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THE CENTRAL TIBETAN ADMINISTRATION: LEGAL STATE OR MERE ORGANIZATION

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I. INTRODUCTION

Over the years, celebrities and individuals have advocated to “Free Tibet,” such as Sharon Stone’s scandalous suggestion that the 2008 Sichuan earthquake was a result of “bad karma” due to Chinese mistreating the Tibetans.¹ Such individuals are referring to the Tibet Autonomous Region (“TAR”) within China when chanting “Free Tibet” or commenting on the mistreatment of Tibetans. The Central Tibetan Administration (“CTA”) does not receive as much attention even though it may be considered a free, independent state for Tibetans.

In 1949, the People’s Liberation Army of China entered the area now known as the TAR.² The CTA was established in 1959 by His Holiness the Fourteenth Dalai Lama and about eighty thousand Tibetans who fled the TAR because they disagreed with Chinese rule.³ The CTA went on to establish a government in Dharamsala, India for Tibetans.⁴

This paper will analyze whether the CTA meets the qualifications to be considered a state. Part II examines the history between China and Tibet. Part III discusses what makes a state an independent state; this part examines the conflicting arguments regarding the CTA’s possibility of statehood. Part IV will examine how other states in the international community interact with the CTA. The conclusion in Part V will indicate that the CTA has not met the requirements of statehood.

II. HISTORY

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¹ *Sharon Stone Thinks China Earthquake Might Have Been ‘Karma’*, FOX NEWS (May 27, 2008), <http://www.foxnews.com/story/2008/05/27/sharon-stone-thinks-china-earthquake-might-have-been-karma/>.

² *Tibet and China: Two Distinct Views*, RANGZEN, <http://www.rangzen.com/history/views.htm> (last visited Apr. 8, 2015).

³ *About CTA*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/> (last visited Apr. 8, 2015).

⁴ *Id.*

The year 640 A.D. marks the earliest interaction between China and Tibet⁵ when Tibetan King Songtsan Gampo married the niece of a Chinese Emperor, Princess Wencheng.⁶ For decades, China and Tibet struggled over boundary lines. In response, the Sino-Tibetan treaty of 821 or 822 was inscribed on a stone pillar near the Cathedral of Lhasa in 823.⁷ The West face of the pillar reads that “both sides [China and Tibet] shall not struggle like enemies, shall not lead armies into war, and shall not invade and seize each other’s territory.”⁸ While the stone pillar is still standing,⁹ the treaty has clearly been abandoned.¹⁰

The British East India Company became interested in Tibet in 1774 for trade possibilities.¹¹ In 1906, Britain and China signed the British-Chinese Convention, which reaffirmed Chinese possession of Tibet.¹² The British agreed to refrain from interfering with the Tibetan territory or its administration, while China agreed to refrain from admitting a foreign state that would interfere with the Tibetan territory or its administration.¹³ Despite such agreements, however, both Britain and Russia recognized China’s authority over Tibet.¹⁴

The Simla Accord of 1914, or Convention Between Great Britain, China, and Tibet [in] Simla, was meant to divide Tibet areas into “Inner Tibet” and “Outer Tibet.”¹⁵ Inner Tibet would be under the jurisdiction of the Chinese government while Outer Tibet would enjoy autonomy.¹⁶ The British had interest in creating the boundary after they discovered an important trade town in Outer Tibetan territory.¹⁷ Because China and Tibet could not agree over the Sino-

⁵ Please note that the term “Tibet” will be used to describe Tibet from the years 640-1950. From years 1950- present, the term “CTA” will refer to the government established in India in 1959. The term “TAR” will refer to the Tibetan area under Chinese control. However, note that the TAR was created in 1965 for administrative reasons. *Tibet (Tibet Autonomous Region)*, NATIONS ONLINE, <http://www.nationsonline.org/oneworld/tibet.htm> (last visited Apr. 8, 2015).

⁶ JEFFREY YI-LIN FORREST & TAO LIXIN, INVESTMENT AND EMPLOYMENT OPPORTUNITIES IN CHINA 302 (2014).

⁷ The Sino-Tibetan Treaty of 821/823 A.D. was “translated from the inscription of the west face of the stone pillar at Lhasa.” <http://www.tibetjustice.org/materials/treaties/treaties1.html>; Schaeffer, Kurtis R., Matthew Kapstein, and Gray Tuttle, eds. *Sources of Tibetan Tradition*. New York: Columbia UP, 2013. Pgs 76-77.

⁸ Schaeffer, Kurtis R., Matthew Kapstein, and Gray Tuttle, eds. *Sources of Tibetan Tradition*. New York: Columbia UP, 2013. Pg 77.

⁹ *Jokhang Temple*, CHINA TOUR GUIDE, <http://www.chinatourguide.com/tibet/jokhang.html> (last visited Apr. 8, 2015).

¹⁰ There is not an official date the treaty was renounced. Tibet and China had little contact from 907-1276. The contact between the countries was restored when the Mongols captured China and Tibet. MICHAEL C. VAN WALT VAN PRAAG, THE STATUS OF TIBET: HISTORY, RIGHTS, AND PROSPECTS IN INTERNATIONAL LAW 4-5 (1987).

¹¹ *Tibet profile*, BBC NEWS ASIA (Nov. 13, 2014), <http://www.bbc.com/news/world-asia-pacific-17046222>

¹² *Id.*

¹³ JOHN POWERS, HISTORY AS PROPAGANDA: TIBETAN EXILES VERSUS THE PEOPLE’S REPUBLIC OF CHINA 83 (2004).

