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TIBETAN DIASPORA IN THE SHADOW OF THE SELF-IMMOLATION CRISIS: CONSEQUENCES OF COLONIALISM

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CHAPTER THREE

TIBETAN DIASPORA IN THE SHADOW OF THE SELF-IMMOLATION CRISIS: CONSEQUENCES OF COLONIALISM

ROBERT D. SLOANE*

Self-immolation is a reclamation of sovereignty over one's own self within a state of siege. Biological life is taken in an assertion of political life. It is this possibility that is terrifying to the state in its quest to stabilize territorial sovereignty.

—Emily T. Yeh¹

I.

From February 27, 2009, to date (at the time of this writing, July 17, 2013), in at least 120 confirmed cases,² Tibetans living in areas incorporated into the People's Republic of China ("PRC")³ have set themselves on fire.⁴ The media has referred to these tragic acts as self-immolation. Their pace has increased exponentially in recent years and months. In November 2012 alone, twenty-eight Tibetans self-immolated.⁵ Contrary to common belief, self-immolation does not literally mean suicide by fire, which is more precisely denoted by the word *auto-cremation*. Rather, *self-immolation* literally means "offering of oneself as a sacrifice," particularly in the service of an ideal or deeply held belief.⁶ It originates in "the Latin 'molare,' meaning to make a sacrifice of grain."⁷ For Tibet, its etymological origin may be significant. It indicates perhaps the quintessential reason, so far as it may reliably be ascertained despite PRC censorship and other barriers to primary research,⁸ that many Tibetans have recently decided to set themselves on fire. It is an act of profound dissent and protest, among other sentiments.⁹

Self-immolation is a comparatively recent phenomenon among both Tibetans within Tibet and, to a lesser extent, those residing in exile.¹⁰ But

for many years (since roughly 1959), and to date, Tibetans have expressed their rejection of Chinese rule in a less drastic way, namely, by fleeing occupied Tibet. At great personal risk, Tibetans of all ages—from young school children to the elderly—flee Tibet each year and seek refuge in India, Nepal, and (rarely) elsewhere, even though they thereby generally condemn themselves to statelessness, poverty, and permanent separation from family and friends, among other tragic consequences. For most of the past two and a half decades, between 2,500 and 3,500 Tibetans have fled Tibet annually. The exodus of Tibetans persists to this day despite the natural perils of a journey over the Himalayas and the political, especially security, perils of apprehension by Chinese police, military forces, and border patrols, which can lead to torture, detention, and, in extreme cases, extrajudicial killing. With a native Tibetan population of just 6 million, and in view of the risks involved, these numbers speak volumes. After a new wave of protests swept across Tibet in 2008, China intensified its chokehold over the region. It also—diplomatically, economically, and otherwise—coerced Nepal and India to adopt harsh policies that further discourage Tibetans from seeking greater freedoms in these states. The upshot, according to recent estimates, is that the number of Tibetans who manage to flee China annually has declined dramatically.

After more than fifty years, however, an estimated 150,000 Tibetans live in exile. In colloquial terms, their situation is one of the most enduring among the world's unresolved refugee crises—*colloquial* because few Tibetans in exile enjoy any, still less refugee, status under national or international law, including aid or protection from the United Nations High Commissioner for Refugees. Most reside in scattered settlements, some quite remote, in India and Nepal (approximately 125,000 and 25,000, respectively). Smaller communities exist in the United States, Canada, Switzerland, and a few other states. Neither India nor Nepal is a party to the 1951 Refugee Convention or its 1967 Protocol.¹¹ In part as a consequence, neither state recognizes refugees as such under its law or affords them comparable legal status. It would therefore be more accurate to characterize the roughly 150,000 Tibetans in exile as stateless.¹²

The reason for the Tibetan crisis of statelessness is not complicated: for the reasons detailed below, their true state of nationality has been under belligerent occupation for more than sixty years, since the People's Liberation Army ("PLA") invaded Tibet in 1950. One year later, China purported formally to annex and incorporate it into the PRC. Stateless Tibetans, in short, lack a state to which to return. Until internal political changes in China proper make negotiations over, at a minimum, a genuine autonomous arrangement for the Tibetan people plausible, there can be no

resolution to the Tibetan refugee, or statelessness, crisis.

The tragic, and tragically neglected,¹³ wave of self-immolations in Tibet in the past few years and the longstanding Tibetan refugee crisis share a common origin in China's colonization of Tibet. Since Tibet's occupation, China has treated the Tibetan people exactly as colonizer treats colonized.¹⁴ Hence both the refugee crisis and the more recent self-immolation crisis represent sociopolitical and psychological consequences arising from the same colonial dynamic. By saying this, I mean to cast doubt on the predominant view, even among largely sympathetic scholars, activists, and politicians in (mostly Western) liberal democracies: namely, that Tibet is just another minority region within China and that the human rights violations suffered by its people, however serious, originate in China's generally inequitable treatment of its national minorities.¹⁵ The truth is that, legally, Tibet is a country, a nation-state, under longstanding belligerent occupation,¹⁶ and Tibetans qualify as a people, in every legal sense of the word, entitled under international law to exercise their right to self-determination—including the right to choose independence, associated statehood, or integration with another state.¹⁷ The same right has been afforded to most every other formerly colonized people in the postwar era.¹⁸

Self-immolation is not just one more manifestation of political dissent in response to the denial of this right to self-determination; increasingly, it is the *only* available form of dissent possible in the police state in which Tibetans live. For an increasing number of Tibetans, it seems, self-immolation is preferable to a life of colonial exploitation or a worthwhile sacrifice to express their dissent from and protest of more than half a century of foreign occupation, human rights violations, and international neglect. Without appreciating the colonial status and colonization of Tibet and its people, respectively, the phenomenon of self-immolation can be, as it has often been, misunderstood—*ascribed*, for example, to socioeconomic factors.¹⁹ The Tibetan refugee crisis, similarly, cannot be appreciated accurately apart from its colonial context. That crisis will persist, and Tibetans in exile will remain stateless, until the world recognizes the colonial status of their state and its belligerent occupation. In short, the same context that has led thousands of Tibetans to seek greater freedom outside their historic territory year after year has now led more than 120 Tibetans to set themselves on fire. The self-immolation crisis, which is likely to persist, is therefore of a conceptual piece with the diaspora of Tibetans in exile—and unlikely to end until Tibet's people enjoy their inalienable right to self-determination.

