

HUMAN RIGHTS IN TIBET

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The dispute regarding the status of Tibet has raged for more than four decades. In September 2002 for the first time in nearly a decade, representatives of the Dalai Lama's Tibetan Government in Exile have been hosted – both in Beijing and in Tibet – by the Chinese government. Direct talks between the Dalai Lama's representatives and high PRC officials over the status of Tibet and relations between Han Chinese and Tibetans last took place in 1993. Internal and international factors have put added pressure on China and the Dalai Lama to compromise and moderate positions are gradually emerging. A breakthrough on the Tibet Question is by no means foreclosed. The fact that improved economic conditions and a somewhat liberalized political environment in Tibet have led to increased nationalist expression is indicative of the essential issue for Tibetans. Tibetan demonstrations have been distinguished by their nationalist emphasis, especially the carrying of the banned Tibetan flag and shouts for Tibetans independence. Tibetans' desire for self-determination is the ultimate political purpose which must be satisfied in order to achieve any solution – short of political genocide – to the conflict between Chinese and Tibetans. Until that purpose is achieved the conflict will likely continue to the detriment of human rights for Tibetans and of human rights and democratic standards in China.

1. Introduction

In September 2002 for the first time in nearly a decade, representatives of the Dalai Lama's Tibetan Government in Exile have been hosted – both in Beijing and in Tibet – by the Chinese government. Direct talks between the Dalai Lama's representatives and high PRC officials over the status of Tibet and relations between Han Chinese and Tibetans last took place in 1993¹. Internal and

¹ International Commission of Jurists (a cura di), *Tibet: Human Rights and the Rule of Law*, Ginevra 1998

international factors have put added pressure on China and the Dalai Lama to compromise and moderate positions are gradually emerging. A breakthrough on the Tibet Question is by no means foreclosed. The first part of this paper provides a brief overview of the history of the Tibetan issue, the Law of the People's Republic of China on Regional National Autonomy and its practice in the Tibetan Autonomous Region (TAR) with special focus on the practice of religious belief and the second part provides an outline of the Tibetan Government in Exile.

1.1 Legal Framework

The People's Republic of China (PRC) is a multi-ethnic country; the population is around 1.3 billion people of whom 91.96 % are Han-Chinese, while 8.04% (this is about 110 million people) belong to the 56 different "nationalities"²; minorities make up only 45 percent of the 160 million people in China's autonomous areas, but they populate two-thirds of the PRC territory containing most of China's natural resources. Tibetans ranked in number as the ninth largest minority group³.

Since the Communists came to power in China in 1949, the Chinese government adopted several pieces of legislation governing autonomy, including: the 1949 Common Program of the Chinese People's Political Consultative Conference, its three amended versions between 1954 to 1978, and the 1952 General Program for the Implementation of Regional Autonomy of Nationalities. These laws have now been superseded by the 1982 People's Republic of China Constitution and the 1984 Law of the People's Republic of China on Regional Autonomy of nationalities (amended in 2001), the basic law for implementing the autonomy provisions in the 1982 Constitution.

² The Chinese define a nationality as a group of people of common origin living in a common area, using a common language, and having a sense of group identity in economic and social organization and behavior. See Mackerras Collin, *China's minorities: integration and modernization in the 20th century*, Oxford Univ. Press 1994

³ Barry Sautman, *Ethnic Law and Minority Rights in China: Progress and Constraints*, Law & Policy Vol. 21, n.3 July 1999, Blackwell Publishers Ltd., Oxford, 1999

The current Chinese autonomy laws, the 1982 Constitution and the 1984 Law on Regional Autonomy apply to China's five autonomous regions as well as to various autonomous prefectures and autonomous counties covering smaller minority nationality areas⁴. Other Chinese laws, such as the Election law, the Marriage Law, the Mineral Resources Law, the Grassland Law and rules and regulations issued by the Central People's Government and by various local government entities in the autonomous areas also affect the lives of those residing in the autonomous areas.

1.2 *The Tibet Question*

The Tibet Question, in modern times, dates from the 19th century when British attempts to open relations with Tibet culminated in the 1903 to 1904 invasion and conquest of Lhasa⁵. Tibet was a fully independent state until the thirteenth century. It was made a separate part of the Mongol Empire in 1249 but never became a part of the Chinese portion of the Empire that was established in 1279. Tibet regained its full independence from the Mongol Empire in 1349. China did likewise in 1368. Tibet functioned as a fully independent state at least until 1720, when the Manchu Empire began to exert some influence and, for short periods in the late 18th century, a measure of control over Tibetan affairs. By 1840, Tibet was again functioning as an independent state, the Manchu influence having effectively faded. Except for a brief period of occupation by provincial Sichuan troops in the last years of the Manchu Imperium (1909-1911) when the Dalai Lama sought exile in India, the Tibetan government exercised effective control over Tibet as an independent state until Communist China invaded it in 1950⁶.

Tibet at that time presented all the attributes of statehood. Even the PRC does not dispute that the Tibetans are a distinct people who in 1950 occupied a distinct territory. Tibet also had a fully functioning government headed by the Dalai Lama. That government, free from

⁴ The five autonomous regions are: Inner Mongolia (1947), Xinjiang (1955) Guangxi (1958), Ningxia (1958), Tibet (1965).

⁵ Michael van Walt van Praag, *The Status of Tibet, History, Rights and Prospects in International Law*, Boulder Westview 1987

⁶ *The Case Concerning Tibet* The Tibetan Parliamentary and Policy Research Centre, June 1, 1998 in www.tibetjustice.org

outside interference, administered the welfare of the Tibetan people through civil service, judicial and taxation systems, as well as through a postal and telegraph service, and a separate currency. The government controlled the borders and issued passports to its people, which were recognized internationally. It entered into treaties as a sovereign with other states, including Great Britain, Ladakh, Nepal and Mongolia. Tibet also negotiated as an equal sovereign with China and Great Britain at the Simla Conference of 1913-14. Nevertheless, its international status was ambivalent since China claimed Tibet as part of its state and the relevant Western countries like Britain and the United States refused to recognize Tibetan independence. The current dispute over the political status of Tibet is to no small extent the artifact of the Western's democracies decision throughout this period to publicly acknowledge Chinese suzerainty over Tibet⁷, even though Beijing had no direct influence there. The founding of the People's Republic of China (PRC) in 1949 quickly ended Tibet's defacto independence.

The Communists, like the Nationalists of Chinag Kaishek, claimed chinese sovereignty over Tibet and invaded Tibet's eastern province in October 1950 to force the Tibetans government to commence negotiations to accept such a status. They quickly vanquished the Tibetan forces, and when neither the Western democracies, India nor the United Nations responded positively to Tibet's pleas for help, the 14th Dalai Lama sent a negotiation team to Beijing. It signed the 17-Point Agreement for Peaceful Liberation of Tibet in May 1951⁸. This agreement recognized Chinese sovereignty over Tibet for the first time in Tibetan history, but also recognized a high degree of autonomy for Tibet. The legality of this Agreement is questionable. The Tibetan government formally rejected it in 1951 because it was allegedly forced on the Tibetan leadership after the Chinese invasion and signed by Tibetan delegates in Beijing under duress. The Agreement gave Tibet high degree autonomy: the position and authority of the Dalai Lama and Panchen Lama would be maintained, and the existing political system (the unity of politics and religion)

⁷ Felix Ermacora, Wolfgang Benedek, *Tibet/China in Verfassung und Recht in Übersee*, 26. Jahrgang, 1. Quartal Baden, Baden 1993, p. 32

⁸ Tibetan People's Right of Self-Determination, Tibetan Parliamentary and Policy Research Center New Delhi 1996

would not be changed. This political accommodation in Tibet was different from the so called “new democratic system” established in other areas from China at that time⁹. Such agreement can be seen as one-country-two systems. However, in 1959, the Liberation Army clashed with what the CCP called a “rebellion led by the Dalai Lama” and the one-country-two systems for Tibet became one-country-one-system. The Dalai Lama fled to exile in India, followed by about 80.000 Tibetans. China now set aside the agreement and established a People’s government in Tibet. The Dalai Lama in India denounced the agreement, claiming Tibet’s right to self-determination and independence. The political status of Tibet vis-à-vis China reemerged as a contested issue. During the two decades after the 1959 uprising, China ended the feudal estate system in Tibet and gradually implemented a system of pervasive communes. It also destroyed the vast monastic system and, during the Cultural Revolution, vigorously attacked traditional Tibetan culture and prohibited religious activities. As a consequence, in 1959 the United Nations General Assembly called “for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life”. In 1961 and 1965 the Assembly lamented “the suppression of the distinctive cultural and religious life” of the Tibetan people¹⁰. In 1991 again the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights was still “concerned at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan People.”¹¹

In September 1965, the Tibetan Autonomous Region (TAR) was formally founded¹². During the Cultural Revolution (1966-1976)

⁹ Melvyn C. Goldstein, *Il dragone e la montagna: la Cina, il Tibet e il Dalai Lama*, Baldini&Castaldi, 1998, pag. 30ss.

