

Háskólinn á Akureyri  
Félagsvísinda- og lagadeild  
Lögfræði  
Vor 2008

# Tibet: Past, Present and Future

–The question of self-determination for Tibet



Sara Halldórsdóttir

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Sara Halldórsdóttir  
Lokaverkefni til 90 eininga B.A. prófs í Félagsvísinda- og lagadeild  
*Leiðbeinandi: Margrét Heinreksdóttir*

Yfirlýsingar:

Ég lýsi því hér með yfir að ég einn er höfundur þessa verkefnis og að það er ágóði eigin rannsókna.

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Undirskrift

Það staðfestist hér með að lokaverkefni þetta fullnægir að mínum dómi kröfum til B.A.-prófs í félagsvísinda- og lagadeild.

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Undirskrift

## **Abstract**

This thesis is about international law, particularly human rights that is a specific field within international law. This thesis addresses the right to self-determination and the case concerning Tibet. Tibetans claim that Tibet was a sovereign independent State prior to the Chinese occupation in 1950. This claim will be reviewed in a historical content and the author will find try to find an answer concerning the legality of the Chinese occupation. The development of the concept of self-determination will be discussed in a historical content. Today the worldview has changed due to the passing of time as well as the meaning behind the concept. The concept developed from being a political principal to becoming one of the fundamental human rights in international law. After the United Nation General Assembly adopted resolution nr. 2625 in 1970, the acceptance of the right to self-determination got broader and people under alien subjugation and exploitation, which is a violation of the principle of the UN Charter, constitute the right to self-determination. People living under ongoing human rights violations might also be able to enjoy the right to self-determination. Requirements to enjoy the right to self-determination will be discussed as well as some specific groups that might constitute the right to self-determination under certain circumstances.

The author concludes that the Tibetan people constitutes as a “people” under international law and had all the requirements of statehood prior to the occupation. The Tibetan people have been living under alien subjugation with ongoing human rights violations since the occupation in 1950. The Tibetan people should be able to enjoy the right to self-determination according to the United Nation GA resolution 2625 from 1970, free from any interference of the People’s Republic of China.

## Útdráttur

Þessi ritgerð fjallar um þjóðarrétt, þá verður sérstaklega farið inn á svið mannréttinda sem er eitt af sérsviðum þjóðarréttarins. Ritgerðin fjallar um sjálfsákvörðunarrétt þjóða og tekið verður fyrir málefni Tíbeta. Tíbetar halda því fram að þjóðin hafi verið sjálfstæð fyrir hernám Kínverja árið 1950. Kannað verður hvort að saga Tíbeta sýni fram á að þjóðin hafi verið sjálfstæð og mun höfundur reyna að svara sprurningum um lögmæti hernámsins. Fjallað verður um þróun sjálfsákvörðunarréttar í sögulegu samhengi. Heimsmyndin hefur breyst með tímanum og hugtakið þróast í takt við tímann. Sjálfsákvörðunarréttur hefur breyst úr því að vera pólitískt umfjöllunarefni yfir í það að vera grundvallar mannréttindi í þjóðrétti. Eftir að Allsherjarþing Sameinuðu Þjóðanna samþykkti ályktun nr. 2625 árið 1970 fékk sjálfsákvörðunarrétturinn víðari túlkun og fleiri þjóðir fá nú að njóta hans. Þjóðir sem búa við aðstæður sem brýtur í bága við Stofnsáttmála Sameinuðu Þjóðanna svo sem hernám, kúgun, eða stöðug mannréttindarbrot hafa nú möguleika á að njóta réttarins. Ræddar verða forsendur til að njóta réttarins og ákveðnir hópar skoðaðir út frá því.

Dregin er sú ályktun að Tíbetar hafi haft allar forsendur til að vera skilgreindir sem “fólk” samkvæmt skilgreiningu þjóðarréttarins og hafi uppfyllt öll skilyrði réttarríkis fyrir hernám Kínverja. Tíbetar hafa búið við kúgun og stöðug mannréttindarbrot af hálfu Kínverja frá 1950 og ættu þar af leiðandi að fá að njóta sjálfsákvörðunar án afskipta kínverskra stjórnvalda.

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## **Introduction**

The Tibetans' history of independence has always been hazy and paradoxical. Everybody seems to have their own story of the relation between China and Tibet. In 1950 the Chinese People's Liberation Army occupied Tibet and forced the Tibetan to sign a 17-point Agreement where it says, "Tibet shall return to their Motherland, China." The legality of this agreement is very controversial and will be discussed in this thesis.

The question of self-determination for the Tibetan people will also be brought up and checked whether the Tibetan people has any right under that claim. Since the foundation of the United Nation in 1945 the concept of self-determination has developed from being a political principal to becoming one of the fundamental human rights in international law. The right to self-determination has since been established in many international law treaties as well as regional treaties.

It might seem easy to define the concept of self-determination but in practice it is very difficult to give clear answers because peoples tend to interpret it in their own way and according to their own needs and interests. No mutual agreement has been reached about the concept although many instruments have dealt with it in one way or another.

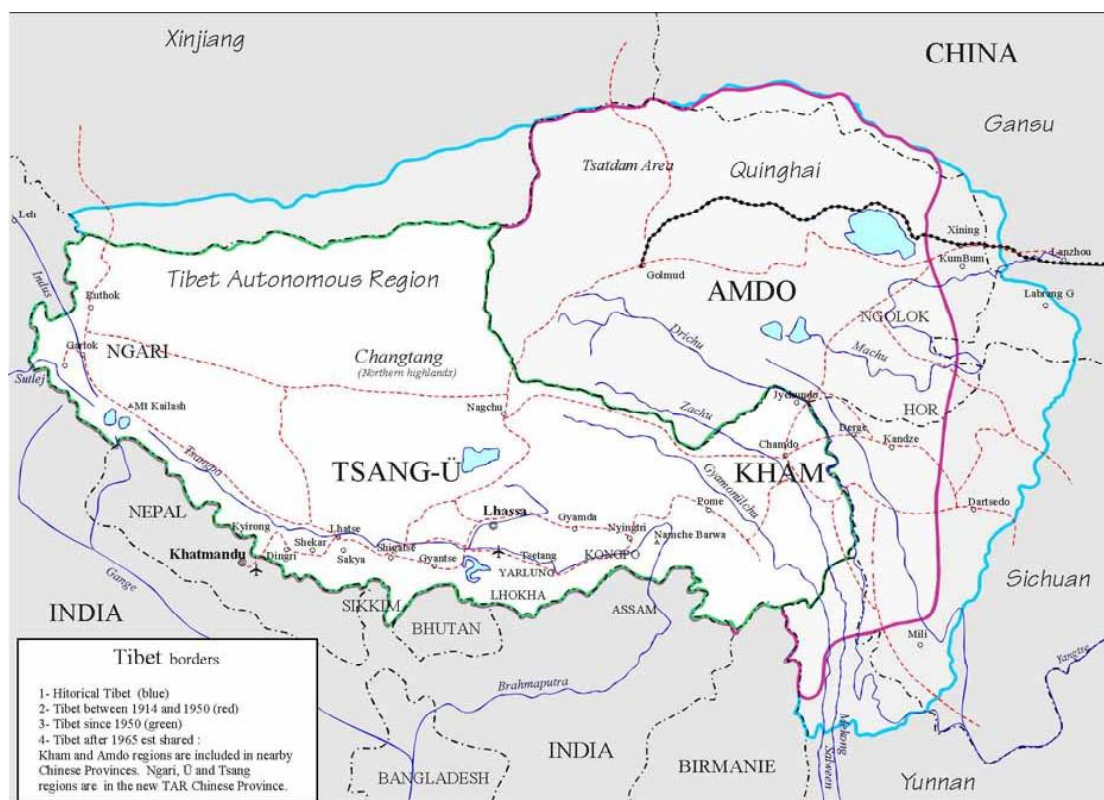
As the work within the Organization of the United Nations progressed in the following decades the concept of self-determination evolved and became a part of international law. The concept started to develop into customary law within the General Assembly that passed one resolution after the other, each new one strengthening the substance of the term. Then it became a part of conventional law when the two International Covenants on Human rights were agreed upon in 1966, coming into force in 1976. During this period the principle of self-determination evolved into international right, as we know it today.

The thesis addresses the right to self-determination and the case of Tibet. The history of Tibet will be reviewed and important historical events discussed. Chapter II deals with the development of the right to self-determination, how the concept became a right in international law and which international treaties deal with the right. Chapter III deals with the case of Tibet and whether Tibet fulfills international requirements to be able to enjoy the right to self-determination, if so how might the future outcome be.

# Chapter I - Introduction to Tibetan history

## 1.0 Tibetan nation

Geographically Tibet lies in the center of Asia, in Southwest China to be precise, with an area of 2,5 million square-kilometers. The ancient Tibet plateau covers three provinces, U-Tsang, Kham and Amdo. The Tibet plateau covers the area where all the Tibetan people lived when they were unified in the year of 640 by the king Songtsan Gampo. The population of Tibet is approximately 6 million. After 1950 the Chinese government gained control over Tibet; it established an autonomous region and reshaped the borders. The Tibet Autonomous region, sometimes called “TAR”, consists of U-Tsang and a small part of Kham with an area of 1.2 million square-kilometers. Lhasa is the capital of the autonomous region. One third of the Tibetan population, 2.09 million people lives in the Tibetan Autonomous region. The other 4 million people live outside the area of “TAR”.<sup>1</sup> The majority of the people are ethnic Tibetans who speak the Tibetan language although the official language is now Chinese.



<sup>1</sup> Tibetan Youth Congress, website: [http://www.tibetanyouthcongress.org/facts\\_about\\_tibet.html](http://www.tibetanyouthcongress.org/facts_about_tibet.html) (03.10.07)



**Picture 1. The Tibetan area.<sup>2</sup>**



**Picture 2. A map of China. The area with brown stripes show the Tibetan autonomous region.<sup>3</sup>**

## **1.1 From tribal community to unification**

The Tibetans' history of independence has always been hazy and paradoxical. Everybody seems to have their own story of the relation between China and Tibet. The borders of the area have also been unclear and debated through history. It is often said that the Tibetan autarchy started in the year of 640 when the king Songtsan Gampo unified the tribes that lived in the area of Tibet under the Tubo Dynasty. Before that time it was a community with many independent tribes.