II.

The Trusteeship Council, one of the six original organs established by the UN Charter, suspended its work in 1994 after the tiny territory of Palau became an associated state (with the United States).²⁰ The Council deemed decolonization, the postwar process that dismantled Europe's colonial empires, thereby quadrupling the number of states in the world in less than half a century, complete. The Council still exists, but has suspended its operations indefinitely, because it believes colonies do not. In legal fact, Tibet, a colony the size of Western Europe, or roughly one-quarter the size of the United States, exists to this day. It is inhabited by about six million Tibetans but also, because of PRC tax breaks and similar economic incentives offered to Han settlers, by a greater number of Han who have migrated from China proper. Slowly but inexorably, these Han settlers (now estimated to constitute about 7.5 million, roughly 1.5 million more than the number of Tibetans) are overwhelming Tibet's indigenous population, as they did in Inner Mongolia decades ago, where Mongols now make up less than 20% of the population. Because of Han migration, Tibetans have likewise become a minority in Tibet, strangers in their own land.

As a contemporary colony, Tibet manifests the same morally repugnant characteristics as its predecessors and essentially the same dynamics that characterized the prewar colonies of European empires in Africa, Latin America, Asia, and elsewhere. These include brutal and discriminatory treatment of the colonized by the colonizer, theft and exploitation of the colony's natural resources, and appropriation of its territory for the benefit of the colonizer. As a *de jure* and *de facto* colony, Tibetans should enjoy the rare legal entitlement to what the Canadian Supreme Court has referred to as *external* self-determination, including a right to secede from the PRC if they so choose in a free and fair referendum.²¹

In 1945 (notably before Tibet's invasion), Article 2(4) of the UN Charter, to which China is an original party, established the prohibition on "the threat or use of force against the territorial integrity or political independence of any state" as what many deem the foundational axiom of the law governing relations between states in the postwar era. For one thing, after the defeat of the Nazis, Europe could no longer avoid the centrifugal sociopolitical dynamics breaking apart its erstwhile colonial empires. States also recognized, finally, the injustice of both aggression and colonization, predominant features of the world public order since the conventional origin of the classical law of nations after the Peace of Westphalia. And although the First World War's Allies largely reconfigured

rather than dismantled colonialism at the Versailles conference, the moral bankruptcy of the practice became increasingly evident in the interwar period. The old norm of political legitimacy, statehood, and sovereignty based on the crude measure of effective control, which finds its classic expression in the *Tinoco* arbitration,²² gave way to a theoretical entitlement to statehood based on the (at first, largely idealistic) Wilsonian principle of the self-determination of peoples.²³

The self-determination of peoples, since its intellectual inception in the Wilsonian era, has begged the question what makes one group, but not another, a *people* for purposes of the principle. Scholars and politicians alike have long recognized that not all self-identified peoples can, as a practical matter, enjoy a legal entitlement to statehood or independence. Consequently, as a rule, self-determination must be respected *internally*.²⁴ I do not propose in this regard to break new ground or, indeed, analyze this issue in any depth within the limits of this chapter. It suffices to observe that Tibetans qualify as a people under *any* of the criteria enunciated in the mainstream international legal discourse since as early as the *Aaland Islands* precedent of the League of Nations²⁵ and, more recently, the influential decision of the Canadian Supreme Court in *Reference re Secession of Québec*.²⁶

In the first place, unlike most of the states established as a consequence of decolonization after World War II, Tibetans share more than a common history of colonization or simple residence within (often arbitrary) lines that were later codified in conformity with the questionable post-colonial norm of *uti possidetis*.²⁷ As I have emphasized in past work, one persistent problem afflicting the debate over Tibet's historical status and its relationship to China is that "the distinctly modern Western conception of the nation-state, with precise borders and a single centralized government, is probably inapposite to pre-twentieth century China and Tibet alike."²⁸ But that is true for well over two-thirds of the nearly 200 states in existence as of 2013. Few, if any, of those states (and *China* is among them) have had their legitimacy or right to exist *as* a state questioned on that basis. Furthermore, Tibet, unlike a clear majority of the others, enjoys a genuine *national* history stretching back millennia, that is, a history of existence as a distinct polity (even before the Common Era) inhabited by a distinct people sharing a host of characteristics and common governance.

From its origins in antiquity until the 1200s of the Common Era, it is, to the best of my knowledge and research, undisputed among historians that the nation of Tibet existed and enjoyed complete political independence. Indeed, even "Chinese court historians recognized that by the eighth century, Tibet had become the most powerful nation in Asia,"

having “actually conquered several Chinese provinces.”²⁹ In the ninth century, China and Tibet famously concluded a treaty, which provides in relevant part:

Both Tibet and China shall keep the country and frontiers of which they are now in possession. The whole region to the east of that [demarcation] being the country of Great Tibet, from either side of that frontier there shall be no warfare, no hostile invasions, and no seizure of territory.³⁰

China’s historical claim to “own” Tibet, ironically, relies not on historical relations between China and Tibet *inter se* but on the political relationships between Tibet and two *foreign* (non-Chinese) dynasties that ruled China for centuries, namely, the Yuan (Mongol) (1271-1368) and the Qing (Manchu) (1644-1911) dynasties. During these periods, Tibet enjoyed more *de facto* political independence than China. Both the Mongols and the Manchus ruled China directly. In contrast, Tibet continued at all times to exercise most modern sovereign competences within the geopolitical and spiritual framework of the unique *cho-yun* (priest-patron) relationship that developed between Tibetan Buddhist leaders and first, the Mongol, and later, the Manchu emperors who conquered and governed China. In the interim, that is, during the reign of China’s native Ming dynasty (1368-1644), the nation of Tibet enjoyed a cultural and political renaissance known as its “Second Kingdom.” At that time, it exercised even greater political autonomy, largely free “of both Mongol and Chinese control.”³¹

