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The Legitimacy of The Tibetan Government in Exile

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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RIGA, 2020

ABSTRACT

The paper examines the legitimacy of the Tibetan Government in Exile as the establishments of democratic governing system, consisting of all three pillars, undeniably prove the state of law created within the community and fulfilling all the state-like functions. The legal basis of this paper fall under the scope of international law and the principle of recognition of both governments (*in situ* and in exile) and states. The aim is to prove the state of law within the TGiE and successful functioning as the representative of Tibetan people, thus presenting the continuity of state that is dating back to the *de facto* independence from 1913 to 1951 and the safeguarded state's personality that still is not legally recognised. The mere reason of such non-recognition of the TGiE can be explained by the sole fact of the lack of the *de jure* recognition.

SUMMARY

The paper “*The Legitimacy of the Tibetan Government in Exile*” henceforth intends to research the situation of the Tibetan Government in Exile and its legitimacy. The paper will introduce a brief overview of events that took place during the 20th century with important treaties conducted that define the legal position of Tibet and relations established. Starting by the Treaty of Lhasa in 1904 after which the exclusion of foreigners was introduced and the 1906 Treaty of China and the Great Britain where an agreement was reached to only allow Chinese influence upon Tibet. The *de facto* independence of Tibet from 1913 to 1951 that was followed by Peoples Liberation Army entering the Eastern Part of Tibet, thus commencing a belligerent occupation which consequence in the infamous 17-Point Agreement that was concluded under duress. The run-in-exile was an expected thing as the imposed agricultural reforms upon Tibetan farmers to whom promise was made not to change anything in their livelihoods concluded into guerrilla warfare against the Peoples Liberation Army and Tibet’s legal status falling under the rule of China. The eventful 20th century introduces to the situation that Tibet had gone through and is a liaison of current establishments by the TGiE.

Nonetheless, the case study of Tibet has to be looked upon from the international law perspective as statehood and governments fall within such scope. The chapter of theory mainly is focusing on the particular case of recognising governments; however, the study of governmental recognition is closely linked to recognition of states. Hence, the principle of recognition also regards the case of granting such act to governments both *in situ* and in exile. Throughout the paper, it will be often stated that for a government to be recognised there has to be a state for it to represent, thus criterion of statehood from the Montevideo Convention on the Rights and Duties of State 1933 will be briefly depicted along with correlated condition for statehood of independence and the principle of self-determination.

Distinction will be made between several types of recognition of governments in order to acknowledge the wide variety of recognitions that can be granted with or without intention. One of the core divisions will be made in terms of *de facto* and *de jure* recognition as the difference can be crucial in terms of possessing the full legal capacity within international law and relations for both *in situ* and exiled governments.

The analysis of the Tibetan Government in Exile will, first, see the aspect of statehood of Tibet during its *de facto* independence during 1913-1951. The argument will be strengthening by presenting some countries that had recognised Tibet as independent to some extent by merely entering into treaty relations, thus also providing an example for the different sorts of recognition that can be provided under international law. Following this there is the

analysis of the effectiveness of the Tibetan Government in Exile to cover one of the core criterion for both recognition of states and governments. The democratic developments along with establishment of all three democratic pillars will be in depth depicted proved the effectiveness of the TGiE as well as its state of law possessed to all the exiled community,

The Tibetan Government in Exile has established the state of law within democratic community of Tibetans in exile, thus also assuring legal order by the Charter of Tibetans in Exile and such legal documents proclaiming the procedures and codes the Central Tibetan Administration has to follow. Albeit the TGiE has not obtained any recognition as it lack *de jure* for both the period whilst was independent in Tibet and within the exiled community, the sovereignty over its community in exile is undeniable along with its established legal order that proves legitimacy in practice. Nonetheless, Tibetan Government in Exile is not legitimate from the legality perspective for the mere reason of *de jure* recognition not being granted, thus providing the conclusion of the research paper.

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LIST OF ABBREVIATIONS

CFLN	French Committee of National Liberation
CTA	Central Tibetan Administration
DIIR	Department of Information and International Relations
HHDL	His Holiness Dalai Lama
KMT	Koumintang Government
TGiE	Tibetan Government in Exile
TPiE	The Tibetan Parliament in Exile
PLA	Peoples Liberation Army
PLO	Palestine Liberation Organization
UN	The United Nations

INTRODUCTION

The Land of Snow is the centre of Buddhist religion in the World that is ruled by the priest-king Dalai Lama. Surrounded with stories of peace loving nation that is living according to the principles of Buddhism. However, Tibet seems to be quite unique on the international realm – technically a suzerain territory under China yet claiming its independence from this big power throughout its leader Dalai Lama while in exile. Ever since the occupation took place in 1951, Dalai Lama has constantly held efforts to request the territory back from the occupying power. The situation risen seems to be quite intriguing and simple yet filled with many complicated aspects in terms of how the occupation and run in exile escalated ever since the beginning of the 20th century. Furthermore, the relations of Tibet and China are dating back to ancient times with such crucial historic events as the Tibetan Empire conquering parts of the neighbouring Chinese Empire during the 6th century. Then it was followed by a two-century long war between the both power upon the border territory from the 7th to 8th century during which the Chinese power lost to the military capacities of Tibet; as in the midst of the 8th century Tibet conquered the capital of the Chinese Empire – Chang’an. Not only this period marked the military expenditure of Tibet, but also the beginning of Buddhism, as this religion was brought from India along with teachers that taught the locals therefore commencing close relations with India. Quite naturally, the interest in religion increased and thus concluding into loss of military capacity that Tibet had been reached previously.¹

When the crowning of the fifth Dalai Lama in 1642 by the Mongols took place, the Lamaist position was established to be the one of the priest-king.² During this period, the *suis generis* nature of Dalai Lamas was based on reincarnation of the Boodhisattva Avalokitesvara (a person that is on the path to become Buddha) into human,³ that meant the soul will be reborn in the next Dalai Lama who has to be found amongst all the children of Tibet that were born following the death of previous Dalai Lama.⁴ The period of the 17th century is marked as one of the most peaceful times in Tibetan history and therefore was claimed to be the first *de facto* independence of Tibet during the rule of the 6th Dalai Lama. Nonetheless, when Manchu Dynasty gained power in the 18th century, the influence upon Tibet begun in the form of the foreigner exclusion within Tibetan lands that begun in 1872.⁵ This period in time is crucial not

¹ Tibet. Autonomous region, China. Encyclopaedia Britannica. Available on: <https://www.britannica.com/place/Tibet/History> Last Accessed April 17, 2020.

² *Ibid.*

³ Melvyn C. Goldstein, “Introduction” in *A History of Modern Tibet, 1913-1951: The Demise of the Lamaist State*, (University of California Press: 1989), p. 11. Last Accessed May 7, 2020.

⁴ Tim Lambert, “A Brief History of Tibet,” *Local Histories*, Available on: <http://www.localhistories.org/tibet.html> Last Accessed April 17, 2020.

⁵ *Supra* note 1.

only because of the beginning of ‘isolationism’, but also because the territorial and sovereignty claims from China are based upon this period of time.

Nonetheless, this paper will, firstly, regard the key events from the 20th century along with the current day establishments made by the Tibetan Government in Exile to see the gradual role of China obtaining authority among the Tibetan region. Second, the principle of recognition of both governments and states will be regarded, in order to understand the occasions in which states grant the recognition. Along, the distinction between *de jure* and *de facto* recognition has to be made, as it will play a crucial role later in analysis. As well as the criterion of statehood in international law will be briefly mentioned, because the government is representing a particular State. Lastly, an analysis will be implied to this particular case of Tibet and the recognition of its exiled government in order to answer the research question of this paper that is whether the Tibetan Government in Exile (TGiE) can be considered a legitimate government in exile.

The author’s hypothesis holds that even if Tibet has all the necessary measure to be recognized as a legitimate government in exile thereby representing an entity recognized as a State, it is not recognised yet considered as legitimate. The reasoning of such hypothesis is the mere fact of the whole recognition process of states and governments being a delicate process that often is disturbed by political matters.

1. OVERVIEW OF TIBET

1.1. The Unification of Tibet

The history of Tibet is quite lengthy and complicated. Not only it was a religious centre of Buddhism by establishing the position of Dalai Lamas and the belief of their reincarnation, but also of its impressive military expansion it once had. Nevertheless, Tibet had gradually changed into a peaceful nation preaching Buddhism and advocating its values. The isolationism period that began in 1872 concluded into the British Empire invading Tibet in 1903 and thus commencing a complicated period for the region. Because the British forces ruled over India, the Tibetan invasion was not a complicated mission. However, the aim of the invasion was different. Meaning, the Brits feared the Tibet would fall under the Russian influence, thus certain actions, such as invasion, had to take place to limit the chances. After the invasion occurred, the 13th Dalai Lama fled to Mongolia in order to express the discontentment of the British invasion.⁶

As the British army begun to enter the territory of Tibet, the signing of a treaty (known as the Treaty of Lhasa) in 1904 was just a question of time. In this treaty, the exclusion of so-called ‘foreign influence’ was included and was, in particular, dedicated to the Russian power and the fear of it affecting Tibet and its foreign policies. As well, the opening of trade routes with India was made.⁷ The Chinese were concerned to lose any type of control or relation over Tibet by such treaty; thus, a conclusion of another treaty in 1906 by the Chinese and British Empire was conducted, where Tibet was declared not to be annexed by the British, nor the Chinese to allow any other foreign power to intervene in affairs of Tibet.⁸ The treaty also basically defined China as the only foreign power to be able to deal with Tibet that clearly allowed to increase the Chinese influence upon the region. The main issue with this multilateral agreement whatsoever was the fact that it had been concluded without Tibet’s consent and had no participation in negotiation as a whole.⁹ The following years came with reduction of the Buddhist monks in monasteries; introduction to Catholicism; opening of Chinese schools in Lhasa and military college to increase the Chinese presence and influence within Tibet.¹⁰

⁶ *Supra* note 1.

⁷ Melvyn C. Goldstein, Gelek Rimpoche, “The Early Years of the 13th Dalai Lama,” in *A history of Modern Tibet, 1913-1951: The Demise of the Lamaist State*, (University of California Press: 1989): pp. 45 – 64. Last Accessed May 7, 2020.

⁸ Convention Between Great Britain and China Respecting Tibet (1906). (23 July 1906). Available on: <http://www.tibetjustice.org/materials/treaties/treaties11.html> Last Accessed April 17, 2020.

⁹ Peter Schwiager, “A Document on the Policy on Foreigners in Tibet After the Anglo-Chinese Convention of 1906.” Available on: http://himalaya.socanth.cam.ac.uk/collections/journals/ret/pdf/ret_31_20.pdf Last Accessed April 17, 2020.

¹⁰ Goldstein, *supra* note 7, pp. 45 – 47.

