

“The Human Rights Situation in Tibetan Areas of China”

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Parliamentary Subcommittee on International Human Rights
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Summary

Since March 2011, more than 100 Tibetans from all walks of life have self-immolated in protest against China’s human rights violations. Their protest is a stunning testimony of the international community’s failure to resolve the conflict in Tibet which has continued since 1950. Canada’s position on Tibet’s political status has evolved in line with pragmatic concerns, sometimes limiting principled action in defense of the Tibetan people. The current crisis in Tibet demands development of a targeted approach in collaboration with like-minded countries around the world.

INTRODUCTION

In 1895, Canadian missionary Dr. Susie Rijnhart became the first western woman ever to enter Tibet. Her attempt to reach Lhasa ended in failure with the death of her infant son due to illness, and her husband at the hands of bandits. Years later, she too died in Tibet but not before writing what is perhaps the very first Canadian eye-witness account of Tibet – a Tibet that self-governed and enjoyed a distinct cultural and political life.¹

Since the Rijnhart's time, the mystique around the “hidden kingdom” has been matched only by its struggle to actually exist. Situated between the great powers of Asia, Tibet was destined to be challenged for control over its polity, cultural traditions, and rich artistic heritage. As the 20th century came to an end, and with China vying with the United States for the title of supreme world power, Tibetans found themselves increasingly marginalized in the international community and confronted by an overwhelming challenge: how to claim their human rights and basic freedoms without abandoning the very principles of compassion and non-violence that define who they are as a people.

Their solution has both disturbed us and inspired us. More than 100 Tibetans have self-immolated since March 2011. Their demands are clear – return of the Dalai Lama and freedom for Tibet. The use of self-immolation as a means of protest has not resulted in the destruction of property, nor has it harmed anyone save the self-immolators themselves. While self-immolation represents the ultimate in non-violent action, responding to it presents a challenge for would-be supporting countries around the world, including Canada.

Today's hearing at the Subcommittee on International Human Rights is the 4th Tibet hearing undertaken by the Parliament of Canada since 1990. Given the current context, it is perhaps the most important one. The Tibetan people are crying out for the world's attention. Will Canada stand up for Tibet?

BACKGROUND²

The history of Tibet can be traced back to the early 7th century when the various tribes and clans living on the high plateau succeeded in uniting as a confederation. In AD 821, Tibet and China engraved their relationship into stone – a pillar which still stands today in the heart of Lhasa in front of the Jokhang Temple. It reads in part:

¹ *With the Tibetans in Tent and Temple*, Susie C. Rijnhart, Asian Educations Services, New Delhi, 1904

² Much of this section is taken from *Tibet China Negotiations: A Case for Canadian Leadership*, Rights & Democracy, 2004

“Both Tibet and China shall keep the country and frontiers of which they are now possessed. The whole region to the East of that being the country of Great China and the whole region to the West being assuredly the country of Great Tibet, from either side there shall be no warfare, no hostile invasions, and no seizure of territory.”

China’s current claim to Tibetan territory is based on the fact that both countries were controlled by the Mongols in the 13th and 14th centuries, even though the Mongols controlled virtually all of Asia at various times. In fact, throughout the Mongol and Manchu rule, Tibet and China enjoyed various forms of “priest-patron” relations which ended formally when the Manchu dynasty came to an end and Tibet declared its independence in 1912. From 1912 until Chinese troops entered the country in 1949, Tibet “governed itself without foreign influence, conducted its own foreign affairs, had its own army and operated its own postal system. Tibet enjoyed *de facto* recognition by its neighbor states as well as by Great Britain, with whom Tibet entered into a series of treaties regarding travel and trade”.³ According to the International Commission of Jurists, Tibet had achieved “*de facto* independence and all of the requirements of *de jure* independence except formal international recognition”.⁴