China finally overthrew the Manchus, which had long been weakened by European colonialism, among other forces, in 1911. Shortly thereafter, Tibet expelled the two Manchu *ambans* (diplomatic representatives)—the sole vestige of Manchu influence in Tibet—from Lhasa.³² Their role had at any rate been largely symbolic for decades, if not centuries, not a meaningful indicia of Qing sovereignty or control. On February 13, 1913, the Thirteenth Dalai Lama, recognizing that modernity compelled urgent changes (political, social, military, and economic) and appreciating, in particular, the need for Tibet to emerge from its isolation and clarify its national status, formally proclaimed Tibet’s independence as a sovereign state on the model of the European nation-state. Without detracting from its symbolic force, it bears emphasizing that this proclamation did not create, but rather described or confirmed, Tibet’s status as an independent polity under, *inter alia*, the formal criteria elaborated by the European law of nations that had come to dominate the world in the twentieth century. Historians, legal scholars, and international fact-finding studies have uniformly concluded that even if Tibet’s pre-twentieth century status were

genuinely debatable, it would nonetheless remain undisputed that between the collapse of the Manchu Qing Dynasty in 1911 and the PLA's invasion of Tibet in 1950, Tibet enjoyed *de jure* and *de facto* independence, "the conditions of statehood as generally accepted under international law,"³³ that is, under the Montevideo or similar criteria.³⁴

That leaves, as China's sole claim to sovereignty over Tibet, arguments based on its invasion and belligerent occupation of Tibet in and since 1950. Contemporary international law, of course, invalidates the annexation of territory by aggression, rendering it null and without legal force or effect. In 1950, Tibet qualified as an independent state. The PLA's aggression did not change that status. But almost before the ink dried on the UN Charter, China, despite having only recently expelled European and Japanese colonial powers from its own territory, ironically launched its own colonial adventure. In violation of Article 2(4) of the Charter, which prohibits the acquisition of territory by force against the "political independence of any state," the PLA marched into Tibet after winning the Chinese civil war. Tibet had relied for centuries on its difficult terrain and unusual geographic isolation for protection against foreign domination. But twentieth-century technology and geopolitical change weakened, if not vitiated altogether, these defenses. And although Tibet theoretically retained, under the nascent law of Article 51 of the UN Charter, an "inherent right"³⁵ to self-defense, with a small army of poorly armed and technologically ill-equipped soldiers, it had no serious chance of defending itself against the battle-hardened and technologically superior (not to mention far more numerous) forces of the PLA.

Of course, China vehemently denies that Tibet has ever enjoyed independence; in its view, Tibet has always been part of China. But this is a manifest fiction. Every comprehensive scholarly study concludes to the contrary.³⁶ Regardless, that is, even assuming the point were genuinely debatable rather than dogmatic (a product of longstanding, widespread, and effective propaganda by the PRC, both within China and abroad), a chief purpose of the UN Charter's core norm in Article 2(4) is precisely to insist that debates of this sort henceforth be resolved *peacefully*, that is, by one of the pacific methods of dispute settlement set forth in Article 33, paragraph 1, of the Charter. Otherwise Article 2(4) would have changed little from the prewar baseline. After all, seldom, if ever, did states in the centuries before the Charter's conclusion *not* justify their territorial wars and adventures, at least in part, by historical, cultural, religious, social, or legal claims, generally asserting that the invaded polity, for one or another such reasons, belonged to the invader. Saddam Hussein, for example, unsurprisingly did the same when he invaded Kuwait in 1990.

Together with Article 2(4), the principle of the self-determination of peoples theoretically established the consent of peoples, as expressed, if necessary, in free and fair referenda, as the postwar basis for sovereign legitimacy. But as China recognizes, any concession to the idea of a referendum on self-determination would lead to the immediate rejection of Chinese rule by the Tibetan people. So to this day, while China insists that the vast majority of Tibetans want to remain part of China, it refuses to consider letting Tibetans vote in a plebiscite that would establish the truth one way or the other. The reason is hardly recondite.

In retrospect, two historical contingencies facilitated Tibet's rapid and, in international relations, largely unnoticed absorption by China. First, it is a sad irony that "the isolation Tibet's government ha[d] self-consciously cultivated to *shield* Tibet from foreign domination proved the principal reason that Tibet found itself unable to achieve political recognition as a modern nation-state—and thus powerless to resist foreign domination by communist China."³⁷ Second, the Korean War broke out at the same time as China's invasion of Tibet. On June 25, 1950, North Korea crossed the 38th parallel, inaugurating the first of the hot wars that punctuated the Cold War, which would dominate international relations and global consciousness for the next forty years. Tibet is a casualty of that period. Its people, as one author aptly put it, remain orphans of the Cold War.³⁸

Tibet's government sent a cable to the United Nations on October 25, 1950, pleading for international assistance to resist the PLA's aggression. Perhaps a few years later in postwar history, that cable would have led to action, prompting some kind of collective self-defense or military resistance. At a later time it may have prompted an international force under UN auspices, a U.S.-led military intervention of the sort that repulsed North Korea's invasion of South Korea, or a unilateral resistance by the United States such as its reaction to North Vietnam's aggression against South Vietnam years later.³⁹ As the Fourteenth Dalai Lama communicated to the nascent United Nations:

The attention of the world is riveted on Korea, where aggression is being resisted by an international force. Similar happenings in remote Tibet are passing without notice We can assure you, Mr. Secretary-General, that Tibet will not go down without a fight, though there is little hope that a nation dedicated to peace will be able to resist the brutal effort of men trained to war, but we understand that the United Nations has decided to stop aggression whenever it takes place. The armed invasion of Tibet for the incorporation of Tibet in Communist China through sheer physical force is a clear case of aggression The problem is simple. The Chinese claim Tibet as a part of China. Tibetans feel that racially, culturally, and

geographically they are far apart from the Chinese. If the Chinese find the reactions of the Tibetans to their unnatural claim not acceptable, there are other civilized methods by which they could ascertain the views of the people of Tibet; or, should the issue be surely juridical, they are open to seek redress in an international court of law⁴⁰

More than half a century later, even young Tibetans who have never known an independent state of Tibet, and can hardly speak of it without fear, continue to feel—indeed, to *know*—as the cable puts it, “that racially, culturally, and geographically they are far apart from the Chinese.” This is so despite the best efforts of the PRC, which have involved intense propaganda, economic incentives to Tibetans and ordinary Han, who have been encouraged to resettle in Tibet, and chronic human rights violations along with brutal repression of the remotest hint of Tibetan nationalism.