During the next decades the Tibetan king attacked many tribal groups and occupied their territories, thereby gaining control of the whole northeastern part of the Tibetan territory, as we know it today. He did not let anyone stop him and continued to invade other territories.

When he had invaded some part of the Chinese province Sichuan, the Chinese wanted to create a friendly relationship between the nations by offering the Chinese princess

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<sup>2</sup> Picture taken from the website, *Discovery of the Tibetan civilization*: <http://www.tibetmap.com/TARbr.html> (03.10.07)

<sup>3</sup> Picture taken from the website, *Dismal World*: <http://www.dismalworld.com/disputes/tibet.php> (03.10.07)

of the Tang Dynasty, Wen Cheng, to marry the Tibetan king. The princess retained her culture from the Han nation and introduced it to the Tibetans.<sup>4</sup>

By 822 the Sino-Tibetan conflict between the two empires had ended and China acknowledged Tibet's independency with its own territory. The Chinese government maintains however that back in 641 the nations became one when the Chinese princess married the Tibetan king.<sup>5</sup> In 823 a monument was placed in front of the Jokhang Monastery in Lhasa with the following inscription;

*"The two sovereigns, uncle and nephew, having come to agreement that their territories be united as one, have signed this alliance of great peace to last for eternity! May God and humanity bear witness thereto so that it may be praised from generation to generation."*<sup>6</sup>

The Tubo Dynasty collapsed in mid 9<sup>th</sup> century and the Tibetan nation disintegrated into tribal groups. Despite these contradictions, the relationship between China and Tibet seems to have been loose or even none for the next four hundred years. After the fall of the Tibetan empire a political vacuum was filled by monastic Buddhist and the Tibetan people reverted to their old ways of living as disunited nation. The Buddhist religion became stronger in the 11<sup>th</sup> century and has placed a big role in Tibetans live ever since<sup>7</sup>

## 1.2 Mongolian influence

Early in the 13<sup>th</sup> century the Mongolian leader, Genghis Khan, conquered the Jin Dynasty in the north of China and in 1279 the Mongolian empire had unified the whole of China. Tibet was no exception and became a part of the Mongol Khanate right before mid 13<sup>th</sup> century. In 1271 the Mongolian regime changed the name of Mongol Khanate to Yuan and established a central government.<sup>8</sup>

The Chinese government states that by this unification Tibet came under the reign of the central government of China and became an administrative region under China's

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<sup>4</sup> Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (18.07.2007)

<sup>5</sup> International Commission of Jurist, *Tibet – Human rights and Rule of Law*, at 31.

<sup>6</sup> White Paper of The Government, *Tibet- Its Ownership and Human Rights Situation*, website: <http://www.china.org.cn/e-white/tibet/9-1.htm> (18.07.07)

<sup>7</sup> International Commission of Jurist, *Tibet – Human rights and Rule of Law*, at 31.

<sup>8</sup> White Paper of The Government, *Tibet- Its Ownership and Human Rights Situation*, website: <http://www.china.org.cn/e-white/tibet/9-1.htm> (02.09.07) and Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (02.09.07)

Yuan Dynasty.<sup>9</sup> Other sources point out that there were many other countries under the Mongolian Empire which have not been claimed by Chinese government.<sup>10</sup>

During the Yuan Dynasty there was some communication between the Tibetans and the Emperor of the Yuan Dynasty.<sup>11</sup> The Tibetans broke their political ties with the Mongolian emperor and later the Chinese regained their independency.<sup>12</sup> On the other hand the Chinese sources maintain that they inherited the territorial claim over Tibet.<sup>13</sup>

The Ming Dynasty replaced the Yuan Dynasty and controlled the Chinese territory for the next 200 hundred years. It seems that there was not much communication between the two nations at that time. During the Ming Dynasty there was great expansion, especially in economic and maritime affairs that might explain limited communication. The political authority in Tibet was mostly in the hands of Buddhist leaders.<sup>14</sup>

### 1.3 The Qing Dynasty 1644-1911

The next period in the Chinese history is the Qing Dynasty ruling from 1644 to 1911. The Qing Dynasty was established by the Manchu people, who mainly live in North-eastern part of China, but in 1644 they gained power over Beijing, by force. The 5<sup>th</sup> Dalai Lama<sup>15</sup> wanted to form a friendly relationship with the Qing Dynasty and became a spiritual mentor for the emperor, thereby gaining support and safeguarding from the Dynasty to protect the Tibetan territory from attacks by the British via India<sup>16</sup> This relationship has been interpreted variously, mainly in two ways; "...[it] was the only formal tie that existed between the Tibetans and Manchus

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<sup>9</sup> White Paper of The Government, *Tibet- Its Ownership and Human Rights Situation*, website: <http://www.china.org.cn/e-white/tibet/9-1.htm> (02.09.07)

<sup>10</sup> Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (02.09.07)

<sup>11</sup> Zheng Shan, *A History of Development of Tibet*, at 3.

<sup>12</sup> The Government of Tibet in exile, *The status of Tibet*, website: <http://www.tibet.com/Status/statuslaw.html> (05.09.07)

<sup>13</sup> Wang Jiawei & Nyima Gyaincain, *The Historical Status of China's Tibet*, at 2.

<sup>14</sup> Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (06.09.07)

<sup>15</sup> The Dalai Lama is a position under the Buddhist religion and the person holding this position is a spiritual and political leader of the Tibetan people. It is believed that the person holding this position has chosen by its own will to be reborn and teach humanity.

<sup>16</sup> Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (09.09.07) and The Government of Tibet in exile, *The status of Tibet*, website: <http://www.tibet.com/Status/statuslaw.html> (09.09.07)

during the Qing Dynasty. It did not, in itself, affect Tibet's independence.”<sup>17</sup> Other sources say on the contrary, that it strengthened their ties even more than before.<sup>18</sup>

During the 18<sup>th</sup> century the Qing Dynasty sent high commissioners, called “Ambans”, into Tibet to protect the nation from foreign attacks. By doing this, the Emperor gained some influence in Tibet. While protecting the Tibetans the Ambans were also supervising the local administration for the central authorities. It has been disputed through the years how much power the Qing Dynasty had over the Tibetans. The Qing Dynasty enacted regulation in 1792 to improve the administrative institutions in Tibet, but by then the Qing Dynasty started to decline and this regulation was never observed in Tibet. During the next century the Qing Dynasty was unable to keep its focus on Tibet due to foreign imperialism. By mid 19<sup>th</sup> century the Ambans left Tibet voluntarily and by the end of that century, Tibet established independent governmental institutions that united secular and ecclesiastical power. Although the Tibetan government started to work more independently by establishing governmental institutions the Qing Empire continued to claim authority over Tibet until its own fall.<sup>19</sup> It has been disputed how much power the Ambans had in Tibet. They appointed high-ranking people in Tibet and some sources state that they were equal to the Lamas.<sup>20</sup> It can be difficult to analyze what kind of relationship was between these nations during that time. Tibet did enjoy some kind of governmental protection from the Qing Dynasty but they were never fully united into one state.

Some sources state that Tibet did not become a part of the Chinese empire because the Qing people were not even a Chinese ethnic group at that time.<sup>21</sup> The 19<sup>th</sup> century turned out to be hard for the Qing Dynasty. The so-called Opium wars between the Qing Dynasty and the United Kingdom started in 1840. The British smuggled opium from India into China and the Qing Dynasty lacked unity to fight back against the British. The Qing government lost the wars and had to tolerate the opium trade.<sup>22</sup> Other conflicts took place during the 19<sup>th</sup> century such as the Taiping revolt in 1851-1864, which was political and religious revolution to make reform in

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<sup>17</sup> The Government of Tibet in exile, *The status of Tibet*, website: <http://www.tibet.com/Status/statuslaw.html> (09.09.07)

<sup>18</sup> Wang Jiawei & Nyima Gyaincain, *The Historical Status of China's Tibet*, at 2.

<sup>19</sup> International Commission of Jurist, *Tibet – Human rights and Rule of Law*, at 34-35.

<sup>20</sup> White Paper of The Government, *Tibet- Its Ownership and Human Rights Situation*, website: <http://www.china.org.cn/e-white/tibet/9-1.htm> (14.09.07)

<sup>21</sup> Free Tibet Campaign, *Tibet fact no.15*, website: <http://www.freetibet.org/info/facts/fact15.html> (14.09.07)

<sup>22</sup> Zheng Shan, *A History of Development of Tibet*, at 250-254.

China and the Boxer revolution, where the main aim was to overthrow the Qing dynasty and expel Western foreigner who had influence in Chinese society.<sup>23</sup>

The foreign imperialism caused tension and unrest, leading to uncertainty and the Qing lost their influence in Tibet. At that time Tibet became vulnerable to the outside world because the Qing government had not been handling the Tibetan affairs, especially the security affairs. At the turn of the century the British and Russian wanted to expand their imperialism and Tibet became an easy target for both.<sup>24</sup> The British tried to gain some power in Tibet by invading the Tibetan territory, which resulted in a serious border crisis. These conflicts ended with the Lhasa Convention in 1904 where the Tibetan acknowledged British control of Sikkim and granted British certain permission for trading and allowed stationing of troops in Lhasa.<sup>25</sup> The next years some uptrend occurred, for example politics and religion were separated, military force was reinforced and brochures were distributed to educate the Tibetans. At that time the Qing government was unstable and corruption, financial problems and lack of leadership were the main reason for the fall of the Qing Dynasty.<sup>26</sup> After the Boxer revolution, dissatisfaction increased among the people, mainly students who had been studying abroad and realized the backwardness of China compared to Western states. The nationalist revolution led by Sun Yat-Sen, often known as the father of modern China, convinced the Chinese public that the only way to modernize was to overthrow the Qing Dynasty and discard the old system. Sun Yat-Sen and his alliance overthrew the Qing government by the end of 1911 and established the Republic of China.<sup>27</sup>

## **1.4 Tibet under the regime of The Republic of China**

On January 1<sup>st</sup> 1912 the Republic of China was established with Sun-Yet-San as president. He proclaimed the following;

*“The foundation of the country lies in the people, and the unification of lands inhabited by the Han, Manchu, Mongol, Hui and Tibetan people into one*

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<sup>23</sup> Encyclopædia Britannica, “Boxer Rebellion”, website: <http://search.eb.com/eb/article-9016047> (19.07.08)

<sup>24</sup> Zheng Shan, *A History of Development of Tibet*, at 250-257.