Consequently, in 1909, China invaded the Tibet to seek the full control over the territory. This invasion was the first time when Chinese used force against Tibetans in ten centuries long period of time and the Dalai Lama was forced the fleeing to India.¹¹

The actions taken further established enmity between the Chinese and Tibetans. When Chinese Revolution occurred between 1911 and 1912 where the monarchic regime of the Qing dynasty was overthrown.¹² Because China was in weakened state, the people of Tibet used this to their advantage and held an uprising to regain the territory back to themselves, due to which the Dalai Lama returned from India.¹³ In the following years of 1913 and 1914, the Simla Conference was held where the topics of frontier between China and Tibet; border with India; and suzerainty of Tibet were discussed. In 1914, the Simla Convention¹⁴ was negotiated between the Chinese and British to regard the accessibility for the Brits to Tibet. British government in India and the Dalai Lama signed the agreement that had been made in terms of aforementioned issues; regardless, China refused the ratification.¹⁵ Nonetheless, the uprising successfully allowed Tibet to re-gain their independence from China, thus declaring their *de facto* independence¹⁶ in 1913 that lasted until 1951.¹⁷

1.2. The Last Occupation

The trouble returned in 1949, when the communist revolution happened when, similar to the above mentioned 1911 Revolution, the ruling class was overthrown in China. This time the bourgeois, which was considered to be the ‘old democracy’, was overthrown by the communist regime, introduced by Mao Zedong under the name of the “New Democracy”.¹⁸ During the 1949, the new regime began to claim the authority over Tibet thus sending troops to enter the

¹¹ *Supra* note 1.

¹² Arif Dirlik, “The 1911 Revolution: An End and a Beginning,” *China Information* 25(3), (November 2011), pp. 213-231. Available on: https://www.researchgate.net/publication/239770940_The_1911_Revolution_An_End_and_a_Beginning Last Accessed April 17, 2020.

¹³ *Supra* note 1.

¹⁴ Convention between Great Britain, China and Tibet. Silma. (1914). Available on: http://www.archieve.claudearpi.net/maintenance/uploaded_pics/1914ConventionbetweenGreatBritainChinaandTibet.pdf Last Accessed May 5, 2020.

¹⁵ Nirmal C. Sinha, “The Simla Convention 1914: A Chinese Puzzle,” *Presidency College Magazine*, (1974). Available on: http://himalaya.socanth.cam.ac.uk/collections/journals/bot/pdf/bot_1977_01_05.pdf Last Accessed May 5, 2020.

¹⁶ *Supra* note 1.

¹⁷ Alice Wilson, Fiona McConell, “Constructing legitimacy without legality in long term exile: Comparing Western Sahara and Tibet” *Geoforum* 66, (November 2015), pp. 203 – 214. Available on: <https://www.sciencedirect.com/science/article/pii/S0016718514002425?via%3Dihub> Last Accessed April 17, 2020.

¹⁸ Dirlik, *supra* note 12.

territory. Shortly after the occupation of the Eastern Tibet had started by the China's Liberation Army in 1950.¹⁹

As the occupation continued to extend, the 14th Dalai Lama brought an appeal in aim to obtain support from the United Nations. In this appeal, His Holiness mentioned the happenings on the Korean peninsula and draw the similarities between the happenings there and the escalation of events in Tibet. Nevertheless, none paid attention to what was further happening in Tibet²⁰ and this appeal was refused based on the fact that the situation in Tibet wasn't on the agenda of national security for the UN member states.²¹ After the occupation had taken place in the 1950, the occupation was further declared to be a 'peaceful liberation' by the Peoples Liberation Army from the Peoples Republic of China in 1951.²² In addition, China begun to enforce the infamous public policy of theirs – "tried and true". It meant that in their conquered lands, throughout the history of China, thousands of ethnic Chinese immigrants were placed in the occupied lands; hence, at one point, concluding into Chinese outnumbering the locals and treating the locals with minority rights. Hence, the same policy had been planned to be implied in the case of Tibet when people of Han ethnicity begun to settle in the region. This, of course, created distress among Tibetans, as they feared their culture and ethnicity to be endangered.²³ The year of 1951 was eventful as the infamous Seventeen-Point Agreement was concluded following the occupation between Tibet and China.

1.3. The 17-point Agreement

When the occupation begun in 1950, an estimate of 40 000 troops of People's Liberation Army had entered the Eastern part of Tibet. Tibetan army had not effectively mobilised, nor had the capacity of defending themselves. The negotiations were the only alternative option for Tibet in order to avoid further military escalation. Therefore, the 14th Dalai Lama appointed a chief negotiation representative that had to further establish a group of fifteen delegates that were sent to China. The one crucial rule for the delegation was to consult and inform both the Dalai Lama and the Cabinet of Tibet (the Kashag) before any possible agreement had been concluded or near the conclusion within the negotiations.²⁴ On the 23rd of May 1951, China and Tibet

¹⁹ Wilson, *supra* note 17.

²⁰ The Appeal by His Holiness the XIV Dalai Lama of Tibet to the United Nations (1950). UN Document A11549-11. (November 1950). Available on: <http://www.friendsoftibet.org/main/appeal.html> Last Accessed April 2, 2020.

²¹ James S. Olson, "Tibet" in *The 1950s: Key Themes and Documents*, (ABC CLIO: 2018), pp. 217 – 218. Last Accessed May 7, 2020.

²² Wilson, *supra* note 17.

²³ Olson, *supra* note 21.

²⁴ The 17 Point Agreement Background. Available on: <https://tibet.ca/media/PDF/The-17-Point-Agreement-Backgrounder.pdf> Last Accessed April 17, 2020.

signed The Seventeen-Point agreement (officially “Seventeen-Point Plan for the Peaceful Liberation of Tibet (1951): The Agreement of the Central People’s government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet”)²⁵. However, the rules given to the negotiation process were not met, because both the Dalai Lama and the Cabinet were not aware of the outcome. In other words, it was concluded by assigned chief negotiator, Nagbo Ngawan Jigme, and the outcome or agreement was not consulted with the necessary parties.²⁶ The occasion was described by Dalai Lama with following words:

Neither I nor my government were told that an agreement had been signed. We first came to know of it from a broadcast which Nagbo made on Peking Radio. It was a terrible shock when we heard the terms of it. We were appalled at the mixture of Communist clichés, vainglorious assertions which were completely false, and bold statements which were only partly true. And the terms were far worse and more oppressive than anything we had imagined.²⁷

The agreement is a controversial document that has been described to be forced upon Tibetans by the communist China, because of their interests in the resourceful territory of Tibet and to further ‘legitimise’ their occupation.²⁸ The process of conducting the agreement proves the one-sided negotiations filled with threatening that it truly was. Throughout all the meetings the Chinese attitude became more and more strict with aggressive outbursts. To elaborate on this statement, during the second meeting of the negotiations, one Chinese representative begun to impose the urge to agree only with their own proposed points by screaming in anger; during the third, Tibetan delegates simply were not allowed to speak at all; during the fourth, a decision was made from the Chinese to establish a military committee in Tibet and, in case of not accepting, posing the question “whether they wanted a peaceful liberation or an armed liberation”.²⁹ Furthermore, during the following meetings, the belligerent stance from China continued only with threats to destroy Tibet and their beloved Dalai Lama. No communication with His Holiness or the respecting government could be made, because these negotiations were claimed to be a matter of ‘state security’. Hence, no contact was permitted by the Chinese representatives to avoid the information being possibly leaked.³⁰ Needless to say more, it is

²⁵ Seventeen-Point Plan for the Peaceful Liberation of Tibet (1951). (23 May 1951). Available on: <http://www.tibetjustice.org/materials/china/china3.html> Last Accessed April 17, 2020.

²⁶ Linda Benson, “Document 3: The Tibetan View of the 17-Point Agreement” in *China Since 1949*, (Routledge: 2013). Last Accessed May 7, 2020.

²⁷ *Ibid.*

²⁸ ““The 17-point Agreement” The full story as revealed by the Tibetans and Chinese who were involved,” in *Facts About the 17-Point “Agreement” Between Tibet and China*, (Diir Publications: 2001). Available on: https://tibet.net/wp-content/uploads/2014/10/FACTS-ABOUT-17-POINT-AGREEMENT_.pdf Last Accessed May 7, 2020.

²⁹ *Ibid.*

³⁰ *Supra* note 28.

clear that Tibetan delegation was coerced in signing the agreement and the validity is debatable for that specific aspect.³¹

The concluded document itself consists of seventeen brief points (clauses), that describe the duties of Tibetans toward the Peoples Republic of China and their integrations back to ‘homeland’.³² The preamble perfectly sets the tone and nature of this agreement and it is as follows:

The Tibetan nationality is one of the nationalities with a long history within the boundaries of China and, like many other nationalities, it has done its glorious duty in the course of the creation and development of the great Motherland. But, over the last 100 year or more, imperialist forces penetrated into China and in consequence also penetrated into the Tibetan region and carried out all kinds of deceptions and provocations. [...] Under such conditions the Tibetan nationality and people were plunged into the depths of enslavement and sufferings. In 1949, basic victory was achieved on a nation-wide scale in the Chinese people's war of liberation; the common domestic enemy of all nationalities – the Kuomintang reactionary Government – was overthrown and the common foreign enemy of all nationalities – the aggressive imperialist forces – was driven out. [...]³³

Clearly, the idea behind this agreement states Tibet being a natural part of China and the necessity to liberate it from the threatening forces. The main envisaged ‘villain’ to be the KMT (Koumintang Government),³⁴ that was a nationalist party ruling in China from 1928 to 1949,³⁵ from which Tibetans had to be liberated from. The statement of this party enslaving and taking advantage of Tibetans already show great proof of disinformation, because, throughout their ruling years of the KMT, Tibet had gained their *de facto* independence and no foreign threat was present. Furthermore, the aspect of liberating Tibet from foreign presence is ironic, because at the time there were not even ten foreigners within the borders of Tibet³⁶ and the only other presence of foreigners were their neighbouring Indians that had trade connections and the right as the official successors of The British Empire to be present in Tibet. Therefore, the preamble not only can be translated in liberating Tibet from the previous rule China had, but also in the PLA liberating Tibetans from their own *de facto* independence. The purpose and construction of clauses is heavily debated due to the fulfilment of duties stated within the document itself. One part of this agreement states the respect for the religion and its practice, as well as the culture and freedom to practice their lives as before the ‘integration’ back to China with the only difference being the leadership over the territory. Having said that, the Tibet was promised

³¹ *Supra* note 28.

³² *Supra* note 25.

³³ *Supra* note 25.

³⁴ *Supra* note 28.

³⁵ Nationalist Party, Chinese Political Party. Encyclopaedia Britannica. Available on:

<https://www.britannica.com/topic/Nationalist-Party-Chinese-political-party> Last Accessed April 2, 2020.

³⁶ *Ibid* note 28.

to be an autonomous region simply falling under rule of Peoples Republic of China. However, the rules were not and still are not met with respect to China carrying out their duties.

From the 17-Point Agreement, such clauses as the 10th and 11th are contradicting. In both it is stated that –

10. Tibetan agriculture, livestock raising, industry and commerce shall be developed step by step, and the people's livelihood shall be improved step by step in accordance with the actual conditions in Tibet.³⁷

11. In matters related to various reforms in Tibet there will be no compulsion on the part of the central authorities. The Local Government of Tibet should carry out reforms of its own accord, and demands for reforms raised by the people shall be settled by means of consultation with the leading personnel of Tibet.³⁸

However, many communistic land reforms were implemented and on its way to be enforced in the region by the Central People's Government. The agricultural lands were over taken and redistributed to Chinese farmers, thus leaving the local Tibetans in the Eastern region without their traditional land. The Chinese did not entirely respect the rules set by themselves, and began to further implement harsher rules upon the people in the particular regions of Amdo and Kham.³⁹ As the land for farmers was taken away and new policies were imposed without meeting the conditions set in the 17-Point Agreement, the situation in Tibet steadily started to escalate into what was later known as the Tibetan Uprisings.