The unique characteristics of the Tibetan people constitute a second, independent criterion on the basis of which Tibetans must be deemed a people under contemporary international law. China has insisted for years that Tibetans constitute one of its fifty-five “minority nationalities,” of which the Han allegedly constitute one, despite accounting for more than 90% of China’s 1.3 billion residents. To those familiar with Chinese and Tibetan history, culture, sociology, or politics, the idea that Tibetans are a Chinese minority is preposterous. It will suffice to canvass a few of the most glaring distinctions between the Tibetan and Chinese peoples.

First, Tibetans speak their own language, which dates back millennia. It is not a dialect of Mandarin or Cantonese. It does not even bear an etymological relationship to the Chinese language group—unlike, for example, Japanese, which uses Chinese characters. Tibetan has its own alphabet and grammatical structure. In terms of etymology, linguists characterize it as part of the Tibeto-Burmese language group. The Tibetan language also does not contain a word for China that includes Tibet: In Tibetan, *Bod* refers to Tibet, while *Gyanag* means China. Only in the post-occupation period have Tibetans come to use the term *Zhonngguo* for the PRC (that is, for China including Tibet).

Second, the vast majority of Tibetans adhere to an intricate, unique, and highly distinctive religious tradition. The form of Buddhism that evolved over centuries in Tibet differs doctrinally and culturally from both Indian variants and the predominant Chinese sect, that is, *Chán* (Zen in Japanese). At any rate, only a minority of Han practice Buddhism, a tradition that entered China from India in the fifth century of the Common Era. Confucian, Taoist, and other spiritual or cultural traditions have for most of Chinese history been much more widespread and dominant within Chinese civilization than Buddhism. They remain so today. Tibetan

Buddhism, in contrast, originated in the unique fusion of Indian Mahayana Buddhism and the indigenous Tibetan religion or spiritual tradition of Bonpo, which, like the Tibetan language, dates back millennia, culminating in the Vajrayana tradition that came to prevail in Tibet and Mongolia.

Third, Tibetans differ racially from Han. “Han Chinese” is a tautology; there are no *non*-Han Chinese in a racial, cultural, or ethnic sense. The characterization of some Chinese citizens as “Han Chinese” originated in the postwar era. It is part of the fiction created and perpetuated by the PRC to justify Chinese colonization of areas, including Tibet and East Turkestan, which China calls Xinjiang. China characterizes these regions as part of a greater China, the “Motherland,” not coincidentally, a project similar to (but more successful than) the effort of Slobodan Milosević and his allies to establish a “greater Serbia.” China’s policies towards Tibet reflect colonial motives, such as natural resource exploitation and the need for territory to accommodate China’s huge Han population—as well as, I think, misplaced national pride. For Tibet is no more part of a Chinese “Motherland” than France could rightfully be said to be part of a hypothetically reconstituted Roman Empire. Even today, not only do most Tibetans not regard themselves as Chinese, most *Han* do not regard Tibetans as Chinese. China’s elite has long considered China the literal and figurative center of civilization, the “Middle Kingdom.” Tibetans historically had been one of the foreign peoples that China characterized as barbarians beyond its civilization’s borders. The idea that Tibet is part of a Chinese “Motherland” is a twentieth-century invention.

Turning from history, culture, and sociology to law, yet another reason that has been proffered for Tibet’s supposed status as part of China is treaty relations. Preliminarily, it is worth noting that Tibet’s entry into numerous treaties with states including Nepal, India, Mongolia, the United Kingdom, and *China* in the first half of the twentieth century casts serious doubt on the assertion that China has always controlled Tibet’s foreign affairs.⁴¹ But the gravamen of this aspect of China’s claim today is that regardless of Tibet’s status historically, it became an inalienable part of China after the 17-Point Agreement of 1951.⁴² That treaty states in strikingly irredentist language that “the Tibetan people shall return to the big family of the motherland—the People’s Republic of China.”⁴³ Because, with few exceptions, only states can be parties to treaties,⁴⁴ the very fact that China felt the need to ground its future relationship with the Tibetan people and their government on such a legal basis ironically implies, contrary to China’s position, that Tibet had indeed been a state before the 17-Point Agreement. Why, after all, had Tibet left “the big family of the motherland”? Why did it need to “return”? Surely the answer

cannot be, as China suggests, European colonialism. Only a literal handful of foreigners resided in Tibet before the Chinese invasion, and unlike China, no European state ever colonized Tibet. China nonetheless ascribes any Tibetan desire for independence or autonomy to foreign instigation, typically meaning Western states that allegedly want to “split” China. Again, the true wishes of Tibet’s people could be readily ascertained by a plebiscite. China unsurprisingly refuses to consider this simple expedient.

