

**Written Testimony by Michael van Walt van Praag  
Congressional-Executive Commission on China hearing  
“Tibet: Barriers to Settling an Unresolved Conflict”  
Capitol Building, Thursday, June 23, 2022**

Contrary to what the People’s Republic of China claims and to what many people take for granted, Tibet was historically *not* a part of China. This is one of the outcomes of a multiyear collaborative historical research project that I recently completed and published.<sup>1</sup>

This is relevant and requires our attention because the PRC government has made agreement on *its* version of history a precondition to Sino-Tibetan negotiations, which have been in deadlock now for 12 years.<sup>2</sup> More fundamentally, the PRC bases its entitlement to Tibet *solely* on its assertion that Tibet has been an integral part of China since antiquity.<sup>3</sup> Whether or not Tibet was historically a part of China therefore determines whether the PRC has the legitimacy to rule Tibet or not. And *that* in turn informs the international community’s obligations and responsibilities regarding the Sino-Tibetan conflict.

Addressing the plight of the Tibetan people has been one of my lifelong goals, and my contributions have mostly been in the international legal and diplomacy spheres, in line with my career. I undertook this academic historical research to get to the bottom of what informs the PRC government and the Dalai Lama in their opposing views on Tibet’s historical status, with the aim to be able to come up with strategies for those with access and clout to encourage the parties to break through the stalemate and resume their dialogue.

In the process it became clear that the PRC’s historical narrative—that Tibet has always been a part of China—stands in the way of Sino-Tibetan negotiations in more than one way. The international community has started to buy into that narrative and governments have started to act accordingly, treating Tibet as if it was China’s internal affair and even stating they consider Tibet to be a part of China. I strongly believe that this development is one of the main obstacles to resolving the Sino-

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<sup>1</sup> The 10-year research project, which involved some 100 leading scholars worldwide, resulted in the publication of *Sacred Mandates; Asian International Relations since Chinggis Khan*, co-authored/edited with Timothy Brook and Miek Boltjes, Chicago University Press, 2018, and *Tibet Brief 20/20*, co-authored with Miek Boltjes, Outskirts Press, 2020. *Sacred Mandates* won a 2021 International Convention of Asian Scholars Book Prize.

<sup>2</sup> See State Council Information Office of the People’s Republic of China, *Tibet’s Path to Development is Driven by an Irresistible Historical Tide* (Beijing, April 15, 2015).

<sup>3</sup> *Tibet Brief 20/20*, *op cit* pp. 6-10.

Tibetan conflict through negotiations. It is also in violation of international law.

Our research firmly establishes that though not always ‘independent’ in the modern legal sense of that term and over time subject to various degrees of Mongol, Manchu and even British authority or influence, Tibet was most certainly *never* a part of China. The PRC could therefore not have ‘inherited’ Tibet from the Republic of China or earlier empires, as it claims. As a matter of fact, Tibet was an independent state *de facto* and *de jure* from 1912 to 1950/51, when the PRC invaded it.

Because Tibet was not at any point in time a part of China, the PRC’s military invasion of Tibet in 1950/51 constituted an act of aggression and violated the peremptory norm of international law prohibiting the acquisition of territory by the use of force against another state.<sup>4</sup> This informs the legitimacy of the PRC’s presence in and rule of Tibet the past seven decades: China does *not* have sovereignty over Tibet. It is occupying Tibet illegally.

International law prohibits governments from explicitly or implicitly recognizing China’s unlawful annexation of Tibet, from doing anything that helps China consolidate its hold on Tibet, and from denying the Tibetans the exercise of their right to self-determination.<sup>5</sup> It also prohibits states from benefiting from the exploitation of Tibet’s resources so long as Tibetans are denied the ability to make decisions concerning them.<sup>6</sup>

At the same time, governments have the positive obligation to take action to help bring about a resolution of the Sino-Tibetan conflict, end the occupation of Tibet and enable the Tibetan people to exercise self-determination.<sup>7</sup>

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<sup>4</sup> A peremptory norm is an international obligation “so essential for the protection of fundamental interests of the international community that [its] breach [is] recognized as a crime by that community as a whole”. International Law Commission Rapporteur Roberto Ago. Quoted in Cassese, *International Law*, p. 202. Aggression is a prime example.