¹⁴ *Tibet profile*, *supra* note 11.

¹⁵ Convention Between Great Britain, China, and Tibet (Simla Accord), COUNCIL ON FOREIGN RELATIONS (July 3, 1914), <http://www.cfr.org/tibet/convention-between-great-britain-china-tibet-simla-accord/p16007>

¹⁶ *Id.*

¹⁷ James Barnard Calvin, *The China-India Border War*, MARINE CORPS COMMAND AND STAFF COLLEGE (1984).

Tibetan boundary, China refused to ratify the agreement and did not recognize Tibet as an independent entity.¹⁸

Tibet was generally considered independent between the years of 1913-1950.¹⁹ The Chinese controlled Qing government, which occupied Tibet, fell in 1911.²⁰ In July of 1912, the Dalai Lama expelled Chinese troops from Tibet.²¹ In the 1950's, Mao Zedong proclaimed the founding of the People's Republic of China and sent the People's Liberation Army to Tibet.²²

Following Chinese occupancy, representatives of the TAR went to Beijing to negotiate an agreement with China. This resulted in a treaty²³ known as the "Seventeen Point Agreement" ("the Agreement"), which incorporated the TAR as an autonomous region of the People's Republic of China.²⁴ According to the Vienna Convention on the Law of Treaties ("VCLT"), which applies to treaties between states,²⁵ a treaty is valid only when there is a written agreement between States and governed by international law.²⁶ Since China maintained that the TAR was never an independent state, the Agreement was not between states and invalid.²⁷

Chinese sources argue the legally binding Agreement was reached on mutual consent.²⁸ The CTA, however, believes the Agreement was signed under duress, preventing full consent.²⁹ While, the validity of the Agreement can be argued, there is no clear answer on whether the Agreement was a treaty improperly entered into under duress.³⁰ The result of the signing of the

¹⁸ *Tibet*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/594898/Tibet/71442/Tibet-since-1900> (last visited Apr. 8, 2015).

¹⁹ China's position is that Tibet was never independent from China.

Michele L. Radin, *The Right to Development As A Mechanism for Group Autonomy: Protection of Tibetan Cultural Rights*, 68 WASH. L. REV. 695, 698-99 (1993); See Lal, Dinesh. *Indo-Tibet-China Conflict*, Kalpaz Publications (August 8, 2008) p 51 stating "[t]he Dalai Lama took control of Tibet's internal and external governance in 1913, negotiating directly with foreign powers, and reforming Tibet's judicial, penal, and educational systems."

²⁰ *The Chinese Revolution of 1911*, U.S. DEP'T OF STATE OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1899-1913/chinese-rev> (last visited Apr. 8, 2015).

²¹ TSERING SHAKYA, *THE DRAGON IN THE LAND OF SNOWS: A HISTORY OF MODERN TIBET SINCE 1947* 5 (1999).

²² *Tibet Profile*, *supra* note 11.

²³ The Agreement may or may not fit the definition of a treaty under VCLT Art. 2(1)(a). China's position is that Tibet was never a free state so the agreement is not "between states" but is a domestic agreement.

²⁴ *Tibet profile*, *supra* note 11.

²⁵ Vienna Convention on the Law of Treaties art. 1, May 23, 1969.

²⁶ *Id.*

²⁷ The Seventeen Point Agreement indicated in point one that "the Tibetan people shall return to . . . the motherland – the People's Republic of China." The preamble to the Agreement acknowledges that Tibet has done its glorious duty in the course of the creation and development of the People's Republic of China. The Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, May. 23, 1951. The Agreement may not meet the VCLT definition of a treaty, but it will continue to be analyzed as if it does meet the definition.

²⁸ *Tibet and China: Two Distinct Views*, *supra* note 2.

²⁹ Regina M. Clark, *China's Unlawful Control over Tibet: The Tibetan People's Entitlement to Self-Determination*, 12 IND. INT'L & COMP. L. 293, 298 (2002).

³⁰ One argument is if the Agreement is not valid then it may be concluded that any treaties that is entered into after war is invalid.

Agreement was that “[t]he political incorporation of [the TAR] into China had been accomplished.”³¹ After the Agreement was signed, Beijing authorized thousands of soldiers to enter the TAR.³²

On March 10, 1959, a full-scale uprising erupted in Lhasa, the administrative capital of the TAR.³³ It is estimated that between ten thousand and fifteen thousand Tibetans were killed within three days of the uprising.³⁴ The Fourteenth Dalai Lama and government fled to Dharamsala, India where they established a government-in-exile, known as the CTA.³⁵ The organization has the goal to rehabilitate Tibetan refugees and to “restor[e] freedom and happiness in Tibet.”³⁶ The goal of the CTA is *not* to take power in the TAR, but rather to ensure freedom and dissolve when such is restored in the TAR.³⁷

The CTA is an exiled government whose proclaimed purpose is to be a continuation of independent Tibet. While it may be argued that the CTA is an independent state, the requirements of statehood must first be examined.