An irredeemable defect at any rate invalidates the 17-Point Agreement: the PRC imposed it on Tibet by violence, including coercion of both Tibet (by the threat of an invasion of Lhasa and other areas) and its government’s personal representatives (by the threat of violence against them if they refused to sign). Shortly after Tibet’s belligerent occupation in 1950, the Dalai Lama, facing few real choices, sent official Tibetan delegates to Beijing to “negotiate.” But “under duress that included both [threats of] personal violence and large-scale military retaliation against Tibet, [and] acting without the authority or approval of the Tibet government, [they] signed the so-called 17-Point Agreement.”⁴⁵ The treaty is therefore “null and void *ab initio*”⁴⁶ under the law of treaties. Even if it were valid initially, the PRC abrogated the 17-Point Agreement almost immediately after its signature and continuing to date. China materially breached the treaty by, among other violations, coercively modifying Tibet’s existing local government and imposing severe restrictions on the Tibetan people’s freedom to practice their religion.⁴⁷

Yet another reason that the Tibetan people qualify legally as a *people* and merit self-determination is China’s history of persistent human rights violations in Tibet. These violations include not only violence against the person and restrictions on freedom of conscience and expression, but also complete refusal to allow Tibetans to exercise any form of internal self-determination—including, even though China deems Tibetans a minority, the *de minimis* minority nationality rights enumerated in Article 27 of the International Covenant on Civil and Political Rights (“ICCPR”). China denies to the Tibetan people the rights, among others, to freedoms of religion, speech, education, political participation, and economic or cultural autonomy. Nomads have recently been forcibly resettled and traditional, often historic, structures and homes in Lhasa demolished to make room for new Chinese construction. Serious civil and political rights violations include systematic torture, summary execution, and arbitrary detention, practices that have long been part of China’s response to any manifestation of Tibetan nationalism or dissent from Chinese rule.⁴⁸ China’s human rights violations continue to have grave consequences for the Tibetan people, most recently illustrated by its brutal crackdown on

widespread political demonstrations in 2008, and even more recently, by its callous response to the tragic wave of self-immolations in Tibet.

For these reasons, as the Canadian Supreme Court suggested, Tibet's people may well have an additional claim to external self-determination based on China's persistent refusal to let them exercise internal self-determination (sufficient autonomy, political, cultural, and otherwise, within the larger nation-state), in combination with the PRC's severe and persistent human rights abuses⁴⁹—a criterion intimated as early as the *Aaland Islands* precedent of the post-World War I era.⁵⁰ The PRC has shown consistently that it will not allow Tibetans even the minimal rights afforded to “ethnic, religious or linguistic *minorities*” (let alone those afforded to *peoples*) by international law, including the minority rights guaranteed by Article 27 of the ICCPR, “the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”⁵¹

In sum, Tibetans qualify as a *people* who should be entitled under international law to external self-determination under any definition of the latter term that does not reduce this central legal concept of the postwar era to a largely empty slogan. Yet for decades, the Fourteenth Dalai Lama, (until recently) Tibet's political and spiritual leader, has not insisted on self-determination. He has not asked for the referendum on Tibet's status to which his people remain legally entitled. His priority has been to secure meaningful cultural autonomy, an arrangement that would sacrifice political self-determination for the sake of preserving the Tibetan people's rich cultural, religious, ethnic, linguistic, and other heritage.⁵² Because this modest request, too, has been met with obstinate refusal and a steady and inexorable process of Sinicization, it should not be surprising that Tibet's people today see few options except self-imposed exile, which perpetuates a crisis of statelessness, and more recently, self-immolation, a new response to what has rightly been described, colloquially even if not legally, as the cultural genocide of the Tibetan people.

III.

Predictably, China's position on the self-immolations, consistent with its approach to any manifestation of dissent in Tibet, is to blame the Dalai Lama. This position is both implausible and ironic in the face of, among other developments, the Dalai Lama's relinquishment of any claim to political authority and, for well over two decades before, his public and repeated affirmation that he seeks only greater cultural and religious autonomy for Tibetans. China's position on the self-immolations is as

preposterous as it is tragic: that a nearly 80-year-old monk has managed to penetrate one of the most strictly controlled political societies in existence today in order to orchestrate a geographically widespread campaign of self-immolations from abroad in cooperation with Tibetan refugees and their foreign supporters. A representative article in the *China Daily* quotes Wang Chengxian, the deputy Communist Party Secretary of the Abo Tibetan and Qiang autonomous prefectures: “For the exiled 14th Dalai Lama and his [associates] in India, instigating self-immolation is just a means of realizing their political goal of splitting Tibet from China.”⁵³ Similarly, Chinese Foreign Ministry spokesman Hong Lei said that “the Dalai Lama and his associates have been instigating Tibetan independence and creating ‘disturbances’ and that [he] and his associates ‘single-handedly’ planned” one of the self-immolations.⁵⁴ China has also characterized Tibetans who self-immolate as terrorists and enacted a new “public security offense” that subjects those who attempt it to criminal prosecution.⁵⁵

The PRC’s rhetoric, however divorced from reality and colored by its colonial agenda, betrays the true cause of the self-immolation crisis. Despite more than half a century of PRC effort—ranging from financial and social incentives, to censorship, to abduction of a six-year-old boy,⁵⁶ to “patriotic reeducation” sessions mandated for Tibet’s monasteries and nunneries, to chronic human rights violations against the person, including torture, arbitrary detention, extrajudicial executions, and other forms of political violence—the PRC cannot convince some six million Tibetans that they are a minority nationality of the Chinese people. Tibetans know that they are not Chinese. They know that Tibet is not part of China.⁵⁷ They maintain a cultural, historical, religious, ethnic, linguistic, and perhaps above all, *national* identity that differs from that of the 1.2 billion plus Han who populate China proper.