1.4. The Tibetan Uprising

In 1956, a resistance movement begun by the Tibetan farmers that caused severe clashes with the Chinese military forces. Tibetan monks and nuns suffered from attacks, thus raising a major concern for the safety of locals. The soon-to-be implemented communist reform was at fault and Dalai Lama fled to India in order to discuss the possibility of asylum seeking. The discussion between Dalai Lama and the Government of India ended with an advice to wait within Tibet. By the time of 1958, the resistance forces had gained an estimate of 80 000 people that fought the PLA with guerrilla warfare and soon involved the capital of Tibet – Lhasa. Clearly, representatives from Beijing were aware of the situation as Chinese presence in Lhasa had been established and several religious figures happened to disappear from the eastern region of Tibet, Amdo and Kham part of Tibet.⁴⁰ Anyhow, to invite prominent Tibetans from that specific region to events organised by the Chinese and then to never return back was quite a common practice.

³⁷ *Supra* note 25.

³⁸ *Supra* note 25.

³⁹ *Supra* note 28.

⁴⁰ Kallie Szczepanski, "The Tibetan Uprising of 1959," *ThoughtsCo*, (3 October 2019). Available on: <https://www.thoughtco.com/the-tibetan-uprising-of-1959-195267> Last Accessed April 17, 2020.

Thereby, the day of the 10th March 1959 worried many Tibetans, as Dalai Lama was invited for a theatrical performance in the headquarters of Chinese military with a special request to come without any body guards. Such invitation got Tibetans worried that this might be the occasion for an attempted abduction of His Holiness Dalai Lama.⁴¹ For this reason approximately 300 000 Tibetans protested around the Summer Palace, where the 14th Dalai Lama was residing at the time, thus blocking any entrance and beginning the uprising of Tibet. This occasion not only was done to protect the leader, but also to further manifest their opinion upon the People's Liberation Army presence in the territory and forced Tibetan suzerainty under China. The protest movement then spread throughout the whole capital city of Lhasa.^{42,43}

On 15th March 1959, the PLA began to move closer to the capital and Dalai Lama announced the evacuation of Tibetans. On 17th of March both the PLA and the protestor movement clashed and the escape towards India through Himalaya mountains begun.⁴⁴ On the 20th March, the PLA had given the right to force in the entry in Lhasa with aim to tame the rebellious forces. Many fighters died in the streets of Lhasa and much of cultural heritage work, pieces of art, and texts were destroyed by the permission granted to the PLA.⁴⁵ Not only did the Tibetan weapons were ancient and not as efficient compared to the ones of the PLA, but also they were outnumbered. The uprising has claimed an estimate of 87 000 lives of Tibetans and 80 000 to seek asylum in the neighbouring countries. For those, who stayed in Tibet, many got killed or imprisoned, therefore also gaining the debated description happenings as 'genocide'.⁴⁶ The official dates of this Tibetan uprising are the 10th to 19th March.⁴⁷

⁴¹ Luo Siling, "A Writer's Quest to Unearth the Roots of Tibet's Unrest," *The New York Times*, (14 August 2016). Available on: <https://www.nytimes.com/2016/08/15/world/asia/china-tibet-lhasa-jianglin-li.html> Last Accessed April 17, 2020.

⁴² *Ibid.*

⁴³ Szczepanski, *supra* note 40.

⁴⁴ Szczepanski, *supra* note 40.

⁴⁵ Chen Jian, "The Tibetan Rebellion of 1959 and China's Changing Relations with India and the Soviet Union," *Journal of Cold War Studies*, (2006). Available on: <https://www.mitpressjournals.org/doi/pdf/10.1162/jcws.2006.8.3.54> Last Accessed April 17, 2020.

⁴⁶ Szczepanski, *supra* note 40.

⁴⁷ Siling, *supra* note 41.

2. THE PRINCIPLE OF RECOGNITION

The principle of recognition consists of five core concepts that have to be explained before elaborating on recognition itself. First is the **international personality** that is also known as the ‘legal personality’ and can be defined as the “capacity to be bearer of rights and duties under international law.”⁴⁸ In other words, a certain person or a group of people can obtain the rights and duties that are provided to them by the particular state. Second is the correlation of **state and government** with the particular reference of the perspective of government’s role in the affairs of a State. It is the core organ that allows a State to act both on internal and external realm. Even if the government is changing, the State continues to exist whatsoever. In addition, if there is a belligerent occupation that has taken place, it does not necessarily affect the continuity of the state, even in case if there is no government to represent the occupied State (of course it is to certain extent). Third is the **state continuity and state succession** that have to be distinguished with reference to state personality. Therefore, state personality is representing the identity and the continuity of the state, whilst state succession is the conclusion drawn upon the state’s personality. Fourth, **sovereignty** is a debatable term and it depends from the interpretation. Nevertheless, it thoroughly can be explained as the implementation of international rights and duties within the state’s territory and judiciary. Lastly, the core concept of a **State** itself that is including the criterion for statehood, conditions and other perks that it takes to be a state.⁴⁹

2.1. Recognition of Governments

The practice of recognizing Governments has been more and more abandoned and has been often replaced with the recognition of States. Many countries have switched their policies into ones that only are able to recognize States. However, governments still can be and are recognized in several simple manners that do not necessarily express that directly, even if legally such policy has been excluded. Though, the difference between government and state recognition is that an existing entity claiming to be a government can be recognised as independent and is as one only as long as there is the state and its continuity in case of exile. As well as the ruling government cannot be recognised because of the actions that have been taken in order to obtain power. Such actions can be taken in unlawful manner done to come into force over the specific state and its governance. Indeed, international actors can also refuse the recognition of a government that has come into force by violent and illegal means, including

⁴⁸ James Crawford, “Chapter 1: Statehood and Recognition,” in *The Creation of States in International Law*, (Oxford, Clarendon Press: 2006). P. 28. Last Accessed May 8, 2020.

⁴⁹ *Ibid.* Pp. 28 – 36.

the recognition of action itself. Such recognition of governments therefore involves both the *in situ* and exiled ones. This question mainly points out the issue in terms of which government is believed to be the sovereign authority over the region in question. Although, it is safe to say that most of the States will recognize democratic governments in exile rather than the non-democratic ones *in situ*.⁵⁰

The particular case of recognizing governments in exile consists of the subjective concept of recognition and the objective concept of government. The relations between states that are facing the issue of governing power are distinguished in terms of which government, the one *in situ* or in exile, to be recognized as the official one. For the government that has been officially recognized, the implementation of its legal status and judiciary is accepted by the recognizing states. With respect to ‘government in exile’, the specific term itself has no special aspect or meaning as to how other actors are treating it. It simply described that the government of that State continues to fulfil their functions with the only difference of them being in exile. By the definition, government is a crucial organ of the State’s governing; hence, there has to be a State in the first place. This does not apply in terms of decolonized territories whatsoever.⁵¹

It is important to explain that States do not recognize the ‘government in exile’ with the particular reference of being in exile. It is on the contrary as the recognition granted to the governments in exile is thereby indicating it as an entity possessing authority over the specific State that is recognized as a government while being placed in exile. The practice itself is with many misunderstandings for the mere reason of not precisely indicating the terms of recognition. There has to be a distinction made between such terms as of the case in ‘legitimate’ and ‘illegitimate’; ‘genuine’ and ‘pseudo’ governments in exile.⁵² This distinguishing is important due to the following three case studies slightly explaining the difference. First case study is of the Palestine Liberation Organization (PLO) that was recognized by States as the sole legitimate representative of the Palestinian people and not as the government of Palestine. Therefore, the PLO had not the legal capacity to exercise actions and duties as the government should. Second is of the French Committee of National Liberation (CFLN) that was recognized by its Allies only as the body that was qualified to conduct the war effort on behalf of France within the cooperation of the Allies.⁵³ On the contrary, the case study of the Belgium Government in Angers that was recognised as the sole legal government of Belgium by France

⁵⁰ Stefan Talmon, “Introduction,” in *Recognition of Governments in International Law: With particular reference to governments in exile*, (New York, Oxford University Press, 1998). Pp. 3 – 14. Last Accessed May 8, 2020.

⁵¹ Crawford, *supra* note 48. Pp. 3 – 14.

⁵² Crawford, *supra* note 48. Pp. 14 – 17.

⁵³ Crawford, *supra* note 48. P. 17.

in 1940 proves the direct recognition as the legal government of Belgium.⁵⁴ In conclusion, the necessity to clearly state the intention of the recognition if some sort of recognition is provided is crucial. Therefore, two first cases clearly prove the importance of recognition as if the government is not recognized as ‘legitimate’ or the ‘legal’ representative of the State, then it can be recognised with a subsidiary purpose.

2.1.1. Meaning of Recognition

One of the key terms within this research is the ‘recognition’. Hence, further elaboration has to be done in order to describe its complicit meaning in occasions that vary from legal circumstances and factual basis of the cases.⁵⁵ The recognition can be made in terms of states, governments, belligerency, and insurgency. In itself it does not necessarily have to be expressed throughout an official agreement. The process of recognizing a state or a government can be done throughout unilateral acts or conducts of a reaction with legal significance. Such expressions can be the estoppel (oral agreement), recognition, or consent. Great example is of a protest outbreak regarding a certain occupation in other states can hold the role of expressing the opinion upon the occurred situation, if the protest is allowed to be held by government. Nevertheless, the chances of protest recognition being as an act of political interest and done beyond the scope and supervision of the law is more possible.⁵⁶ Of course, a suggested or unintentional recognition can also occur.⁵⁷

The difference between admitting facts of the case and recognising the occasion is crucial, because the facts will be the evidence of occupation taken place that can be implied with legal significance only in a particular case. The recognition of governments is interlinked with the recognition of states, therefore often sharing similar principles and concepts. Similar case is with the doctrinal dispute between declaratory and constitutivist recognition. The constitutivist view represents the fact of recognition being limited in terms of acknowledging an existing state of law, which has subjected its citizen to the legal order by gaining legal independence of a State. In case of constitutivist recognition of government, there has to be a claim to the national personality of a particular State. From the case study of Tinoco’s government in Costa Rica that was not recognised by majority of state, the Tinoco Concession Arbitration in 1923 the arbitrator stated that –

⁵⁴ Crawford, *supra* note 48. P. 16.

⁵⁵ Crawford, *supra* note 53.

⁵⁶ Ian Brownlie, “Recognition of States and Governments,” in *Principles of Public International Law*, (New York, Oxford University Press: 2003). Pp. 85 – 86. Last Accessed May 8, 2020.

⁵⁷ Brownlie, *supra* note 56. P. 93.

Such non-recognition for any reason, however, cannot outweigh the evidence disclosed by this record before me as to the *de facto* character of Tinoco's government, according to the standards set by international law.⁵⁸

Therefore, the entity holding the necessary measures of a government or a state with effective work implied in the governing cannot be argued in practical terms. On the other hand, the legality of such entity being in power is a debate of facts and full recognition granted by states.