<sup>5</sup> International Law Commission, ‘Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) (2001) YILC Vol.2, Part 2, Arts. 40, 41, and commentary para. 5. *See also*, UNGA Res 2625 (XXV) Declaration on Friendly Relations Confirmed by the International Court of Justice in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, paras 119, 124, ICJ Reports 1971; and in *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, paras 155-159, ICJ Reports 2004.

<sup>6</sup> Court of Justice of the European Union in a landmark case concerning the Sahrawi people’s rights, in 2016, CJEU, Judgment in Case C-104/16 P *Council v Front populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario)*, Dec. 21, 2016, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf>, accessed 08/28/2021. Confirmed by the UK High Court on 2019, <https://www.lexology.com/library/detail.aspx?g=e9a48d23-358c-4948-b754-3f8868bda922>,

<sup>7</sup> International Law Commission, ARSIWA, *op.cit*, Commentary to Art. 41(1).

Many governments are today acting contrary to these obligations, in plain violation of international law and to the detriment of the resolution of the Sino-Tibetan conflict. This includes the US government.

Two developments stand out in this regard: governments make statements recognizing that Tibet is a part of the PRC, and they treat Tibet as China's internal affair, outside their purview.

When governments state that they consider Tibet to be a part of the PRC, they take away the PRC's principal incentive to negotiate with the Tibetans as well as reduce the latter's main source of leverage. In the first place, Beijing uses these statements as 'evidence' for its claim that it has sovereignty and legitimacy in Tibet, and even for its historical claim. The more such statements it obtains, the less it feels the need to turn to Tibetans for legitimacy. Instead, it uses the international community's pronouncements as a substitute for true legitimacy, that is, the legitimacy that would result from the consent of the governed—through an exercise by the Tibetans of self-determination or through a process of sincere negotiations with the Tibetan leadership.

Secondly, once a government states that it considers Tibet to be a part of the PRC it cannot but treat Tibet and Sino-Tibetan relations as China's internal affair. This is effectively happening today: most governments are limiting their expressions of concern to human rights abuses. In this way Beijing has largely succeeded in containing international scrutiny and reproach to where it can manage it.

Some governments, including the US, have also added that they do not support or are opposed to Tibetan independence.<sup>8</sup> Such statements not only violate the prohibition against recognizing annexation by force, but also constitute a denial of the Tibetan people's right to self-determination, an equally serious violation of international law. Even though states cannot actually take away the right to self-determination—including the option of independence—from the Tibetan people, such statements do the Tibetans a great disservice and encourage Beijing to ignore the Tibetans' rights. By supporting the aggressor, not the injured, they also fail to fulfill the fundamental role international law requires the international community to play— to prevent war and promote friendly relations and cooperation among states based *inter alia* on the principles of non-use of force against other states and

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<sup>8</sup> See, e.g., President Barack Obama – February 21, 2014, Readout of the President's Meeting with His Holiness the XIV Dalai Lama. See also, 'Note Verbale' of the Danish government of Dec. 9, 2009. Reported by AFP, Dec 10, 2009.

of equal rights and self-determination of peoples—, frustrating the very purpose of international law in the process. For, as the International Court of Justice underscored in the Namibia case<sup>9</sup>, it is precisely to the international community that the injured people must look for ending the illegality and for realizing its rights.

It is for Tibetans, and Tibetans only, to make concessions with respect to their right to independence—if and when they so decide. Ruling out independence one-sidedly disempowers the Tibetan side. It weakens the Tibetans’ negotiation position, exacerbates the already stark power asymmetry, and conditions the expectations of the Tibetans as well as of the international community to envision a settlement that can bring only marginal change in Tibet. Given what we know not only about China’s treatment of Tibetans<sup>10</sup> but also of Uyghurs, as detailed in the recent Newslines Institute Genocide report,<sup>11</sup> and the fact that Tibetans are resorting to self-immolation to protest Beijing’s oppression and policies to eradicate Tibetan identity,<sup>12</sup> I ask: is marginal change in Tibet what the US wants for the Tibetan people?