Tibet is a sovereign state under illegal foreign occupation. It is the world’s largest colony.⁵⁸ Only brute military force and the political and economic power of modern China today, combined with an intense propaganda campaign within China and abroad, obscure Tibet’s colonization. Until that status changes, until China allows the Tibetan people to exercise their right *as* a people to self-determination, no effort “to control Tibetan discontent by means of carrot and stick” will be availing.⁵⁹ Hence the self-immolation crisis *within* Tibet casts considerable light on the unresolved refugee crisis *without*—where some 150,000 Tibetans reside in exile, largely as stateless persons.⁶⁰ Neither self-immolations nor the Tibetan diaspora will cease until Tibet’s people receive the same right that every other formerly colonized people should

receive in the postwar era: self-determination. As the world's largest remaining colony, Tibet's right to external self-determination, including, if its people so choose, independence as a sovereign state, should be legally undisputed.⁶¹

Notes

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¹ Int'l Campaign for Tibet [ICT], *Storm in the Grasslands: Self-Immolations in Tibet and Chinese Policy*, 16 (2012), available at <http://www.savetibet.org/wp-content/uploads/2013/06/storminthegrassland-FINAL-HR.pdf> (quoting Emily T. Yeh, *On "Terrorism" and the Politics of Naming*, J. SOC'Y CULTURAL ANTHROPOLOGY (2012), available at <http://www.culanth.org/files/HotSpot-Yeh.pdf>) [hereinafter *Storm in the Grasslands*].

² ICT, *Self-Immolations in Tibet: Fact Sheet* (last updated Feb. 27, 2013), available at <http://www.savetibet.org/resource-center/maps-data-fact-sheets/self-immolation-fact-sheet> [hereinafter *Self-Immolation Fact Sheet*].

³ By Tibet, I mean more than the Tibet Autonomous Region (TAR). The PRC established the TAR in 1965 and misleadingly suggests that it is coterminous with Tibet. By Tibet, apart from the TAR, I mean to refer to traditionally Tibetan areas of the PRC, namely, parts of the contemporary PRC provinces of Qinghai, Gansu, Sichuan, and Yunnan. The TAR corresponds roughly to the Tibetan province of Ü-Tsang. The PRC broke up the former Tibetan provinces of Amdo and Kham and incorporated them into, respectively, Qinghai and Gansu (Amdo), and Gansu, Sichuan, and Yunnan (Kham).

⁴ In addition, six Tibetans residing in exile have self-immolated. See *Self-Immolation Fact Sheet*, *supra* note 2. For a comprehensive symposium on the issue, see *Tibet is Burning — Self-Immolation or Political Protest?*, 25 REVUE D'ETUDES TIBÉTAINES (Katia Buffetrille & Françoise Robin eds., Dec. 2012)(Fr.), http://himalaya.socanth.cam.ac.uk/collections/journals/ret/pdf/ret_25.pdf.

⁵ *Self-Immolations Hit 90 Mark*, RADIO FREE ASIA (Nov. 30, 2012), available at <http://www.rfa.org/english/news/tibet/burning-11302012155443.html>.

⁶ See THE NEW OXFORD AMERICAN DICTIONARY 1538 (Erin McKean ed., 2d ed. 2005); see also CONCISE OXFORD ENGLISH DICTIONARY (Catherine Soanes & Angus Stevenson eds., 11th rev. ed. 2009).

⁷ *Storm in the Grasslands*, *supra* note 1.

⁸ Since the international community first took notice of the crisis of self-immolations in Tibet, the PRC has imposed a media blackout throughout Tibet and

deployed the full resources of the state's propaganda machinery in an effort to blame the self-immolations on the Dalai Lama and the Tibetan government-in-exile. See, e.g., Cui Jia, *Monks Vent Anger at Self-Immolation*, CHINA DAILY, Dec. 3, 2012. China also responded to the self-immolations in Tibetan areas by imposing curfews, banning kerosene and other incendiary materials, further abridging human rights, and intensifying its "patriotic reeducation" campaigns in monasteries and elsewhere.

⁹ *Tibet's Future: The Limits of Despair*, ECONOMIST, Mar. 9, 2013.

¹⁰ See generally Carole McGranahan & Ralph Litzinger, *Self-Immolation as Protest in Tibet*, FIELDSIGHTS – HOT SPOTS, CULTURAL ANTHROPOLOGY ONLINE (Apr. 9, 2012), available at <http://www.culanth.org/fieldsights/93-self-immolation-as-protest-in-tibet>.

¹¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267. See Tibet Justice Center [TJC], *Tibet's Stateless Nationals: Tibetan Refugees in Nepal* 44 (2002) [hereinafter *Tibet's Stateless Nationals: Nepal*]; TJC, *Tibet's Stateless Nationals II: Tibetan Refugees in India* 41 (2011) [hereinafter *Tibet's Stateless Nationals: India*]. Both reports can be found at <http://www.tibetjustice.org/reports/>.

¹² The Convention Relating to Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117, defines a stateless person as "a person who is not considered as a national by any State under the operation of its law." *Id.*, art. 1. The vast majority of Tibetans residing in exile in India and Nepal qualify as stateless, so defined, and the remainder should be characterized as de facto stateless: in practice, they lack the nationality, or any of the generally associated rights and privileges, of any state. See *Tibet's Stateless Nationals: India*, *supra* note 11, at 51-58; *Tibet's Stateless Nationals: Nepal*, *supra* note 11, at 46-48.

¹³ Self-immolation, in general, is a phenomenon so rare and shocking to the collective political conscience that a single act grips the world's attention, as did the self-immolation of Thich Quang Duc in Vietnam in 1963, see, e.g., Robert F. Worth, *How a Single Match Can Ignite a Revolution*, N.Y. TIMES, Jan. 21, 2011, or, more recently, Tarek al-Tayeb Mohamed Bouazizi in Tunisia in 2011, see, e.g., *Tunisia's Troubles: Sour Young Men*, ECONOMIST, Jan. 6, 2011. It is remarkable and sad that some 120 self-immolations in a span of just over three years have led to little more than a few articles in the press and pusillanimous expressions of concern from UN officials and institutions. See, e.g., Edward Wong and Jim Yardley, *100th Self-Immolation Reported Inside Tibet*, N.Y. TIMES, Feb. 14, 2013; *Self-Immolation in Tibet: The Burning Issue*, ECONOMIST, Dec. 9, 2012; *Tibet's Growing Tragedy: Self-Immolation Protests Reach 105*, FORBES, Feb. 25, 2013.

¹⁴ For the seminal account of these dynamics, see generally ALBERT MEMMI, *THE COLONIZER AND THE COLONIZED* (1965).