The second is **the declaratory view** that is the act of recognition that grants the pre-condition of legal rights of a State. The political act of recognizing a state or government can be explained with an extreme example of the state's personality being dependent upon the decisions of political manner made by other states. Many constitutivist viewers tend to rationalize the non-recognition of states, thus approaching the declaratory view. Nonetheless, the recognition itself further requests the clarification upon such issues as the number of states that have to provide this recognition; the relativity of existence; and the recognition that has been provided only after the all facts are presented. However, such issues often marginalise the both views. These two views do not represent the legal situation whatsoever. If anything, both actually are oversimplifying the situation of recognition from the perspective of law.⁵⁹

As it is established so far, there is no certain description or meaning of recognition itself. The variations are many and the global actors have to pay attention in terms of the kind of recognition they provide the entity with. There are two main legal functions of the act of recognition whatsoever. The first is the conclusion of statehood and the state of law and while the second is the act of establishing relations with the recognizing state (i.e. diplomatic, formal, etc.). In itself, the act of recognition often blurs the line between legal reasoning and political intent. Hence, this aspect has to be taken into consideration at all times when speaking of statehood and government recognition by States.⁶⁰ Interesting is that in principle no state is obliged to recognize another state in terms of public determination; on the contrary, the difference lays in situation when an entity is holding the marks of statehood and states do not recognize it as an independent entity. In such occasion, the rest of states not providing recognition might throw themselves at risk because of the simple duty to respect state relations and marks of statehood at presence.⁶¹ This argument can be elaborated in a different light as the government in matter either exist in fact and is fulfilling the duties that are supposed to be

⁵⁸ Brownlie, *supra* note 56. P. 87.

⁵⁹ Brownlie, *supra* note 56. Pp. 86 – 88.

⁶⁰ Brownlie, *supra* note 56. Pp. 88 – 89.

⁶¹ Brownlie, *supra* note 56. Pp. 89 – 90.

done with the governing, or it simply does not.⁶² Nevertheless, the non-recognition of a government has two legal sides – first, the government simply is not independent or effective in practice; second, the non-recognizing state is not willing to enter relations with the particular government.⁶³

To summarize all the aforementioned aspects of the recognition, a simple quotation can be presented by Mr. Hackworth, who was the Legal Advisor to the US Department of State, that has expressed the meaning of recognition in a memorandum dating back to 17th of May 1993. In it the author has made a clear statement of the term in a concise manner that sums up everything that has been so far mentioned –

By the term ‘recognition’, used in the sense of recognition of new governments, is meant to establish of normal official relations by the recognizing government with the government recognized, or an indication of readiness to do so.⁶⁴

Therefore, concluding that the act of recognition mainly identifies the recognizing States willingness to enter into relations with the particular government.

2.1.2. *De facto* and *de jure* recognition

For a recognition granted there also has to be an act of intent implied that also is in the situation with *de facto* and *de jure* recognition. For the both the act of recognition can be more of political nature due to which the government, presumably effective, is recognised as lawful.⁶⁵ Nevertheless, it is further necessary to elaborate upon both terms in detail to understand the difference. One way of describing is that *de facto* recognition is a ‘provisional, conditional, implied, incomplete, and/or (more easily) revokable recognition,’ whilst *de jure* is ‘final, unconditional, express, full, and/or irrevocable recognition’.⁶⁶ However, the discussion between both is not as easy or riddling as the abovementioned. Some scholars tend to argue with the irrevocability of *de jure* recognition as for the *de facto* it is perfectly normal to withdraw the act.⁶⁷ As well, the granting of *de facto* recognition does not necessarily indicate the official beginning of the government’s existence. As for a fact, governments have existed and fulfilled their duties even before the *de facto* recognition has been provided, or any

⁶² Stefan Talmon, “Meaning of ‘Recognition’,” in *Recognition of Governments in International Law, With particular reference to governments in exile*, (New York, Oxford University Press, 1998). P. 29. Last Accessed May 8, 2020.

⁶³ Brownlie, *supra* note 56. P. 90.

⁶⁴ Talmon, *supra* note 61. P. 24.

⁶⁵ Brownlie, *supra* note 56. Pp. 91 – 92.

⁶⁶ Stefan Talmon, “Recognition and its Variants,” in *Recognition of Governments in International Law, With particular reference to governments in exile*. (New York, Oxford University Press, 1998). P. 46. Last Accessed May 8, 2020.

⁶⁷ Brownlie, *supra* note 56. Pp. 91 – 92.

recognition as a whole.⁶⁸ As it is common in international law that the principles of *de facto* and *de jure* have many issues along with their practice and further explanations. First and foremost, the issue from legal perspective as the line between both terms is often blurred out along with the merging meaning. Furthermore, there is no real distinction between both and the difference mainly lies on the political aspect of the granted recognition. Therefore, the distinction between *de facto* and *de jure* usually is drawn from case-to-case analysis that have been implied in order to determine the difference from legal and factual perspectives.⁶⁹

From what was learnt in the case of America determining its states, the first division in terms have to be made in regards to sovereignty and independence. Thus, independence represents the factual situation of a State, that in fact the State is independent, whilst sovereignty determines the legal standing, or the fact of state of law. Additionally, none of these terms (sovereignty and independence) shall be confused with statehood as both are either precondition or consequence of statehood. Having said that, Stefan Talmon has analysed the practice of Lord Castlereagh and his successors that have made the differentiation between both the *de facto* and *de jure* recognition from the case of American states during the 19th century. Mr. Talmon described the distinction established as –

... *de jure* recognition, as used by lord Castlereagh and his successors, indicate that, in the opinion of the recognizing State, the recognized State is a sovereign State and/or indicates the recognizing State's willingness to deal with it as such, i.e. to enter into relations with it on the basis of sovereign equality. In contrast, *de facto* and diplomatic recognition, according to Lord Castlereagh and his successors, do not manifest an attitude on the question of sovereignty but simply indicate a willingness to have a certain mode of relations.⁷⁰

Hence, *de facto* can be simplified as an act of recognition symbolising the interest and willingness to begin inter-State relations, meanwhile *de jure* is the announcement of the state to be seen as an independent party on the international sphere, with which the recognizing state is entering inter-state relations to a full scale as with other already established, independent states. In addition, there is another term introduced in the description provided above to the knowing of recognitions, which is the diplomatic recognition. If the *de facto* can be explained as entering in commercial relations with the state in matter, appointing diplomatic agents and consuls, then the diplomatic recognition thereby is the formal diplomatic relations between states involving Ambassadors. Such event of recognition occurred when the British Government concluded a Trade Agreement with the Bolshevik Government in 1921. *De jure* recognition was granted three years later along with commencing diplomatic relations by

⁶⁸ Talmon, *supra* note 61. Pp. 26 – 27.

⁶⁹ Talmon, *supra* note 66. Pp. 46 – 49.

⁷⁰ Talmon, *supra* note 66. Pp. 53 – 54.

inviting the Bolshevik Government to begin official diplomatic relations and exchange the *chargé d'affaires* persons thus providing with the diplomatic recognition as well.⁷¹

Indeed, the *de facto* and *de jure* recognition is granted for both states and governments, in case of governments, there are some slight difference whatsoever. There is more than one meaning when the caption of *de facto* government is used in practice and scholarly articles. The meanings of such recognition are used to describe an effective government; an unconstitutional government; a government that only partially marks the conditions of government under international law; a partially successful government that are common in belligerent occupations; a government without a sovereignty; and an illegal government. However, in practice there are two types how the *de facto* recognition in terms of governments is used – ‘recognition of a *de facto* government’ and ‘recognition as a *de facto* government’. The difference in usage often translates into the simple description of the first as *de jure* or *de facto* recognition of a government, thus wielding all the power and sovereignty over its people and territory,⁷² whilst the ‘recognition as the ...’ transcribes into government not really holding the effective status of government that is necessary. Anyhow, the *de facto* recognition is, in a way, the steps that are made towards *de jure* yet not being able to execute them all in order to obtain full recognition. In other words, the government has an effective authority without possessing the rest of criterion for *de jure* recognition. Moreover, the formerly stated difference envisages the situation of government placed in exile.⁷³ It is also important to mentioned the role of non-recognizing both the government of occupant *in situ* and the exiled government that concludes into the end of diplomatic relations between the non-recognizing states and the two in matter.⁷⁴

2.2. Legal Status

The government’s exclusive competence is to represent the State on the international realm, also known as the *jus repraesentationis omnimoda*. This principle is in matter for both *in situ* and in exiled governments, because the particular government has the authority over its population no matter where the physical placement is found. Albeit the crucial role of government when even in exile, it is still necessary to distinguish its role in international sphere and the issue of whether it still continues to represent the particular State.⁷⁵ Thus, in terms of international treaties and their conclusion, the recognized government is acting on behalf of its

⁷¹ Talmon, *supra* note 66. Pp. 26 – 27.

⁷² Talmon, *supra* note 66. Pp. 59 – 65.

⁷³ Talmon, *supra* note 66. Pp. 59 – 95.

⁷⁴ Stefan Talmon, “International Representation,” in *Recognition of Governments in International Law, With particular reference to governments in exile*, (New York, Oxford University Press, 1998). P. 155. Last Accessed May 8, 2020.

⁷⁵ *Ibid.* Pp. 115 – 116.

State and is the only authority that is able to sign, ratify, or accede to inter-state treaties. Even in case of not all parties recognizing the particular government, it is still allowed to enter international treaties depending on the threshold of minimum recognition limit. Nonetheless, the bare minimum depends upon the topic of the treaty which usually is lower for ones in regards to human rights and humanitarian law, whilst the other way around for technical or organizational treaties. The conclusion of such treaties does not necessarily create treaty relation between the government in matter and the non-recognizing state whatsoever.⁷⁶ All the concluded treaties are also binding to the government *in situ* when established as the official successor of the one in exile.⁷⁷

By exchanging ambassadors or holding missions in a foreign country, states do not automatically recognize the government or its diplomatic relations. On the contrary, the act of diplomatic missions is known to be called as the ‘borrowed diplomatic status’.⁷⁸ Upon the subject of government in exile and its relation with the host state, the host state provides the same treatment to the government seeking exile within their territory as it does with diplomatic missions. Therefore, government placed in exile over the particular territory of a host country has the jurisdiction of their own as supposed within their own State. Of course, it is necessary to legally formulate the situation as the one with accrediting diplomatic missions and provide with the same diplomatic status as to a usual diplomatic mission. Although, before doing so, the host state must recognize the entity seeking exile as a government of the particular state.⁷⁹

As to the judicial situation, if the authority in exile has recognized as government, only then it can appear in front of international tribunals. Similar situation is to national courts, as if the government has been recognized by a state or by members from within a certain forum, then the exiled representatives and opposing party can commence court proceedings on a national level.⁸⁰ The government also is exercising their own jurisdiction within the settlement in the host state. However, the case of the not recognized government concludes into it practising the conferred jurisdiction of the host state. Of course, this practice has its limits and the host State can practice its jurisdiction upon the government based in its territory only within the exclusive competences that its conferred jurisdiction holds, which is based upon the principle of *nemo plus iuris transferre potest quam ipse habet* (no-one can transfer a greater right than he himself has).⁸¹ Either way, the division of power within the host state is no more

⁷⁶ Talmon, *supra* note 74. Pp. 118 – 121.

⁷⁷ Talmon, *supra* note 74. P. 131.

⁷⁸ Talmon, *supra* note 74. Pp. 159 – 161.

⁷⁹ Talmon, *supra* note 74. P. 167.