¹⁰ UN General Assembly Resolutions: 1353(XIV) of 1959; 1723 (XVI) of 1961; 2079 (XX) of 1965 as cited in *Tibetan People’s Right of Self-Determination*, Tibetan Parliamentary and Policy Research Center New Delhi, 1996

¹¹ Resolution 1991/10 as cited in *Tibetan People’s Right of Self-Determination*, Tibetan Parliamentary and Policy Research Center New Delhi, 1996

¹² The Chinese Constitution stated that the regional autonomy applies in areas where a minority lives in a compact community (art. 4); in practice China followed the old colonial policy of “divide and rule” and divided Tibet into eight administrative divisions curtailing the scope of autonomy.

autonomy existed in name only. The 1975 Constitution even deleted the provisions concerning nationality's right to develop their languages and maintain their cultural customs and tradition. Since 1978 the Chinese government has tried to reestablish and improve regional autonomy. Sino-Tibetan relations entered a new phase when China embarked a more liberal policy under the leadership of Deng Xiaoping. A limited cultural liberalization took place between 1985-1988 Beijing shifted its Tibet policy away from the assimilation/class struggle policy of the Cultural Revolution, instituting in its place a policy that emphasized meeting the ethnic sensibilities of Tibetans while improving their economic situation. At the same time, Beijing and the Tibetan exiles began secret talks to resolve their dispute. After the statement of Deng that "if the exiles accept that Tibet is part of China there can be negotiations over all issue other than the independence of Tibet" the Dalai Lama formally sent negotiation delegations to Beijing in 1982 and 1984¹³. These talks however proved fruitless. The Chinese were unwilling to consider real political autonomy in Tibet, i. e. a political system different than the rest of China and run by Tibetans. Conversely the exiles were unwilling to accept a solution that addressed only cultural, religious and linguistic issues and did not give them political control over Tibet. Complicating the situation was the exile's demand for creation of a "Greater Tibet" that would include not only political Tibet (the Tibetan Autonomous Region) but also the ethnic Tibetan areas in Qinghai, Sichuan, Gansu and Yunnan provinces¹⁴. After the Sino-Tibetans negotiations reached a deadlock in the mid-1980s, the Dalai Lama made his basic political demands public. On 21

¹³ Tsering Shakya, *Dragon in the Land of Snows: a History of Modern Tibet*, London, 1999, pag. 90 ss.

¹⁴ Prior to 1949, Tibet included almost all of the Tibetan plateau having a territory of about 2.5 million square kilometers. The independent country of Tibet included three provinces: U'Tsang, Kham, and Amdo. In 1949, the Chinese renamed the two eastern provinces of Amdo and Kham and integrated them into China as the province of Qinghai and parts of Sichuan, Gansu, and Yunnan. The province of U'Tsang became in 1965 the TAR. When China refers to Tibet, it is referring to the Tibet Autonomous Region. When the Tibetan government in exile refers to Tibet, it is generally referring to the original three regions of Tibet or "Greater Tibet.". See Thomas Hoppe, *Tibet heute. Aspekte einer komplexen Situation*. Mitteilungen des Instituts für Asienkunde, Hamburg n. 281, 1999

September 1987 before the US Congressional Human Right Caucus, he called for:

- a. Transformation of Tibet into a zone of peace;
- b. Abandonment of the PRC's population transfer policy which threatens the very existence of the Tibetans as a distinct people;
- c. Respect for the Tibetans people's fundamental human rights and democratic freedoms;
- d. Restoration and protection of Tibet's natural environment and abandonment of China's use of Tibet for the production of nuclear weapons and dumping of nuclear waste;
- e. Commencement of earnest negotiations on the future status of Tibet and of relations between Tibetan and Chinese peoples.

However since 1989 the Chinese Communist Party (CCP) has adopted a tough policy toward Tibetan secessionism which has undermined efforts to implement true autonomy. In 1987 the Dalai Lama address to the US Congress Human Rights Caucus for the "transformation of the whole Tibet, including the eastern provinces of Kham and Amdo into a "zone of Àhinsa", a Hindi term used to mean a state of peace and non-violence. This sentiment was again echoed in his address to the European Parliament when he "called for the conversion of Tibet into a zone of peace, a sanctuary in which humanity and nature can live together in harmony". In 1988 the Dalai Lama outlined in his Strasbourg proposal the future political structure of Tibet "in association with China"¹⁵. The PRC is to remain responsible for Tibet's foreign policy and defence. However, Tibet should have its own Foreign Affairs Bureau dealing with commerce, education, culture, religion, tourism, science, sports and other non-military activists. China should have the right to maintain a restricted number of military installations in Tibet until such a time as demilitarization and neutralization could be achieved through a

¹⁵ The proposal spoke of an „associate status“for Tibet and sought a Hongkong style arrangement. See M. Goldstein "The Dragon and the Snow Lion. The Tibet Question in the 20th century" in A. Kane, ed. China Briefing 1990, Boulder, Westview Press 1991, pp. 129-167

regional peace conference and international agreement. For the first time the Dalai Lama laid out publicly his willingness to accept something less than independence for Tibet, namely complete political autonomy. While eschewing persistent Tibetan claims to independence, it calls for genuine and complete autonomy. The Dalai Lama's proposal was well received by the international community. The Nobel Peace Prize in 1989 has taken as an indication of Western if not world public opinion. The Dalai Lama's initiative achieved considerable success internationally and especially in the United States. China's Tibet policy was now in shambles. Beijing reacted predictably by shifting to a more hard-line strategy¹⁶. This policy developed new and effective security measures to prevent political demonstrations from turning into riots, and acceleration of a program of rapid economic development that is increasing Tibet's integration with the rest of China and, over time, is hoped to create more "modern" Tibetans who will be less influenced by religion and lama¹⁷. The economic strategy, however, pulled in large numbers of Chinese entrepreneurs and laborers to Tibet to work, increasing the size of non-Tibetan population in Tibet. Today the population is about 6 million Tibetans and an estimated 7.5 million Han-Chinese¹⁸.

The Tibet Question is a constant irritant in China's foreign relations¹⁹. International pressure to resolve the Tibet Question increased on China from the late 1990s because of its perception that, after the events in Kosovo and East Timor, the Western states hold that "humanitarian intervention" in ethnic conflicts trumps state sovereignty²⁰. At the same time, the Dalai Lama's popularity and the effectiveness of different "Tibet Movements" in the West reached new heights in the 1990s. From the late 1990s there has also been increased "internal" pressure on the PRC to resolve ethnic problems. This is not only because of the increased sensibility

¹⁶ Since 1998 the PRC-Government also has required the Dalai Lama to affirm publicly that Taiwan is a province of China.

¹⁷ M. Goldstein "The Dragon and the Snow Lion. The Tibet Question in the 20th century", cit.

¹⁸ www.tibet.com

¹⁹ Lodi Gyari, Don't shut out the Dalai Lama, in *Far Eastern Economic Review*, 20 January 2000 pag. 28

²⁰ "Beijing's law and order problem", *IHT* 19 January 1999

regarding the *ethnic revival*²¹ throughout the world, but also because of the consequences of the problems related to “the opening of the market”, i.e. mass unemployment, chaotic financial markets, official corruption, demonstrations by workers and peasants²². In 1999, PRC leaders also experienced a protest of 10.000 members of the Falun Gong unprecedented since 1989. The PRC government has major problems with other unofficial religious organizations as well. Such groups continue to expand in part because there has been a significant decline in the cohesion of the CCP.

In Tibet, economic development as the legitimating factor for Chinese rule is obviously insufficient²³. An inkling of doubt has begun to appear among PRC leaders about whether Tibet presents merely a question of overcoming the “backwardness” that keeps Tibetans in the thrall of religion and makes them unwilling to accept the benefits of “advanced culture”. The PRC acknowledged however that the Tibet Question is ethnic, rather than the *sui generis* result of “feudal” holdovers from old Tibet and admit that it is comparable to other ethnic problems. In 1999, Premier Zhu Rongji told a Canadian reporter:

*“The Kosovo question is an ethnic problem, which is of course an internal matter. Questions like this exist in many countries. You in Canada have the question of Quebec; the UK has the Northern Ireland question; and for China, there is the question of Tibet”*²⁴.

Recognition by PRC leaders that Tibet is a conflict like Kosovo, Quebec and Northern Ireland is a sure sign that they feel added pressure to resolve the Tibet Question.

²¹ A.D. Smith, *Il revival etnico*, Bologna 1984

²² Luigi Moccia, *Il sistema giuridico cinese: caratteri tradizionali e lineamenti attuali* in *Rivista trimestrale di diritto e procedura civile* fasc. 4, 2000, pag. 1251 ssg.; Crespi Reghizzi Gabriele, *Verso il mercato e lo Stato di diritto: recenti riforme costituzionali in Cina*, in *Diritto pubblico comparato ed europeo*, 1999, fasc. 2 (giugno), pag. 485ss.

²³ “*To integrate Tibet, China tries economic lures*”, in *Wall Street Journal* 14 July 1997, p. 3, “*Tibetans turn to net in search of profit*” in *South China Morning Post*, 5 July 1999, pag. 8

²⁴ ‘*Zhu links Kosovo and Northern Ireland*’, *Irish Times*, (8 April 1999), p. 12

2. Law of the People's Republic of China on Regional National Autonomy (1984) and its practice in Tibet

2.1 Form of Government

The 1984 Law on Regional Autonomy describes „regional autonomy“ as follows²⁵:

“Regional autonomy of nationalities is practised in areas where minorities’ nationalities are concentrated and where self-governing bodies are established and the right to autonomy is exercised under the uniform of the Central Government”.

The „self governing bodies“ in the Autonomous areas, as described in 1982 Constitution consist of „People’s Congress and People’s government“²⁶. Under the Chinese political structure, the people’s government and the people’s congress are two branches of a local government. The former is controlled by the State Council and the latter is under the control of the national People’s Congress, China’s supreme legislative body.