III. WHAT MAKES A STATE

“States are the principal persons under international law.”³⁸ A state has rights and duties such as the right to regulate its territory and nationals, and a duty to respect internationally recognized fair treatment to nationals and aliens within state territory.³⁹ There is not an academic consensus regarding the most precise definition of a state. Max Weber’s definition of a state is widely used: “...the modern state is a compulsory association which organizes domination. It has been successful in seeking to monopolize the legitimate use of physical force as a means of domination within a territory.”⁴⁰ The Global Policy Institute establishes that “[a] state is the means of rule over a defined or ‘sovereign’ territory.”⁴¹

The Montevideo Convention on the Rights and Duties of States is the most cited textual basis for statehood.⁴² Article I provides a “state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into

³¹ TOM A. GRUNFELD, *THE MAKING OF MODERN TIBET* 114 (1996).

³² *Id.*

³³ *Tibet profile*, *supra* note 11.

³⁴ *Why Tibet? Why Be Concerned?*, FRIENDS OF TIBET INDIA, <http://www.friendsoftibet.org/main/concerns.html> (last visited Apr. 8, 2015).

³⁵ Please note that the information about the CTA is taken from the CTA’s website. Therefore, the source is positively biased towards the CTA. The information is meant to establish why the CTA came in existence and what are the CTA’s declared goals.

³⁶ *About CTA*, *supra* note 3.

³⁷ *Id.*

³⁸ *About CTA*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/>.

³⁹ BARRY CARTER & ALLEN WEINER, *INT’L LAW* 429 (2011).

⁴⁰ *Id.*

⁴¹ Max Weber, *Politics as a Vocation*, 4, <http://anthropos-lab.net/wp/wp-content/uploads/2011/12/Weber-Politics-as-a-Vocation.pdf> (last visited Apr. 8, 2015).

⁴² *What Is a “State?”*, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/nations-a-states/what-is-a-state.html> (last visited Apr. 8, 2015).

⁴³ Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 *COLUM. J. TRANSNAT’L L.* 403, 413-14 (1999). Sixteen Western Hemisphere countries have ratified the 1933 Montevideo Convention. Carter, *supra* note 37, at 430.

relations with other states.”⁴³ Thus, Article I dictates that an entity must possess the four qualifications to be considered a state.

The Third Restatement of the Law for Foreign Relations Law of the United States Section 201 (“Restatement 201”) attempts to describe these four qualifications.⁴⁴ A defined territory exists even if boundaries are not settled or if another state claims some of the territory as their own.⁴⁵ Even if a foreign power occupies *all* of its territory or control is temporarily lost, the state does not cease to exist.⁴⁶ While Restatement 201 does not require a particular form of government, there must be some authority capable of representing the entity in international relations.⁴⁷ Restatement 201 further emphasizes that an entity is not a state unless it is capable of conducting international relations with other states, and maintains the political, technical, and financial capabilities to engage in such relations.⁴⁸ “An entity that has the capacity to conduct foreign relations does not cease to be a state because it voluntarily turns over to another state control of its foreign relations”⁴⁹ Although there is not a universally accepted criteria of what characteristics make an entity a state, sources such as Restatement 201 provide guidance in determining whether the CTA fits into these categories.

When determining whether the CTA is a state, it first helps to examine whether Tibetans within the CTA are a “people” with the right to “self-determination.” Self-determination includes the right to determine political status and pursue economic, social, and cultural development free from outside interference.⁵⁰ Under international law, “[a]ll peoples have the right of self-determination.”⁵¹ The U.N. General Assembly recognized that indigenous peoples have the right to self-government, manage their own cultural life, and maintain their distinct cultural institutions.⁵² The U.N. Charter (“the Charter”) creates a system where members are not to impede on self-determination.⁵³ According to the Charter, the U.N. does not purport to have the right of intervention in the domestic jurisdiction of a state, and members are not required to submit domestic matters to the U.N.⁵⁴ However, there is not a clear definition of the term “peoples.” To determine if a unit can be considered a “people,” it is helpful to consider certain factors: whether the unit occupies a defined land, sociological, geographical, historical, psychological, and political factors.⁵⁵ The

⁴³ Montevideo Convention on the Rights and Duties of States art I., Dec. 26, 1933.

⁴⁴ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (1987).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

⁵¹ International Covenant on Civil and Political Rights, art. 1 (Dec. 16, 1966), *available at* <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.

⁵² United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

⁵³ *See* U.N. Charter art. 1, para. 2 (stating the purpose of the U.N. Charter is to develop friendly relations among nations based on respect for the principle of . . . self-determination of all peoples).

⁵⁴ *See* U.N. Charter art. 2, para 7.

⁵⁵ Julie M. Sforza, *The Timor Gap Dispute: The Validity of the Timor Gap Treaty, Self-Determination, and Decolonization*, 22 SUFFOLK TRANSNAT'L L. REV. 481, 499 (1999); Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1287, 1290 (1991).

number of individuals need not be large, but there must be more than a mere association of individuals within a state.⁵⁶

Self-determination has often been recognized as a way colonies gain their independence, but alternative models such as national self-determination have challenged the colonial model.⁵⁷ Because Tibetans have a distinct culture in language, political structure, and religion, they are a “people.”⁵⁸ Additionally, the CTA occupies an area of land that “is geographically separate from China.”⁵⁹ The United Nations’ provisions indicate that “member states must act in a manner that does not impede the right to self-determination of non-self-governing territories either by direct suppression of the right, non-action, or support of parties whose acts in this regard contravene U.N. purposes.”⁶⁰ “In the Case Concerning East Timor, the International Court of Justice (I.C.J.) stated that entitlement to the right of self-determination ‘is not extinguished due to forcible intervention by a third party, by the passage of time, or by failed attempts at decolonization.’”⁶¹