The need for the international community to take responsibility and effectively address the Sino-Tibetan conflict is not just a legal and moral imperative, it is also a political necessity. Looking the other way with an underlying “let’s not make the Tibetans’ problem our problem” has been a mistake for which the international community is today paying a price as it tries to deal with an emboldened PRC and Russia asserting expanding territorial claims and influence.

Beijing’s aggressive behavior in the South China Sea and threatening moves towards India and Bhutan to press territorial claims, as well as its genocidal policies against Uyghurs, all taking place at the time of this writing, cannot be treated as unrelated to the years of international appeasement of Beijing as concerns its unlawful seizure and occupation of Tibet and its implementation of oppressive policies of integration and assimilation there. And neither can Russia’s attempt at forcefully annexing part or all of the Ukraine.

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<sup>9</sup> International Court of Justice (ICJ), *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, para. 127, concerning South Africa’s illegal annexation of Namibia.

<sup>10</sup> See Tibet Action Institute, *Separated from their Families, Hidden from the World; China’s vast system of colonial boarding schools inside Tibet*, December 2021; Tibet Advocacy Coalition, *Assaulting Identity: China’s new coercive strategies in Tibet*, March 2021.

<sup>11</sup> Newslines Institute for Strategy and Policy, *The Uyghur genocide: An Examination of China’s Breaches of the 1948 Genocide Convention*, March 2021.

<sup>12</sup> There have been 160 confirmed cases of self-immolations since 2009.

**It is US policy to support a negotiated resolution of the Sino-Tibetan conflict. US government actions however run counter to US policy.** Supporting a negotiated resolution of the Sino-Tibetan conflict requires the political will to be vocal about the lack of legitimacy of China's presence in and rule of Tibet, *not* statements that imply an acceptance of China's claim to sovereignty over Tibet. It requires calling and treating Tibet what it is: an occupied country, and the Tibetans what they are: a people under alien subjugation and domination, *not* a 'minority' or 'ethnic group of China'. Adopting such PRC terminology denies the Tibetan people its proper status and implicitly its right to self-determination. And lastly, it requires the Sino-Tibetan conflict to be called and treated what *it* is: an international conflict, falling squarely within the international community's—including the US government's—purview and responsibility, *not* China's internal affair.

**It is also US policy *not* to recognize a country's attempt to annex territory by the use of force.** President Joe Biden recently reiterated that taking territory by force is unacceptable. He said so publicly in reference to Taiwan and the Ukraine.<sup>13</sup> The prohibition against taking another country's territory by force is a cornerstone and fundamental norm of modern international law and the international legal order. No derogation from this is allowed, and governments are prohibited from recognizing such territorial expansion. Just as Russia's attempted annexation of Ukrainian territory cannot be accepted or recognized by the international community, so China's attempted annexation of Tibet must not be accepted or recognized. Only in the absence of such recognition may the PRC government be moved to negotiate with the Tibetan leadership to resolve their conflict.

The US Department of State stated on March 12, in relation to the Russo-Ukrainian conflict, that the US is committed to "putting the Ukrainians in the strongest possible negotiating position".<sup>14</sup> Tibet's leaders are committed to non-violence and do not seek weapons. But they do need coordinated international action to—at a minimum—firmly anchor Tibet's international legal status, to bolster its negotiating capacity and to bring China to the negotiating table. The US and other governments have shown in the recent months how coordinated diplomatic and economic measures, including sanctions, can be deployed in efforts to stop and punish aggression. Such coordinated action is overdue to address China's occupation of Tibet.

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<sup>13</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/05/23/remarks-by-president-biden-and-prime-minister-fumio-kishida-of-japan-in-joint-press-conference/>. President Biden accused President Putin of attacking "the norms and principles that are the foundations of our international order."

<sup>14</sup> <https://www.reuters.com/world/europe/us-ready-take-diplomatic-steps-ukraine-will-find-helpful-state-dept-2022-03-12/>