

Tibet - The International Mistake of the Century

Executive Summary

TIBET: The International Mistake of the Century; From Negligence to Resolve - Mechanisms for Effect

This report has been prepared by Late Claudia Johnston, an independent researcher in International Law, now studying "Dispute Resolution" at the University of Victoria, Canada.

The report is the result of three years of research conducted at the United Nations Archives in New York, the United Nations Peace Palace Archives in Geneva, and the International Court of Justice Library at The Hague. The report shows how the international community - in particular the United Nations, individual UN Member States, parliamentary bodies and diplomats - can help to solve the issue of Tibet. Principal findings of this research can be summarised as follows: "The International Mistake of The Century" explores the primary reasons why there has been no solution, nor significant move towards a solution, for the crisis in Tibet. A primary reason is that the United Nations, and individual Member States, have been conducting their decisions based on the false assumption that Tibet is not a "State", but "an internal affair" of China. UN official records show this to be a mistake, because:

1. Information regarding the international character of the "Invasion of Foreign Forces Into Tibet" has yet to be appropriately considered for resolve. At the time of the invasion of Tibet in 1949/1950 by Chinese forces, Tibet was an independent State. In October 1950 the Tibetan Government maintained its international character as a "State" by sending a plea to the Secretary General of the United Nations. The plea inspired the United Nations Member State of El Salvador to enter the issue "Invasion of Foreign Forces

Into Tibet" on the First Committee Agenda for November 1950. This meeting, though convened, was postponed due to "insufficient information". The Committee members identified that they did not have access to information, imperative to consider, for appropriate deliberations by their Governments. Thus, First Committee Members were unable to recommend United Nations action. Three prominent information issues were identified:

(1.1) The Tibetan plea to the Secretary General.

(1.2) Demonstration of Tibetan International Instruments of Statehood

(1.3) The Tibet/China Dispute.

(1.1) The Tibetan plea to the Secretary General.

(1.1.1) The Secretary General did not distribute the Tibetan plea to Members of the General Assembly, although he was obliged to do so under the UN Resolution 378 V, "Duties of States in the Event of the Outbreak of Hostilities", declared at the 308th UN Plenary Meeting, 17th November 1950.

(1.1.2) The "Invasion" was scheduled for consideration on the 24th November 1950 First Committee Agenda, thus obligating the Secretary General to respond according to procedure declared in the 378 V Resolution, 17th November 1950.

(1.1.3) The Secretary General was repeatedly requested, at least on three separate occasions, to distribute the Tibetan plea. The Member of El Salvador, who had initiated the issue of the "Invasion of Foreign Forces Into Tibet" on the First Committee Agenda, states his explicit attempts to get the Secretary General to comply during the verbatim of the 24th November meeting.

(1.2) Tibetan International Instruments of Statehood

(1.2.1) The First Committee purposefully postponed consideration of the "Invasion", in anticipation of the arrival of the Tibetan Delegation to present their "International Instruments of Statehood".

(1.2.2) The verbatim of the 24th November 1950 First Committee Meeting

concludes with the acknowledgement that the Tibetan delegation was "on its way" to present "International Instruments of Statehood

(1.3) The Tibet/China Dispute.

(1.3.1) The 24th November 1950 First Committee Meeting, held to consider "Invasion of Foreign Forces Into Tibet", identified, in the verbatim, the crisis as a "Dispute" regarding the aggressive invasion across Tibetan territorial boundaries.

(1.3.2) The United Nations has recorded the territorial invasion of Tibet, by Chinese forces, as a "Dispute", filed in June 1959. The "Dispute" file was officially handled at least 16 times, according to the file roster. There is no indication that this initial "Dispute" file has been reviewed since October 1968. Identification of the file is made by reference to "PO 240 Tibet".

(1.3.3) Under the United Nations Charter, Chapter Five, The Security Council, Article 27, Paragraph 3, decisions under Chapter VI (Pacific Settlements of Disputes), under paragraph 3 of Article 52 (Regional Arrangements): "A Party to a Dispute shall abstain from voting".

(1.3.4) As China is clearly a "Party" to the Dispute with Tibet, China is obligated under the United Nations Charter to abstain from vetoing on any issue related to the Tibet Dispute.

(1.3.5) The PRC, as Parties to the Tibetan Dispute, have been allowed inappropriate influence considering the outstanding and unresolved nature of the "Dispute". The PRC changed the title of reference from the historical United Nations recognition of "Tibet", to what is now referred to as "Xizang". This historical interruption is demonstrated through scrutiny of United Nation's yearbooks. The initial U.N. yearbooks refer to Tibet as "Tibet". From the period of PRC take over of the China seat, and PRC subsequent influence thereof, reference to the title of Tibet has been changed to "Xizang".