Tibet functioned as an independent but isolated state until Chinese troops entered the eastern province of Kham (ch. Sichuan) in 1949 just two years after India to the south had won its independence from Great Britain. Despite appeals to the United Nations, the international community, pre-occupied with the situation in Korea, failed to act in defense of Tibet. With Chinese troops only 100 miles from Lhasa, the Tibetan government, headed by a 15 year old Dalai Lama, had little choice but to agree to send emissaries to Peking. Once there and prevented from contacting government authorities in Lhasa, the emissaries were coerced into signing the “Seventeen-Point Agreement” in 1951. The agreement formalized annexation of Tibet to China, ceding control of Tibet’s external affairs to China in exchange for guarantees that internal governance, cultural and religious systems and institutions would remain under Tibetan administration.

The guarantees of autonomy, however, quickly proved illusory. The Dalai Lama and his government were soon subordinated to the Military Control Committee of the People’s Liberation Army which systematically violated all provisions of the Seventeen Point Agreement. Between 1951 and 1959, the number of Chinese troops in Tibet increased steadily and eventually took full administrative control. In March 1959, the situation resulted in full-scale revolt which was brutally suppressed by Chinese forces resulting in the deaths of more than 10,000 people. The Dalai Lama,

³ *Occupied Tibet: The Case in International Law*, Eva Herzer, Tibet Justice Center, 2002

⁴ *Tibet: Human Rights and the Rule of Law*, International Commission of Jurists, Geneva, 1997

followed by some 80,000 of his countrymen, fled across the Himalayas and was given sanctuary by the Government of India. Once in India, the exiled administration repudiated the Seventeen Point Agreement stating that it had been signed under duress and while Chinese troops occupied much of its territory.

The United Nations General Assembly subsequently adopted three resolutions in support of Tibet citing various violations to the fundamental rights and freedoms of the Tibetan people, including their right to self-determination.⁵ Since 1959, hundreds of thousands of Tibetans have died as a result of the Chinese occupation, either through harsh prison conditions, summary execution or starvation. In 2013, the human rights situation continues to deteriorate.⁶ As we meet here today, Tibetans who were born and raised under Chinese rule, continue to struggle for their basic human rights and democratic freedoms.

THE DALAI LAMA’S PEACE PROPOSAL: A MIDDLE WAY SOLUTION

In India, the Dalai Lama established his government in exile, guided the settlement of more than 100,000 refugees and initiated cultural preservation programs. He began his lifelong campaign for a peaceful resolution of the conflict in Tibet and the promotion of his doctrine of compassion and “universal responsibility”. For his efforts the Dalai Lama has received several international peace awards including the Nobel Peace Prize in 1989.

On September 21, 1987, speaking to the US Congress, the Dalai Lama launched his *Five Point Peace Plan for Tibet*. The central elements of the plan were the transformation of Tibet into a zone of peace; abandonment of China's population transfer policy; respect for the fundamental human rights and democratic freedoms of the Tibetan people; restoration and protection of Tibet's natural environment; the commencement of earnest negotiations on the future status of Tibet. In October 1990, the Dalai Lama presented the *Five Point Peace Plan* here in the Parliament of Canada where it was tabled during a hearing on the situation in Tibet at the Standing Committee on External Relations.

On June 15, 1988, at the European Parliament in Strasbourg, the Dalai Lama elaborated on the *Five Point Peace Plan* and presented the *Strasbourg Proposal* in which he suggested that China could maintain responsibility for Tibet's foreign policy and a restricted number of military installations in Tibet for defense purposes. The proposal received mixed support within the Tibetan diaspora. Ultimately, the Tibetan administration held a referendum to determine the will of the people. The

⁵ UN General Assembly Resolutions 1353 (XIV) 1959, 1723 (XV1) 1961, 2079 (XX) 1965. Canada voted in favour of each resolution.