<sup>25</sup> The Government of Tibet in exile, *The status of Tibet*, website: <http://www.tibet.com/Status/statuslaw.html> (14.09.07)

<sup>26</sup> Zheng Shan, *A History of Development of Tibet*, at 294-309.

<sup>27</sup> Encyclopædia Britannica. “China”, website: <http://www.britannica.com/EBchecked/topic/111803/China> (02.06.08)

*country means the unification of the Han, Manchu, Mongol, Hui and Tibetan races. It is called national unification.*<sup>28</sup>

China still proclaimed authority over Tibet. But the Tibetans still claimed that they were fully independent from China at that time. In 1912 the Tibetans expelled the Han's from the Tibetan territory. The Han nationality is the largest of the 55 nationalities in China, 92% of the total population of the Chinese state. In the following year the Mongolians and Tibetans recognized each other's independent state. The British exploited the disruption that occurred during the establishment of the Republic of China. In April 1912 they demanded that the new Chinese government respected "Tibet's autonomy under Chinese suzerainty in return for British recognition of the government of the Republic of China."<sup>29</sup> On August 10, 1912 the Beijing government declared the so-called "Organic" Law of the Parliament of the Republic of China that gave Tibetans right to participate and have a direct say in the government's affairs. A week later the British announced that they would not recognize the new Republic of China if the Chinese Ministry of Foreign Affairs did not accept certain demands in five points.<sup>30</sup> These demands, dealing with the relations between Tibet and China, were the following;

*"1. The British government does not allow China to intervene actively in the internal administration of Tibet.*

*2. The British government opposes Chinese officials seizing administrative power in Tibet, and refutes the Chinese statement that Tibet is on an equal footing with China's provinces.*

*3. Britain does not allow China to station numerous troops within the territory of Tibet.*

*4. An agreement should be signed and the British side would then recognize the Republic of China.*

*5. The communication between China and Tibet be cut for the time being.*<sup>31</sup>

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<sup>28</sup> White Paper of The Government, *Tibet- Its Ownership and Human Rights Situation*, website: <http://www.china.org.cn/e-white/tibet/9-1.htm> (14.08.07).

<sup>29</sup> Wang Jiawei & Nyima Gyaincain, *The Historical Status of China's Tibet*, at 118.

<sup>30</sup> International Commission of Jurist. "*Tibet and the Chinese People's Republic*". A report to the International Commission of Jurist by its Legal Inquiry Committee in Tibet. International Commission of Jurist, Geneva, 1960. at 139 and White Paper of The Government, "*Origins of So-called Tibet Independence*", website: <http://www.china.org.cn/e-white/tibet/9-2.htm> (14.08.07).

<sup>31</sup> Wang Jiawei & Nyima Gyaincain, *The Historical Status of China's Tibet*, at 118-119.

The Chinese government rejected these demands and the British reacted by closing all the roads from China leading to India.<sup>32</sup>

These disputes continued until 1913 when the British invited delegates from the Chinese government and Tibet to settle the disputes. Plenipotentiaries from each country met in October 1913 to reach some settlement. The Chinese plenipotentiaries did not have much space for negotiations because the Chinese government still claimed full sovereignty over Tibet and administrative power over eastern Tibet. Yet the plenipotentiaries were able to discuss some kind of autonomous status for outer Tibet. On the other hand, Tibet claimed the right to self-determination for the entire Tibetan plateau. The Chinese government refused the Tibetan claim and at the final stages the Chinese backed out of the negotiation and did not sign the so-called Simla Convention,<sup>33</sup> signed in April 1914 by the representatives of Tibet and Britain. The Simla Convention recognized the autonomy of Western Tibet but under Chinese suzerainty. Tibet should carry out their internal affairs and China should have limited number of troops in Tibet.<sup>34</sup> Now the British communicated directly through the Tibetans and British influence increased during this period while the Chinese influence vanished. In the following years Tibet acted as an independent country, it had its own currency, postal and telegraph service and conducted its own foreign affair with the British government. It also maintained diplomatic relations with other states such as Bhutan and Nepal. They treated Tibet as a sovereign state so in fact it had *de facto* status of sovereignty.<sup>35</sup> In a report to the International Commission of Jurist<sup>\*</sup>, a Legal Inquiry Committee concluded in 1960 that:

*“...throughout the period 1912-1950 the Government of Tibet exercised exclusive authority in domestic affairs within its territory, that it successfully defended its territory against attack under colour of a claim to sovereignty and*

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<sup>32</sup>International Commission of Jurist, “*Tibet and the Chinese People’s Republic*”, at 139 and White Paper of The Government, “*Origins of So-called Tibet Independence*”, website: <http://www.china.org.cn/e-white/tibet/9-2.htm> (14.08.07).

<sup>33</sup>The Simla Convention was signed in the Indian city Simla in north India and the Convention got named by the city.

<sup>34</sup>International Commission of Jurist, “*Tibet and the Chinese People’s Republic*”, at 139-142.

<sup>35</sup>International Commission of Jurist, “*Tibet and the Chinese People’s Republic*”, at 142-143 and The Government of Tibet in exile, *The status of Tibet*, website: <http://www.tibet.com/Status/statuslaw.html> (20.04.08).

<sup>\*</sup> For further information about the International Commission of Jurist on the website: [http://www.icj.org/rubrique.php?id\\_rubrique=11&lang=en](http://www.icj.org/rubrique.php?id_rubrique=11&lang=en)



*that vis-à-vis the Republic of China no act was committed or declaration made that compromised its internal independence.*”<sup>36</sup>

## **1.5 People’s Republic of China claim authority over Tibet**

On the 1<sup>st</sup> of October, 1949 the People’s Republic of China was established by the People’s Liberation Army, having won what is termed as the Chinese People’s “War of Liberation”. Besides its military successes the army had also peacefully won over provinces from the former Kuomintang government<sup>37</sup>. The new government decided also to take over Tibet and Taiwan. The Tibetan government did not like those actions and expelled all the Chinese representatives from Tibet in July 1949, in order to make it clear that China did not have any rights over Tibet. In November, Radio Peking announced that the Panchen Lama<sup>38</sup> had told Mao Zedong to take over Tibet. On January 1<sup>st</sup> 1950 the Chinese government announced that it would do so. Because of the Chinese threat the Tibetan government called for international support from nations like India, Nepal, United Kingdom and the United States. These states advised Tibet to avoid provoking the Chinese: either by declaring their independence or ask the United Nation to intervene. The Tibetan government underestimated the power and strength of the People’s Liberation army, on October 7<sup>th</sup> 1950 it entered Chamdo, the eastern part of Tibet and defeated the Tibetan army within two weeks.<sup>39</sup>

In November the Tibetan government appealed to the General Assembly of the United Nation<sup>\*</sup>; reiterating the independence of Tibet and protesting the Chinese aggression. The British delegate with support from India recommended that the Tibetan case be adjourned *sine die*. The Indian delegates thought it could be solved by negotiation between China and Tibet.<sup>40</sup> The plea was set a side and China called on the Tibetans to negotiate. The Tibetans were now forced to send delegates to negotiate with the Chinese government because the People’s Liberation Army threatened to continue all the way to the capital, Lhasa. The delegates had little choice; either they would come to an agreement or the People’s Liberation Army would take Tibet by military force. On 23<sup>rd</sup> May 1951, the Tibetan delegates signed the “Agreement on

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<sup>36</sup> International Commission of Jurist, *Tibet and the Chinese People’s Republic*, at 148.

<sup>37</sup> Kuomintang was the Nationalist Party of China. Ruled China from 1930’s through World War II. Defeated by the Chinese Communists led by Mao Zedong in the civil war which ended in 1949

<sup>38</sup> The Panchen Lama is the second highest spiritual and political leader of the Tibetan people after the Dalai Lama.

<sup>39</sup> International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 44-49.

<sup>\*</sup> For further information about the Tibetan plea on the website:

<http://www.tibetjustice.org/materials/un/un2.html>

<sup>40</sup> International Commission of Jurist, “*Tibet and the Chinese People’s Republic*”, at 160-161.



Measures for the Peaceful Liberation of Tibet” or the so-called “17-point Agreement” whereby Tibet agreed to return to the big family of the Motherland – the People’s Republic of China. The agreement was dictated by the Chinese according to their interests and the Tibetan delegates had no say in the negotiation. It is also disputed whether the delegates had full authority to conclude such an agreement, Dalai Lama says they did not have such power.<sup>41</sup> The 17- point agreement was reported by Radio Beijing a week after it was signed and first then Dalai Lama learned about its substance. In middle of August, Dalai Lama returned to Lhasa in the hope of re-negotiating with the Chinese. In September the People’s Liberation Army had occupied Lhasa and central Tibet with thousands of troops and the Chinese government refused to re-negotiate. On the 25<sup>th</sup> of October, Dalai Lama accepted the 17-point Agreement in a letter to Mao Zedong.<sup>42</sup>

## **1.6 Tibet under the Chinese Communist Party**

In 1954 the Chinese government started to pursue more political power in Tibet by transferring authority from Tibetans to the Chinese. General dissatisfaction was among the Tibetans and in 1959 there were rumors that the Chinese were going to kidnap Dalai Lama. On March 10<sup>th</sup> the Tibetans revolted openly in Lhasa to protect their leader, demanding Tibet’s full independence. The Tibetan government also participated, repudiating the 17-point Agreement and claiming independence. The People’s Liberation Army put the “Tibetan uprising” to an end. Around 90.000 Tibetans were killed during the revolt and many others were put in prison. A week later Dalai Lama and his cabinet fled to India followed by thousands of Tibetans. The Chinese government dissolved the Tibetan government and implemented what was called “democratic reforms” for the “TAR” area.<sup>43</sup> Dalai Lama and his cabinet established a Tibetan government-in-exile. In 1963 that government promulgated the Constitution of Tibet, which is build upon Buddhist principles with democracy.<sup>44</sup> “In

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<sup>41</sup> International Commission of Jurist, “*Tibet and the Chinese People’s Republic*” at 160-164 and International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 44-49.

<sup>42</sup> International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 48-49.

<sup>43</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination.*” Tibet Justice Center. June 1, 1998, at 1-40 and International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 50-51.

<sup>44</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination,*” at 43.