A. Instances Where the CTA Satisfies the Definitions of a State

Assuming the Tibetans within the CTA are a people with the right to self-determination, the Montevideo Convention can be used as guidance to argue that the CTA satisfies the four qualifications for statehood. China is not a signatory to this particular convention,⁶² but nevertheless, the Montevideo Convention provides a helpful framework in determining the definition of a state.⁶³

First, there is a distinct population in the CTA.⁶⁴ The Montevideo Convention does not define “permanent population,” but permanence may consist of two points: (1) a permanent population that intends on inhabiting the territory permanently, and (2) a habitable territory.⁶⁵ Population is defined as all

⁵⁶ UNESCO, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Final Report and Recommendations, 22 Feb. 1990, SHS-89/CONG.602/7, available at <http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>.

⁵⁷ Regina M. Clark, *China's Unlawful Control over Tibet: The Tibetan People's Entitlement to Self-Determination*, 12 IND. INT'L & COMP. L. REV. 293, 323 (2002).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Signing a treaty is one party to become a party to the treat. If a country signs a treaty, then it declares intention to be legally bound to the terms of the treaty. China is not a signatory to the Montevideo Convention so China has not declared intention to be legally bound to the Montevideo Convention. <https://sedac.uservoice.com/knowledgebase/articles/41617-clarify-the-differences-between-being-a-party-to-a>.

⁶³ Montevideo Convention on the Rights and Duties of States, COUNCIL ON FOREIGN RELATIONS (December 26, 1933), <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>.

⁶⁴ See Yan Hao, *Tibetan Population in China: Myths and Facts Re-examined*, 1 ASIAN ETHNICITY 11, 14 (2000), <http://www.case.edu/affil/tibet/booksAndPapers/tibetan.population.in.china.pdf>.

⁶⁵ DAVID RAIC, STATEHOOD AND THE LAW OF SELF-DETERMINATION 58 (2002) (stating that when a group occupies an island without the intention to move there but only for purpose of gaining monetary benefit, there is not “statehood”).

the inhabitants of a particular town, area, or country.⁶⁶ CTA satisfies the requirement of population because Tibetans inhabit a particular area in Dharamsala. The total Tibetan population in the CTA and the TAR is six million.⁶⁷ Of that six million, about two million live in the TAR while the rest reside in Tibetan areas outside of the TAR.⁶⁸ Even though the population of Tibetans in Dharamsala do not intend to either remain in India or replace Tibet,⁶⁹ there is a distinct population⁷⁰ because the individuals residing in the CTA are ethnically, linguistically, and culturally different from the other populations residing within India.⁷¹

Second, the CTA is a defined territory. A defined territory occurs even if the boundaries are not settled.⁷² A territory may be defined “even if its boundaries have not been fully settled, if one or more of its boundaries are disputed, or if some of its territory is claimed by another state.”⁷³ In the *North Sea Continental Shelf Cases*, the International Court of Justice held that there is “no rule that the land frontiers of a State must be fully delimited and defined, and often . . . for long periods they are not.”⁷⁴ Thus, even though the CTA’s boundaries may not be distinct, the territory remains defined because Dharamsala occupies eleven square miles as a territory within India.⁷⁵ The CTA, headquartered in Dharamsala, India may not have boundary lines that are as distinct as those boundary lines of the TAR. However, the CTA maintains that the boundary in the TAR belongs to all Tibetans, those Tibetans in the TAR and those Tibetans in the CTA.⁷⁶

⁶⁶ *Population Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/population> (last visited Apr. 8, 2015).

⁶⁷ *Tibet at a Glance*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-tibet/tibet-at-a-glance/> (last visited Apr. 8, 2015).

⁶⁸ *Id.*

⁶⁹ *About CTA*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/>.

⁷⁰ International law does not define what is a “distinct population.” However, Tibetans within the CTA meet the requirement of “peoples” because they occupy a defined land, and differ from other populations based on sociological, geographical, historical, psychological, and political factors. Lung-Chu Chen, *Self-Determination and World Public Order*, 66 NOTRE DAME L. REV. 1287, 1290 (1991).

⁷¹ In India, the nationality is Indian; Indo-Aryan ethnic group composes seventy-two percent; eighty percent of Indians practice the Hindu religion; the language Hindi is most widely spoken. Index Mundi, India Demographics Profile 2014, http://www.indexmundi.com/india/demographics_profile.html. Statistics about the CTA are not readily available from verifiable sources. However, the Tibetans in the CTA are culturally similar to Tibetans in the TAR. In the TAR, ninety-nine percent of Tibetans practice Tibetan Buddhism; most speak the Tibetan language although Chinese is the official language of the TAR. International Campaign for Tibet, Tibet Statistics, <https://www.savetibet.org/resources/all-about-tibet/tibet-statistics/>.

⁷² BARRY CARTER & ALLEN WEINER, INTERNATIONAL LAW 434 (Wolters Kluwer Law & Business, 6th ed. 2011).

⁷³ Restatement (Third) of Foreign Relations Law § 201 (1987).

⁷⁴ *N. Sea Cont'l Shelf (F.R.G. v. Den.; F.R.G. v. Neth)*, 1969 I.C.J. 3, 32 (Feb. 20).