Under the 1982 Constitution, the people’s congress and people’s government of an autonomous region possess both “the power and authority of a local level of the central Government” and the “power to exercise regional autonomy provided by the Constitution and other laws and regulations”²⁷. Therefore, at the autonomous region level, the people’s congress and the people’s government function both as a provincial government within China’s governmental hierarchy²⁸ and as the self-government of the autonomous region.

The government of the TAR consists of the TAR people’s government and the Tibet Regional People’s Congress (TAR-Government). This government is of course not the result of any active determination by the people of the TAR or their preferred form of government. Rather it was imposed by the Central Government without regard to the Tibetan people. Earlier Chinese

²⁵ Preface Law on Regional Autonomy (1984)

²⁶ Art. 112 Constitution 1982

²⁷ Art. 115 Constitution 1982

²⁸ Art. 95 Constitution 1982

autonomy laws had made occasional references to granting the people in the autonomous regions the right to determine their own form of government. Art. 67 of the 1954 Constitution provided that:

“The form of the autonomous region government may be determined by the will of a majority of the people residing in a given minority nationality autonomous region”.

The Seventeen-Point Agreement also contains provisions regarding the form of government in Tibet²⁹:

Art 4. „The Central Authorities will not alter the existing political system in Tibet. The Central Authorities also will not alter the established status, functions and powers of the Dalai Lama. Officials of various ranks shall hold office as usual“

Art 11. „In matters related to various reforms in Tibet, there will be no compulsion on the part of the Central Authorities. The Local Government of Tibet should carry out reforms of its own accord, and when the people raise demands for reform, they must be settled through consultation with the leading personnel of Tibet.“

However, except in the first few years following 1949, when the Central Government was still consolidating control in the occupied areas, no Autonomous region has ever had a form of government other than those specified under Chinese law. Following the 1959 uprising by Tibetans against the Chinese garrison in Lhasa, Chinese authorities set out to abolish all previous Tibetan government officials.

2.2 Powers of the TAR government

Both the Constitution of 1982 and the 1984 Law on Regional autonomy purportedly grant various powers to the self-government

²⁹ While China has long since abandoned the notion of implementing the provisions of the Seventeen Point Agreement, it still heralds the agreement as symbolizing the „unity and friendship“ between Han and Tibetan peoples. Questions of legality aside, the Seventeen Point Agreement does provide useful insights into the central Government’s attitude and strategy towards Tibet at time it was signed.

of autonomous regions. However these powers are so limited, both under the Chinese laws and in practice that all real authority remains in Beijing.

Under the 1982 Constitution, the organs of self-government of national autonomous regions, people's congress and people's government of autonomous regions, autonomous prefectures and autonomous counties. Local people's governments are subordinate to State Council and accountable to the locale people's congress while the latter is subordinate to the National People's Congress (NPC), the PRC supreme legislative body. The organs of self-government of autonomous regions exercise the right of autonomy within the limits of their authority as prescribed by the Constitution, the law of regional national autonomy and other laws, and implement the laws and policies of the state in the light of the existing local situation³⁰. The people's congress of an autonomous area has the power to enact

“Autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the area concerned”³¹.

Such regulations must be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record³². The constitution further specifies that the organs of self-government control the finances of their area, „independently arrange for and administer local economic development under the guidance of state plans“, „independently administer educational, scientific, cultural, public health and physical culture affairs“, „cull through the cultural heritage of the nationalities“and „with the approval of the State Council, organise local security forces for the maintenance of public order“³³. The constitution also instructs these autonomous organs to „employ the spoken and written language or languages in common use in the locality“.

³⁰ Art. 115 Constitution 1982

³¹ Art. 116 Constitution 1982

³² Art. 116 Constitution 1982

³³ Art. 117-120 Constitution 1982

The Law on national Regional Autonomy of 1984 gives autonomous people's congress the power to „enact regulations on the exercise of autonomy and separate regulations in the light of economic and cultural characteristics“. However these regulations have to be submitted to the Standing Committee of the NPC for approval³⁴, as do amendments or non-implementation of decisions or instructions of state organs at a higher level on the ground that these laws and regulations „do not suit the conditions of an autonomous area“³⁵.

2.3 Power to formulate policies

Article 19 of the Law on Regional Autonomy provides that:

“The people’s congresses of national autonomous areas shall have the power to enact regulations on the exercise of autonomy and separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulation on the exercise of autonomy and separate regulations of autonomous regions shall be submitted to the Standing committee of the National People’s Congress for approval before they go into effect. The regulations on the exercise of autonomy and separate regulations of autonomous prefectures and autonomous counties shall be submitted to the standing committees of the people’s congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People’s Congress for the record”.

The power to formulate policies under Art.19 is restricted by its own words: the exercise of the legislative power by the government of an autonomous region such as the TAR is „subject to approval“ by the Central Government, giving Beijing veto power over actions by the TAR government.

³⁴ Art. 19 Autonomy Law

³⁵ Art. 20 Autonomy Law

2.4 *Power to alter policies*

Article 20 of the Law on Regional Autonomy provides that

“If a resolution, decision, order or instruction of a state organ at a higher level does not suit the conditions in a national autonomous area, the organ of self-government of the area may either implement it with certain alterations or cease implementing it after reporting to and receiving the approval of the state organ at a higher level”

This power if exercised in fully by the TAR would be an important step towards meaningful autonomy for the TAR Government. However like art. 19, the exercise of the power to alter Beijing’s policies under art. 20 is subject to „approval“ by the Central Government.

2.5 *Power to regulate the economy*

Article 6 of the Law on Regional Autonomy provides that:

“The organs of self-government of national autonomous areas shall lead the people of the various nationalities in a concentrated effort to promote socialist modernization.

On the principle of not contravening the Constitution and the laws, the organs of self-government of national autonomous areas shall have the power to adopt special policies and flexible measures in the light of local conditions to speed up the economic and cultural development of these areas.

Under the guidance of state plans and on the basis of actual conditions, the organs of self-government of national autonomous areas shall steadily increase labour productivity and economic results, develop social productive forces and gradually raise the material living standards of the people of the various nationalities.

The organs of self-government of national autonomous areas shall inherit and carry forward the fine traditions of national cultures, build a socialist society with an advanced culture and ideology and with national characteristics and steadily raise the socialist consciousness and scientific and cultural levels of the people of the various nationalities”.

State planning has dictated China’s economic policies since the inception of the PRC. In this sense art. 6 does no more than reiterate

China's economic policy, leaving little freedom to the TAR Government to pursue anything other than the prevailing economic policy as set by Beijing. The ability of the TAR to promulgate its own economic policies is also limited by the effect of the inflow of Central Government funding. The PRC is argues that the Tibetan economy has grown rapidly in recent years, in part because of heavy subsidies provided the TAR by the central government and sister provinces.³⁶ Since the majority of the TAR budget comes from Beijing, the Central Government has a big amount of control over how this money is spent. The result is that much of Beijing's subsidies serve urban areas and infrastructures, benefiting Chinese settlers more than Tibetans. All reports indicate that the income gap between the Han and Tibetans increased and fuelled discontent across a wide spectrum of Tibetan society³⁷.

The recent amendments and additions to the 1984 autonomy law focus on "the economic system and the support and help that State organs at higher levels offer to localities under ethnic autonomy". Their aim is to solve "some practical problems in the economic and social development in localities under ethnic autonomy, so as to accelerate the economic and social development in ethnic regions and promote nationality solidarity"³⁸. However, the new amendments do not deal with issues of autonomy, but focus largely on outlining the priorities of the central authorities regarding the control and economic development of autonomous areas in accordance with a centralised plan.

2.6 Power to engage in foreign trade

Article 32 of the Law on Regional Autonomy provides that:

"In accordance with state provisions, the organs of self government of national autonomous areas may pursue foreign economic and trade activities and may, with the approval of the State Council, open foreign trade ports.

National autonomous areas adjoining foreign countries may develop border trade with the approval of the State Council. While

³⁶ „Central Governments Support for Tibet's Construction“ in Xinhua, May 1998

³⁷ Australia Tibet Council [ATC] News, 2001, Lafitte 2001

³⁸ www.tibetinfo.net

conducting foreign economic and trade activities, the organs of self-government of the national autonomous areas shall enjoy preferential treatment by the state with regard to the proportion of foreign exchange retained by them and in other respects”.

Also under this article TAR's autonomy in foreign trade is subject to „approval“ by the Central Government. In practise the trade between the TAR and outside has been managed by Beijing. At the Second Session of the Fourth People's Congress of the TAR in July 1985, Tibetan government leaders issued a series of preferential policies on Tibet's foreign trade activities. Tibet opened the Zham Port abutting Nepal for the foreign trade activities, the central government adopted special policies which specify lower rates for import and export duties and allow the TAR to retain all of its export earnings (100% for Tibet, 50% for other autonomous regions)³⁹. To encourage economic development in Tibet, Beijing had exempted Tibet from the general rule that one must be permanent resident of a given area to start a business there⁴⁰. The result was that Tibetan cities, Lhasa, in particular, were inundated with so called „floating population“ of Han Chinese from other provinces.

2.7 Power to regulate the Influx of Population

Article 43 of the Law on Regional Autonomy provides that:

“In accordance with legal stipulations, the organs of self-government of national autonomous areas shall work out measures for control of the transient population”.