¹⁵ See, e.g., U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: CHINA

(INCLUDES TIBET, HONG KONG, AND MACAU) (2012) (comparing Tibet to “other predominantly minority areas” of the PRC) [hereinafter U.S. DEP’T OF STATE REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011].

¹⁶ See *infra* text accompanying notes 40-50.

¹⁷ See *infra* text accompanying notes 39-40.

¹⁸ For an overview of the meaning and history of self-determination, see generally Gary Lawson & Robert D. Sloane, *The Constitutionality of Decolonization by Associated Statehood: Puerto Rico’s Legal Status Reconsidered*, 50 B.C. L. REV. 1123, 1132-36 (2009). For the application of these issues to Tibet, see generally Robert D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT’L L. REV. 107, 129-55 n.85 (2002) [hereinafter Sloane, *Recognition*]. See also, e.g., TJC & Unrepresented Nations and Peoples Org. [UNPO], *The Case Concerning Tibet: Tibet’s Sovereignty and the Tibetan People’s Right to Self-Determination* (1998) (by Andrew G. Dulaney & Dennis M. Cusack, TJC, & Michael C. van Walt van Praag, UNPO) (update added by TJC, Feb. 13, 2013), available at

http://www.tibetjustice.org/reports/sovereignty/the_case_concerning_tibet-updated2013.pdf [hereinafter *Tibet’s Sovereignty and the Tibetan People’s Right to Self-Determination*]; UNPO et al., *China’s Tibet: The World’s Largest Remaining Colony: Report of a Fact-Finding Mission and Analyses of Colonialism and Chinese Rule in Tibet* (1997) [hereinafter UNPO Report, *China’s Tibet: The World’s Largest Remaining Colony*].

¹⁹ See, e.g., Barry Sautman, *Tibet’s Suicidal Politics*, EAST ASIA FORUM, (Mar. 21, 2012), available at <http://www.eastasiaforum.org/2012/03/21/tibet-s-suicidal-politics/>. Sautman’s editorial is reflective of a trend in global opinion. For a response, see Robert D. Sloane, *Tibet, Cynical Sinicism, and the Tragedy of Self-Immolations*, EAST ASIA FORUM, (May 9, 2012), available at <http://www.eastasiaforum.org/2012/05/09/tibet-cynical-sinicism-and-the-tragedy-of-self-immolations/>.

²⁰ For a description of the evolution and status of associated statehood in international law, see Lawson & Sloane, *supra* note 18, at 1137-40.

²¹ See Reference re Secession of Quebec, [1998] S.C.R. 217, ¶¶ 126-39 (Can.). For a brief overview of the import of this case, which expresses the consensus view on contemporary self-determination; see generally Lawson & Sloane, *supra* note 18, at 1132-40.

²² Tinoco Concessions (Gr. Brit. v. Costa Rica), 1 R.I.A.A. 369 (1923).

²³ It is no accident that the twin pillars of the postwar international human rights treaties, the International Covenant on Civil and Political Rights, *adopted by the General Assembly* Dec. 16, 1966, art. 1, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR], and the International Covenant on Economic, Social, and Cultural Rights, *adopted by the General Assembly* Dec. 16, 1966, art. 1, 993 U.N.T.S. 3 (entered into force Jan. 3, 1973) [hereinafter ICESCR], each begin by affirming that “all peoples have the right of self-determination” and that

“by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” ICCPR art. 1, ¶1 (emphasis added); ICESCR art. 1, ¶ 1 (same). Equally, the UN Charter proclaims as one of its paramount purposes the “develop[ment] of friendly relations among nations based on . . . [the] *self-determination of peoples*.” U.N. Charter art. 1, ¶ 2 (emphasis added).

²⁴ See Reference re Secession of Quebec, *supra* note 21, at ¶ 126.

²⁵ *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Comm. of Rapporteurs*, League of Nations Doc. B7.21/68/106 (1921) [hereinafter *The Aaland Islands Question*]; *Report of the Int’l Comm. of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question*, League of Nations Doc. 69.20/4/238 (1920).

²⁶ See Reference re Secession of Quebec, *supra* note 21, at ¶¶ 132-34.

²⁷ For a general critique, see Steven R. Ratner, *Drawing a Better Line: Uti Possidetis and the Borders of New States*, 90 AM. J. INT’L L. 590 (1996).

²⁸ Sloane, *Recognition*, *supra* note 18, at 131 n.85.

²⁹ *Tibet’s Sovereignty and the Tibetan People’s Right to Self-Determination*, *supra* note 18.

³⁰ Sino-Tibetan Treaty, China-Tibet, 821/823 A.D., reprinted in MICHAEL C. VAN WALT VAN PRAAG, STATUS OF TIBET: HISTORY, RIGHTS AND PROSPECTS IN INTERNATIONAL LAW app. 2 (1987). This is only one of multiple treaties entered into by the Tibetan nation. See Sloane, *Recognition*, *supra* note 18, at 148 n.147. In 2007, scholars discovered the original text of an additional treaty entered into between Tibet and Mongolia in 1913. See Phurbu Thinley, *Tibet-Mongolia Treaty of 1913, a Proof of Tibet’s Independence: Interview with Elliot Sperling*, PHAYUL.COM (Nov. 12, 2008), available at <http://www.phayul.com/news/article.aspx?id=23205&t=1>.

³¹ *Tibet’s Sovereignty and the Tibetan People’s Right to Self-Determination*, *supra* note 18, at 7.

³² *Id.* at 40

³³ See Sloane, *Recognition*, *supra* note 18, at 146-47 & n.144-45 (quoting, inter alia, a report by the International Commission of Jurists, and collecting authorities); see generally VAN WALT VAN PRAAG, *supra* note 30 (supplying a comprehensive study of the legal issues and, insofar as they may be relevant to the law, the historical background, and concluding that Tibet is a sovereign state under illegal foreign occupation).

³⁴ Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19.

³⁵ U.N. Charter art. 51.