Conclusion

None of the First Committee Members had the Plea to consider in context, nor information regarding the international character of the incident to relate

back to their Governments for direction. This condition has remained in perpetuity for 47 years, and is yet to be redressed. Furthermore, during the period of perpetuity, the "People's Republic of China" took the United Nations seat for China. Thus, the original "Party to the Dispute" with Tibet became active within the United Nations forum. Since the PRC placement at the U.N., the terms of reference for "Tibet" has been changed to "Xizang". Has this change interfered with the original "Dispute" file? Is it a cause why the original "Dispute" file appears not to have been addressed since 1968?

2. Due to the situation of perpetuity, the issue of Tibetan Statehood remains unconsidered by the United Nations.

United Nations mechanisms for "States" to employ peaceful solutions to "Disputes", have not been utilised. Thus, the Tibetan Nation continues to suffer the severe consequences of this delayed presentation of their "State" status.

(2.1) United Nations records clarify the mistaken assumption that to be a "State" one must be recognised by other "States". According to the "Convention of Rights and Duties of States", signed at Montevideo in 1933, "The political existence of the State is independent of recognition by other States".

(2.2) The Tibetan Government in Exile is able to demonstrate that it meets the traditional definition of "Statehood" by: (1) Having a population, (2) Having a Government, (3) Possessing a territory -even though it is presently seized, and disputed, (4) Maintaining international

interchange. (2.3) Demonstration of Tibetan State Instruments - such as: (a) Tibetan Seal of Government, (b) Tibetan International Treaties, (c) Tibetan Flag, (d) Tibetan currency, (e) Tibetan Postage, (f) Tibetan passports.

(2.4) The truth that all of these Tibetan International Facts and Instruments have been functional entities of the Tibetan State, used in commerce, and agreement with other States, demonstrates historical recognition of their International and State character

(2.5) The International Law Commission explicitly exclaims: " Recognition is

unconditional and irrevocable". (Yearbook of the International Law Commission, 1971, Vol II, Part II, page 16.)

Conclusion

United Nations records document, via the "Convention on The Rights and Duties of States", signed at Montevideo in 1933, that: "The political existence of the State is independent of recognition by other States". This is further confirmed by the International Law Commission in 1971, that: "Recognition is unconditional and irrevocable". These give historical testimony that Tibet does not require current recognition by any State to be, in fact, a State. These conditions of international agreement regarding Statehood, especially the 1933 Montevideo Convention, now bring the original treatment of the Tibetan Plea by the United Nations Secretary General, into severe scrutiny. However, it is agreed that political co-operation is dependent on such recognition. Therefore, the importance of demonstrating the historical, and current, functional capacities of the Tibetan Government is imperative to the task of international recognition. The effort to achieve current acknowledgement is based in the belief that the international community of States will respect historical root doctrines, as presented in Montevideo and by the Law Commission, and, thus respected, will guide each State's decision regarding Tibet, based in the root of international agreement. A Way Forward

The Tibetan Government in Exile has endeavored to establish dialogue with the PRC for decades. Though sincere efforts have continued over the years, no concrete result has been achieved. We must remain hopeful, but also remain vigilant. The PRC must understand negotiations are the inevitable bottom line; private or internationally monitored. The strategy discussed herein represents a full scale, comprehensive plan to internationally make clear the bottom line demand is for negotiations. Let it be understood, should private efforts fail, the need for international monitoring will be a prepared final alternative for remedy. The strategy to clarify "Tibetan Statehood", and reveal the "Dispute Status" are not distracting approaches to simply confront

the PRC. Rather, the vehicles of both Statehood and Dispute Status, are the prerequisites to obtain the key to the United Nations door of Dispute Resolution mechanisms. Historically, the Tibetan effort has channeled all energies to the attention of the Human Rights violations within Tibet. However, as remaining the falsely perceived "internal affair" of China, these efforts have gone without achieving resolve. The International Community of United Nations Member States is yet to be empowered by any mechanistic facilitation to engage United Nations deployment of specific conflict resolutionary tools. Clarification of both Tibetan Statehood, and revealment of the outstanding "Dispute" status, provides those tools to empower the international community of U.N. Members to act within appropriated United Nations Policy and Procedure. It must be clearly understood, that the initiative to clarify Statehood and Dispute Status, is solely to achieve international negotiation protection and participation by the United Nations. The message to be sent to the PRC regarding this initiative is bottom line negotiations; privately, or internationally monitored. The combined effort of pursuing private negotiations, accompanied by the relentless pursuit of international participation and monitoring is a bonafide opportunity to clearly checkmate the issue of negotiations. There is no other goal. The report sets out a process by which this "international mistake of the century" and consequent gross miscarriage of justice can be reversed by the international community. A way forward to implement a peaceful, negotiated resolution for the crisis of Tibet is identified.