One of the most controversial issues regarding the TAR today is the influx of non-Tibetans, Han (ethnic Chinese) and Hui (Muslims), into Tibet since 1984. The Chinese government has forced and encouraged migration into Tibet in aid of its economic development through a combination of directives, subsidies and incentives. The cornerstone of

³⁹ Luo Qun, *The autonomous Rights of Tibet*, Beijing Review, vol. 34/1991

⁴⁰ Tibetans are subjected to severe restrictions in respect of freedom of movement in their own country (a permit is needed to travel fifteen kilometres, with checkpoints every fifty kilometres); this is certainly not the case for the Chinese settlers who are encouraged to emigrate to Tibet. This policy naturally limits any chance Tibetans might have of improving their economic status. See TCHRD Human Rights Update, March 2001, www.tchrd.org/hrupdate/2001

the central government's new policy was (and is) economic growth and modernization i.e. accelerating economic development in Tibet by Beijing providing large subsidies for development projects aimed at building infrastructure and productive capacity. This strategy seeks to modernize Tibet's economy and people, increasing their standard of living and reducing their isolation by inextricably linking Tibet's economy with the rest of China. A component of the "economic integration" approach is the freedom of non-Tibetans to do business in Tibet. These non-Tibetans are part of the phenomenon called "floating population", individuals who are permanent residents in one area but who live and work temporarily in another. They do not have citizen rights in the place where they do work, so are not "colonists" in the usual sense, but nonetheless live there for all or part of any given year. China's "open door" policy to Tibet started in 1984-85 and has accelerated tremendously as a result of the economic development. The approximately 7.5 million ethnic Han Chinese in the area encompassing historical Tibet now outnumber the approximately 6 million Tibetans⁴¹. Beijing's reluctance to terminate this influx is understandable politically. The large number of non-Tibetans living and working in Tibet provide Beijing a new and formidable pro-China constituency that increases its security there and will open up Tibetans to new ideas and create a new "modern" Tibetan who will not be so influenced by religion and lamas.

2.8 *Power to utilize natural resources*

Autonomous areas are also given authority over natural resources and management and protection in their own areas, but this is again limited in „accordance with ... the unified state plan“⁴² The Mineral Resources Law of 1986 provides:

“In exploiting mineral resources in national autonomous areas, the Central Government shall give due considerations to the interests of those areas and make arrangements favourable to the area's economic construction and to the protection and livelihood of the people of local minority nationalities. The organs of self-government of national autonomous areas shall, in accordance with legal provisions

⁴¹ www.tibet.org

⁴² Art. 33, 1986 Mineral Law

and the unified state plan, have priority for nationally developing and utilizing the mineral resources that may be developed by local authorities”.

Art. 33 speaks of „the mineral resources that may be developed by local authorities“without specifying what those are, leaving open another avenue for Beijing to limit the autonomous regions' control over local resources. In practice, Beijing's instructions to the TAR are that natural resources should be extracted from the TAR for use in China⁴³.

The Grassland Law of 1985, aimed at improving the protection, management and development of grasslands in China, contains this provision regarding autonomous regions:

“If grasslands in national autonomous areas are to be requisitioned or used for state construction, due consideration shall be given to the interests of the national autonomous areas and arrangements made in favour of the economic development of those areas.”(art. 7).

Thus the Central Government can requisition and exploit the land of an autonomous region without giving the autonomous region either the power to stop such use or the right to compensation for requisition. There is also no concrete measure of the „due consideration“ that is to be given to the interests of an autonomous region.

Tibet contains very rich mineral resources: it has the world's largest deposits of uranium and borax, half the world's supply of lithium, the second largest copper deposits in Asia, and the largest supplies of iron and chromate in China. It also has more than 40% of China's present supply of bauxite, gold, and silver, and extensive reserves of oil, coal, tin and zinc. In addition, Tibet has huge tracts of timber. Since China's 1949 occupation, it has aggressively exploited these resources. Forests have been clear-cut to provide lumber to China's eastern cities. The pace of mining, usually open-pit mining, has accelerated in recent years. Indeed, two of the five pillars of the Tibetan economy, according to Chinese planners, are mining and

⁴³ This policy was articulated at the highest level by Jiang Zemin at the 14th National Party Congress in 1992 see International Commission of Jurists, *Tibet: Human Rights and the Rule of Law*, Ginevra 1998

lumbering. China intends to use the natural resources for the benefit of China proper: the most recent schemes include hydro dams, gas and electricity grids as well as a large railway across the TAR, involving the investment of multinational companies⁴⁴.

Mining, logging and various hydroelectric projects have been particularly destructive to the Tibetan environment. Few safeguards have been imposed on strip mining operations with the result that lakes, rivers, groundwater and soil have been contaminated. Logging has caused soil erosion that threatens major river systems, threatens the long-term arability of the land, and may even be contributing to climate change. Efforts to increase crop and herd yields have depleted the soil and left large tracts unsuitable for further agriculture or grazing. This slow, long-term poisoning of an already fragile environment can create an ecological disaster not only for China and its surrounding regions but even worldwide.

2.9 *The Role of the Communist Party*

The limited autonomy given to the TAR by Chinese law is further undercut by the dominance of the Chinese Communist Party (CCP). The Chinese Communist party controls the State Council, the National People's Congress and every provincial and local level government throughout China. This pattern has been mirrored in the TAR. Since the Communist Party took control of Tibet following the aborted 1959 Tibetan uprising in Lhasa, the TAR government in its capacity both as a lower level of the Central Government and as the ostensible self-government of the TAR, has been under the effective control of the Communist Party even though China's autonomy laws do not provide any role for the Communist Party in governing the TAR or other autonomous regions.

Key "representatives" are not elected delegates but state and party decision makers, administrators and professionals of the same ethnicity at all levels who are part of China's governing cadres. Communist Party members dominate key government posts and a corollary is implemented at each level to oversee the working of the government and to formulate government policies. The majority of

⁴⁴ Laura S. Ziemer *Application in Tibet of the Principles on Human Rights and the Environment*, Harvard College Pub. 2001

top positions in the CCP in Tibet are filled by non-Tibetans. On paper, there are no bars for Tibetans to become Party members, in reality however the requirement that Party members be atheists effectively precludes many Tibetans from joining the Party.

The function of the TAR Peoples' Congress is to rubber-stamp these policies, while that of the People's government is to implement and to enforce them. Moreover, Communist party members within the TAR government possess more power than non-party members; even if the party member's official rank is lower than the non-party members. The control held by the Communist party is also demonstrated by the purely nominal power held by Tibetans who are not party members. At national level they are allowed to attend only to „minority“ issues such as pacifying dissent in the TAR and serving as token representatives in the National Peoples' Congress.

A greater degree of autonomy also requires a broad separation between party and state apparatus. As long as the Communist Party can claim absolute power, and as long as party instructions can contravene government decisions at every level as well as laws themselves, a legal vagueness prevails and autonomy can at any moment be abolished. Chinese autonomy is based on power-relationships, not on rights.

2.10 *The role of the Tibetans in the TAR*

Chinese law requires that Tibetans hold positions of authority in the TAR government⁴⁵, but so such requirement exists with regards to position within the Communist party⁴⁶.

⁴⁵ Art. 17 Law on Regional Autonomy: The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned. Other posts in the people's government of an autonomous region, an autonomous prefecture or an autonomous county should, whenever possible, be assumed by people of the nationality exercising regional autonomy and of other minority nationalities in the area concerned.

The people's governments of national autonomous areas shall apply the system of giving overall responsibility to the chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county, who shall direct the work of the people's government at their respective levels.

⁴⁶ In the TAR Sixth People's Congress elected in 1993, 82 percent of the 450 regional deputies were minorities. See Wang Dewen and Huang Xiaohong: *Great Practice*

The official Communist party line is that the party is separate from and superior to the TAR Government and thus not subject to the law requiring minority nationality representation.

The Tibetans as group have neither powerful position within the TAR Government nor within the Communist Party. The erosion of the role of Tibetans in the government started before the TAR was established. The only Tibetan who achieved some real power and influence was the late Panchen Lama, who used his power in the 1980s to fight for rights such as religious freedom and the use of the Tibetan language, and voiced strong criticism of China's Tibet policies.

2.11 *Military*

The 1982 Constitution provides on art. 120 that the self-governing body of an autonomous area may organize its own local security forces, contingent upon approval by the State Council, by following the Central Government's military system. However the 1984 Law on Regional Autonomy designed to implement the Constitutional provisions on the autonomous regions, contains no provisions allowing the autonomous regions to have their own security forces⁴⁷.

2.12 *Culture*

The subject of culture is of particular importance for the TAR. Developing Tibetan culture, which is heavily based on Buddhism, is therefore intrinsically at odds with „China's socialist orientation“ which is extremely atheistic. The regime's position that minorities need the Han for their cultural advancement, while the Han need the minority areas for raw materials and buffers against the external

of the Policy of Regional Autonomy of Minority Nationalities in Tibet in Xizang Ribao, 11 August 1995

⁴⁷ Whereas before 1950 the Tibetan army consisted of around 10 000 soldiers serving primarily as frontier guards and the country was a neutral buffer state between India and China, today Tibet is a vast Chinese military base with over half a million soldiers (some experts speak of 3.50 000 servicemen), that is to say nearly one Chinese soldier for every ten Tibetan civilians. See TCHRD Human Rights Update, cit.

world⁴⁸ is epitomized in a slogan “The Han are inseparable from the minorities and the minorities are inseparable from the Han”. Minorities are aware, however, that assertions of minority “backwardness” represent a disdain that reinforces Han identity and “others” minorities⁴⁹.

Although China’s autonomy laws promise rights to Tibetans regarding local religion, language and education, ample evidence shows the underlying hostility of Chinese socialism toward Tibetan culture.