⁷⁵ RM Ventures, *Dharamsala*, <http://wdemo.in/rmventure/index.php/index/tourdetail/243>.

⁷⁶ Regina M. Clark, Note, *China's Unlawful Control over Tibet: The Tibetan People's Entitlement to Self-Determination*, 12 IND. INT'L & COMP. L. REV. 293, 297 (2002); *Tibet at a Glance*, *supra* note 61 (holding their land size includes Chinese administrative areas including the TAR).

Third, the CTA has a government. A state is not required to follow any particular pattern of governance.⁷⁷ However, the government must effectively assert authority.⁷⁸ An effective government is the institutionalized, political, executive, and administrative organizational machinery that actually exercises state authority over the claimed territory and people residing in the territory.⁷⁹ The CTA established a parliament in 1960 and, as of 2006, it has matured into a complete legislative body known as the Tibetan Parliament-in-Exile.⁸⁰ The Charter of the Tibetans in Exile, adopted in June 1991, is the supreme law governing the functions of the CTA, and guarantees equality and separation of powers.⁸¹ The CTA further enacted codes on civil procedure, evidence, and judiciary.⁸² These codes allow the power for the CTA government to maintain legal order. Legal order is traditionally defined as “a set of regulations governing society and those responsible for enforcing them,” and is modernly defined as “such regulations and officials plus the process involved in creating, interpreting, and applying the regulations.”⁸³ However, concrete information regarding trials, prisons, and other punishment procedures within the CTA is difficult to locate. Therefore, it is not dispositive if CTA codes allow government to maintain legal order because there is not evidence of enforcement provisions. The external government should have the ability to act autonomously,⁸⁴ which is the right to self-government and capacity for self-determination.⁸⁵ Because the CTA is an autonomous organization that is self-governed by its members, the CTA can act independently.

Last, the CTA has the capacity to enter into relations with other states.⁸⁶ Although no country recognizes the CTA as an independent state,⁸⁷ and the CTA is not a member or signatory to conventions, the CTA possesses *the capacity*⁸⁸ to enter into relations. There is no rule or law forbidding the CTA from setting up meetings or entering into agreements with other nations. The CTA could enter into agreements or conduct meetings with representatives of international states because the CTA has the ability to pursue these relationships.⁸⁹ An entity is not a

⁷⁷ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (1987).

⁷⁸ *Id.*

⁷⁹ RAIC, *supra* note 59 (indicating to see L.F.L. OPPENHEIM, INTERNATIONAL LAW 118 (1955)).

⁸⁰ *About CTA*, *supra* note 3.

⁸¹ *Id.*

⁸² *Law, Code & Evidence*, TIBETAN SUPREME JUSTICE COMMISSION, <http://tibet.net/about-cta/judiciary/programs/law-code-and-evidence/> (last visited Apr. 8, 2015).

⁸³ LEGAL ORDER, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁸⁴ See League of Nations Official Journal Sp. Supp. No. 4 (1920) 9 (indicating that an effective government has a stable political organization which the public authorities were strong enough and able to assert themselves without foreign military troops. Therefore, it can be inferred the government needs to be autonomous from outside influence and governance); PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 77 (1997).

⁸⁵ AUTONOMY, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁸⁶ The focus for this subsection is on the ability of the CTA to enter into international relations with other states. The issue of how other states actually interact with the CTA is analyzed in Part IV.

⁸⁷ Robert D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT'L L. REV. 107, 168 (2002).

⁸⁸ Capacity is the ability or power to do a thing. CAPACITY, BLACK'S LAW DICTIONARY (10TH ED. 2014).

⁸⁹ For example, individual states in the United States are barred from executing international treaties. The CTA does not have any restrictions against international relations like this. U.S. CONST. art. II, § 2; U.S. CONST. art. I, § 10.

state unless it has the competence to conduct international relations with other states, and also has the political, technical, and financial capabilities to conduct these relations.⁹⁰ While the international relations may be lacking, the relations are not barred.⁹¹

B. Instances Where the CTA Does Not Satisfy the Definition of a State⁹²

The government of the People's Republic of China maintains that China has controlled Tibet since the Yun Dynasty.⁹³ Again using the Montevideo Convention as guidance, it can be argued that the CTA does not meet the requirements of a state.

First, there is a distinct population of Tibetans in the CTA. Tibetans reside in locations other than the TAR or the CTA, but significantly more Tibetans reside in India than in any other state.⁹⁴ Although there may be a distinct population of Tibetans in the CTA, such population is not permanent.⁹⁵ The CTA is not meant to replace TAR and will discontinue once TAR is granted autonomy. Therefore, the CTA does not intend to inhabit the territory in Dharamsal, India permanently so the element of permanent population is not satisfied.

Second, there is not a defined territory. While the CTA may have territory in Dharamsala, the territory is not defined because the CTA does not intend to remain in Dharamsala.⁹⁶ The boundaries of the CTA are indefinite and subject to dissolution if the TAR is granted genuine autonomy from China.⁹⁷ Further, while there is not a requirement that the defined territory must be permanent, the willingness to cease existence as a territory indicates the territory is not defined. Thus, the CTA's malleable defined territory likely does not withstand this requirement.