1984 the Tibetan government –in –exile, based in India, estimated that, as a direct result of the Chinese invasion and occupation of Tibet, 1,207,387 Tibetans had lost their lives.”<sup>45</sup>

### **1.7 Tibet as a sovereign state**

Prior to 1950 Tibet had been a sovereign independent state and had all requirements for constituting a statehood as the Montevideo Convention from 1933 describe a state; territory, population, government controlling the population and territory and capacity to enter into relations with other states.<sup>46</sup> Dalai Lama was the head of the Tibetan government and administered the Tibetan population, free from outside interference. They had their own currency and issued passport that were internationally recognized.<sup>47</sup> During the World War II, Tibet was neutral and refused to allow the Chinese government to construct a road through Tibet for military supplies.

Having looked into the Tibetan history it seems like everyone has their own version and some resources do not match up, therefore it is difficult to find the real historical truth. Before discussing whether Tibet has any right to self-determination the concept of the right will be examined in next chapter.

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<sup>45</sup> International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 53.

<sup>46</sup> Montevideo Convention on the Rights and Duties of States. Article 1. Website: <http://www.molossia.org/montevideo.html> (20.06.08)

<sup>47</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination*,” at 4.

## **Chapter II - Introduction to the concept of self-determination**

### **2.0 Background of the concept of self-determination**

Since the foundation of the United Nation in 1945 the concept of self-determination has developed from being a political principal to becoming one of the fundamental human rights in international law. The right to self-determination has since been established in many international law treaties as well as regional treaties.

The concept can be traced back to the late 18<sup>th</sup> century, to the French Revolution as well as the American Declaration of Independence. The concept was used in connection to negotiations on the allotting of territories between existing states.<sup>48</sup>

The concept is closely linked to democracy, the right of peoples to choose their political status and by whom they are to be governed etc. It might seem easy to define the concept of self-determination but in practice it is very difficult to give clear answers because peoples tend to interpret it in their own way and according to their own needs and interests. No mutual agreement has been reached about the concept although many instruments have dealt with it in one way or another.

The then United States' president, Woodrow Wilson, presented his view of the concept to European states right before the end of the World War I. His aim was to reach an open adjustment between the colonial rulers and the people living within a colony to prevent future conflicts between those parties. The peoples living in the colony should have the equal right to choose their own authorities and national leaders as well as to a form of sovereignty.<sup>49</sup> At the Paris Peace Conference in 1919 Wilson tried to insert the concept of self-determination in the Covenant of the League of Nations. Soon it became clear that the states did not agree on the definition of the concept and thus it was not included in the Covenant. The concept evolved through the

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<sup>48</sup> Antonio Cassese, *"Self-determination of Peoples, A Legal Reappraisal"*. Cambridge University Press, 1995, at 10-15.

<sup>49</sup> Antonio Cassese, *"Self-determination of Peoples, A Legal Reappraisal"*, at 10-21.

years and after the World War II there was increasing international pressure for abolishing the colonization of nations.<sup>50</sup>

The right to self-determination has since been established in many international treaties as well as regional treaties. The concept as such first appeared in an international treaty in the Charter of United Nations of 1945, yet only as a principle and without any definition. The purpose of the United Nations is set forth in article 1, paragraph 1, where the main aim is said to preserve "...international peace and security", and to that end: "...to take effective collective measures for the prevention and removal of threats to the peace..."<sup>51</sup> Article 1, paragraph 2 of the UN Charter gives guidelines on how to preserve peace and security; "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."<sup>52</sup> Thus, the concept of self-determination in the UN Charter is limited by the respect for integrity and sovereignty of existing states. The principle of self-determination is also mentioned in article 55<sup>53</sup> of the UN Charter with similar wording as article 1. Within the framework of the UN Charter the concept of self-determination did not rank as a "right" but only as a mere "principle".

Articles 73<sup>54</sup> and 76<sup>55</sup> of the UN Charter mention the principle of self-determination of nations under the rule of "other" states. Article 73 deals with the development of

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<sup>50</sup> Rhona K. M. Smith, *Textbook on International Human Rights*, (Oxford, Oxford University Press, 2<sup>nd</sup> ed. 2005) at 270-2.

<sup>51</sup> Charter of the United Nations, website: <http://www.un.org/aboutun/charter/> (15.07.08)

<sup>52</sup> Charter of the United Nations, article 1(2), website: <http://www.un.org/aboutun/charter/> (15.07.08)

<sup>53</sup> Article 55 of the UN Charter: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

<sup>54</sup> Article 73 of the UN Charter: "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;  
b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement; ..."

self-government in then called “non-self-governing territories” while article 76 covers the development in “trust territories” towards self-government or independence. These articles provide further guidelines for how to respect non-self-governing territories.

Even though the UN Charter deals with the principle of self-determination it does not cover any legal right to self-determination nor does it impose any obligation on the Member States to implement it as a “right” to self-determination. The UN Charter links the principle of self-determination to coherence of the wording of article 1, “friendly relations among nations” and “equal rights” of peoples to stress the importance to keep the principle of self-determination in high regard, so that the main aim of the Charter, “universal peace” be respected. During the drafting of the UN Charter the founding states divided into two groups; the Western States who wanted to regard self-determination as a mere principal with no judicial binding and on the other hand the East European (socialist) states and those of the so-called “Third world” countries that wanted to give it a wider adoption. The Western States had to modify their view since the demand for de-colonization was getting louder and louder.

As the work within the Organization of the United Nations progressed in the following decades the concept of self-determination evolved and became a part of international law.<sup>55</sup> The concept started to develop into customary law within the General Assembly that passed one resolution after the other, each new one strengthening the substance of the term. Then it became a part of conventional law when the two International Covenants on Human rights were agreed upon in 1966, coming into force in 1976. During this period the principle of self-determination evolved into international right, as we know it today.

### **2.0.1 United Nations instruments**

In 1952 the UN General Assembly adopted an important resolution nr. 637 (VII) concerning the right to self-determination. The resolution stresses the

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<sup>55</sup> Article 76 of the UN Charter: “*The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:*

*a. to further international peace and security; b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement; ...*”

<sup>56</sup> Antonio Cassese, “*Self-determination of peoples – A legal reappraisal*”, at, 11-13.

importance that the principle of self-determination “is a prerequisite to the full enjoyment of all fundamental human rights.”<sup>57</sup> It also connects the principle of self-determination to non-self-governing territories and defines what constitutes a non-self-governing territory and who might possess the right to self-determination.<sup>58</sup> After the GA adopted resolution 637 (VII) an extensive and lengthy debate took place about the definition of non-self-governing territories. States with different views and different interests had a difficult time in negotiating definition for the non-self-governing territories and how far they should expand the definition. In the end the states agreed that colonies that were separated by sea from the colonial - “mother” states and had defined territory could possess the right to self-determination as long as this would not disrupt the territorial integrity within the existing state.

In 1960 the GA adopted the historical resolution 1514(XV) also known as “The Declaration on the Granting of Independence to Colonial Countries and Peoples”. This resolution ensures the right to self-determination for those who live under “alien subjugation, domination and exploitation”<sup>59</sup> that “constitute a denial of fundamental human rights”.<sup>60</sup> The resolution re-stresses the importance that beneficiaries of self-determination must maintain national unity and the territorial integrity of a state as can be read in article 6, of the resolution;

*“Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”<sup>61</sup>*

Article 6, of the resolution prevents ethnics and minority groups from seceding the main colony, which means that these groups do not constitute to be beneficiaries of the right to self-determination. Since the aim was to put an end to colonization the emphasis lies in the geographical entity rather than taking into consideration the different nationality of that geographical entity; it stresses the right for a colony or an occupied territory as such.<sup>62</sup>

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<sup>57</sup> UN GA Res. 637 (VII) December 16, 1952 “The Rights of peoples and nations to self-determination”

<sup>58</sup> UN GA Res. 637 (VII) December 16, 1952

<sup>59</sup> UN GA Res. 1514 (XV) December 14, 1960 “The Declaration on the Granting of Independence to Colonial Countries and Peoples” Article, 1.

<sup>60</sup> UN GA Res. 1514 (XV) December 14, 1960 Article, 1.

<sup>61</sup> UN GA Res. 1514 (XV) December 14, 1960 Article, 6.

<sup>62</sup> Guðmundur Alfredsson. Farose Law Review- Fólk og Fullveldi, “*The Faroese People as a Subject of Public International Law*”, 2001, at 48.

The day after the GA adopted resolution 1514 (XV) it adopted resolution 1541 (XV) to define “territorial integrity” and to whom the right belongs. The resolution puts the colonies into the same category as the non-self-governing territories as defined by Charter XI of the UN Charter and stresses the importance that those who have the right to self-determination must be geographically separated from its colonial state.

This resolution emphasizes that minority and ethnic groups do not have the right to secede from their existing State when colonialism occurs within a shared state.<sup>63</sup> With these two resolutions the principle of self-determination is considered to have been recognized as a right in international law.

During the next ten years many colonies enjoyed the right to self-determination and became independent. The world changed and in 1970 the General Assembly adopted resolution 2625 (XXV) also known as “The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”. This resolution expanded the scope of self-determination by opening the opportunity for nations other than colonies to enjoy the right. It sets out general rules about the right to self-determination and gives the right of self-determination to people living under alien subjugation and exploitation that constitute violation of the principle of the UN Charter. Ongoing denial of fundamental rights also gives people the right to self-determination.<sup>64</sup>

According to paragraph 4, the resolution gives wider approach to the implementation of the right to external self-determination:

*“The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”<sup>65</sup>*

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<sup>63</sup> UN GA Res. 1541(XV) December 15, 1960 “Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter”

<sup>64</sup> UN GA Res. 2625 (XXV) October 24, 1970 “The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”

<sup>65</sup> UN GA Res. 2625 (XXV) October 24, 1970

This resolution gives people living under racist regime the right to both internal and external self-determination whether the people choose self-government under the existing State or choose to secede from the racist regime is up to the people living in the State. This resolution adopted new codifying rules concerning the right to self-determination and has become part of customary international law. The declaration also explains which groups of people do not qualify to enjoy the right to self-determination. Minorities and other ethnic groups do not constitute the right to self-determination if the government within the state represents the minority or the ethnic groups.

## **2.0.2 International Covenants on Human rights**

After the adoption of the Universal Declaration on Human Rights in 1948 the Commission on Human Rights wanted to make some of the articles in the UDHR as legally binding by international law and the outcome was the two International Covenants on human rights. As often before the drafters of the Covenants had different views concerning how the articles should be presented in Covenants. The Western States only wanted to cover fundamental rights for individuals while the Soviet Union recommended that people would have the right to self-determination whereas it “was a precondition for the respect of individual rights.”<sup>66</sup> Some Western States had interest in retaining their colonies while other states thought it might disrupt territorial integrity within existing states. By extensive support of the developing countries the Soviet view prevailed in the end and both Covenants included the right to self-determination as a common article 1.