2.13 *Religion and Religious Freedom*

Religion is becoming more and more important in China. In a country that remains officially atheist, conversions to Christianity have risen sharply, the country’s 19 million Muslims are attracting the attention of their co-religionists elsewhere, and Buddhism is the fastest growing religion of all⁵⁰. As interest in religion has increased, so has state control over religious organizations, in part because the Chinese government believes that religion breeds disloyalty, separatism, and subversion. Beijing views Tibetan religious leaders, especially the Dalai Lama, as potential heads of a separatist movement for the vast territory. Islamic devotion in China’s far west is also feared in case it leads to nationalist fervour among the region’s minority groups, such as the Uighurs, and separatism⁵¹.

2.14 *Freedom of religious belief in the PRC*

In the Constitution of the People’s Republic of China, freedom of religious belief is a basic right enjoyed by all citizens. Art. 36 of the PRC Constitution stipulates:

⁴⁸ Stevan Harrell, *Cultural Encounters on China’s Ethnic Frontiers*, Seattle: Univ. of Washington Press, 1995

⁴⁹ Giles Hewitt, *China’s Minorities Fight Poverty Trap*, Agence France Press 22 June 1994,

⁵⁰ United States State Department, Office of International Information Programs, *International Religious Freedom Report 2001*, 26 October 2001 www.usinfo.state.gov/regional/ea/usChina/Chinarfl.html

⁵¹ International Commission of Jurists, *Tibet* cit.

“Citizens of the People’s Republic of China enjoy freedom of religious belief. No State organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State”.

Within the PRC, various other legislation provide for the protection of freedom of worship and equality of rights for religious citizens: such as, the Penal Code (Articles 147 and 165), the Civil Code (Article 77), the Military Service Code (Article 3), the Electoral Code (Article 3), the Compulsory Education Act (Article 16) and the Organisation of Rural Committees Act. In particular, Article 147 of the Criminal Law provides that

“State officials who violate the freedom of worship of citizens or the customs of national minorities are punishable in serious cases by imprisonment for not more than two years or by a short term of imprisonment. Any person who forcibly prevents legal religious activities, compels believers to abandon their religion, compels a citizen to practise any form of worship, illegally closes or demolishes legal places of worship or other religious premises is violating democratic rights and individual freedom and failing in his duty and is punishable by law.”

The Chinese government has promulgated the Regulations on the Administration of Sites for Religious Activities so as to “protect the lawful rights and interests of such sites”. The Regulations specify:

“Sites for religious activities shall be run independently by the administrative organisation thereof, whose lawful rights and interests and normal religious activities at the sites shall be protected by law. No organisation or individual may violate or interfere with such rights.”

However, the rights guaranteed are not to be interpreted, as they would be in a liberal democracy. China insists on the socialist character of the rights and in particular emphasises the unity of

the rights of individuals with their duties to the State and society⁵². The CCP has never made any secret of its view of the place of religion within Chinese society. It is to be tolerated – but only barely – until such time as “socialism with Chinese characteristics” is fully realized and religion, having become irrelevant, will wither and die. Until then, government and Party will seek to harness the power of believers to China need to strengthen its productive forces. They believe it is better to permit minimal flourishing of religion within “official” churches than to drive it underground – as during the Cultural Revolution (1966- 1976) – where it can neither be monitored nor made to serve the state⁵³. Officially and publicly, at least, it is no longer a question of eliminating religions originally perceived as “the opium of the people”, but rather of recognizing them and permitting their practice, but under the strict control of the authorities⁵⁴. Chinese authorities are keenly aware of the role that the church played in Eastern Europe during the disintegration of the Soviet empire⁵⁵.

2.15 *Religious control*

Officially five religions are recognized by the Chinese government: Buddhism, Catholicism, Protestantism, Daoism and Islam⁵⁶. Each of the five recognized religions is monitored by a “patriotic association,” among them the Chinese Buddhist Association⁵⁷, the

⁵² Melvin C. Goldstein, *The Dalai Lama's Dilemma*, Foreign Affairs, Vol. 77, nr. 1, 1998

⁵³ Mickey Spiegel, *Religious Freedom in China*, China Rights Forum, Spring 1995

⁵⁴ Melvyn C. Goldstein, *The snow lion and the dragon: Cina, Tibet and the Dalai Lama*, University of California Press 1997

⁵⁵ As a 1996 government document titled “Some Hot Issues in Our Work on Religion” illustrates, the Chinese government believes that Western countries are aiming to “achieve pluralistic political beliefs through pluralistic religious beliefs” and that they have used religion since the 1980s to subvert socialist countries. See International Religious Freedom Report 2001, released by the Bureau for Democracy, Human Rights, and Labor

⁵⁶ Mickey Spiegel “*Religious Freedom in China*” in Human Rights Watch/Asia, 1996

⁵⁷ In 1957, the Tibetan Buddhist Association, a regional branch of the Chinese Buddhist Association CBA was established. Both, the CBA and the TBA were banned during the Cultural Revolution and reestablished in 1981. The TBA acts as an intermediary, it makes suggestions and relays complaints to the RBA office,

Catholic Patriotic Association, the Protestant Three-Self Patriotic Movement (TSPM), the Chinese Islamic Association and the Chinese Daoist Association.

Each association is responsible to the government's Religious Affairs Bureau (RAB) through which the government monitors membership in religious organizations, locations of meetings, religious training, selection of clergy, publication of religious materials, and funding for religious activities⁵⁸. The government also undertakes annual inspections of registered religious organizations. All churches, temples, mosques, monasteries and other fixed locations for worship must register with the relevant patriotic association. Unregistered religious activity is illegal and is a punishable offence: failure to register can result in the imposition of fines, seizure of property, razing of "illegal" religious structures, forcible dispersal of religious gatherings, and occasionally, short term detention.

Art. 36.2 Constitution stipulates: "Religious bodies and religious affairs are not subject to any foreign domination" and outlaws control of any Chinese congregation by a foreign religious organization. The requirements of self-administration, self-support and self-propagation is particularly difficult for Catholics, as it severs, as it is meant to, links between the Vatican and Chinese Catholics⁵⁹. For one thing, the Vatican represents a foreign centre of influence over China's adherents. For another, it maintains diplomatic relations with Taiwan, not the People's Republic. As a result, China doesn't allow its state-approved Patriotic Catholic Association to recognize the Pope as leader. On 6 January 2000, the official Chinese Catholic Church's ordained five new "auxiliary bishops". The day before, the Vatican had explained that this act was a provocation, the day after; it said it was a schism. On 5 January 2000, the 14-year old Karampa Lama arrived in Dharamsala, seat of the Tibetan Government in

and the Central Government. See Pedro C. Moreno, Tonya Hairstone Religious liberty in Tibet: a historical and legal approach, in *Tibetan People's Right of Self-Determination*, Tibetan Parliamentary and Policy Research Center New Delhi, 1996

⁵⁸ Operational in 1956, out of commission during the Cultural Revolution, reestablished in 1978, this organisation is led by a member of the CCP.

⁵⁹ International Religious Freedom Report 2001

Exile. The boy, after the Dalai Lama and the Panchen Lama, the third highest religious authority in Tibet, fled from Tsurphu monastery in Tibet, where he had been living under protection of the Chinese government. These two events occurred after almost a year of harsh confrontation with Falungong, which had been asking for official recognition as a religion. The government, following the sect's demonstrations in the spring, had made it illegal in July 1999 and since then carrying out a campaign against it⁶⁰. For the Chinese government, these three events were absolutely distinct and unrelated. Different indeed are the questions regarding the relationship between Beijing and the Catholics, the Tibetan Buddhists and Falungong. Nevertheless, these events point to the wearing down of old religious policy and the difficulty of formulation a new one.

Other religious groups are also affected by this constitutional prescription and by the detailed regulations set out in the January 31, 1994, Regulation No.144, On the Management of Religious Activities of Foreigners within Chinese Borders. Foreigners cannot "establish religious organizations, set up religious offices or run religious institutes." They can only bring in religious material for personal use – bringing in even one extra Bible is illegal. Foreign pastors must receive permission, rarely granted, from the Religious Affairs Bureau to preach in a Chinese church and are not allowed to recruit believers among the Chinese citizens⁶¹.

Registration is the government's core control mechanism⁶². Its legal basis is spelled out in Regulation No.145, On the Management of Places for Religious Activities, issued by the Religious Affairs Bureau under the State Council, and signed by Premier Li Peng on January 31, 1994. A supplementary set of regulations, Registration Procedures for Religious Activities, promulgated in May 1995, details conditions and procedures for new applicants and formerly approved congregations, all of which are required to reapply. Registration is based on the "three-fix" policy, requiring an applicant congregation

⁶⁰ International Religious Freedom Report 2001

⁶¹ Human Right Watch China: Persecution of a Protestant Sect, June 1994

⁶² See also Pedro C. Moreno, Tonja Hairsto "Religious liberty in Tibet: a historical and legal approach" in Tibetans People's right of self-determination, Tibetan Parliamentary and Research Center, New Delhi 1996

to have a professional religious leader approved by the relevant patriotic association, a fixed meeting point and activities confined to a specific geographic area. Such conditions effectively eliminate significant contributions by lay leaders, critically important in small congregations and in those which insist on non-hierarchical organization, and severely proscribes recruitment through proselytization. In addition, these regulations specify the need for a regular membership and a legal source of income. A government-approved religious affairs administrative commission must endorse all registration applications, the opinion of the local people's government or the neighbourhood committee must be attached, as well as the views of unspecified "related parties." The final decision is still in the hands of the Religious Affairs Bureau at the county level or above. To further ensure control, three of eighteen new articles added by the National People's Congress on May 12, 1994, to the January 1987 Regulations Governing Public Order Offences specifically targeted religious practice. "Carrying out activities under the name of a social organization without registration," "organizing activities of superstitious sects and secret societies to disrupt public order" and "disturbing public order and damaging people's health through religious activities" are subject to criminal charges. "Disturbing social order" and "damaging people's health" are not defined in the Regulations.

