle – ground method might be suggested it could somehow come up with a way of arguing for a form of increased autonomy for Tibet as a means of upholding the sovereign wishes of China as well. If it is such a method, it could recognize the seniority of China's authority, yet afford Tibet with greater rights for the control of cultural, religious and governmental issues. Models of semi-autonomous areas, like the Åland Islands in Finland or Hong Kong under its old "One Country, Two Systems" system, could serve as models, giving Tibet real authority without full freedom.²³

Policy suggestions might also include foreign control methods to ensure that any agreed authority is followed in practice, as well as strong rights for Tibetan culture and religious practices. Further, by creating better rules within international law for handling similar autonomy claims, the global community could offer more realistic paths for combining minority rights with state authority. Enhanced international law frameworks for self-determination could provide tools for resolution, support human rights monitoring, and encourage discussion between states and minority groups, setting new standards for handling complicated cases like Tibet's in a globalized world.

²³ National Research Council, *The Internet's Coming Impact on Higher Education, in Preparing for the Revolution: Information Technology and the Future of the Research University* (2002), <https://nap.nationalacademies.org/read/9897/chapter/13> (last visited Nov. 3, 2024).