In 1976, two International Covenants entered into force; The International Covenant on Economic, Social and Cultural Rights<sup>67</sup> and The International Covenant on Civil and Political Rights.<sup>68</sup> The right to self-determination is mentioned in both of these Covenants, the articles are neutral and refer to internal self-determination which gives the people right to choose their own legislator. The article in both of the Covenants has the same meaning and is spelled out exactly the same;

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<sup>66</sup> Antonio Cassese, “*Self-determination of peoples – A legal reappraisal*”, at 47.

<sup>67</sup> UN GA Res. 2200A (XXI) December 16, 1966 “The International Covenant on Economic, Social and Cultural Rights”

<sup>68</sup> UN GA Res. 2200A (XXI) December 16, 1966 “The International Covenant on Civil and Political Rights”



*“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*<sup>69</sup>

It can be said that full enjoyment of internal self-determination according to the Covenants is not only the right to choose its own legislator but also the enjoyment of other fundamental rights such as freedom of expression, the right to vote, the right to freedom of association, the right of peaceful assembly, which are all guaranteed under the Covenants.<sup>70</sup>

## **2.1 The meaning of the concept of self-determination**

The principle of self-determination can mean a lot of different things and can also be achieved in different forms. The right to self-determination is a collective right and is a “group” right<sup>71</sup> and articles establishing the rights in international instruments refer precisely to “peoples”. But who are those peoples? During the drafting of the United Nations Charter the definition of “peoples” was debated at length but no agreement was reached nor was any definition given to the concept of self-determination. In the final draft it came out as a mere “principle”. In November 1989 the United Nations Educational, Scientific and Cultural Organization, hereafter UNESCO, held an International Meeting of Experts to study the concept of the Rights of Peoples. This group of experts gave certain description of the common features that “people” must have to possess the right to self-determination. The group mentioned that people must have some or all of the following characteristics; “a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection and common economic life”<sup>72</sup> The experts also stated that the “people” must be of certain number, at least more than a mere association of individuals within a State and it must have the will to be identified as a people as well as some common institution to express their will.

The concept of self-determination has been categorized by scholars into two main bodies: internal and external self-determination. Under those “headings” are

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<sup>69</sup> UN GA Res. 2200A (XXI) December 16, 1966, Article 1

<sup>70</sup> Antonio Cassese, “*Self-determination of peoples – A legal reappraisal*”, at 50-54.

<sup>71</sup> Group rights are rights where the right holder is a group of people rather than a mere individual.

<sup>72</sup> UNESCO. International Meeting of Experts on further study of the rights of peoples, at 8-9.

some sub-categories that provide different rights that will be reviewed later on. The internal self-determination is the right of peoples to control some of their internal affair within a country or enjoy “self rule” or certain autonomy within their homeland. An outcome from internal self-determination could be for example an autonomous region with special political system. The external self-determination is the peoples right to choose their judicial status vis a vis other states, according to international law and future outcome, which can mean separation and/or creation of an independent state.

Still the acceptance of the principle has been limited and also selective for those who are seeking the right. This is particularly done when it comes to ethnic groups, religious, cultural and language minorities. The international law fails to provide alternative remedy to those groups and does not grant the right to self-determination.<sup>73</sup>

## **2.2 The right to external self-determination**

The right to external self-determination is the right of an entity to decide its international status without interference of the state. People that have been deprived of independence by use of force or any other kind of occupation could constitute the right to external self-determination. The UN General Assembly resolution 1541 (XV) offers different outcomes for these peoples such as a) independence, b) free associations with some other state or c) integration with another country. There are different ways to seek those outcomes and it depends on people’s status when they exercise the right.<sup>74</sup>

### **2.2.1 Political decolonization**

Political decolonization has been the strongest reason for the claim for self-determination and has generally been recognized at international level. The UN GA resolutions concerning the right to self-determination have developed from being mere guidelines to being legally binding at customary law.

The UN GA resolution on “Granting of Independence to Colonial Countries and Peoples” from 1960 states the following;

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<sup>73</sup> Antonio Cassese, “*Self-determination of peoples – A legal reappraisal*”, at 63

<sup>74</sup> Guðmundur Alfredsson. *German Yearbook of International law*. “Greenland and the law of Political decolonization, 1982” at, 294

*“Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic process. It should be one which respect the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territories which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional process.”<sup>75</sup>*

If a colony chooses integration, it may or may not become a group within a State, the people within the State and the Non Self-governing territory shall be treated as equal, they shall have the right of citizenship and equal guarantees of fundamental rights without any discrimination.<sup>76</sup> Colonies that have chosen this option have often reduced their rights from peoples’ rights to group rights.<sup>77</sup>

More than 80 nations<sup>78</sup> have been decolonized and have joined the United Nations as sovereign independent states. Still there are some colonial territories waiting to exercise their right, such as the Western Sahara, Bermuda, Gibraltar and so on.<sup>79</sup>

As mentioned before (in 2.2) the options for political decolonization are independence, free association with some other state or integration with another country.<sup>80</sup> Most of the former colonial territories have chosen independence.<sup>81</sup> People living in colonies are not always consulted in referendum though many liberation movements having fought against the ruling state have been recognized as the voices of the people without a referendum being held. Colonies that have chosen free

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<sup>75</sup> UN GA Res. 1514(XV) December 14, 1960 “The Declaration on the Granting of Independence to Colonial Countries and Peoples” Principle VII

<sup>76</sup> UN GA Res. 1514(XV) December 14, 1960 “Declaration on the Granting of Independence to Colonial Countries and Peoples” Principle VIII.

<sup>77</sup> The implementation of the Right to Self-determination as a contribution to conflict prevention. *Report of the International conference of experts*, Guðmundur Alfreðsson “Access to International monitoring procedures: Choices between self-determination and the human rights of groups”, 1998 at 199

<sup>78</sup> Here is a list of former colonies that have decolonized and became sovereign independent state: <http://www.un.org/Depts/dpi/decolonization/trust2.htm> (12.03.08)

<sup>79</sup> Basic Facts about the United Nation, website: <http://www.un.org/aboutun/basicfacts/decolonization.htm> (12.03.08)

<sup>80</sup> Guðmundur Alfreðsson. *Self-Determination – International Perspectives*. “Different Forms of and Claims to the Right of Self-Determination, 1996 at 60

<sup>81</sup> Trust and Non-Self-Governing Territories, 1945-1999. Website: <http://www.un.org/Depts/dpi/decolonization/trust2.htm> (12.03.08)

association keep their options open later to become an independent state or have integration within another independent state or keep their *status quo*.<sup>82</sup>

### 2.2.2 Occupied Territories

The UN Charter prohibits the use of force to gain territory.<sup>83</sup> The UN GA resolution 2625 from 1970, often called the UN declaration of Friendly Relation, gives the right to people living under foreign occupation, alien subjection or exploitation the right to self-determination or at least it should be able to restore their prior situation. Although the right to self-determination was confirmed explicitly in the UN declaration of Friendly Relations, it could be more difficult to restore the right compared to the cases of political decolonization because of the problem concerning the definition of “alien subjugation, domination and exploitation”. In 1983 the General Assembly adopted resolution 38/16 also known as the “Universal realization of the right of peoples to self-determination” which tries to define the concept of “foreign occupation” and “limit the concept of foreign domination to intervention by use of force and military occupation.”<sup>84</sup> Still there are states that have enjoyed the right to self-determination because of occupation such as Estonia, Latvia and Lithuania that restored their independence from the Soviet Union in 1990’s. The Palestinian territory occupied by Israeli is still waiting to practice the right of self-determination.<sup>85</sup>

The Vienna Declaration, adopted at the World Conference on Human Rights in 1993, reaffirms the commitment contained in article 56 of the UN Charter; “*to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55*”<sup>86</sup>. In article 2, paragraph 2 the Vienna Declaration states the following;

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<sup>82</sup> Guðmundur Alfreðsson. *Self-Determination – International Perspectives*. “Different Forms of and Claims to the Right of Self-Determination, 1996 at 60.

<sup>83</sup> Charter of the United Nation, website: <http://www.un.org/aboutun/charter/> (15.07.08)

<sup>84</sup> Antonio Cassese, “*Self-determination of peoples – A legal reappraisal*”, at 93, and UN GA Res. 38/16 November 22, 1983 “Universal realization of the right of peoples to self-determination”.

<sup>85</sup> The implementation of the Right to Self-determination as a contribution to conflict prevention. *Report of the International conference of experts*, Guðmundur Alfreðsson “Access to International monitoring procedures: Choices between self-determination and the human rights of groups”, 1998 at 199.

\* Article 55 of the UN Charter; With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:  
a. higher standards of living, full employment, and conditions of economic and social progress and development;

*“Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.”<sup>87</sup>*

The declaration affirms the right to self-determination for those living under “alien domination or foreign occupation” and also allows people to “take any legitimate action” to restore their prior status.

### **2.3 The right to internal self-determination**

*“By internal self-determination is meant participatory: the right to decide the form of government and the identity of rulers by the whole population of a state and the right of a population group within the state to participate in decision making at the state level. Internal self-determination can also mean the right to exercise cultural, religious, or (territorial) political autonomy within the boundaries of the existing state.”<sup>88</sup>*

There are estimated 5000-7000 indigenous and minority groups in the world today, consisting of one and a half billion people. If all of these groups would have the right to self-determination it would threaten international peace and borders.<sup>89</sup> Some indigenous and minority groups have enjoyed the right to internal self-determination in the form of the right to exercise cultural or religious autonomy within a state borders. Some minorities have also enjoyed internal self-determination and have carried out their autonomous governments without interference from their

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b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

<sup>86</sup> Charter of the United Nations, website: <http://www.un.org/aboutun/charter/chapter9.htm> article 55 of the UN Charter. (30.07.08)

<sup>87</sup> Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993)

<sup>88</sup> Dr. Michael C. von Walt van Praag and more. The implementation of the Right to Self-determination as a contribution to conflict prevention. *Report of the International conference of experts*, held in Barcelona 1998, at 21.

<sup>89</sup> Guðmundur Alfredsson. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. Sonderabdruck aus Band 59. Nr.2. “The Right of Indigenous Peoples with a Focus on the National Performance and Foreign Policies of the Nordic Countries” at 537.