⁶ Human rights violations in Tibet are monitored and documented by the Tibetan Centre for Human Rights and Democracy. www.tchrd.org

outcome of the referendum indicated strong support (64%) for the Dalai Lama to use his discretion in determining a strategy for resolution of the Tibetan issue. The referendum results were later endorsed by the exile parliament in a unanimous resolution passed in September 1997. The Dalai Lama has since promoted his “Middle Way Approach”, articulated in the Strasbourg Proposal, as the best means to achieve genuine autonomy for the Tibetan people, while ensuring the unity and political stability of China.⁷ His position is endorsed and promoted by the current Tibetan administration represented here today by its elected leader, Sikyong Dr. Lobsang Sangay.

In 2002, representatives of the Dalai Lama traveled to China and Tibet and re-established contact with the Chinese leadership for the first time since 1993. The delegation, headed by the Dalai Lama’s special envoys, arrived in China on September 9, 2002 and was officially received by government representatives of the United Work Front. Nine subsequent rounds of talks took place until negotiations broke down in the wake of widespread protests in Tibet in 2008. In 2012, the Dalai Lama’s Special Envoys resigned their posts citing lack of progress and a sharp divide with their Chinese counterparts, particularly over the issues of autonomy and migration policy in Tibetan areas.⁸

THE MYTH OF AUTONOMY IN TIBET TODAY

Interestingly, the Seventeen Point Agreement was the first effort by the People’s Republic of China to develop and adopt an autonomy arrangement for ethnic minorities. It included the provision not to “alter the existing political system in Tibet...or the established status, functions and powers of the Dalai Lama” although China never honored those commitments.

Today, the status of Tibet as an autonomous region within China is protected by national level legislation entitled the “Law on Regional Ethnic Autonomy” (LREA) recently revised in 2001. The Law is designed to implement the system of regional autonomy based on Constitutional provisions which allow for the creation of administrative regions having their own governance systems. The Law includes the right to enjoy self-government, to manage internal affairs, to formulate separate regulations, to protect language and religious freedoms, and to independently manage economic development.⁹ Theoretically, it enables autonomous areas, including Tibet, to enact local legislation and to modify state laws and policies in the interests of local priorities and needs.¹⁰

⁷ *Introduction to the Middle-Way Policy and its History*, Department of Information and International Relations, Central Tibetan Administration, India, 2005

⁸ <http://www.thehindu.com/news/international/article3486969.ece>

⁹ *White Paper on regional Autonomy for Ethnic Minorities in China*, State Council Information Office, 2005 found at http://english.people.com.cn/whitepaper/ethnic_minorities_2005/ethnic.html

¹⁰ *Unused Powers: autonomy legislation in the PRC*, Yash Ghai and Sophia Woodman, University of Hong Kong and University of British Columbia 2008.

http://www.soci.ubc.ca/fileadmin/template/main/images/departments/soci/faculty/woodman/Ghai_and_Woodman_article_Unused_powers.pdf

However, in practice these rights are not used, possibly because they must be approved by State ministries (effectively a veto) and because no actions are permitted if they are seen to “oppose the Constitution” or “harm the State”.¹¹

Far from enjoying regional autonomy, the Tibetan people suffer under a myriad of discriminatory policies that have contributed to political, social and economic exclusion. China continues to escalate its response to the self-immolations with an aggressive strategy to stop information reaching the outside world. On 31 January, a court in Sichuan found two Tibetans guilty of “intentional homicide” issuing a death sentence, suspended for two years, to Lobsang Konchok age 40, and sentenced his nephew Lobsang Tsering age 31, to ten years in prison. According to China’s state media, the men had confessed to “recording details of the protesters, gathered photographs and passed them on to exile groups in India”.¹² On 7 February, authorities announced that they had detained another 70 Tibetans for similar offences.