"Official" churches too are under constant scrutiny. Controls are exercised over such issues as personnel selection, sermon themes, dissemination of religious publications and congregation size. Another factor preventing freedom of religion is the use of Democratic Management Committees (DMC) to control major monasteries and temples⁶³. These committees, which are made up of Party officials as well as religious personnel, have the authority to regulate religious affairs, production, finance, security and study.

2.16 Freedom of religious belief in Tibet

The Seventeen-Point Agreement promised that the „religious beliefs, customs and lama monasteries shall be protected“and that

⁶³ Established in 1957, the Democratic Management Committees is the "highest authority of a monastery and the principle organ with overseeing the operation of its affairs" in International Campaign, cit. p. 25

the „central authorities will not effect a change in the income of monasteries“⁶⁴.

Art. 11 of the 1984 Law on Regional autonomy provide that:

“The organs of self-government of national autonomous areas shall guarantee the freedom of religious belief to citizens of the various nationalities. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion, nor may they discriminate against citizens who believe in, or do not believe in, any religion.

However, a second clause severely impairs these protections by limiting state protection to “normal religious activities” but leaves “normal” completely undefined, and by prohibiting “the use of religion to engage in activities that disrupt social order, impair the health of citizens or interfere with the educational system of the state.”

By empowering the Central Government to curtail a „guaranteed“ right on such vague grounds such as „public order, health and education“, art. 11 fail to grant full religious freedom. The hostility of the Communist Party towards religion in general, and towards the Tibetans in particular, makes the lack of an absolute assurance of religious freedom particularly worrisome. As the true power in the TAR, the Communist Party is in the sole position to enforce the laws that grant religious freedom to Tibetans. However, the Communist party holds atheism as a central tenet, making it an unlikely guarantor of religious freedom.

Indeed, Tibet’s enduring religious tradition⁶⁵, a perennial area of concern for Communist China, is viewed as the fountainhead of instability and “splittist” activities in Tibetan regions of the PRC⁶⁶. Chinese antagonism towards Tibetan Buddhism originates from a fear of national unity and identity, since religion is central to the

⁶⁴ Art. 7 Seventeen Point Agreement

⁶⁵ Chinese officials state that Tibet has more than 46,000 Buddhist monks and nuns and more than 1,700 monasteries, temples, and religious sites. See International Religious Freedom Report 2001

⁶⁶ International Commission of Jurists, Tibet: Human Rights and the Rule of Law, Geneva 1998

Tibetan psyche. Religious practise per se, is viewed as an obstacle to China's economic "development" of the region and monks are criticised vehemently for their lack of contribution to economic growth⁶⁷. The Tibetan religion has undergone a systematic destruction since the Chinese occupation⁶⁸.

The use of religion as a tool with which to colonise Tibet and make subordinate the spiritual leaders of Tibet to China has historical origins. In 1960 the International Commission of Jurists⁶⁹ made an inquiry into Chinese control in Tibet and reported that the Communist Government had prohibited the practice of Buddhism, assassinated religious figures and destroyed places of worship, concluding "acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group"⁷⁰. By 1965, prior on the onset of the Cultural Revolution, Chinese forces had already abolished the "feudal prerogatives of the lamaseries" which were supposedly protected under the Seventeen-Point Agreement. The Cultural Revolution led to the wholesale suppression of religion and massive destruction of monasteries and temples. Mao Zedong wanted to eradicate the "Four Old – old ideas, old culture, old customs, and old habits." He hoped to replace the "olds" with the "four new" – "Mao's new ideology, proletarian culture, and communist habits and customs". During this period China banned religious activity, destroyed religious items, executed monks and sent monks to inconspicuous concentration camps. In the mid-1970s the

⁶⁷ International Religious Freedom Report 2001

⁶⁸ ICLT, Legal Materials on Tibet, Berkeley 1997

⁶⁹ Committee of Inquiry appointed by the International Commission of Jurists, a non-governmental organization with consultative status, category B, on the United Nations Economic and Social Council, published two damning reports in 1959 and 1960. The Committee refers bluntly to the genocide of the Tibetan people saying that China was trying to destroy the Tibetan national religious, ethnic and racial group, by killing and causing serious bodily and mental harm to its members. Thus the genocide has been denounced by reason of its intent and the reality of its execution. The report adds that it would be difficult to find another case in which the brutal suppression of man's essential dignity has been carried – out so systematically. The International Commission was able to prove that sixteen Articles of the Universal Declaration of Human Rights had been violated in Tibet (cfr. Articles N 3, 5, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 28)

⁷⁰ Legal Inquiry Report, 1960

repression abated, with the death of Mao Zedong and the end of the Cultural Revolution⁷¹.

In 1972, the Chinese government began supporting the “four freedoms – freedom to worship, to buy and sell privately, to lend and borrow with interest and to hire labourers or servants.”⁷² Temple restoration also began at that time. Since the 1980s it became possible for Lamaist Buddhists to make the pilgrimage to Lhasa again. Monasteries and temples destroyed during the Cultural Revolution were rebuilt⁷³. Young men were again permitted to become monks if they so desired. In September 1988 through a committee established under his leadership, the late Panchen Lama called for “self-government of religion” in Tibet in order to preclude administrative interference in the religious affairs of all Tibetans in China⁷⁴. Ironically when the late Panchen Lama died, Beijing initiated its own researches for the reincarnation of the late Panchen Lama while denying the Dalai Lama’s finding. Since 1994 Work Forum on Tibet, Chinese leadership have identified the influence of the Dalai Lama and the “Dalai clique” as the root of Tibet’s instability and Tibetan Buddhism has been subjected to intense scrutiny and control. The PRC government has placed limits on the number of people who may become monks. The government also controls pilgrimage through the regulation that one has received permission from one’s work unit. Sometimes permission is denied for purely economic reasons: the absence of a large number of people at same time could affect production. At other times, the motivation for refusal is connected with social control, as pilgrims often raise banners calling for independence, hoist Tibet’s snow mountain and lion flag (banned by government authorities) and distribute anti-Chinese leaflets.

⁷¹ Melvyn Goldstein, *Change conflict and continuity among a community of nomadic pastoralists: a case study from Western Tibet, 1950-1990*, in Robert Barnett/S.Akiner, *Resistance and Reform in Tibet*, London Hurst, 1994, pag. 76 ss; Geoffrey Samuel, *Civilized Shamans: Buddhism in Tibetan Societies*, Washington, Smithsonian, 1993, pag. 142 ss;

⁷² M. Bell, *The Origins of the Tibet Question* in *Columbia East Asian Review* Spring 98

⁷³ Dreyer, *Unrest in Tibet* cit.

⁷⁴ Thomas Heberer, *China and its National Minorities-Autonomy or Assimilation*, East Gate Book 1989

Although the “patriotic education” campaign begun in the mid-1990 officially has concluded, patriotic education activities continued at a lower level of intensity⁷⁵. Core requirements of “patriotic education,” such as the renunciation of the Dalai Lama and the acceptance of Tibet as a part of China, continue and engender resentment on the part of Tibetan Buddhists. Restrictions now placed on Tibetans include: compulsory political indoctrination in state schools as well as schools in monasteries and nunneries, prohibition of educating young Tibetans in India, prohibition of monks and nuns under 18 years old⁷⁶, denial to Communist party members and state employees of participation in religious activities or of possessing religious objects. Additionally, the Chinese government will not permit the reconstruction of more monasteries destroyed during the Cultural Revolution. Another sign of escalation of religious restrictions in Tibet is the ban on photographs of the Dalai Lama: in fact, the Dalai Lama and Tibetan Buddhism are inseparable.⁷⁷

⁷⁵ China’s “patriotic re-education”, a component of the “Strike Hard” or “Crack Down Severely on Crimes” campaign launched in Tibet in April 1996, was introduced as a means of suppressing politically active monks and nuns. In Tibet, the campaign is used as a lever to exert stricter control over monasteries, long regarded by the Chinese authorities as “breeding grounds and hotbed of dissent”, and to indoctrinate the monastic populace who are looked upon as the “vanguard of disturbances”. Beside the establishment of a “Democratic Management Committee”(DMC) and “Patriotic Education Work Unit” in every monastery and nunnery, a 10-point disciplinary code for monks and nuns was issued on 20 July 1997. To enforce the campaign, “work teams” comprising officials from the Public Security Bureau, the Religious Affairs Bureau and the DMC, are sent into religious institutions throughout Tibet to “re-educate” clergy. The “work team” orders monks and nuns to sign a five-point political pledge in which they must oppose Tibetan “separatism” and independence, denounce the Dalai Lama and accept the Chinese candidate for Panchen Lama and the unity of Tibet and China. See International Religious Freedom Report 2001

⁷⁶ It is traditional cultural practice for Tibetans to admit one son to the monkhood. Additionally, as impoverishment increases among rural communities, enrolment of a son at the local monastery can become an economic necessity. However, Chinese policy makes it illegal to admit youths under the age of 18, thus barring them from a traditional religious education. Where no schools exist, this condemns the child to no education at all.

⁷⁷ Wang Lixiong, *The Dalai Lama is the Key to Tibet Issue*, Lhasa and Beijing, printed by Department of Information and International Relations, Dharamsala, May-July 2000, p.4

Beijing claims that the Dalai Lama — in complicity with “foreign forces” — has nurtured “splittist” activities in Tibet in the monasteries.