“dominator” - the Faroe Islands is one example. But what is the different between indigenous and minorities groups?

In 1998, UNESCO held a conference concerning “The Implementation of the Right to Self-determination as a Contribution to Conflict Prevention” In that conference a group of experts tried to define what characteristics constitute a minority. Principle elements of any definition of minority groups are those who share same characteristics such as ethnic, linguistic, cultural and religious identity and are distinct from the major population such as French Canadians living in Canada. Minority groups have been living on the territory for a long time, they have shared and developed their cultural habits and their future generations will inherit their legacy.<sup>90</sup> Still there is no plain definition of what constitute a minority because of different interests by different states. Minority groups do not always want to be defined as a minority groups because that could reduce their right to self-determination whereas minority groups do not enjoy the same right as “people” under international law.

In 1992 the UN GA adopted resolution 47/135 also known as the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”<sup>91</sup> and is inspired by article 27 of the ICCPR.<sup>92</sup> This resolution should protect minority groups within existing State from any discrimination and *“have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”*<sup>93</sup>

Indigenous people are those who are distinct from majority of the state, have been living on the territory for centuries and have their historical continuity which they will preserve to their future generations. They could be so-called natives on the

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<sup>90</sup> Dr. Michael C. von Walt van Praag and more. The implementation of the Right to Self-determination as a contribution to conflict prevention, at 20.

<sup>91</sup> UN. G. 47/135, December 18, 1992 “Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”.

<sup>92</sup> UN GA Res. 2200A(XXI) December 16, 1966 “International Covenant on Civil and Political Rights” Article 27 of ICCPR; In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

<sup>93</sup> UN. G. 47/135, December 18, 1992. Art. 2(1).

territory.<sup>94</sup> They identify themselves by the name of their people or their distinct nation, such as the Maasai people living in Kenya and Tanzania, the Saami people in northern Scandinavia, the Maya people in Guatemala, the Quechua in South-America and so forth. The right to internal self-determination for indigenous peoples is concerned with protection of cultural heritage, the possession of their land and benefits of natural resources as well as those basic human rights such as non-discrimination.<sup>95</sup> In 2007 the General assembly adopted resolution 61/295 also known as the “United Declaration on the Rights of Indigenous Peoples”. This declaration emphasizes the right for indigenous people to develop their historical heritage as well as maintaining their own institutions. It also gives them the right to self-determination to strengthen their social, economic and cultural development. Article 4 of the declaration gives them “right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”<sup>96</sup>

The concept of self-determination has evolved from being a political principle to fundamental human right in international law. Through the years the concept has gotten wider acceptance and has appeared in many international instruments, still there are cases where the international society has hesitated to apply the right. Many GA resolutions concerning the right to self-determination have been adopted through the years and have become legally binding as a customary law. The resolutions give certain direction and guidelines how states should carry out the right to self-determination to protect the main aim of the United Nations; to maintain international peace and security.

It is time to look into the case of Tibet and examine whether some of those international instruments could apply to the Tibetan case and see whether Tibet fulfills the condition of the right to self-determination.

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<sup>94</sup> Dr. Michael C. von Walt van Praag and more. The implementation of the Right to Self-determination as a contribution to conflict prevention.

<sup>95</sup> Namminersorneq pillugu Isumaliogatigiissitat, “Working Paper on Basic choices under International Law” Guðmundur Alferðsson. Website: [http://www.namminersorneq.gl/uk/uk\\_arbsgr4-3-01.htm](http://www.namminersorneq.gl/uk/uk_arbsgr4-3-01.htm) (02.08.07)

<sup>96</sup> UN. GA. 61/295, September 13, 2007. “United Nations Declaration on the Rights of Indigenous Peoples”

## Chapter III - Are Tibetans entitled to self-determination?

### 3.0 The Tibet autonomous region

Late in the year of 1950 the People's Liberation Army had occupied Tibet. In a White Paper<sup>97</sup> from 2004 the State Council of the People's Republic of China states that; "The peaceful liberation put an end to imperialist aggression against Tibet, enabled the Tibetan people to shake off political and economic fetters, safeguarded the unification of state sovereignty and territorial integrity, realized equality and unity between the Tibetan ethnic group and all other ethnic groups throughout the country as well as the internal unity of Tibet, and laid the foundation for regional ethnic autonomy in Tibet."<sup>98</sup>

On 23<sup>rd</sup> of May 1951 delegates from China and Tibet signed the 17-point agreement, which gave the Tibetan people the right of exercising national regional autonomy under the leadership of the Central People's Government.<sup>99</sup> Soon after having forced the Tibetan delegates to sign the 17-point agreement the People's Liberation Army occupied Lhasa and central Tibet and stationed the occupying force all over the Tibet region. When the Chinese government formed the Tibetan Autonomous region it only applied to the central Tibet, now called the "TAR" area and excluded the eastern part of Tibet, which became a part of China. Having divided Tibet into these areas the Chinese government made it clear that the 17-point agreement would only apply to the new "TAR" area. In 1954 the Chinese government made an agreement with the Indian government on border disputes and India formally recognized the Chinese authority over Tibet.<sup>100</sup>

In 1955 a preparatory committee worked on the establishment of the Tibet Autonomous Region. To be responsible for the implementation of the autonomy, the Committee set up political power that answered to the State Council. Soon Chinese government expelled the Tibetans from the Committee and gave the power to Chinese people.<sup>101</sup> This was a clear violation of article 4 of the 17-point agreement, which

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<sup>97</sup> The White Paper is a report from the State Council of the People's Republic of China that discusses important issue concerning different topics from time to time and reveals the governments view each time.

<sup>98</sup> White Paper of The Government, "*The Establishment and Development of Regional Ethnic Autonomy in Tibet*", website: <http://www.china.org.cn/e-white/20040524/1.htm> (08.08.08)

<sup>99</sup> 17-Point Agreement. website: <http://www.friends-of-tibet.org.nz/17-point-agreement.html> (06.08.08)

<sup>100</sup> International Commission of Jurist, "*Tibet – Human rights and Rule of Law*", at 49-50.

<sup>101</sup> International Commission of Jurist, "*Tibet – Human rights and Rule of Law*", at 49-50.



states, “The central authorities will not alter the existing political system in Tibet. The central authorities also will not alter the established status, functions and the power of the Dalai Lama. Officials of various ranks shall hold office as usual.”<sup>102</sup>

After the People’s Liberation Army had occupied Tibet there was general dissatisfaction among the Tibetans. In March 1959 there were rumors that the Chinese Government was going to kidnap the Dalai Lama. On the 10<sup>th</sup> of March an open revolt occurred in Lhasa; the Tibetan Government repudiated the 17-point Agreement and reiterated the claims for independence from China.<sup>103</sup> The Peoples Liberation Army put an end to the “Tibetan uprising”; the Central People’s Government implemented the “democratic reforms”<sup>104</sup> and overthrew the feudal system. On 28<sup>th</sup> of March the State Council dismissed the local government of Tibet and the democratic reforms were implemented in the “TAR” area. In article 11<sup>105</sup> of the 17-point Agreement the Chinese government promised not to impose any kinds of reforms on Tibet and specifically said that the local government of Tibet could carry out their own reforms according to demands from the Tibetan People. Implementing the so-called “democratic reforms” in Tibet was a clear violation by the Chinese Government of article 11 of the 17-point Agreement.

Religion and civil administration were separated and the region was divided into counties. In 1961, the first multi-party elections were held in Tibet and four years after the People’s Congress of the Tibet Autonomous region came together for the first time, the Tibet Autonomous Region was formally established.<sup>106</sup>

According to article 4 of the Chinese Constitution all ethnic minorities are equal. Tibet operates as an ethnic minority with regional autonomy.<sup>107</sup> Tibet

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<sup>102</sup> 17-Point Agreement. Website: <http://www.friends-of-tibet.org.nz/17-point-agreement.html> (06.08.08).

<sup>103</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination*,” at 1-40 and International Commission of Jurist, “*Tibet – Human rights and Rule of Law*”, at 50-51.

<sup>104</sup> The democratic reforms were economic and social plan to transform Chinese farmers into industrialized communist society. The main idea was to switch agricultural society into industrial society and provide cheap labour so the Chinese wouldn’t have to import heavy machine.

<sup>105</sup> Article 11 of the 17-point Agreement; 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 shall be settled by means of consultation with the leading personal of Tibet.

To read the 17-point Agreement in full text, website: <http://www.friends-of-tibet.org.nz/17-point-agreement.html> (06.08.08).

<sup>106</sup> White Paper of The Government, “*The Establishment and Development of Regional Ethnic Autonomy in Tibet*”, website: <http://www.china.org.cn/e-white/20040524/1.htm> (08.08.08).

<sup>107</sup> Constitution of the People’s Republic of China, website: <http://english.peopledaily.com.cn/constitution/constitution.html> (05.08.08)

autonomous region exercises its right through the National People's Congress of the Republic of China. The Tibetan autonomous region has the right to carry out its own self-government ordinances in the field of political, economic and cultural matters. The region has also been given the right to develop minority education and other cultural characteristics such as media, art, journalism etc.<sup>108</sup> The military in Lhasa is built up with Chinese troops which are under a Chinese military commander.<sup>109</sup>

### 3.1 Violation of human rights in Tibet

The formal abuse of human rights in Tibet by the People Republic of China began in 1950 when the People's Liberation Army invaded Tibet. First of all when the Chinese government forced the Tibetan delegates to sign the 17-point agreement. The Chinese government acknowledges that Tibet had not been under Chinese authority at the time of the invasion. The violation of human rights in Tibet extends to many fields such as "suppression of religion; population transfers; denial of reproductive rights; discrimination in employment, education and housing; destruction of the environment; enforced disappearances; denial of freedom of expression; torture and summary executions."<sup>110</sup> Some of these violations will be discussed later on. According to the Tibetan Government in-exile more than 1,2 million Tibetans died as a direct result of the Chinese occupation and the Chinese Liberation Army conducted a systematic destruction of Tibetan characteristics and cultural identity.<sup>111</sup> After the Tibetan's revolution in 1959 the Dalai Lama and his Cabinet fled to India and soon after the Chinese State Council dismissed the Tibetan government to "safeguard the unification of the country and national unity".<sup>112</sup> Soon after their arrival to India they re-established the Tibetan Government in exile based on three administrative organs (executive, legislature and judiciary) with democratic principles.<sup>113</sup> In 1963 the

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<sup>108</sup> Fifty years in Tibet, Regional Autonomy in Tibet, website: <http://zt.tibet.cn/tibetzt/tibet50-en/figure/doc/006.htm> (05.08.08)

<sup>109</sup> Encyclopædia Britannica "Tibet", website: <http://search.eb.com/eb/article-71425> (10.08.08)

<sup>110</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. "The Case Concerning Tibet. Tibet's Sovereignty and the Tibetan People's Right to Self-determination," at 1-40 and International Commission of Jurist, "Tibet – Human rights and Rule of Law", at 60.