THE EVOLUTION OF CANADA’S TIBET POLICY

Early correspondence between Canadian diplomats in Peking and New Delhi and their counterparts in Ottawa (obtained through Access to Information requests) describes Tibet as an independent state incapable of resisting military invasion by Chinese forces. Until 1969, Canadian support for the Tibetan government was often tentative, but steady.¹³

In 1950, Canada’s Minister of External Affairs, (Lester Pearson who interestingly would later be awarded the Nobel Peace Prize, an honour also bestowed on the Dalai Lama decades afterwards) sent a confidential memo to his Ambassador in Washington. In the memo, Pearson was clear:

“In fact it appears that during the past 40 years Tibet has controlled its own internal and external affairs. Viewing the situation thus, I am of the opinion that Tibet is, from the point of view of international law, qualified for recognition as an independent state”.

By March 1959, as the Lhasa Uprising raged resulting in the deaths of some 10,000 Tibetans, internal Government of Canada documents show that officials were following developments closely and reporting to Ottawa. They attributed the uprising to growing frustration in Tibet over China’s “invasion in 1950”. By June 1959, however, Canadian diplomats were already suggesting that China be admitted to the United Nations and that efforts to assist Tibetan refugees be done quietly and without public fanfare.

¹¹ *Legal Standards and Autonomy Options for Minorities in China: The Tibetan Case*, Theodore C. Sorensen and David L. Phillips, John F. Kennedy School of Government, Harvard University, 2004

¹² http://news.xinhuanet.com/english/china/2013-01/31/c_132141355.htm

¹³ All references to correspondence between Canadian diplomats from 1944 to 1969 are found in *Canada’s Secret Tibet File 1944-1969*, <http://www.tibet.ca/en>

By 1970, the international climate had changed and Canada officially recognized the People's Republic of China. With the establishment of diplomatic relations Canada recognized China's effective control over the Tibetan territory. In a letter written to the Canada Tibet Committee in July 1988, the Honourable Joe Clark explained:

“... the Canadian Government's view is that Tibet's legal status is that of an autonomous region of the People's Republic of China, as set out in the Chinese constitution.”¹⁴

Following the November 1990 visit of the Dalai Lama to Ottawa when he inaugurated the Human Rights Monument near Parliament Hill, gave testimony before the Standing Committee on External Relations, and introduced his *Five Point Peace Plan* to Canadians, Canada's official position on Tibet's political status was amended to reflect a more nuanced and principled approach:

"In 1970, when Canada established diplomatic relations with the People's Republic of China, it recognized the PRC as the sole legitimate government of China. Canada takes no position with regard to specific Chinese territorial claims; it neither challenges nor endorses them.”¹⁵

The position was Canadian policy until 1997 when Canadian Minister of Foreign Affairs and International Trade, Lloyd Axworthy, adopted a new foreign policy approach he termed “principled pragmatism”. The pragmatic dimension of principle required another change of Canada's official position on Tibet's status in 1998:

“When Canada established diplomatic relations with the People's Republic of China in 1970, we recognized the PRC as the sole legitimate government of China. Canada does not recognize the Tibetan “government-in-exile” led by the Dalai Lama based in Dharamsala, India.”¹⁶

Since 1998, Canada's position has remained essentially unchanged, although with some adjustment presumably because of the Dalai Lama's devolution of power in 2011. In 2013, Canada's position on Tibet's status is:

¹⁴ Letter from Hon. Joe Clark, Minister of External Relations, to the Canada Tibet Committee, July 21, 1988.

¹⁵ Letter from D.E. Waterfall, Director, North Asia Relations, Department of External Relations to the Canada Tibet Committee, May 27, 1991

¹⁶ Letter to Canada Tibet Committee, from Hon. Lloyd Axworthy, Minister, Department of Foreign Affairs & International Trade, December 3, 1998.