Third, the CTA does not have an effective government because the CTA does not exercise authority over the claimed territory and people residing in the territory.⁹⁸ While the CTA can act autonomously, the CTA plans to dissolve if the TAR is genuinely autonomous.⁹⁹ If this occurs, the new government would not consist of the members of the CTA, but rather an elected (or appointed) Interim-President would take over followed by an election.¹⁰⁰ Consequently, there may not be complete autonomy since the existence of the CTA's

⁹⁰ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201, comment e (1987).

⁹¹ *Supra* note 87.

⁹² Because the CTA proclaims itself as the representative of Tibetans, the population within the CTA will be the only Tibetan population examined.

⁹³ *Tibet and China: Two Distinct Views*, *supra* note 2.

⁹⁴ MacPherson, Bentz & Ghoso, *Global Nomads: The Emergence of the Tibetan Diaspora (Part I)*, MIGRATION INFORMATION SOURCE, table 1 (Sept. 2, 2008), <http://www.migrationpolicy.org/article/global-nomads-emergence-tibetan-diaspora-part-i>; *About CTA*, *supra* note 3 (the CTA seeks to rehabilitate Tibetan refugees).

⁹⁵ RAIC, *supra* note 59, at 58-59.

⁹⁶ *About CTA*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/>.

⁹⁷ The people who reside in the CTA plan to reside within the TAR boundaries if China grants genuine autonomy.

⁹⁸ RAIC, *supra* note 59 (indicating to *see* L.F.L. Oppenheim, INTERNATIONAL LAW 118 (1955)).

⁹⁹ *About CTA*, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/>.

¹⁰⁰ *About CTA*, *supra* note 3.

government is dependent on the activities that occur within the TAR. And even though the Montevideo Convention does not explicitly require anything more than a government, a lack of enforcement procedures questions the internal government's ability to maintain a legal order.¹⁰¹

The CTA codified procedures, but information regarding jails or law enforcement is not readily available on their government websites. The CTA has a Department of Security, but the Department's the primary responsibility is to ensure security of the Dalai Lama.¹⁰² There must be some authority exercising governmental functions.¹⁰³ Neither the Montevideo Convention nor Restatement 201 requires the government to express the intent to sustain. However, the CTA's willingness to terminate strengthens the argument that the government is not effective. Furthermore, the CTA wishes to govern the TAR. Lacking the desire to govern indicates the government is not effective. The government in the CTA is not effective because of its willingness to dissolve, lack of enforcement procedures, and the CTA government lacks autonomy because the CTA's government is dependent on activities occurring within the TAR.

Last, the CTA does not have the capacity to enter into international relations with other states. The state must have the competence to conduct international relations along with the political, technical, and financial capabilities to do so.¹⁰⁴ No law, rule, or statute prevents the CTA from having the capacity to enter into international relations. However, there must be more than the mere capacity to enter into international relations. Instead, other states must consent to the interactions because without actual interaction, the capacity to engage in international relations is meaningless.¹⁰⁵

IV. HOW DO OTHER STATES INTERACT WITH THE CTA?

There is a strong argument in favor of statehood when other states treat an entity as a state.¹⁰⁶ Even if a state does not formally recognize another state, the state is required to treat that entity as a state if it meets the four qualifications.¹⁰⁷ On the other hand, others believe there is no duty to formally recognize others as a state. Professor Brownlie noted that "[r]ecognition . . . is an optional and political act and there is no legal duty in this regard."¹⁰⁸ Generally, states are at liberty to recognize or decline to recognize governments.¹⁰⁹ Because states have the freedom whether or not to recognize another state, the provisions

¹⁰¹ As noted above, "legal order" is traditionally defined as "a set of regulations governing society and those responsible for enforcing them", and is modernly defined as "such regulations and officials plus the process involved in creating, interpreting, and applying the regulations." LEGAL ORDER, Black's Law Dictionary (10th ed. 2014).

¹⁰² *Security*, DEPARTMENT OF SECURITY, <http://tibet.net/security/> (last visited Apr. 8, 2015).

¹⁰³ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201, comment d (1987).

¹⁰⁴ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201, comment e (1987).

¹⁰⁵ The question of how other states interact with the CTA will be examined in Part IV.

¹⁰⁶ Restatement (Third) of Foreign Relations Law § 201 (1987).

¹⁰⁷ BARRY E. CARTER & ALLEN S. WEINER, INTERNATIONAL LAW 434 (6th ed. 2011); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 201 (1987).

¹⁰⁸ *Id.*

¹⁰⁹ Robert D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT'L L. REV. 107, 169 (2002).

examined by the Montevideo Convention can be disregarded since other states can choose to ignore these factors.

A. The CTA and the United Nations

Membership in the United Nations supports that an entity is a state. The U.N. consists of one hundred and ninety-three member states.¹¹⁰ An applying state is admitted into membership by the General Assembly upon the recommendation of the Security Council.¹¹¹ China is a permanent member of the Security Council and can exercise their veto powers.¹¹² When an entity wants to become a member of the General Assembly, they submit a resolution to the U.N. on which the current members will vote.¹¹³ A resolution is rejected if any of the five permanent members votes “no” to admitting the entity.¹¹⁴ Because of their contentious relationship, and China’s ability to vote “no” on admitting the CTA into the U.N., the relationship between the CTA and China creates an obstacle to admittance into the U.N.