⁸⁰ Talmon, *supra* note 74. Pp. 190 – 191.

⁸¹ Stefan Talmon, “Jurisdiction,” in *Recognition of Governments in International Law, With particular reference to governments in exile*, (New York, Oxford University Press, 1998). P. 208 – 211. Last Accessed May 8, 2020.

than the State had previously before fleeing in exile and only in case of recognition. The Host State must also provide the consent to both practice and the extent of the exiled government practising their judiciary. Thus, the Host State is restricting to some extent the exiled governments judiciary. The exiled government cannot exercise more of its judicial power than the one agreed upon by the host State, but the procedures and codes of exercising their power are within the competence of the government in exile. Although, some specific law can be challenged throughout diplomatic channelling to not be practiced by the Host State.⁸²

The issue of the legislative power over the occupied territory lies within The Hague Regulations Respecting the Laws and Customs of War on Land (HR), according to which the power over that territory does not fall under the occupying power. In other words, the sovereignty of that State is not over taken by the occupant. Although, some extent of the authority over the territory is conferred upon the aggressor State and Article 43 from the aforementioned Hague Regulations hold a contradicting position in regards of exercising this power. This can conclude into the government in exile pursuing the so-called ‘war of law’ as to what the occupying power has legislated within their authority upon that territory.⁸³ As learned from the case of *State of Netherlands v. Appeals Reserve Bank of New York* (1953), the US Court of Appeal held that –

Mere hostility to the occupant should not, however, invalidate the absent sovereign’s enactments. To have such an effect the hostile legislation must be directed against those aspects of governmental control which international law vests in the occupant; In short, the legitimate sovereign should be entitled to legislate over occupied territory insofar as such enactments do not conflict with the legitimate rule of the occupying power.⁸⁴

Therefore, there is a necessity to determine the scope within which the exiled government has the authority to exercise its power by instruments of the humanitarian law.⁸⁵ In terms of government exercising its authority upon their people in other states, they are able to impose their own laws within other Host States. Nonetheless, there are many restrictions and many levies of usual social contributions to people from the exiled community, for example, a levy of certain taxes. An exclusive competence to the government is the calling upon its nationals in aim to call in military service.⁸⁶

⁸² Talmon, *supra* note 81. Pp. 211 – 218.

⁸³ Talmon, *supra* note 81. Pp. 219 – 223.

⁸⁴ Talmon, *supra* note 81. P. 223.

⁸⁵ Talmon, *supra* note 81. Pp. 223 – 231.

⁸⁶ Talmon, *supra* note 81. Pp. 238 – 243.

2.3. Statehood

As it has been established in previous chapters, the subject of government and state are interlinked and for the mere fact for the government to represent a state there has to be a state. Therefore, a brief overview of statehood has to also be presented in order to understand what it takes to be an independent State. Throughout times, there is no concrete definition provided, nor accepted in the international law regarding the term 'state'. The contradiction of this issue is the simple fact of 'State' being one of the core subjects falling within the scope of international law while not entirely having a precise legal definition. However, there are many proposals as of how to define this term, along with descriptions of it. One example would be during the drafting process of the Vienna Convention on the Law of Treaties 1969, an early draft on Article 6 was concluded by Fitzmaurice and it was as follows –

... [T]he term 'State' (i) means an entity consisting of a people inhabiting a defined territory, under an organized system of government, and having the capacity to enter into international relations binding the entity as such either directly or through some other State; but this is without prejudice to the question of the methods by, or channel through which a treaty on behalf any given State must be negotiated – depending on its status and international affiliations; (ii) including the government of the State.⁸⁷

Although the aforementioned proposal of definition was not further accepted and, instead, the article was concluded to be – “Every State possess capacity to conclude treaties,”⁸⁸ it distinguished several core criteria that an entity must possess in order to be recognized as a state. For comparison, another example of defining the term is by Enrique Peruzzotti, where the state and its concept are defined as –

[M]odern state refers to a specific institutional configuration that resulted in the establishment of a sovereign structure of political authority within a territory. It consists of a cluster of constitutionally regulated agencies that have supreme jurisdiction over a delimited territory and population.⁸⁹

Clearly, there are some overlapping basis within both proposed definitions and represents some of the criteria the state must possess. Some characteristics are universal in terms of the capacity in international law and have to be taken into consideration in terms of describing statehood. Such characteristics are (1) the capacity of a state to enter into international treaties and to act within the international sphere, which can be simply described as sovereignty; (2) the exclusive competence of a state is its internal affairs; (3) states are not obliged to engage in international process, jurisdiction, or settlement without their interest, nor consent; (4) all states are equal on

⁸⁷ James Crawford, “The Criteria for Statehood: Statehood as Effectiveness,” in *The Creation of States in International Law*, (Oxford, Clarendon Press: 2006), p. 39. Last Accessed May 8, 2020.

⁸⁸ *Ibid.*

⁸⁹ Enrique Peruzzotti, “State/Statehood,” *The International Encyclopaedia of Political Communication*, (4 January 2016), pp. 1 – 8. Available on: [10.1002/9781118541555.wbiepc191](https://doi.org/10.1002/9781118541555.wbiepc191) Last Accessed April 17, 2020.

the international realm, but it does not mean equal voting at all times whatsoever (meaning, the situation in international organizations with weighed voting, i.e. the World Bank); (5) courts will mainly vote in favour for the state to act in their free will, also known as the *Lotus* presumption, although, it is declining in importance throughout the past decades.⁹⁰

Then the criteria of statehood that an entity claiming to be an independent State have to possess, although not necessarily all of them to be recognised. Within the Montevideo Convention on the Rights and Duties of State, Article 1 states the core criterion that must be possessed by an Entity in order to be claimed a State. The Article is as follows –

The state as a person of international law should possess the following qualifications:

- (1) defined territory;
- (2) permanent population;
- (3) government;
- (4) capacity to enter into relations with other States.⁹¹

Having said that, a closer introduction also has to be made for the precondition of independence and the principle of self-determination that will be briefly mentioned after the following chapter.

2.3.1. Criterion of statehood

There are two possible ways of an independent State being recognised by other states. First is the fact that the following criterion are to be presumptions which are necessary for a State to exist. States do not necessarily have to possess all of the criterion whatsoever. Second is that states might treat another entity that is not necessarily a State as one as the margin of freedom tend be wide.⁹²

First of all, an entity that is claiming to be an independent State cannot exist without a **defined territory** that falls within the competence of a government to exercise its power upon at least some piece of land. It is necessary for the state to have a territory of a sufficient consistency upon which the state is exercising its authority. In other words, the territory of that State is under an exclusive control of its government.⁹³ Second, State has to have a stable and organized community that is known to be as a **permanent population**, that is living within the defined territory without depending on the number, nor the nationality of the people. The

⁹⁰ Crawford, *supra* note 87. Pp. 40 – 45.

⁹¹ Montevideo Convention on the Rights and Duties of States 1933. (26 December 1934). Available on: <https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml> Last Accessed May 7, 2020.

⁹² Crawford, *supra* note 87. P. 45.

⁹³ *Supra* note 91.

determined population of that State is usually considered to be the nationals of that particular State on the international platform. The nationality has to be extended to all people residing within the territory of that State and thus is the legal status of a person.⁹⁴

Third, the criterion of having an **effective government** is the core principle of statehood from the ones mentioned in the Montevideo Convention. It is also the basis for another central criterion – independence. The territorial sovereignty is the governmental power over the territory and its population. Therefore, a State having a government is more of a precondition of statehood and a successful conduct into international relation. A great description can be found from the case study of Finland when before 1918 it was an autonomous region of the Russian Empire. There were several conclusions drawn from the case study as to what takes to be a State. First, an entity has to possess a government or a system of it without any other entity controlling it. Second, the international law only requests the legal order and institutions to be established under the governance. Third, in order to apply the principles to certain cases, such points have to be taken into account - (1) the importance of government controlling its territory, thus excluding other entities claiming to control it; (2) international law does not define the extent of the aforementioned control, besides the necessity to have law and order and basic institutions; (3) if the entity is opposed in the international law, the effectiveness of government has to be more crucial.⁹⁵ As well, this criterion can be debated in regards to the continuity of a state even if there is a change of government or political system.⁹⁶ As briefly mentioned at the beginning of this chapter, the State continues to exist even if there is no government that can represent it after certain events have taken place.⁹⁷

Fourth, **the capacity to enter into relations with other States** is more of a consequence rather than being a criterion of statehood. Throughout times, this capacity has become to be nothing exclusive, or never even was seen as such. This capacity has no constant and is depending on the particular case of the State and its polity, because the dependence on the State's internal governance can be tended towards isolationism or can conclude into the debate of State's independence. However, by entering international relations and treaties, other states quite automatically recognise the independence of that State to some extent.⁹⁸

⁹⁴ Crawford, *supra* note 87. Pp. 52 – 55.

⁹⁵ Crawford, *supra* note 87. Pp. 55 – 61.

⁹⁶ Crawford, *supra* note 87. Pp. 55 – 61.

⁹⁷ Cf. The Chapter 2 – Principles of recognition.

⁹⁸ Crawford, *supra* note 87. Pp. 61 – 62.

2.3.2. Independence

Besides these main four criteria, there are other aspects to be taken into consideration. One is the independence of the State. Besides effective government, **independence** is the following core principle (or condition) which can derive from having an effective government. The sovereignty between states prove the independence of the state in debate. No exterior agency or party has to be able to interfere within the internal affairs of the particular state, nor imposing or influencing the legal order with their own unless the situations falls within the scope of the international law. However, the independence is of a wide interpretation, similar as in the case of effective government, as there might only be freedom of exercising their power and independence to certain extent. In other words, the State possibly is an autonomous ‘region’ under another power, thus being under the other State’s control. Another example is the well-known situation of the ‘puppet states’, which were a common method of governing during the USSR times and its occupied territories. However, this aspect can be interpreted from several angles, from which one involves a state holding a continued existence. The independence of a state is protected under international law in case of unlawful occupation or annexation, thus, the state continues to exist despite the lack of effective government or under the occupying power.⁹⁹

2.3.3. Self-determination

Self-determination is a principle that represents an entity’s right to be a State. It is regarded underneath the chapter of criterion of statehood, because it is often discussed as one. The principle itself, during the period shortly after 1945, became an exception describing the right to be a State as more of a matter of fact rather than based upon law. In the aforementioned case of the independence of Finland in 1918, there was the question of self-determination involved in regards to certain islands. In this particular case, those islands claimed to be a part of Sweden rather than Finland.¹⁰⁰ A Committee of Rapporteurs described self-determination in this case in 1920 as –

It is a principle of justice and of liberty, expressed by a vague and general formula which has given rise to most varied interpretations and differences of opinion ... To concede minorities either of language or religion, or to any fraction of population the right of withdrawing from the community to which they belong [...] would be to destroy the order and stability within State and to inaugurate anarchy in international law [...]. ... The separation of a minority from the State of which it forms a part and its incorporation in another State and only be considers as an altogether exceptional solution, a last resort

⁹⁹ Crawford, *supra* note 87. Pp. 62 – 66.