“Canada recognizes the People's Republic of China as the sole, legitimate government of China and does not recognize the Tibetan "government-in-exile". Canada recognizes the Dalai Lama as an important spiritual leader who earned the Nobel Peace Prize and is an honorary Canadian citizen.”¹⁷

PRAGMATIC CONCERNS: TRADE & INVESTMENT

In 1996, Canada de-linked the promotion of human rights from its trade promotion initiatives, opening the door to negotiations on China's entry to the World Trade Organization. In a statement on its website, the Department of Foreign Affairs and International Trade said that efforts to create a positive economic environment for Canadian investment in China include “the recent Canadian government decision not to tie its economic relationship with China to the question of human rights”.¹⁸

More recently, the current Government of Canada indicated in an internal foreign policy reform proposal dated September 6, 2012 and cited in media reports, that it would maintain the silo policy approach. According to the reports, the new policy explicitly acknowledges that its approach to generating trade and investment opportunities will not be integrated with other concerns including the promotion of human rights and democracy - “To succeed we will need to pursue political relationships in tandem with economic interests even where political interests or values may not align.”¹⁹

A recent example of what this implies for Tibet is provided by the controversial takeover of Canada's Nexen by China National Off-shore Oil Corporation (CNOOC). In contrast to Nexen's leadership in the area of human rights, state-owned CNOOC has been implicated in the controversial displacement of Tibetan nomadic communities through its “development” activities in various parts of China. CNOOC's website describes numerous projects in Nagchu Prefecture of Tibet since 2002 including the provision of assistance for the “settlement of herdsmen families”.²⁰

The forced resettlement of nomadic herders in Tibet is a contributing factor in the self-immolation protests. In 2012, a United Nations report, adopted by the Human Rights Council, stated that between 50 and 80 per cent of the 2.25 million nomads on the Tibetan plateau were

¹⁷ Email correspondence between the Canada Tibet Committee and the Department of Foreign Affairs, February 2013.

¹⁸ www.dfait-maeci.gc.ca, accessed December 1, 1996

¹⁹ To succeed we will need to pursue political relationships in tandem with economic interests even where political interests or values may not align.”

²⁰ http://en.cnooc.com.cn/data/html/english/channel_154.html, accessed September 28, 2012.

being progressively relocated.²¹ The report criticized the displacement of Tibetan nomads as a contributing factor in the further marginalization of Tibetans by removing their economic independence.²²

“In the resettlement villages, job opportunities have not materialized on the necessary scale, or have been filled by new migrant labourers moving in, while social assistance allowances are insufficient to make up for the increase in the cost of living that followed resettlement near urban centres.”

In our recommendations to the Government of Canada with respect to the CNOOC takeover approval application, the Canada Tibet Committee urged Canadian regulators to take advantage of CNOOC’s application for approval to leverage concessions from CNOOC with respect to its projects in Tibet.²³ The fact that such human rights concerns seem not to have played any role in the government’s ultimate approval of the deal, is a stark indicator of things to come.

Notwithstanding the possibility of an unforeseen crisis, investment between Canada and China will certainly increase in the coming years. The Nexen takeover came on the heels of a new investment treaty signed between Canada and China on September 9, 2012 and currently awaiting approval in Parliament.²⁴ The *Canada China Foreign Investment Protection Agreement* (FIPA) is designed to facilitate investment between the two countries by protecting investors from perceived discriminatory treatment (most-favoured nation and national treatment) and expropriation.

Much has been written about the human rights implications of bilateral investment treaties such as Canada’s FIPA.²⁵ A primary concern is that such treaties, which are legally binding on the signatories, do nothing to protect the human rights of non-parties to the agreement – in other words individuals and communities directly or indirectly affected by the investment. In essence, investor protection treaties raise the rights of investors over human rights. In the Tibetan context, there would be little recourse for local communities if a specific Canadian investment was found to have a negative impact their ability to access grazing land, traditional food sources, or even to enjoy freedom of expression.

²¹ *Report of the Special Rapporteur on the right to food, Mission to China*, Olivier De Schutter, A/HRC/19/59/, Add.1, para 35, http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf. The rapporteur cites – “As early as 1998, the vice-minister of agriculture, Qi Jingfa, was reported as saying that all herdsmen were expected to end the nomadic life by the end of the century. — Herdsmen in China to end nomadic life, Xinhua News Agency, 18 March 1998. Available from www.highbeam.com/doc/1P2-18157255.html”

²² DeSchutter, para 36

²³ *Net Risk to Human Rights: The CNOOC grab for Nexen and its potential impacts on human rights*, Canada Tibet Committee, December 2012, http://www.tibet.ca/_media/PDF/Net_Risk_to_Human_Rights.pdf

²⁴ Approval is stalled in part by a court challenge launched by BC’s Hupacasath First Nation, based on failure to consult.