While China’s veto power makes the CTA’s admittance into the U.N. Member State unlikely, the U.N. can recognize an entity as a Permanent Observer: either a Non-Member State or Intergovernmental Organization.¹¹⁵ Permanent Observers can access most meetings and relevant documents of the U.N..¹¹⁶ The CTA is not a Non-Member State and is not invited to join as an Intergovernmental Organization because China has the ability to vote against admitting the CTA into the U.N.¹¹⁷ The CTA does, however, receive occasional attention from the U.N.¹¹⁸ For example, the Commission on Human Rights continued a general debate on violation of fundamental freedoms.¹¹⁹ Jonathan Sisson of the International Fellowship of Reconciliation stated the “efforts by the Chinese Government to integrate [the TAR] fully into China had resulted in a serious disregard for rights guaranteed by the International Convention on the Elimination of Racial Discrimination.”¹²⁰ However, “Tibet” in the U.N. context refers to the TAR within China as an autonomous region in China, and *not* the CTA.¹²¹ Although “Tibet” received attention in the U.N., such attention was directed towards the TAR, not the CTA. The lack of a discussion of the CTA by

¹¹⁰ *U.N. Member States On The Record*, UNITED NATIONS, <http://www.un.org/depts/dhl/unms/whatisms.shtml> (last visited Apr. 8, 2015).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *About UN Membership*, MEMBER STATES, <http://www.un.org/en/members/about.shtml>.

¹¹⁴ *Charter of the United Nations*, UNITED NATIONS, <http://www.un.org/en/documents/charter/chapter18.shtml> (last visited Apr. 8, 2015).

¹¹⁵ *Permanent Observers*, UNITED NATIONS, <http://www.un.org/en/members/aboutpermobservers.shtml> (last visited Apr. 8, 2015).

¹¹⁶ *Id.*

¹¹⁷ *U.N. Member States On The Record*, UNITED NATIONS, <http://www.un.org/depts/dhl/unms/whatisms.shtml> (last visited Apr. 8, 2015).

¹¹⁸ Press Release, Commission on Human Rights Continues General Debate on Violation of Rights and Fundamental Freedoms, U.N. Press Release HR/CN/858 (Apr. 16, 1998).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Tibet is not completely disregarded within the United Nations. However, the Tibet that is referred to as the TAR is not equivalent to the CTA. See *Member States*, UNITED NATIONS, <http://www.un.org/en/members/index.shtml> (last visited Apr. 8, 2015).

Sisson not only shows a disconnect between the CTA and the U.N., but it also reflects the hardships faced by the CTA in their attempts to be recognized by other nations.

B. International States Refusal to Meet the Dalai Lama

The United States, consistent with the policy of the international community, recognizes the TAR as a part of the People's Republic of China.¹²² However, President Barack Obama expressed his support of preserving the TAR's "unique religious, cultural and linguistic identity," while also upholding and protecting the rights of Tibetans in the People's Republic of China.¹²³ Despite criticism from the Chinese government, President Obama met with the Dalai Lama, a representative of the CTA,¹²⁴ but branded the meeting as "spiritual" rather than political.¹²⁵

Other states have refused meeting with the Dalai Lama.¹²⁶ In 2001, the Dalai Lama met with eleven top leaders, but met with only two in 2013.¹²⁷ For example, Norwegian Prime Minister Erna Solberg stated that refusing to meet with the Dalai Lama was motivated by a "desire to improve diplomatic relations with China."¹²⁸ South Africa also rejected a visa to the Fourteenth Dalai Lama¹²⁹ reportedly due to political pressure from China thus signifying unanimity with China regarding the Tibet issue.¹³⁰ After British Prime Minister David Cameron met with the Dalai Lama in 2012, Cameron insinuated this was the final meeting after the Chinese foreign ministry declared that such a meeting "seriously interfered with China's internal affairs."¹³¹ State leaders not meeting with the

¹²² BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, REPORT ON TIBET NEGOTIATIONS AS REQUIRED BY FOREIGN RELATIONS AUTHORIZATION ACT 2003 SECTION 611, "TIBETAN POLICY ACT OF 2002" (2004).

¹²³ Statement from the Press Secretary on the President's Meeting with His Holiness the XIV Dalai Lama, 2010 WL 560994 (Feb. 18, 2010).

¹²⁴ President Obama met with the Dalai Lama in February 2010 and July 2011, but delayed the first meeting from October 2009 to avoid angering the Chinese a month before the President visited Beijing. Mark Landler, *China Criticizes Obama Over Visit by Dalai Lama*, N.Y. TIMES, Feb. 21, 2014, at A8.

¹²⁵ <http://www.bbc.com/news/world-asia-31177849>.

¹²⁶ John Fund, *The Dalai Lama as a 'Necessary Sacrifice'*, NATIONAL REVIEW, May 11, 2014, <http://www.nationalreview.com/article/377732/dalai-lama-necessary-sacrifice-john-fund>.

¹²⁷ Information regarding Dalai Lama meetings with Heads of State from 2000-2014 in a chart compiled from data by Robert Barnett, Director of Modern Tibet Studies Program at Columbia University.

Isaac Stone Fish, *Why is Oslo kowtowing to Beijing and stiff-arming the Dalai Lama?*, FOREIGN POLICY, May 6, 2014, http://www.foreignpolicy.com/articles/2014/05/06/why_wont_norwegian_prime_minister_meet_with_dalai_lama_china.

¹²⁸ Rick Gladstone, *Norway's Leaders Snub Dalai Lama in Deference to China*, N.Y. TIMES, May 7, 2014, at A7.