On paper, the Chinese State recognises and respects the reincarnation of “holy men or Living Buddhas” and considers the reincarnation procedure a “religious ritual and historical convention of Tibetan Buddhism”⁷⁸. However, Beijing’s “continued interference in this age-old tradition is not only an act of retribution by an atheistic state against the practice of religious freedom”, it can be attributed to “Chinese reincarnation politics”. The whereabouts and well-being of the 12-year-old 11th Panchen Lama recognised in 1995 by the Dalai Lama, continue to be unknown⁷⁹. The second highest spiritual leader of Tibet disappeared in May 1995 just days after the Dalai Lama announced his choice. All appeals from the international community for access to the boy to ascertain his state of health and circumstances have been rejected by Beijing⁸⁰.

These current events concerning the Panchen Lama can be interpreted by an examination of Chinese influence and colonisation of Tibet. Due to Tibetan resistance to Chinese authority the Chinese government has to find ways to make its rule appear legitimate. A facet of this concerns religion, because religion has played a major political role in the lives of Tibetans since the introduction of Buddhism in 700ad.⁸¹ Thus by the Chinese government conducting its own research for the Panchen Lama and appointing a child in opposition to the Tibetan chosen child, China is in fact opposing the legitimacy of the Dalai Lama to make decisions on behalf of the Tibetan population. The Chinese Government is exerting political power over the Tibetans through their religion, which is magnified by the disappearance of Gendun Choekyi Nyima, in other words removing the national symbol recognized by the Dalai Lama and

⁷⁸ M. Bell, *The origins of the Tibet Question* in *Columbia East Asian Review* Spring 1998

⁷⁹ The Panchen Lama is the Tibetan spiritual leader second only to the Dalai Lama. As with the Dalai Lama, the soul of the Panchen Lama is believed by Tibetan Buddhists to be reincarnated after death into another person.

⁸⁰ See *International Religious Freedom Report 2001*

⁸¹ Melvyn C. Goldstein, *The snow lion and the dragon: Cina, Tibet and the Dalai Lama*, University of California Press 1997

replacing it with one it approves. By eradicating the Buddhist element in Tibet the Chinese government is attempting to assimilate the Tibetans into the Peoples Republic of China. The Chinese colonial administration is trying to make the Tibetans more “chinese”; “progressive” and “practical”.

On another level the oppression of religion is also a repression of Tibetan anti-colonial resistance. Historically it has been the religious groups in Tibet who have led the revolts against China. As early as 1904 when the Chinese Manchu empire began to annex the outer regions of Tibet (Szechuan and Yunan) over 9000 lamas revolted against the harsh administration and suppression of the Tibetan people, which the Manchu empire eventually defeated with military action including murder of religious leaders and destruction of religious buildings⁸². Another major revolt occurred in Lhasa 1959 in an eruption of resistance to Chinese colonization since 1951. This too was mainly organized by the religious factions of Tibetan society, although aided unsuccessfully by American CIA support and other Tibetans⁸³. In 1987 Tibetan monks staged a succession of riots after Chinese police had arrested monks staging demonstrations in Lhasa against the Chinese economic development in Tibet. The economic development, which co-incident with large movements of Hans Chinese into Tibet, sparked anger in Tibetan’s who believed that Tibet should remain ethically “pure” and thus not include the despised Hans Chinese. Similar riots and protests occurred right up until China declared martial law in 1989. Thus Tibetan Buddhism is a threat to the legitimacy and administration of what the Communist Government refers to as the TAR and hence has striven to undermine and erode the power and voice of the Tibetan religion, the core of Tibetan anti-colonial sentiment.

2.17 Language

The Constitution of PRC stipulates that every nationality has freedom to use and develop its own language⁸⁴.

⁸² Tatiana Shumian, *Tibet, the great game* Oxford University Press, New York 2000

⁸³ Tatiana Shumian, *Tibet, the great game*, cit.

⁸⁴ Art. 3, 1982 Constitution

Language and education are among the few areas in which Beijing has attempted to give „minorities“ more control. The Seventeen-Point Agreement provides that:

“The spoken and written language and school education of the Tibetan nationality will be developed step by step in accordance with the actual conditions in Tibet” (Art. 7).

Under the PRC Constitution

“People of all nationalities have the freedom to use and develop their own spoken and written language”⁸⁵.

Moreover,

“In performing their functions, the organs of self-government of the national autonomous areas, employ the spoken and written language or languages in common use in the locality”⁸⁶

The 1984 Law on Regional Autonomy provides autonomous regions with the following guidelines:

“The organs of self-government of national autonomous areas shall guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages and their freedom to preserve or reform their own folkways and customs” (Art. 10).

“Schools where most of the students come from minority nationalities should, whenever possible, use textbooks in their own languages and use these languages as the media of instruction. Classes for the teaching of Chinese (the Han language) shall be opened for senior grades of primary schools or for secondary schools to popularize Putonghua, the common speech based on Beijing pronunciation” (Art. 37,3).

The efforts to establish their own language as the official language in government, commerce and education have been met with tremendous resistance.

⁸⁵ Art. 4, 1982 Constitution

⁸⁶ Art. 121, 1982 Constitution

At the outset, art. 37 itself limits the use of Tibetan language to schools where Tibetans are a majority of the students. Art. 6 of Compulsory Education law of the PRC adopted in 1984, further elaborated on these limitations, stating that the Chinese language is mandated in all schools and the Tibetan language is only encouraged where possible if there is a majority of Tibetans in school. As a result, the use of the Tibetan language is not required in urban areas in the TAR and other parts of the TAR where Chinese are now frequently the majority. Heated battles over the use and promotion of the Tibetan language have been waged within the TAR. In 1988 the TAR Peoples's Government formally promulgated the „Detailed rules and Regulations Implementing Certain (Tentative) Stipulations for Studying, Using and Developing the Tibetan Language in the TAR“. The TAR established a „Leading Committee on Work in Spoken and Written Tibetan“ to further development of Tibetan language. Many Tibetans wanted this law to establish Tibetan as primary language, and according to some reports it purported to do so⁸⁷. The Chinese media however downplayed and such significance, saying that the law only required that both Tibetan and Chinese be used in official communications.

2.18 Education

Control by Tibetans over education system in the TAR has similarly been an uphill struggle. Historically, from 1949 to the early 1980s, schools had oriented students towards assimilation rather than giving recognition to their distinctiveness and towards conformity to the centralized control of the Communist government rather than support of autonomy and local initiatives. During the Cultural Revolution (1966-1976) minority cultural customs were denounced as backward and subjected to attack; minority schools were forced to use only mandarin, the majority language, and to teach a curriculum which was designed for the whole nation regardless of local levels of economic development and culture.

Education since the early 1980s took a slightly different direction but, while Communist zeal dimmed somewhat, the fundamentals of teaching remained the same.

⁸⁷ T. Heberer, *China and its national minorities: autonomy or assimilation?*, cit.

The relaxation of travel conditions in 1984 made escapes from Tibet possible for the first time since the 1950s⁸⁸.

The 1984 Law on Regional Autonomy gives a broad mandate to the self-government of the autonomous regions:

“In accordance with the guidelines of the state on education and with the relevant stipulations of the law, the organs of self-government of national autonomous areas shall decide on plans for the development of education in these areas, on the establishment of various kinds of schools at different levels, and on their educational system, forms, curricula, the language used in instruction and enrolment procedures”(Article 36).

This is the broadest and least restrictive delegation of authority to autonomous areas, but the fruits of delegation have been minimal. Another problem is that the curricula in the TAR's schools are set by Beijing. Periodic advances have been made in Tibetan schools to teach the Tibetan language, and Tibetan is now taught in many primary schools, unlike in past decades. However the system of education and the curricula are likely to remain under fairly rigid control as long as the current political system remains intact.

3. The Tibetan Government-in-Exile

In 1949, when China militarily invaded Tibet, Tibet was a theocratic state⁸⁹. Today, China's policies in the TAR are characterized by ethnic tension and the struggle for order, while Tibetans who fled into exile have developed a thriving democratic form of government.

The Tibetan Government in Exile (TGIE), formally known as the Central Tibetan Administration, was established by the Dalai Lama in 1959, upon his flight from Tibet. The seat is in Dharamsala, India. This government is not a new body established outside the

⁸⁸ The Tibetan Government-in-Exile estimates that in the ten years since 1984 between 6000 to 9000 Tibetan children and young adults have fled Tibet in order to seek educational opportunities in India and Nepal. About 5000 are reported to have joined monasteries and nunneries and around 4000 have joined lay schools in exile. See www.tibet.com

⁸⁹ International Commission of Jurists (a cura di), *Tibet: Human Rights and the Rule of Law*, cit.

territory of Tibet, but continuation of the legitimate government of Tibet which was in effect prior to China's invasion. Today 131.000 Tibetans are living in exile⁹⁰.

The Tibetan Government-in-Exile effectively administers all affairs pertaining to refugees in India and, to a lesser extent, elsewhere. Furthermore, the Dalai Lama's Government enjoys a special status in India. New Delhi, for example, refers all matters relating to Tibetan refugees to Dharamsala or, at least, handles them in consultation with the exile government. International governmental or non-governmental agencies also work with the Dharamsala administration. In India, the Tibetan policy, its settlements, its enterprises, and its religious political structure have not only flourished but have transformed and developed from the prototype in Tibet into an active part of the modern world.