<sup>111</sup> The question of Self-determination – The cases of East Timor, Tibet and Western Sahara, 1996 at 46-47.

<sup>112</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. "The Case Concerning Tibet. Tibet's Sovereignty and the Tibetan People's Right to Self-determination," at 42.

<sup>113</sup> "The Kashag, or the Council of Ministers, is the highest executive authority. The ATPD is the government's legislative wing of the Tibetan Government-in-Exile. It has framed and passed the Charter of Tibetans in Exile, which in effect is the Constitution of the exile government. Tibetan

representative body of “new” government drafted a Constitution of Tibet, based on the principle of modern democracy with principles of Buddhism.

The 17-point agreement was signed under duress and the negotiators were threatened with use of force. According to article 2, paragraph 4 of the United Nation Charter, the member states must refrain use of forces, which means that forceful occupation of an independent state is violation of international law.<sup>114</sup> The terms of the United Nation Charter is reaffirmed in the UN General Assembly resolution nr. 2625 from 1970 that has become a part of customary international law.<sup>115</sup>

Article 52 of The Vienna Convention of the Law of Treaties, deals with treaties that are signed under duress;

*“A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”<sup>116</sup>*

Therefore the 17-point agreement is void and not legally binding in any way. The treaty was concluded when the People’s Liberation Army had occupied Chamdo and threatened more violation if the Tibetan delegates wouldn’t sign under the 17-point agreement.<sup>117</sup>

### **3.1.1 Freedom of religion**

The Buddhist religion has been indistinguishable from the Tibetan identity for many centuries. According to article 7 of the 17-point agreement the Chinese Government promised to protect and respect the Buddhist religion on Tibet;

*“The policy of freedom of religious belief laid down in the Common Programme of the CPCC shall be carried out. The religious beliefs, customs and habits of the Tibetan people shall be respected and lama monasteries shall be protected. The central authorities will not effect a change in the income of the monasteries.”<sup>118</sup>*

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Supreme Justice Commission is the highest judicial organ and guardian of the Charter.” The Government of Tibet in exile, “*Democratization of Tibetan Government in Exile*”, website: <http://www.tibet.com/Govt/demo.html> (03.08.08)

<sup>114</sup> Charter of the United Nation, website: <http://www.un.org/aboutun/charter/> (15.07.08)

<sup>115</sup> UN GA Res. 2625 (XXV) October 24, 1970

<sup>116</sup> Vienna Convention on the Law of Treaties, 1969. Website:

[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (09.08.08)

<sup>117</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination*,” at 1-40.

<sup>118</sup> 17-Point Agreement, website: <http://www.friends-of-tibet.org.nz/17-point-agreement.html> (06.08.08)

From 1949-1976 the Chinese government spread extensive propaganda against the religion of Buddhism being of the opinion that the religion was the main obstruction to its control over Tibet. People were “re-educated” and told that religion was *the great enemy* and should be condemned. Despite article 7, of the 17-point agreement, 6259 monasteries were destroyed by 1959; these monasteries had been residences to more than half million monks and nuns.<sup>119</sup> Many historic and cultural buildings were destroyed and other religious items were moved from Tibet.<sup>120</sup>

Freedom of religion is protected in international law. On 10 December 1948 the Chinese government adopted the United Nation Declaration on Human rights, which protects freedom of religion. Article 18 of the Declaration gives everyone the right to freedom of thought, conscience and religion. The article also stresses the right for people to practice their religion, individually or in community.<sup>121</sup> The Chinese government has also signed\* the International Covenant on Civil and Political rights which also protects freedom of religion under article 18.<sup>122</sup> The right to freedom of thought, conscience and religion has also been established under the United Nation's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief<sup>123</sup> and last but not least in the Convention on the prevention and Punishment of the Crime of Genocide but the Chinese Government has not yet signed those instruments. The Chinese government has clearly violated article 7 of the 17-point agreement as well as other international treaties that protect freedom of religion.

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<sup>119</sup> The Government of Tibet in exile, “*Religion and National identity*”, website: <http://www.tibet.com/whitepaper/white7.html> (03.08.08)

<sup>120</sup> Veronique de Weichs de Wenne, (rapporteur). Unrepresented Nations and People Organization, 1996. The question of Self-determination – The cases of East Timor, Tibet and Western Sahara, 1996 at 46-47.

<sup>121</sup> Office of the High Commissioner for Human Right, “Universal Declaration of Human Rights”, website: <http://www.unhchr.ch/udhr/miscinfo/carta.htm> (02.08.08) and UN GA Res. 217 A (III) December 10, 1948. “Universal Declaration of Human Rights”.

\* Signed by the Chinese Government on October 9, 2005.

<sup>122</sup> UN GA Res. 2200A(XXI) December 16, 1966 “International Covenant on Civil and Political Rights”

<sup>123</sup> UN GA Res. 36/55 November 25, 1981 “Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief”

### 3.1.2 Population transfer and discrimination in employment

The Chinese Government started to transfer Chinese civilians into Tibet during the invasion in 1949 and still does. The Chinese policy to transfer Chinese citizens into Tibet threatens the survival of the Tibetan nation and makes it a “minority” in its own country. The main aim is to force the Tibetans to become a “minority” in China so they won’t be able to resist to the Chinese authority as a majority in Tibet. The Chinese Government offers great benefits to the “han” nationality<sup>124</sup> if they move to Tibet.

The Government of Tibet in-exile issued a White Paper about human rights violation in Tibet, stating that: “Housing, health-care, cultural and educational facilities are all part of an enormously expensive undertakings to provide for the Chinese in Tibet. Other costly subsidies include high-altitude allowances, and transporting wheat and rice by truck to Tibet.”<sup>125</sup> The longer the “han” people stays in Tibet the more benefits do they get. The Chinese who move to Tibet receive much higher wage than the average Tibetans and get longer vacations where the Chinese government pays all their expenses.<sup>126</sup> This employment discrimination is the cause of uncontrolled inflow of Chinese migrants who want to work in Tibet. The Labour Act of the People’s Republic of China from 1994 prohibits any kind of discrimination in employment. Section 12 of the Labor Act states; “Labourers shall not be discriminated against in employment, regardless of their ethnic community, race, sex or religious belief.”<sup>127</sup> The protection against discrimination in employment is also given under article 5(c) (i) of the International Covenant on the Elimination of All Forms of radical Discrimination.<sup>128</sup> By offering Chinese civilians great benefits while working in Tibet and refusing those same benefits to the Tibetans is a violation of the Chinese Labour Act as well as the ICERD.

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<sup>124</sup> The Han nationality is the largest nationality in China among 55 other nationalities. The Han nationality is 92% of the total population.

<sup>125</sup> The Government of Tibet in Exile. “*Tibet: Providing Truth from Facts*”, website: <http://www.tibet.com/whitepaper/white8.html> (03.08.08)

<sup>126</sup> Annual wages for Chinese personnel are 87 per cent higher in Tibet than in China. See on the website: <http://www.tibet.com/whitepaper/white8.html> (03.08.08)

<sup>127</sup> National Laws on Labour, social security and related human rights. Chinese Labour Act. July, 5 1994. Webstie: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm> (05.08.08)

<sup>128</sup> UN GA Res. 2106 (XX) December 21, 1965 “International Convention on the Elimination of All Forms of Racial Discrimination”

### 3.1.3 Freedom of movement

The United Nation Declaration of Human rights protects the freedom of movement under article 13, paragraph 1, where “everyone has the to freedom of movement and residence within the border of each state”<sup>129</sup> The right to freedom of movement is also protected under article 12, paragraph 1, in the International Convention on Civil and Political rights with similar wording as the UNDHR.<sup>130</sup>

The Chinese government has posed a restriction on freedom of movement in Tibet. Since 1950’s the Chinese government established the household registration system that categorizes the citizens into different levels according to their residences.<sup>131</sup> The Tibetans are registered at a certain place - usually where they are born - and are entitled to have residence there. If the Tibetans are going to another place, even for a short period of time, they must get official permission. For example during the preparation of the 40<sup>th</sup> anniversary of annexation of Tibet in 1989 a demonstration occurred in Lhasa and 40.000 Tibetans were expelled from Lhasa to their registered residences.<sup>132</sup>

### 3.2 Tibetans right to self-determination

The Peoples Liberation Army of China has occupied Tibet since 1950 and China has ever since violated fundamental rights of the Tibetan people. The Chinese government claims its “ownership” of Tibet, based on historical relationship with the Mongol Khanate.<sup>133</sup> When the Chinese became independent form the Mongol Khanate the Chinese claim that Tibet became under the central government and became an administrative region under the China’s Yuan Dynasty in China. It can’t be denied that Tibet was under various different foreign influences in its long history but it would be hard to find any state that has not been under subject of foreign domination over such a long time.

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<sup>129</sup> UN GA Res. 217 A (III) December 10, 1948. “Universal Declaration of Human Rights”

<sup>130</sup> UN GA Res. 2200A (XXI) December 16, 1966 “International Covenant on Civil and Political Rights”

<sup>131</sup> Congressional-Executive Commission on China. *China’s Household Registration System: Sustained Reform Needed to Protect China’s Rural Migrants*. Website: <http://www.cecc.gov/pages/news/hukou.php> (10.08.08)

<sup>132</sup> Tibetan Center for Human Rights and Democracy, “*Land and Housing Right in Tibet*”, website: [http://www.tchrd.org/publications/topical\\_reports/dispossessed-land\\_and\\_housing\\_rights-2002/](http://www.tchrd.org/publications/topical_reports/dispossessed-land_and_housing_rights-2002/) (10.08.08)

<sup>133</sup> The Department of Information and International Relations Central Tibetan Administration. *Tibet - Providing Truth from Facts*. at, 8. 3<sup>rd</sup> ed. 1996.