¹²⁹ Murray Williams, *Dalai Lama was 'asked to withdraw'*, IOL NEWS, Oct. 7, 2014, <http://www.iol.co.za/news/politics/dalai-lama-was-asked-to-withdraw-1.1761332#.VFo7wPnF8b8>.

¹³⁰ <http://www.theguardian.com/world/2014/oct/02/nobel-peace-summit-south-africa-dalai-lama-visa>.

¹³¹ *David Cameron's Dalai Lama meeting sparks Chinese protest*, BBC NEWS UK POLITICS, May 16, 2012, <http://www.bbc.com/news/uk-politics-18084223>.

Dalai Lama implies they do not formally recognize the CTA as a state because they refuse to meet with the leader or representative of the CTA.

Additionally, the CTA's limited relation with India further stifles their ability to be recognized as a state. Tibetans within the CTA are granted many rights by the Indian government such as receipt of travel permits and the ability to seek employment.¹³² However, the government in India regards Tibetans within the CTA as refugees, does not regard the CTA as an independent state¹³³ and regards the TAR as an integral part of China.¹³⁴ India, while allowing the CTA to take refuge, does not acknowledge the CTA as an independent state. Without India's acknowledgement, the CTA does not have any international relations with other states.

C. The CTA's Department of Information and International Relations

Despite the lack of foreign relations, the CTA's Department of Information and International Relations aims to interact and establish contact with governments, International Tibet Support groups, and other organizations.¹³⁵ The International Relations Division of the CTA has five subsections, such as the Offices of Tibet and the China Desk. Offices of Tibet are official agencies¹³⁶ and act as de facto embassies of the CTA.¹³⁷ Offices are present in ten countries including India, USA, Switzerland, Japan, UK, Australia, France, Russia, South Africa, and Taiwan. The concrete accomplishments of the Offices of Tibet are not clear. The CTA established the China Desk in 1994 with the goal to reach out to Chinese people outside of China.¹³⁸ The China Desk holds meetings and maintaining a website in the Chinese language.¹³⁹ The CTA's offices also try to enhance foreign relations because the offices are located in various states.¹⁴⁰ However, without concrete actions and events, it is difficult to articulate if international relations are achieved.

The CTA possesses the capacity to interact with other nations and governments. The Offices of Tibet are meant to encourage these interactions. However, it does not appear that other states consent to interactions with the CTA on a level that acknowledges the CTA as an independent state.

V. CONCLUSION

¹³² *Id.*

¹³³ Report of Refugee Populations in India, HUMAN RIGHTS LAW NETWORK 4 (Nov. 2007).

¹³⁴ India and China agreed to the Five Principles of Peaceful Coexistence, known to India as the Panchsheel Treaty. This codified that India recognized Tibet as integrated with China. The preamble states the intercourse is between "Tibet Region of China and India."

Agreement Between the Republic of India and the People's Republic of China on Trade and Intercourse Between Tibet Region of China and India, Apr. 29, 1954, 299 U.N.T.S. 70.

¹³⁵ *International Relations Division*, DEPARTMENT OF INFORMATION & INTERNATIONAL RELATIONS, <http://tibet.net/information/programs/international-relations-division/> (last visited Apr. 8, 2015).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Offices of Tibet are located in Washington, D.C., Geneva, Tokyo, London, Brussels, Moscow, and Taiwan.

Tibet and China have a rich and extensive history that resulted in Tibetans fleeing to the CTA. Because of their ethnic identity, linguistic unit, and religious affiliation, the Tibetans meet the qualifications of “people,” and “people” have the right to self-determination which is the right to determine political status and pursue economic, social, and cultural development free from outside interference.¹⁴¹

The CTA retains some of the qualities that an independent state possesses. The Montevideo Convention on the Rights and Duties of States, the most cited textual basis for statehood,¹⁴² provides a “state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”¹⁴³ There may be a distinct population of Tibetans in the CTA because all occupy the area of Dharamsala, India, which is an eleven square mile area. However, the CTA is not meant to replace the TAR and is subject to dissolution if the TAR is granted autonomy from China. Neither does the CTA intend to inhabit the territory in Dharamsala, India permanently. As such, the element of a permanent population is not satisfied because the element of permanence is lacking.

Furthermore, because the boundaries of the CTA are indefinite and subject to dissolution if the TAR is granted genuine autonomy from China, the CTA does not have a defined territory in Dharamsal.¹⁴⁴ The CTA lacks effective government because of its willingness to dissolve and lack of enforcement procedures. The CTA government lacks autonomy because the CTA’s government is dependent on activities occurring within the TAR. Finally, the CTA lacks support from the international community.¹⁴⁵ The CTA has not been invited to join the United Nations, and foreign leaders generally refuse to meet with the Dalai Lama who serves as a representative of the CTA. The CTA has failed to meet the requirements for recognition as an independent state.

¹⁴¹ Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

¹⁴² Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT’L L. 403, 413-14 (1999). Sixteen Western Hemisphere countries have ratified the 1933 Montevideo Convention. Carter, *supra* note 37, at 430.

¹⁴³ Montevideo Convention on the Rights and Duties of States art I., Dec. 26, 1933.

¹⁴⁴ The people who reside in the CTA plan to reside within the TAR boundaries if China grants genuine autonomy.

¹⁴⁵ Rob Dickinson, *The Global Reach and Limitations of Self-Determination*, 20 CARDOZO J. INT’L & COMP. L. 367, 396 (2012).