¹⁰⁰ James Crawford, “International Law Conditions for the Creation of states,” in *The Creation of States in International Law*, (New York, Oxford University Press, 2006). Pp. 107 – 131. Last Accessed May 8, 2020.

when the state lack either the will or the power to enact and apply just and effective guarantees.¹⁰¹

Nevertheless, in the United Nations Charter the principle overtook a legal visage that was stated in the Article 1(2) as the friendly coexistence between the nations of the World, respecting equal rights and self-determination of the people. Additionally, in the Article 55, the principle is dedicated to point out the importance and respect for human rights.¹⁰² Obviously, the writings in the Charter were further elaborated on in such documents as the International Covenants on Economic, Social and Cultural Rights, adopted in 1966, the Friendly Relations Declaration annexed to resolution 2625 (XXV), The Colonial Declaration, etc.¹⁰³ The Friendly Relation Declaration further elaborated on the subject with the following words –

The territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the charter shall exist until the people [...] have exercised their right of self-determination in accordance with the Charter ... Every State shall refrain from any action aimed at the partial or total disruption of the national unity or territorial integrity of any other State or country.¹⁰⁴

The resolution also mentions the importance of State exercising their internal and external affairs freely, without any intervention. Although, later the term – non-self-governing – were described to mean the colonial territories in particular. Higgins has said –

The present stage of development of international law and relations as exemplified by United Nations practice, does allow certain tentative observations to be made. Self-determination refers to the right of the majority within generally accepted political unit to the exercise of power. In other words, it is necessary to stat with stable boundaries and to permit political change within them.¹⁰⁵

The principle of self-determination applies to such entities that have established this right under international agreement (specifically mandated, trust and non-self-governing); to already existing states in order to protect them from interference in their internal affairs from a threat. In occasion of an are being misgoverned and the human rights have been violated, the case falls under the scope of the safeguard clause. Additionally, the principle is not a matter within the jurisdiction of the metropolitan state.¹⁰⁶

¹⁰¹ Crawford, *supra* note 100. P. 111.

¹⁰² The United Nations Charter. (24 October 1945). Available on: <https://www.un.org/en/sections/un-charter/un-charter-full-text/> Last Accessed April 17, 2020.

¹⁰³ Crawford, *supra* note 100. Pp. 107 – 131.

¹⁰⁴ Crawford, *supra* note 100. P. 113.

¹⁰⁵ Crawford, *supra* note 100. P. 125

¹⁰⁶ Crawford, *supra* note 100. Pp. 107 – 131.

3. THE CASE OF TIBET

After running in exile, Dalai Lama established a Tibetan Government on the 2nd September of 1960, which is also known as the Tibetan Government-in-Exile (TGiE).¹⁰⁷ It was placed in the Northern India, the hill-station of Dharamsala. The main tasks were to re-establish the stately functions they once practiced and to create a mechanism of protection for the refugees. Until this day, the set-up community still is living there; practising all the necessary responsibilities of an independent state; continue the work of the before-independent government; and continuously advocates for the liberation and recognition of Tibet as a sovereign country.¹⁰⁸ The estimate of 100 000 Tibetans are living in asylum in India, based upon 2019 statistics; thus, Dharamsala is the centre for the Tibetan diaspora.¹⁰⁹ Altogether, there is an estimate of 122 000 Tibetans in exile so far.¹¹⁰

The analysis of whether the Tibetan Government in Exile will consist of points made in the previous chapter of ‘The Principle of Recognition’. However, first point to be regarded will be the statehood and its criterion for the simple reason that for the government to represent a State there has to be a State in the first place.¹¹¹ Hence, the situation of Tibet during the *de facto* independence from 1913 to 1951 will be implemented with the criterion of the statehood. Second, the establishments of Tibetan Government in Exile have to be regarded to understand whether the reality covers the criterion ‘effective government’ and it representing the interests of the Tibetan people. Third, relations with India have to be briefly covered due to correlation from the judiciary aspect. Lastly, the legal status of Tibet will be determined based upon principles presented in the Chapter 2 – Recognition of Governments.

3.1. The Statehood of Tibet

Based upon the fact that for a government to be recognized as an official organ of the particular state, there has to be the state in the first place. Therefore, the criterion of statehood that have been mentioned in the Chapter 2.3 based on the Article 1 of the Montevideo Convention on the Rights and Duties of State will be implied to the particular case of Tibet during the years the *de*

¹⁰⁷ Brief Introduction to Tibetan Government In-Exile. The Office of Tibet – Pretoria. Available on: <https://www.officeoftibet.com/index.php/2014-08-21-17-03-06/brief-introduction-to-tibetan-government-in-exile> Last Accessed May 7, 2020.

¹⁰⁸ Fiona McConnell, “De facto, displaced, tacit: The sovereign articulations of the Tibetan Government-in-Exile,” *Political Geography* 28 (6), (August 2009): pp. 343 – 352. Available on: <https://doi.org/10.1016/j.polgeo.2009.04.001> Last Accessed May 7, 2020.

¹⁰⁹ Krishna N. Das, “Tibetans in exile struggle to see beyond Dalai Lama,” *Reuters*, (27 March 2019). Available on: <https://www.reuters.com/article/us-china-tibet-india/tibetans-in-exile-struggle-to-see-beyond-dalai-lama-idUSKCN1R80ZP> Last Accessed May 7, 2020.

¹¹⁰ McConnell, *supra* note 108.

¹¹¹ *Cf.* The Chapter 2 – The Principle of Recognition.

facto independence that was claimed in the 20th century. Accordingly, defined territory, population, government and capacity to begin relations with other states will be further regarded.

The period of Modern Tibet and its *de facto* independence is from 1913 to 1951. Throughout those years, the governmental structure consisted of the head of State that is the Dalai Lama above whom there was no superior authority. As the head of the office with the ultimate authority, the Dalai Lama had to provide approval to all decisions, recommendations and action plans forwarded by the government and the administration. Further, there is the Tibetan Government and the Kashag (also known as the administrative centre). The Kashag mainly received messages of different forms from Tibetans and forwarded them to the appropriate office, i.e. proposals and recommendations of law were sent in order to be regarded by His Holiness and so on. Below the administrative body, there were approximately 20 different offices, such as the Finance Office and the Foreign Office.¹¹² The governing territory of Tibet have been of approximately 1 221 thousand square kilometres in the Himalayan region,¹¹³ with the capital city Lhasa. Citizens of Tibet all were issued Tibetan passports. The Tibetan plateau often is referred to be as the ‘roof of The World’, because of its tall mountain range that includes the Everest on the border with Nepal. The region itself is rich with natural resource reserves such as minerals, oil and gas therefore being one of the reasons why the PLA occupied the territory. Currently the region is known as the Tibetan Autonomous Region under the control of People’s Republic of China.¹¹⁴ Therefore, the aspects of government, defined territory, and permanent population are covered as Tibet has possessed those during their proclaimed *de facto* independence.

The criterion of capacity to enter in relation with other states also is proven to be present throughout the period of Modern Tibet. During the negotiation process of the withdrawal of the Chinese forces from Tibet during the Chinese Revolution was concluded in the form of the Agreement Between the Chinese and Tibetans in 1912. Nonetheless, the agreement itself does not provide any type of recognition towards Tibet from the Chinese side. Further, The Treaty of Friendship and Alliance Between the Government of Mongolia and Tibet (1913) proclaims the recognition of one another in the first two articles (cf. Article 2 stating the recognition of Tibet by the ruler of Mongols), thus indicating both the capacity to enter into relations with

¹¹² Melvyn C. Golstein, “Introduction” in *A History of Modern Tibet, 1913-1951: The Demise of the Lamaist State*, (University of California Press: 1989), pp. 11 – 16. Last Accessed May 7, 2020.

¹¹³ Nation Profile – Tibet. Nationalia. Available on: <https://www.nationalia.info/profile/46/tibet> Last Accessed May 6, 2020.

¹¹⁴ John Lee, “12 Regions of China: The Tibetan Plateau,” *The Diplomat*, (29 July 2017). Available on: <https://thediplomat.com/2017/07/12-regions-of-china-the-tibetan-plateau/> Last Accessed May 6, 2020.

another State and providing with recognition of independence. The treaty also involves the announcement of commencing trade and other commercial related relations (cf. Article 6 and 7).¹¹⁵ Upon the conclusion of the before mentioned treaty, shortly came the Tibetan Declaration of Independence on February 1913 by the 13th Dalai Lama.¹¹⁶ The turning point whatsoever was the 1914 trade agreement concluded with the British Empire, that recognized Tibet with *de facto* independence, therefore having a bigger power to grant such recognition.¹¹⁷ Having said that, the criterion of the capacity to enter into relations with other States was present along with the granting of *de facto* independence to the Tibetan State.

In conclusion, during the years of *de facto* Tibetan independence, the four-core criterion of statehood stated in the Montevideo Convention on the Rights and Duties of State had been met during the period of 1913 to 1951. However, it is worth mentioning that during the period of Modern Tibet, there were many that granted the *de facto* recognition, meanwhile one of the main issues of not obtaining *de jure* independence was due to the fact that Tibet did not apply for the membership in the League of Nations after the First World War when it had the full capacity of doing so.¹¹⁸ Consequentially, this fact partly explains the hesitation many countries had in order to potentially grant the full recognition. Nevertheless, Tibet did possess all the criterion and managed to establish relations with other countries. Hence, the question of a state to be represented by government when in exile has been answered as the TGIE is representing what was known of Tibet over the span of almost 40 years. Further the question of legitimacy of the TGIE has to be regarded by establishing the governmental structure.

3.2. The Tibetan Government in Exile

Ever since the settlement in exile in the Northern India, His Holiness Dalai Lama and the governmental representatives begun to re-establish the organs of governance that were previously known *in situ* thus becoming the Government of Tibet while in exile. The administration of this exiled government, the Central Tibetan Administration (CTA), had concluded and introduced the implementation of the democratic principles, that way transferring TGIE to be a democratic government since 1991. This had also concluded into the

¹¹⁵ Treaty of Friendship and Alliance Between the Government of Mongolia and Tibet (1913). (11 January 1913). Available on: <http://www.tibetjustice.org/materials/treaties/treaties14.html> Last Accessed May 6, 2020.

¹¹⁶ Proclamation Issued by H.H. The Dalai Lama XIII, On the Eight Day of the First Month of the Water-Ox Year (1913). Available on: <https://tibet.net/wp-content/uploads/2014/10/political-treaties-of-tibet...pdf> Last Accessed May 6, 2020.

¹¹⁷ Anglo-Tibetan Trade Regulations 1914 (3 July 1914). Available on: <http://www.tibetjustice.org/materials/treaties/treaties17.html> Last Accessed May 6, 2020.

¹¹⁸ Tsering W. Shakya, "Tibet and The League of Nations with reference to letter found in The India Office Library, under Sir Charles Bell's Collections," *The Tibetan Journal* 10 (3), (Autumn 1985), pp. 48 – 56. Available on: <https://www.jstor.org/stable/43300179?seq=1> Last Accessed May 6, 2020.

creation of their own constitution – the Charter of Tibetans-in-Exile.¹¹⁹ Based upon previous practice, His Holiness Dalai Lama is the head of the state and the government whilst also being the spiritual leader. Meanwhile the core organs of a democratic state were installed to cover the spheres of legislative, executive and judiciary bodies. Therefore, all three will be regarded to understand the structure and the extent of their work.