3. The first step is to provide the opportunity for Tibet to demonstrate Statehood. As a State, the United Nations mechanisms of resolve become available to the Tibetan Nation.

(3.1) In the event of hostilities between States, the Secretary General is obliged to send a "Peace Observation Contingency", as per United Nations Resolution 378 V, "Duties of States In The Event of The Outbreak of Hostilities" 308th Plenary Meeting, declared on 17th November 1950.

(3.2) In the event of a "Dispute" between States, the Secretary General is obliged to "Administrate the Constitution of a Panel For Inquiry and Conciliation", UN Resolution 268 III, 199th Plenary Meeting; 29th April 1949.

4. United Nations Policy and Procedure must be followed to engage the process for Tibet to demonstrate "Statehood".

(4.1) As the First Committee of the General Assembly has remained in perpetual postponement for 47 years, waiting for the demonstration of Statehood by the Tibetan Government, the first priority is to reopen this postponement and demonstrate Tibetan International Instruments of Statehood.

(4.2) Reopening of the First Committee Postponement requires a UN Member Nation to agree to address the "General Committee", which considers such issues for it's recommendation concerning the matter, to the General Assembly. However, the "General Committee" is only a body designed for recommendation. The General Assembly has, on numerous occasions, decided to ignore the recommendations of the General Committee when the General Assembly wanted to hear information directly. Here, it is imperative to understand that the task will be to convince as many United Nation Members regarding the "new and significant information" that is to be provided to the General Assembly. The process for approving a G.A. Agenda item, will be dependent on a majority vote, cast among the General Assembly, as was the case concerning the "Question of Tibet" during the years, 1959, 1961. Therefore, the task over the next year is to thoroughly inform, and prepare, each UN Member for that General Assembly Vote regarding the reopening of the postponement for the GA Assembly agenda. The UN Member requesting the reopening of the postponement must announce that:

(a) "Significant information" is now available for consideration. (This claim will be supported by submissions of internationally recognized authoritarian opinion regarding:)-- The continuance of Tibet's opportunity to demonstrate

"International Instruments of Statehood".-- The revelation of the United Nation's "Dispute" file on Tibet, and the international ramifications thereof. Further elaboration by qualified opinions in support of the Tibetan demonstration of Statehood, namely;-- What "International Instruments" constitute a legal demonstration of Statehood?-- The legal "significance" of International Instruments of Statehood.-- What constitutes illegal impediments to bonafide "Statehood" in the eyes of the international community.-- What Rights are inherent in Statehood.-- How can Statehood be demonstrated under the extraordinary conditions of exile.-- How has the League of Nations, and the United Nations, responded to Government in Exile?

(b) "Reopening of the postponement for inclusion on the General Assembly Agenda is requested". Once a U.N. Member State submits this notice of new "significant information", and requests to reopen the postponement, the General Committee is then seized with the decision to make a recommendation to the General Assembly.

(4.3) The People's Republic of China is a Member of the General Committee, and will have a vote on that Committee. However, there is no veto power associated with the General Committee, who only maintains a recommendation status. It is clear that it is the responsibility of the United Nations and its Member States to ensure that, as a "Party to the Dispute", China will be obligated, under the UN Charter, to abstain from vetoing should the Tibet/China Dispute ever be referred to the Security Council for any reason. End Resolve: The strategy pursues that once the Tibetan Government in Exile demonstrates its "International Legal Instruments of Statehood", and the Tibet/China Dispute status is clearly revealed, the Secretary General, and the General Assembly, will be in a bonafide position to respond to the Tibetan crisis through the United Nations Policy and Procedures, which clearly delineate the Dispute Resolution processes for States. Thus, we all maintain one goal, negotiated settlement. Privately, or publically inspired. The choice is incremental. The choice for checkmate.

5. The Report also explores other international precedents, which demonstrate resolve on the part of the international community to circumstances similar to the Tibet/China Dispute.

(5.1) Trusteeship.

(5.2) Internationalisation.

(5.3) Economic Mechanisms.

(5.4) Reconstruction