²⁵ See for example, *Human Rights and Bilateral Investment Treaties: Mapping the role of human rights law within investor-state arbitration*, Luke Peterson, Rights & Democracy, 2009. http://publications.gc.ca/collections/collection_2012/dd-rd/E84-36-2009-eng.pdf

CONCLUSION and RECOMMENDATIONS

The Canada Tibet Committee deeply appreciates the efforts of the Subcommittee, its Chair and Vice-Chairs, to ensure that this hearing opportunity became a reality today. We also wish to thank the Canadian Parliamentary Friends of Tibet for its continued interest and steadfast support of the Tibetan cause since its founding in 1990. We are deeply grateful to Minister John Baird and Minister Jason Kenny for their public statements on behalf of Tibet which provide much-needed comfort to Tibetans inside Tibet. Now is the time to consolidate and amplify our efforts.

The Canada Tibet Committee requests that the Subcommittee on International Human Rights prepare a full report on the self-immolation crisis in Tibet including attention to its causes and consequences. We ask that in the report requests the Government of Canada to convene an interdepartmental taskforce to consider the following recommendations:

- Canada should play a leadership role in efforts to establish an international “contact group” or other form of multilateral mechanism designed explicitly to coordinate strategy among those countries wishing to resolve the human rights crisis in Tibet.
- Canada should reinforce efforts to send Canadian diplomats to Tibetan areas where most of the self-immolations have taken place, while at the same time initiating efforts to establish a permanent diplomatic presence in Tibet. Until this objective can be achieved, Canada should increase Embassy resources to more closely monitor the situation in Tibet, to verify the security of self-immolators’ families, and to ensure that adequate medical treatment is provided to those self-immolators who have survived their action.
- Canada should press China to allow human rights monitors into Tibet as requested by UN High Commissioner for Human Rights Navi Pillay in her public statement dated November 2, 2012. Permission for human rights monitors must be accompanied by access for foreign journalists to the Tibet Autonomous Region as well as to Tibetan areas in Gansu, Sichuan, Qinghai, and Yunnan.
- Canada should include the situation in Tibet within its “item 4” statement at the upcoming 22nd Session of the Human Rights Council.
- Canada should emphasize the situation in Tibet during China’s upcoming 2nd cycle Universal Periodic Review, including as follow-up to recommendation #26 accepted by China in its first cycle UPR and dealing specifically with the Tibet Autonomous Region.

NOTES

Terminology

The word “Tibet” is often used in reference to the Tibet Autonomous Region (TAR) of China. In fact, the TAR comprises only one province of historical Tibet which included three provinces or administrative regions. The Tibetan province of Kham is situated mostly in the western mountainous part of Sichuan and the northwestern tip of Yunnan, while the Tibetan province of Amdo accounts for most of Qinghai and a western part of Gansu. Outside the TAR, the historical Tibetan regions where Tibetans are concentrated have been designated as Tibetan Autonomous Prefectures in accordance with the minority nationality policy of the Government of China. Therefore, the TAR itself includes only about half of the total ethnic Tibetan populations in China and it does not include many of the regions of historical Tibet.²⁶ For the purposes of this report, the word Tibet is used in its broader sense.

Canada Tibet Committee

The Canada Tibet Committee (CTC) was founded in 1987, recently celebrating its 25th anniversary. The CTC is cross-Canada network with its national office located in Montreal. The CTC mandate is to defend and promote human rights and democratic freedom for the Tibetan people.

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²⁶ *Poverty by Design: The Economics of Discrimination in Tibet*, Andrew Fisher, Canada Tibet Committee, 2002