3.2.1. The Tibetan Parliament in-Exile

In 1960 the Tibetan Parliament in Exile (TPiE) was established. The parliament is the supreme legislative body that is democratically elected and is considered to be the most crucial change that had been established by the 14th Dalai Lama in terms of the governmental structure. Altogether there are 46 members consisting of ten from each of the three traditional provinces (U-Tsang, Do-Toe, Do-Mey);¹²⁰ two from each of the four Buddhist and Bon faith schools; three representatives from three different regions of the World (the Tibetans residing in the West); three from the art, science, literature and community service fields; another three seats are in particular nominated by the Dalai Lama himself. Additionally, according to the Charter of the Tibetans-in-Exile, there must be at least two women elected from the abovementioned regions, thus promoting equality within the Parliament. Elections are held every five years and citizens can vote from the age of 18, the minimum age of a candidate is 25. Sessions are held twice a year, with exception of specific sessions called by the Dalai Lama in emergency situation.¹²¹

In addition, the members of the Assembly have to undertake periodic trips throughout the settlement of their people. During these tours, they have to draw assessments of the present conditions which are later addressed to the administration in case of matters in concern and specific grievances. The parliament continuously communicates with the 38 settlement areas and their local parliaments/authorities.¹²² Furthermore, the delegation also holds visitations and meeting with leaders and representatives from different countries. The most recent being the visit by the TPiE delegation to the Russian Federation from the 2nd to 12th of March 2020 by the current 16th Parliament with aim to visit Tibetan Buddhists, supporters and to update about the situation within Tibet.¹²³ The TPiE regularly is publishing reports upon their meeting and decisions made in English and Tibetan on their official website, therefore making the

¹¹⁹ Charter of the Tibetans-in-Exile (1991). (28 June 1991). Available on: <http://www.tibetjustice.org/materials/tibet/tibet6.html> Last Accessed May 7, 2020.

¹²⁰ *Supra* note 107.

¹²¹ *Supra* note 107.

¹²² *Supra* note 107.

¹²³ Tibetan Parliamentary delegation concludes official visit to the Russian Federation. (24 March 2020). Available on: <https://tibetanparliament.org/tibetan-parliamentary-delegation-concludes-official-visit-to-the-russian-federation/> Last Accessed May 6, 2020.

information publicly available to everyone. The transparency of information regarding the work of the TPiE is present and the purpose of visits, as to the one to Russia, are made clear by stating the agenda and the process of its completion. Moreover, the communication with other Tibetan diasporas are kept and honoured throughout such meetings.

3.2.2. The Kashag (the Cabinet)

The Kashag, also known as the Cabinet, is the executive pillar and is the oldest body from the three branches, thus dating back to the midst of the 18th century.¹²⁴ The head is the Kalon Tripa (the Chief of the Council of Ministers) who is elected by a popular vote from the people. Further, Kalon Tripa appoints a team of seven colleagues of the cabinet that are further approved by at least 51% support from the Parliament members. The administrative departments under the Kashag are Department of Religion and Culture; Department of Home; Department of Education; Department of Finance; Department of Security; Department of Information and International Relations; Department of Health.¹²⁵ Thus, further the departments will be broken down to their essential aims and duties.

The Department of Religion and Culture mainly seeks to strengthen the cultural and religious heritage Tibet has. The Department keeps constant contact with Buddhist monasteries all around the World and it is supervising approximately 262 monasteries and nunneries that have been established in India, Nepal, and Bhutan.¹²⁶ The Department of Education is administrating schools for Tibetan children in exile based in India, Nepal and Bhutan. The main teaching within the schools represent the core spiritual values of Buddhism, such as the principle of “others-before-self”. All the developments within the school system are publicly available in the official site of the Central Tibetan Administration, therefore providing transparency in terms of investments made in the educational sector. The Department of Finance prepare the annual budget distributed to the Central Tibetan Administration (CTA). Nevertheless, the main income of the budget is the donations given by the Tibetan community that is known as the Green Book contribution,¹²⁷ as well as donations and income from trade.¹²⁸ One of the most active donations have regularly been made by the US, from which the most

¹²⁴ The Kashag (Cabinet). Central Tibetan Administration. Available on: <https://tibet.net/about-cta/executive/> Last Accessed May 6, 2020.

¹²⁵ *Supra* note 107.

¹²⁶ Department of Religion & Culture. Central Tibetan Administration. Available on: <https://tibet.net/department/religion/> Last Accessed May 6, 2020.

¹²⁷ *Supra* note 107.

¹²⁸ Department of Finance. Central Tibetan Administration. Available on: <https://tibet.net/department/finance/#code0slide0> Last Accessed May 6, 2020.

recent is of nine million dollars approved on January 2020.¹²⁹ The Green Book contribution has also effectively become the passport of Tibetans with particular reference to obtain rights from the CTA. Such rights are the admission in schools and universities, and voting rights by proving the participation and involvement in the political structure of the TGIE. The contribution was introduced in 1972 as a form representing the peoples' contribution in the expenses of the Kashag that is serving for the people. The contribution was passed in the form of legislation in 1992.¹³⁰ The Department of Health is running institutions of medical help throughout the settlement areas of Tibet – five Primary Health Care Centres; seven hospitals; 47 clinics; two mobile clinics; and 47 branch clinics of the Medical Institute that is practising the traditional medicine, thus dealing with physical and mental health. To assure proper work by the medical staff throughout the settlement areas, there are positions of officers that regard the medical practice throughout Dharamsala and other settlement places.¹³¹

The Department of Security has two main priorities on its agenda. First, the responsibility to protect and to ensure the security of the Dalai Lama. Second, it helps the refugees to renew their certificates within the Indian government. Security department has additional Reception Centres, altogether three, that are overlooking the number of people seeking refuge from Tibet. These Reception Centres provide food; shelter; guides to their destinations; and provide with necessary measures for these people to enter the job market, obtain education, etc. The department has a Branch Security office which provides with arrangements of security in occasions of public events. This office not only works to provide security for Dalai Lama, but also is monitoring the developments of the situation between both China and Tibet.¹³²

The Department of Information and International Relations (often referred to as 'DIIR') is the succession of what was known to be the Foreign Relations Office. The transformation was made for the simple reason to provide information of the situation in both *in situ* and in exile lives of Tibetans, therefore fulfilling the duties of informing people. The information provided mainly regards the politics, human rights and environmental updates of Tibet. The publications made by the Department are in English, Chinese and Tibetan in both printed and electronic form, including the media publications. Moreover, there are altogether 12 missions

¹²⁹ David Thomas, "Tibet's exile President Thanks United States government and Congress for new aid," *Tibet Post International*, (21 January 2020). Available on: <http://www.thetibetpost.com/en/news/international/6700-tibet-s-exile-president-thanks-united-states-government-and-congress-for-new-aid> Last Accessed May 6, 2020.

¹³⁰ Green Book (Chatrel). Central Tibetan Administration. Available on: <https://tibet.net/support-tibet/pay-green-book/> Last Accessed May 6, 2020.

¹³¹ Department of Health. Central Tibetan Administration. Available on: <https://tibet.net/department/health/> Last Accessed May 6, 2020.

¹³² *Supra* note 107.

of the Central Tibetan Administration in the World that bridge the communication with the according parliaments and governments; support groups; and international organizations to provide updates about the Tibetan situation.¹³³ Offices are in such countries – India; The United States; Japan; the United Kingdom; Russia; Belgium, Switzerland; Australia; South Africa; Taiwan; Brazil;¹³⁴ thus also fulfil the work of the diplomatic service.

All the aforementioned departments are quite a usual division in a democratic state. Nonetheless, the seventh Department has the particular reference to Tibetan refugees and assurance of the habitual practice of agriculture to be practised. The Department of Home is responsible for the rehabilitation of exiled Tibetans and the watch-over other settlement societies. Furthermore, it has local representatives of the settlements that are known as the Settlement or Welfare Officers that update the situation to the CTA. These officers are elected by the communities they are in or appointed by the Central Administration. Even though the CTA is encouraging the local societies to elect their administrative heads, because of the village self-rule and maturity politic-wise having a crucial role, it is depending upon the decision of people themselves, which way of the appointment is preferred.¹³⁵

3.2.3. The Tibetan Justice Commission

The Tibetan Justice Commission is the supreme judiciary body of the TGiE and was officially introduced on the 11th of March 1992. The Commission only deals with civil disputes regarding Tibetans themselves as any other matter under the scope of criminal law does not fall in their competence, nor does any issue that is going beyond the limits of the TGiE and is in relation to the matters of India. The Chief Justice Commissioner along with two Justice Commissioners are selected by the Dalai Lama and approved by the Parliament with at least a two third majority vote.¹³⁶ Tibetan Justice Commission guides the Charter of Tibetans in Exile 1991 to be respected throughout three instances – The Local Justice Commission; Tibetan Circuit Justice Commission; Tibetan Supreme Justice Commission (from lower to the supreme instance). To follow all the matter of procedural codes that have to be followed during the course of judgements the Code of Judiciary, Civil Procedure Codes and the Rules of Evidence that have been formulated in 1996 by the Justice Commission and given approval by Dalai Lama.¹³⁷

¹³³ Department of Information & International Relations. Central Tibetan Administration. Available on: <https://tibet.net/department/information/#code0slide1> Last Accessed May 6, 2020.

¹³⁴ Contact CTA – Offices of Tibet. Central Tibetan Administration. Available on: <https://tibet.net/contact/cta-contact/#code0slide1> Last Accessed May 6, 2020.

¹³⁵ Home Department. Central Tibetan Administration. Available on: <https://tibet.net/department/home/#code0slide1> Last Accessed May 6, 2020.

¹³⁶ *Supra* note 107.

¹³⁷ Judiciary. Central Tibetan Administration. Available on: <https://tibet.net/about-cta/judiciary/> Last Accessed May 6, 2020.

The structure established within the democratic pillars clearly shows the developments reached by the TGiE towards a community respecting Tibetan values and welfare. The main issues on the agenda are the refugee security and their further implementation into a ‘normal’ life that can be successful from both educational and workfare aspects. As well, the promotion of the research made for the situation that occurred historically and issues from the current day on a global scale proves Dalai Lama’s and Tibetan continuous tries to advocate for the liberation of Tibet and safeguarding their identity. Nonetheless, the structure of democratic system is thought through. The TGiE functions as a *de facto* government for the mere fact of being effective. So far it has been established that effective government is one of the core criterion for both *in situ* and exile. The wielding of power over the Tibetan people is present, although only over those that also are found in exile. Over Tibetans that have stayed within the border of Tibet the TGiE has no legal authority. The constitutivist view in terms of recognition stated the fact that evidence of effective government can outweigh the lack of recognition itself. Even if there is no recognition of a *de facto* government granted to the TGiE, the fact of possessing the capacity that has been used to imply successful democratic structures within the livelihoods in exile is undeniable.

3.3. Indo-Tibetan Relation

When talking about Tibetan and Indian inter-relations, it is important to involve a third party – China. The relation of Tibetan-Indo-Sino triangle depends from the ones countries have established with one another in pairs. Having said that, the particular situation with Tibet and India varies from the foreign policy that India has set towards China. As the recent celebration of 60 years in exile shows, the moving of the event from the supposed New Delhi to Dharamsala was made with an aim to not trigger China and its relations with India. Clearly, the topic of Tibet is a sensitive subject to China while to India it can negatively affect the standing between both. Nonetheless, the Indian representatives have thoroughly stated the relations with Tibet to be based upon religious and cultural links and respect to Dalai Lama as the spiritual leader of Buddhism to whom many Indians also look up to.¹³⁸ Though the balance between providing asylum to Tibetans and also drawing relations with China is a slippery slope.