³⁶ See, e.g., LEE FEIGON, DEMYSTIFYING TIBET (1998); CHARLES BELL, TIBET PAST AND PRESENT (1992); REBECCA REDWOOD FRENCH, THE GOLDEN YOKE: THE LEGAL COSMOLOGY OF BUDDHIST TIBET (1999); MELVYN GOLDSTEIN, A HISTORY

OF MODERN TIBET, 1913-1951 (1989); WARREN SMITH, *TIBETAN NATION* (1996); Dawa Norbu, *Selfdetermination in the Post-Soviet Era: A Case Study of Tibet*, 34 J. INT'L L. STUD. 237 (1997); Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet, Jan. 6-10, 1993, *Tibet: The Position in International Law* (1994); Legal Inquiry Committee on Tibet, *International Commission of Jurists, Tibet & The Chinese People's Republic*, ¶¶ 5-6 (1960).

³⁷ Sloane, *Recognition*, *supra* note 18, at 136; *see generally id.* at 136-40.

³⁸ JOHN KENNETH KNAUS, *ORPHANS OF THE COLD WAR: AMERICA AND THE TIBETAN STRUGGLE FOR SURVIVAL* (1999).

³⁹ To be clear, I do not mean to express any view here on the propriety or legality—still less the advisability—of the Vietnam War, either internationally or domestically (from the perspective of U.S. law). I mean only to suggest, descriptively, that historical contingency rather than principle accounts for the distinct treatment of the reactions to China's invasion of Tibet, on the one hand, and Iraq's invasion of Kuwait or Indonesia's invasion of East Timor, on the other. *See*, in this regard, Sloane, *Recognition*, *supra* note 18, at 130-31, 145, 178-83.

⁴⁰ Cablegram from the Kashag and the National Assembly of Tibet to the U.N., U.N. Doc. A/1549 (Nov. 11, 1950), *reprinted in* VAN WALT VAN PRAAG, *supra* note 18, at 334 [hereinafter Cablegram from the Kashag and the National Assembly of Tibet to the U.N.].

⁴¹ *See* Sloane, *Recognition*, *supra* note 18, at 147 n.148 (citing multiple treaties entered into by Tibet). For a complete list, see TJC, *Treaties and Conventions Relating to Tibet*, available at <http://www.tibetjustice.org/materials/> (last visited Apr. 14, 2013).

⁴² *See* Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, China-Tibet, ¶ 1, May 23, 1951 [hereinafter 17-Point Agreement], *reprinted in* VAN WALT VAN PRAAG, *supra* note 30, at 337.

⁴³ 17-Point Agreement, *supra* note 42, at art. 1.

⁴⁴ Vienna Convention on the Law of Treaties art. 1, May 23, 1969, 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679.

⁴⁵ Sloane, *Recognition*, *supra* note 18, at 152.

⁴⁶ VAN WALT VAN PRAAG, *supra* note 30, at 165.

⁴⁷ *See* 17-Point Agreement, *supra* note 42, arts. 4, 6, 7; Sloane, *Recognition*, *supra* note 18, at 154.

⁴⁸ Recent reports and other documentation include, for example, U.S. DEP'T OF STATE REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011, *supra* note 15; Amnesty Int'l [AI], *People's Republic of China: Tibet Autonomous Region: Access Denied*, AI Index ASA 17/085/2008 (June 18, 2008); Human Rights Watch [HRW], *"I Saw It with My Own Eyes": Abuses by Chinese Security Forces in Tibet, 2008-2010* (July 21, 2010).

⁴⁹ *See* Reference re Secession of Quebec, *supra* note 21, at ¶ 134.

⁵⁰ *The Aaland Islands Question*, *supra* note 25, at 27-28.

⁵¹ ICCPR, *supra* note 23, art. 27.

⁵² Dalai Lama, Address to the U.S. Congressional Human Right's Caucus: Five Point Peace Plan (Sept. 21, 1987) (transcript *available at* <http://www.dalailama.com/messages/tibet/five-point-peace-plan>).

⁵³ *Monks Vent Anger at Self-Immolation*, *supra* note 8; *see also Dalai Lama Behind Tibet Protest Self-Immolation, Says China*, TELEGRAPH (Mar. 27, 2012), <http://www.telegraph.co.uk/news/worldnews/asia/tibet/9168885/Dalai-Lama-behind-Tibet-protest-self-immolation-says-China.html>.

⁵⁴ *Dalai Lama Behind Tibet Protest Self-Immolation, Says China*, *supra* note 53.

⁵⁵ *See* Edward Wong, *From the Tibetan Monastery at the Heart of Self-Immolations, an Explanation*, N.Y. TIMES, June 3, 2012, at A6.

⁵⁶ *See, e.g., Tibet's Missing Spiritual Guide*, BBC NEWS (last updated May 16, 2005), *available at* <http://news.bbc.co.uk/2/hi/asia-pacific/4551425.stm>; Interfaith International, *Written Statement on Panchen Lamas Case*, UNPO (Feb. 13, 2006), *available at* <http://www.unpo.org/article/3948>.

⁵⁷ *See* Cablegram from the Kashag and the National Assembly of Tibet to the U.N., *supra* note 40. Today, of course, China refuses to allow independent research of any sort to ascertain what Tibetans in Tibet believe about their national identity or political situation, among many other issues, and to that extent it is impossible to verify this assertion with certainty. But the objective evidence, not least, recently, the statements of Tibetans who have self-immolated, *see generally Storm in the Grasslands*, *supra* note 1, strongly supports the statement in the text. The author has also personally interviewed hundreds of Tibetans who have fled Chinese-occupied Tibet. Without exception, and in a variety of contexts, they have expressed the same sentiment with remarkable force and passion.

⁵⁸ *See* UNPO Report, *China's Tibet: The World's Largest Remaining Colony*, *supra* note 18.

⁵⁹ *Tibet's Future: The Limits of Despair*, *supra* note 9.

⁶⁰ *See supra* text accompanying notes 10 to 11.

⁶¹ Reference re Secession of Quebec, *supra* note 21, at ¶ 132.