On 9<sup>th</sup> September 1959 the Tibetan Government in exile appealed to the General Assembly of the United Nations to resist the Chinese aggression. The Dalai Lama referred to a former appeal from 1950 which had been adjourned because of possible peaceful resolution between the two states. “In his appeal the Dalai Lama reiterated Tibet’s status as a sovereign state, based upon the Thirteenth Dalai Lama’s declaration of independence in 1912, the Simla Convention, Tibet’s World War II neutrality, and the recognition of the Tibetan passport used by the 1946 Tibetan trade Delegation”<sup>134</sup>

In October 12, 1959 the General Assembly of the United Nations adopted resolution 1353(XIV) also known as the “Question of Tibet. Respect for the fundamental human rights of the Tibetan People and for their distinctive cultural and religious life.” This resolution deals with the fundamental human rights and freedom of the Tibetan people. It stresses the importance to respect the civil and religious freedom of the Tibetan people as well as their cultural heritage. The resolution points out the importance to respect the principles of the UN Charter and the Universal Declaration of Human Rights to continue world peace, by doing so the Tibetan autonomy must be respected.<sup>135</sup>

The General Assembly adopted another resolution nr. 1723 (XVI) in October 27, 1961, concerning the situation in Tibet, expressing grave concern about ongoing violation of fundamental human rights in Tibet, mentioning also violation of the principle of self-determination and hoping that Member States would make all appropriate measures to achieve the purpose of the resolution. This resolution indicates that the Tibetan people do have the right to self-determination whereas it is stated; “*Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedom, including their right to self-determination*”.<sup>136</sup>

In December 18, 1965 the General Assembly adopted resolution 2079 also known as “The Question of Tibet”. The resolution reaffirms the previous resolutions concerning the situation in Tibet and continues to express deep concern about the

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<sup>134</sup> International Commission of Jurists, *Tibet – Human rights and Rule of Law*, at 58

<sup>135</sup> UN GA Res. 1353(XIV) October 21, 1959 “Question of Tibet. Respect for the fundamental human rights of the Tibetan People and for their distinctive cultural and religious life.”

<sup>136</sup> UN GA Res. 1723(XVI) December 20, 1961. “Question of Tibet. Right to self-determination”

suppression of human rights of the Tibetan people.<sup>137</sup> In all of these three resolutions adopted by the General Assembly, the Tibetan nation is recognized as a “people”.

Some UN General Assembly resolutions such the resolution “Concerning Friendly Relations”<sup>138</sup> have explicitly said that “people” may possess the right to self-determination that governments must respect that right and act in accordance with international law.

As mentioned in Chapter II, UNESCO held an International Meeting of Experts in 1989 to study the concept of the Rights of Peoples and tried to define which common features “peoples” must have to possess the right to self-determination. This group of experts gave certain description of what might constitute “peoples” They mentioned that people must have some or all of the following characteristics; “a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection and common economic life”<sup>139</sup> The experts also stated that the “peoples” must be of a certain number, at least more than a mere association of individuals within a State and it must have the will to be identified as a people as well as some common institution to express their will.<sup>140</sup> The Tibetan people obviously constitute these characteristics as the experts define the concept of people. The Tibetan people clearly have their historical tradition and ethnic identity. The Tibetan people speak their unique language that is very different from the Chinese language. The Tibetan people have practiced the Buddhist religion for many centuries and the religion is one of their ideological characteristics. The Tibetan people have lived in specific area, the Tibetan plateau, and have maintained territorial integrity.<sup>141</sup>

The Permanent Tribunal of Peoples met in Strasbourg in 1992 to discuss the Tibetan case and their legal status. The Permanent Tribunal of Peoples concluded that the Tibetans met the legal criteria of “people” to enjoy the right to self-determination. It also concluded that the Chinese presence in Tibet is considered to be foreign domination of the Tibetan people which is therefore entitled to enjoy the right to self-determination.<sup>142</sup>

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<sup>137</sup> UN GA Res. 2079(XX) December 18, 1965. “Question of Tibet”

<sup>138</sup> UN GA Res. 2625 (XXV) October 24, 1970

<sup>139</sup> UNESCO. International Meeting of Experts on further study of the rights of peoples, at 8-9.

<sup>140</sup> UNESCO. International Meeting of Experts on further study of the rights of peoples, at 9.

<sup>141</sup> Dr. Michael C. von Walt van Praag and more. The implementation of the Right to Self-determination as a contribution to conflict prevention.

<sup>142</sup> Permanent Tribunal of Peoples, Session on Tibet: Verdict (Strasbourg 1992) at 14.



The Montevideo Convention on the Rights and Duties of a States, signed in 1933 between the American States deals with the right and duties of states as well as the definition of statehood. Articles in the Convention, such as article 1, has been accepted as a rule of customary international law. Article 1 of the Montevideo Convention says; *“The state as a person of international law should possess the following qualifications:(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”*<sup>143</sup>

The White Paper issued by the State Council of the Chinese Government states; “No government of any country in the world has ever recognized Tibet as an independent state.”<sup>144</sup> Even if no government has recognized Tibet as an independent state by some special declaration there are other ways to recognize a state by certain act of behavior. Before the occupation, the Tibetan Government had signed treaty with the Mongolian Government in 1913 were the states recognized each other’s independency.<sup>145</sup> The Tibetan Government also concluded treaties with other states such as Great Britain and Nepal. In fact the British invited delegates from China and Tibet to conclude the Simla Convention as equal sovereign states. Prior to 1950 the Government of Tibet functioned as a government that was administered by Dalai Lama and his cabinet. In the report *“The Case Concerning Tibet”*, it is says; *“That government, free from outside interference, administered the welfare of the Tibetan people through civil service, judicial and taxation system, as well as trough a postal and telegraph service, and a separate currency. The government controlled borders and issued passports to its people, which were recognized internationally.”*<sup>146</sup>

The International Commission of Jurists’ Legal Enquiry Committee on Tibet reported in its study on Tibet’s legal status that; *“Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950*

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<sup>143</sup> Montevideo Convention on the Rights and Duties of States. Article 1. Website: <http://www.molossia.org/montevideo.html> (20.06.08)

<sup>144</sup> White Paper of The Government, *“Origins of So-called Tibet Independence”*, website: <http://www.china.org.cn/e-white/tibet/9-2.htm> (14.08.08).

<sup>145</sup> Treaty of friendship and alliance between the Government of Mongolia and Tibet 1913

<sup>146</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. *“The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination,”* at 1

*foreign relations of Tibet were conducted exclusively by the Government of Tibet, and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent State.*”<sup>147</sup>

Under article 1, of the International Covenants on Civil and Political rights the right to self-determination means that the people who are entitled to self-determination should “freely determine their political status and freely pursue their economic, social and cultural development”.<sup>148</sup>

The Tibetan government did not freely determine their political status when the Chinese Government forced the Tibetan delegates to sign the 17-point Agreement while threatening continuous use of force in Tibet. It is clear that Tibet was a sovereign independent state before the Chinese occupation. The Chinese occupation in Tibet constituted an illegal act of aggression and the Tibetan people live under alien subjugation and should be entitled to exercise their right of self-determination, without any interference from the People’s Republic of China.

If the Tibetan nation would be allowed to exercise their right to self-determination it would be interesting to know which way they would go. As mentioned in Chapter II of this thesis there are several ways to implement the right of self-determination. When a State exercises the right of external self-determination the usual outcome is one of the following; independence, free associations with some other state or integration with another state. On the other hand when a State exercise the internal self-self-determination the outcome might be “political autonomy within the boundaries of the existing state”<sup>149</sup> It is hard to tell whether the Tibetan nations would choose independent or political autonomy because the freedom of speech is very limited in Tibet. The Tibetan Assembly of People’s Deputies (part of the government in exile) have said that they are “unwilling to settle for anything less than complete independence, and that position appears to have substantial support in Tibet.”<sup>150</sup> Dalai Lama has stated that; ““the Tibetan people must once again be free to develop culturally, intellectually, economically and spiritually”” despite this statement he has

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<sup>147</sup> International Commission of Jurist, “*Tibet and Chinese People’s Republic*”, at, 5-6.

<sup>148</sup> UN GA Res. 2200A (XXI) December 16, 1966 “International Covenant on Civil and Political Rights”

<sup>149</sup> The implementation of the Right to Self-determination as a contribution to conflict prevention. *Report of the International conference of experts*, held in Barcelona 1998, at 21.

<sup>150</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination*,” at 50.

also said that; “the future status of Tibet is negotiable”.<sup>151</sup>

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<sup>151</sup> Andrew G. Dulaney, Dennis M Cusack and Dr. Michael van Walt Praag. “*The Case Concerning Tibet. Tibet’s Sovereignty and the Tibetan People’s Right to Self-determination,*” at 50.

## Chapter IV

### 4.0 Conclusion

The concept of self-determination has developed from being a political principal to becoming one of the fundamental human rights in international law.

The concept started to develop into customary law within the General Assembly that passed one resolution after the other, each new one strengthening the substance of the term. It became a part of conventional law when the two International Covenants on Human rights were agreed upon in 1966. There are several different ways to exercise the right of self-determination, the most popular are; a.) political decolonization, b.) independence and c.) free association with some other state or integration with another country. The Scope of the right to self-determination expanded with the United Nation GA resolution 2625 from 1970 and more “people” were able to exercise the right. People living under alien subjugation and exploitation that constitute violation of the principle of the UN Charter constitute the right to self-determination. Constant denial of fundamental human right might also constitute the right to self-determination according to UN GA resolution 2625.

The Chinese government claims its “ownership” of Tibet, based on historical relationship with the Mongol Khanate. When the Chinese became independent from the Mongol Khanate the Chinese claim that it heritage Tibet from the Mongolian. In 1950 the People’s Liberation Army occupied Tibet and forced them to sign under the 17-point agreement. Therefore the 17-point agreement is void and not legally binding in any way. Prior to 1950 Tibet had been a sovereign independent state and had all requirements for constituting statehood. The formal abuse of human rights in Tibet by the People Republic of China began in 1950 when the People’s Liberation Army had occupied Tibet. According to the Tibetan Government in exile more than 1,2 million Tibetans died as a direct result of the Chinese occupation. The Chinese occupation in Tibet constituted an illegal act of aggression and the Tibetan people live under alien subjugation and should be entitled to exercise their right of self-determination according to the UN GA resolution from 1970. Not only do the Tibetan constitute the right to enjoy self-determination because of alien subjugation but also because of ongoing violation of fundamental human rights.

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