The purpose of the exile government, from the outset, was two-fold: To restore freedom inside Tibet and to promote the welfare of the Tibetan refugee population⁹¹. At the same time it has developed a participatory democracy for the first time in Tibet's history. At first, this consisted of his cabinet, the Kashag, with six portfolios: Home Affairs, Foreign Affairs, Religion and Culture, Education, Finance, and Security. A bureau was opened in New Delhi to serve as the link with the Indian Government, foreign diplomatic missions, and the various international relief agencies. Offices were subsequently opened in New York, Geneva, Kathmandu, Gangtok, and later in Tokyo, London, Paris, Moscow, Canberra, and Budapest to act as unofficial embassies for the government-in-exile.

In 1960, the Dalai Lama called the first democratic elections for a newly created representative body, the Commission of People's Deputies. A year later he announced the outline for a new democratic constitution, and on 10 March 1963, the Dalai Lama promulgated

⁹⁰ Tibetans in exile: India 100,000; Nepal 25,000; Bhutan 2,000; Switzerland 2,000; Canada 600; United States 1500 see: www.tibet.com

⁹¹ It is partly because of the human rights violations that many Tibetan's have gained refugee status in India and live with the Government in exile. Recently in March 2001 the 17th Karmapa, Urgyen Trinley, (a Tibetan religious leader) was granted refugee status by the Indian Government after escaping across the Indian-Tibetan border to join the Tibetan government in exile. See Annual Report on International Religious Freedom for 2002.

the "Constitution of Tibet", an instrument combining principles of Buddhism with popular democracy.

The Constitution, in its Preliminary Articles, specifically recognizes the supremacy of international law, the United Nations Charter, and the Universal Declaration of Human Rights, and renounces the use of force as an instrument of national policy. The main body of the document provides for a system of government not unlike a constitutional monarchy, with the executive power vested in the Head of State, the Dalai Lama, and the Kashag; the legislative authority vested in the elected National Assembly; and the judicial authority in an independent Supreme Court⁹².

Under the Charter of the Tibetans in Exile, adopted in 1991, a smaller elected body, the Commission of People's Deputies, essentially fulfills the function of a parliament in exile⁹³. The number of parliamentarians has grown to 46 over the years. Of these, 10 are elected from each of the three traditional Tibetan provinces; two members are elected from each of the five religious lineages and three members are elected by Tibetans residing in the North America and Europe. Additionally, the Dalai Lama nominates three outstanding members of the Tibetan society to the Assembly. The proportionate representation in terms of religion and geographic origin reflect Tibetans' strong identification with their religion and the importance they accord to regional balance (Kham, Amdo and U-Tsang). The Assembly has broad legislative and budgetary powers. Elections take place in two phases and are overseen by an Election Commission. The electoral system is adapted to Tibetan cultural values, which promote humility and regard self-promotion negatively. Thus, in the first phase, candidates do not run for office, but rather voters suggest candidates. Those who are nominated most are then asked by the Election Commission to declare their candidacy and stand for election in a second round of voting.

The executive branch of the Tibetan Government in-exile, the Kashag composed today of eight ministers were initially appointed

⁹² Michael van Walt van Praag, *The Status of Tibet, History, Rights and Prospects in Interantional Law*, Boulder Westview 1987

⁹³ Charter of Tibetans-in exile in, *Legal Materials on Tibet*, 2nd ed., ICLT, Berkely 1997; Much of this text was adapted from Eva Herzer, *An evolving democracy in exile*, www.tibet.org

by the Dalai Lama. Over the years, the Dalai Lama has actively sought to lessen his role in the government in an effort to strengthen the Tibetan democracy. In 1990, the Dalai Lama requested that the Assembly elect the Kashag. The traditional system of political leadership, based on reincarnation, is not suited to the current conditions because the death of the Dalai Lama could create a potentially fatal power vacuum in the Tibetan society. Thus, between 1990 and 2001, the Kashag was elected by the Assembly from among candidates nominated by the Dalai Lama. In turn, the eight ministers, named Kalons, elected a Chief Kalon from their own rank. In the late 1990s further reforms to strengthen the Kashag were adopted. Since 2001 the Chief Kalon, the chief executive officer, is directly elected by the Tibetan people. The Chief Kalon position, called Kalon Tripa, is now the equivalent of what we might call a Prime Minister. Up to now, the only person who enjoyed clear and undisputed leadership status in the Tibetan society was the Dalai Lama. Now, with a popularly elected Chief Kalon, a democratically elected political leadership position has been created. To strengthen the Chief Kalon position further, the Assembly approved a change, which allows the Chief Kalon to select his cabinet of ministers, subject to parliamentary approval.

Very importantly, the position of a directly elected Chief Kalon, with the power to form his or her own cabinet of ministers, is now institutionalized and thus lessens the Tibetans' dependency on the continued leadership of The Dalai Lama. Below the Kashag, the government functions are now organized under the following departments: the Councils for Home Affairs, for Religious and Cultural Affairs and for Education, the Finance office, the Security Office and the Information Office, and the Departments of Health, of Service Management, and of Audit. In 1993, an independent judiciary was established with jurisdiction (within the bounds permitted by Indian law) to resolve disputes between Tibetans.

The government is financed primarily by a voluntary tax from the refugees around the world and from Tibetan business organizations, as well as by small enterprises run by the Finance Office. The government established or encouraged the establishment of a number of institutions to preserve and promote the Tibetan heritage and to enhance the exile community's cultural life.

It has only been since the late 1980s that the Tibetans in exile and their supporters have pursued a strategy of internationalizing

the question and it was not until the late 1990s that Tibet became a compelling issue for a critical mass of the attentive Western public. The policy position of foreign governments on the Tibet issue seek to preserve the status quo and their relations with the Chinese government. Many governments call for increased respect for human rights in Tibet but exclude discussion of Tibet's political status or the issue of self-determination. Indeed, the Tibetans in exile have had to content themselves with resolutions from a handful of Western parliaments, almost none of which urge support for Tibetan independence⁹⁴. Only three states have received the Dalai Lama as "Head of State of the Tibetan Government-in-Exile": the Czech Republic, Estonia and Latvia, yet none of these contests that Tibet is part of China.⁹⁵

4. Conclusions

The Tibetan democracy in exile has evolved gradually over the past 40 years and has been guided not only by the principles set forth in the Universal Declaration of Human Rights, but also by Tibetan cultural values. Unlike many of the democracies established

⁹⁴ The EU Parliament has passed the following resolutions on Tibet: October 14, 1987; March 15, 1989; September 15, 1993; May 17, 1995, December 14, 1995; April 18, 1996; May 23, 1996, March 13, 1997; Januar 16, 1998, May 13, 1998, July 6, 2002, April 11, 2002. The Council of Europe passed one resolution regarding Tibet in October 1988; the German Bundestag one in October 1987, one in June 1996 and one 18 April 2002; the Belgian Parliament one in 1990; the Italian Parliament one 12 April 1989 and one in October 9, 2002 by the House of Representatives. The US Congress has termed Tibet an 'occupied country' and unsuccessfully called upon the executive branch to recognize the exile government. Between 1987 and 1991 the US Congress passed six resolutions on Tibet; the Tibetan Policy Act a major piece of Tibet legislation, was signed into law on September 30, 2002: the purpose of the Tibetan Policy Act is to help the Tibetans preserve their identity as a people in exile and in Tibet. On October 10, 2002 the U.S. House of Representatives passed H. Res. 410 by unanimous consent. H.Res. 410 expresses the sense of the House regarding human rights violations in Tibet, the Panchen Lama, and the need for dialogue between the Chinese leadership and the Dalai Lama or his representatives.

⁹⁵ Denmark had long refused to comment on the status of Tibet, but in 2000, Prime Minister Poul Nyrup Ramussen affirmed that Denmark considers Tibet to be part of China. See Sue Williams, "*Tibet, why we are silent*", The Martlet, University of Victoria, Canada, 9 March 2000

in the 20th Century, the Tibetan democracy in exile was not imposed by a foreign power or gained through a popular uprising. Rather, it was strongly promoted by Tibet's traditional supreme leader, the Dalai Lama and voluntarily established by the Tibetan people at his initiative⁹⁶.

China's ethnic policies include a growing number of "ethnic laws" and the existence of these rights reflects internal and external factors⁹⁷. Strong internal influences include the general desire for political stability and the main external factor is the greater attention paid to question of minority rights internationally.

The PRC officially speaks of "ethnic law" as the guarantee of the rights of ethnic minorities⁹⁸ but these laws has yet to produce unquestionably "genuine" autonomy for minority areas. Furthermore these laws does not mandate the creation of minority economic opportunities to overcome the tendency of the "socialist market economy" to increase the gap between Han and minority living standard and does not provide for regularized state intervention to protect the dignity of minority peoples from affronts by "Great Han chauvinism".

The fact that improved economic conditions and a somewhat liberalized political environment in Tibet have led to increased nationalist expression is indicative of the essential issue for Tibetans. Tibetan demonstrations have been distinguished by their nationalist emphasis, especially the carrying of the banned Tibetan flag and shouts for Tibetans independence. Tibetans' desire for self-determination is the ultimate political purpose which must be satisfied in order to achieve any solution – short of political genocide – to the conflict between Chinese and Tibetans. Until that purpose is achieved the conflict will likely continue to the detriment of human rights for Tibetans and of human rights and democratic standards in China.

⁹⁶ Michael van Walt van Praag, *The Status of Tibet, History, Rights and Prospects in Interantional Law*, Boulder Westview 1987

⁹⁷ B. Sautmann *Ethnic Law and Minority Rights in China: Progress and Constraints*, in *Law&Policy* Vol. 21, July 1999

⁹⁸ Xinhua 31 March 1997