The relation between India and Tibet is of a long run throughout which the period of the so-claimed Tibetan *de facto* independence involved the governing of foreign affairs including such issues trade, supply, frontiers that were directly dealt with. India itself notably recognised

¹³⁸ Abhishek Madhukar, “Dalai Lama calls on Tibetans to remain united as India drifts towards China,” *Reuters*, (31 March 2018). Available on: <https://www.reuters.com/article/us-india-china-tibet/dalai-lama-calls-on-tibetans-to-remain-united-as-india-drifts-toward-china-idUSKBN1H70J3> Last Accessed May 6, 2020.

the *de facto* independence of Tibet by merely entering in different types of relations with its neighbouring country. The claimed sovereignty over Tibet by the Manchu Dynasty has been often claimed as ‘fiction’ that in practice was no more than simply having the Dynasty’s ambassadors placed in Tibetan capital with no linkage to their internal, nor foreign affairs whatsoever. Such occasion as the aforementioned quite simply sums up the viewpoint upon Tibetan status in history from the Indian viewpoint. Furthermore, to strengthen this argument, many bilateral agreements were concluded with Tibet as being an independent actor, based on declarations by different Indian representatives that were based in Lhasa at the time.¹³⁹

The invasion of Tibet was never recognized by India, however, when in 1954 an agreement was signed between China and India in terms of trade, India also signed the recognition of Tibet as a region as part of China. Ever since the agreement was concluded, the policy towards China continues to grow with aim to maintain peaceful and friendly relations, that allow both countries to establish strength within the region of Asia.¹⁴⁰ While the TGIE is not spoken of by Indians in any public realm in terms of recognising it as legitimate due to the fact that relations with China seemingly are more crucial for the foreign policy of India, the institutions established are recognised as representatives of the Tibetan Government in terms of bilateral relations to be successfully fulfilled. The acceptance to give the refuge to the Tibetans ever since 1959 has not been an official and legal matter. It has been provided as a specific territory where Tibetans can live because of the closeness both nations have had throughout history and the link of religion and culture both share. The fact of official non-recognition of the exiled government leads to clarification of jurisdiction as technically TGIE is under the Indian Law. Hence, the legal status of Tibet has to be further analysed.

3.4. Legal Status

The transition into the democratic system within their settlement areas and promoting the participation of Tibetans with the Green Book has been a recent development. By the statement made in the Chapter 2 - Recognition of Governments, the government in exile has no particular reference to the displacement, rather the fact that the government was forced to flee in asylum whilst the duties of governance are kept within them being in exile. The case of Tibet serves as a great example of such practice due to Dalai Lama and the Government of Tibet fleeing in exile yet continuing to do the work that is supposed to be done. Based on the distinction made

¹³⁹ L. L. Mehrotra, “India’s View of Tibet’s Political Status,” in *India’s Tibet Policy: An Appraisal and Options*, (New Delhi: 2000). Pp. 5 – 10. Available on: <https://tibet.net/wp-content/uploads/2017/05/Inidas-Tibet-Policy.pdf> Last Accessed May 6, 2020.

¹⁴⁰ Brahma Chellaney, “Why Tibet Remains the Core Issue in China-India Relations,” *Forbes*, (27 November 2014). Available on: <https://www.forbes.com/sites/brahmachellaney/2014/11/27/why-tibet-remains-the-core-issue-in-china-india-relations/#23a00d0358a0> Last Accessed May 6, 2020.

in previous chapters between *de facto* and *de jure* independence and based on the fact that Tibet has never reached its *de jure* independence, the legitimacy of TGiE is open for debate from the perspective of the establishments and social structure throughout the 61 years in exile. Indeed, the situation can reach the maximum in the terms of *de facto* recognition only.

Because officially the TGiE is not recognised as a government, the territory of Dharamsala is not formed based upon the same procedure as embassies.¹⁴¹ However, the Charter of Tibetans in Exile is a constitutional body that represents the state of law established within the exiled community. Therefore, TGiE is practising their own agenda according to their own law, but has a limitation to the extent of their own jurisdiction. The extent of such limited capacity is stated in the Article 66 (2) of the Charter on Tibetans-in-Exile –

(2) As all Tibetans-in-Exile are required to adhere to the laws of the respective host countries, the Tibetan Supreme Justice Commission shall have no authority over civil and criminal proceedings while in exile. It will nevertheless exercise its authority over the following:

- a) cases involving interpretation of the wordings of the Charter of the Tibetans-in-Exile;
- b) cases involving issues of fairness on the conduct of business of the executive departments or civil servants of the Tibetan Administration;
- c) cases involving redressal of grievances regarding the services of civil servants of the Tibetan Administration and such institutions under its jurisdiction;
- d) disputes involving land and property in the Tibetan settlements;
- e) cases of arbitration involving Tibetan communal disputes, social welfare and security;
- f) pronouncement of judgements in types of cases other than those specified in this Article; and
- g) it shall have the authority over and offer guidance to the Tibetan Local Justice Commissions and the Tibetan Administration in regard to their conduct of business involving legal matters.¹⁴²

It can be concluded that particular matters falling within the scope of Tibetan law are dealing with intra-Tibetan issues and the margin of exercising the authority by the Tibetan Justice Commission is narrow. Any other issue falling beyond this scope has to be exercised according to the laws of the host state. The TGiE whatsoever is an entity that has established the state of law within its community with the necessary judiciary body and the aforementioned hierarchy of commission instances. On the other hand, decisions made by the Commission and law passed are not legally binding because of the lack of *de jure* recognition of the government.

¹⁴¹ Cf. Chapter 2 – Legal Status. For governments in exile, the particular territory of exile is formed under the principles of a diplomatic mission, thus allowing the exiled government to have their own jurisdiction to certain extent agreed upon with the host state.

¹⁴² Charter of Tibetans-In-Exile (1991). (28 June 1991). Available on: <http://www.tibetjustice.org/materials/tibet/tibet6.6.html> Last Accessed May 6, 2020.

The particular role of government within the statehood for both *in situ* and in exile is crucial for providing the state continuity. Even if during the independent years Tibet had gained only *de facto* independence, by establishing efficient government in exile they have secured the continuity of Tibet and safeguarded the State's personality (as the religious centre of Buddhism). Hence, the principle of *jus repraesentationis omnimoda*, the exclusive competence to represent the State¹⁴³, has been proven to be practiced by the TGiE. First, by the mere fact that when in 1959 the uprising begun in order to protect the life of Dalai Lama and the estimate of 80 000 Tibetans then following Dalai Lama throughout the Himalayas¹⁴⁴ show the faith and trust Tibetans have vested within His Holiness. This means not only the faith in Dalai Lama as a religious priest representing the rebirth of Avalokitesvara¹⁴⁵, but also as the supreme authority of Tibetans. Second, as established in regard to the Department of Information and Foreign Relations, there are 12 missions all around the World thereby representing Tibet and its values.

In terms of the missions in those 12 countries around The World, the missions are not set as official embassies of the TGiE. Nonetheless, these missions have their own representatives chosen and fulfilling the work of ambassadors, as communication with the host countries are ongoing and information upon Tibet itself constantly is updated. This does not mean the recognition of diplomatic relations between the parties involved whatsoever.

In case of belligerent occupation, the sovereignty of the subject state continues to lie within the government forced fleeing in exile, but only to certain extent. Meaning, the TGiE continues having sovereignty, however the territory of Tibet is limited as the authority within are the Peoples Republic of China. The aspect of sovereignty while in exile is the fact of implementing international laws within the state of law the TGiE has. As it has been mentioned, democracy has been introduced and successfully put in practice for almost three decades and Dalai Lama continues to promote the importance of people participating within the matters of the government. Regarding human rights the TGiE continues cooperation with the United Nations in terms of fighting against human right violations within Tibet itself.¹⁴⁶ Regardless, over the Tibetan territory itself, the TGiE has no sovereignty nor jurisdiction simply because of the Chinese occupation that established full authority over the region.

¹⁴³ Cf. Chapter 2 – Principle of recognition.

¹⁴⁴ Cf. Chapter 1 – Overview of Tibet.

¹⁴⁵ Cf. Introduction.

¹⁴⁶ “Tibetan President-in-exile urges UN official to visit Tibet,” *AP News*, (10 March 2020). Available on: <https://apnews.com/0e489e69ba7c7985f300720196f620e3> Last Accessed May 8, 2020.

CONCLUSION

Although some case studies show that not all criterion are necessary to be possessed by a state to be recognised, one of the main reasons the recognition is not granted is the mere the influence of politics comes into play. Majority of states hesitated the granting of *de jure* recognition to Tibet during its *de facto* independence. Some for the reason of Tibet not applying for the League of Nations when it had a chance and others because of political reasons, such as the fear from the Chinese reaction if full recognition would be granted. Nonetheless, the process of recognition is a delicate yet simple process that has many variations in terms of recognitions that can be granted to governments claimed to represent a State. In case of Tibet, the *de facto* independence had been granted by many States yet no full recognition was present. However, the repeated formula of government to be recognised of the particular state is proven to be present. Tibetan *de facto* independence had been granted, thus proving the claims of TGiE to represent the particular state to be valid. Furthermore, Tibetan Government in Exile does have the official status of representing Tibetan people.

So far it has been cleared that Tibet has the criterion under the international law to be considered a State, even if only on the basis of *de facto* independence. Consequently, the mere fact of granted *de facto* recognition to Tibet and status independence as a State also reflects upon the legal standing as a government in exile. The Tibetan Government in Exile cannot possess more of legal capacity than the one of *de facto* and it has not been officially recognised by any other state. Even though the decisions of the Commission and the legal acts of the Tibetan Parliament in Exile is not legally binding, the state of law within the community of Tibetans in Exile is present in its full range. The fact of such charters, procedural codes and laws as a whole not being binding does not mean they are not practised. In other words, the TGiE has their own rule of law that is practised by democratically constructed institutions and people do abide by these laws. Therefore, the legal capacity within their exiled community is undeniable and the structure of government prove the TGiE to be a democratic entity.

The self-determination of Tibetan people does express the strong bond to both the Tibet willing to be an independent State within their historic territory that had been independent to some extent until the 1951 and the faith entrusted to their spiritual leader His Holiness the Dalai Lama. This aspect not only involves placed in the main diaspora community within the Dharamsala, but also all around the World. The constitutivist view of recognition states that the evidence of government practising effective power upon its people and territory outweighs the sole fact of lacking official recognition. It is clear that Tibetan Government in Exile is legitimate within the framework created during the years of exile and by implementing such principles of

human rights and democracy within their own way of life, however, it has been argued that lack of *de jure* recognition does not cover the legality of such government. Therefore, the legitimacy of Tibetan government has not been officially recognised even if in practice it has proven to fulfil all the duties one shall do.

The author's hypothesis has been partly proven right in terms that there is no recognition granted to the Tibetan Government in Exile. However, such recognition by states is not granted for the reason of not obtaining full extent of recognition during their independence of 1913 to 1951. For political reasons, such recognition is neither granted though with particular reference with India and its ever-changing relations with China. Besides this particular position of India, the non-recognition of Tibetan because of political matters has to be argued.

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