

INAUGURAL DAVID ENNALS MEMORIAL LECTURE

CHATHAM HOUSE, LONDON, 17 JULY 1996

**DAVID ENNALS, SELF-DETERMINATION AND THE CASE OF
TIBET**

The Honourable Justice Michael Kirby AC CMG

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DAVID ENNALS REMEMBERED

"A shilling life will give you all the facts:
How Father beat him, how he ran away,
What were the struggles of his youth, what acts
Made him the greatest figure of his day:
Of how he fought, fished, hunted, worked all night,
Though giddy, climbed new mountains; named a
sea:
Some of the last researchers even write
Love made him weep his pints like you and me."

I have come across the world to honour the memory of
David Ennals. Confined in a cylinder of steel, I have crossed the

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oceans and the mightiest mountains of our planet to celebrate his life. Whereas the First Fleet, which took the convicts, sentenced to transportation in courtroom not far from this famous meeting house, took eight months to traverse the distance, my journey involved a little more than a day of time. It is the kind of thing that David Ennals would have done. I am proud to have been asked for he was a stalwart of human rights and, like the Pilgrim, valiant for truth.

David Hedley Ennals was born on 19 August 1922. He was educated at Queen Mary's Grammar School Wansall and later in the United States of America. Between 1941 and 1946 he served in the military forces which rescued the world from the gangsters of Nazism and Fascism.

"O what is that sound which so thrills the ear
 Down in the valley drumming, drumming?
 Only the scarlet soldiers dear,
 The soldiers coming.

O what is that light I see flashing so clear
 Over the distance brightly, brightly?
 Only the sun on their weapons, dear,
 As they step lightly.

O what are they doing with all that gear,
 What are they doing this morning, this
 morning?
 Only their usual manoeuvres, dear,
 Or perhaps a warning."

In 1945 he saw the birth of the United Nations, as the hope of the world. From 1947 to 1952 he was Secretary of the Council for Education in World Citizenship. From 1952 to 1957

he was Secretary of the United Nations' Association of the United Kingdom. In 1957 he was elected to the House of Commons in the interests of the Labour Party. Thereafter, until his death, he served in numerous important posts in the Palace of Westminster, the mother of parliaments. He was Principal Private Secretary to the Minister of Overseas Development in 1964. He was Parliamentary Under-Secretary of State for the Army between 1966 and 1967. He moved to the Home Office in 1967 to 1968. In that year he was commissioned as Minister of State, serving in DHSS from 1968 to 1970 and in the Foreign and Commonwealth Office from 1974 to 1976. Between 1976 and 1979 he was Secretary of State for Social Services.

David Ennals was created a Life Peer in the rank of Baron in 1983. It was thereafter that his life, far from declining into nostalgia for past ministerial office and glory, took on a new momentum in the multifarious good causes which he embraced, as a citizen of the world. In 1985 he became President of the Parliamentary Food and Health Forum. In 1989 he joined the Parliamentary Alternative Medicine Group. His specific interest in the people of Tibet can be traced back to 1972. He took an active part in the Tibet Society from 1988. It was in the pursuit of the rights of the people of Tibet for the self-determination which they were promised by the *Charter and Covenants* of the United Nations, that I came to know David Ennals. When I did, I learned of his many other activities: in the anti-apartheid movement; in the campaign for the homeless and rootless; in

support for children's medical charities; in the Asia Committee of the British Refugee Council; as co-Chairman of the Global Cooperation for a Better World; and in more recent years as a Member of the Council for Counsel and Care of the Elderly; as President of the National Society of Non-Smokers (QUIT); as Trustee of Biopolitics International and Patron of the Alzheimer's Disease Society. He was a joiner and a doer.

David Ennals could never turn his back on a good cause. When the cause made extra and unreasonable demands, he simply worked harder. He cut back on the precious time available to his loved ones. He had a distinctly Methodist sense of discipline and urgency. His was a temperament of controlled passion. He felt deeply the injustices which propelled him to associate himself with causes: seeking their redress and rectification.

In times to come, as this Memorial Lecture grows in stature as an enduring way of recording the life and works of a splendid fighter for justice, people will speak, and more will come, who did not know David Ennals. But we did. I did. I worked with him on many occasions. Vividly I recall his leadership, energy and drive in a conference in London in 1991 on the issue of self-determination and Tibet. He was restless in the forum, in the meeting rooms and in the social gatherings. He never gave up. In the meeting he seemed to be everywhere. In this, he truly had a Churchillian spirit, although in many other

ways he was quite a contrast to that other notable occupant of the Palace of Westminster.

In November 1993 I saw him at a large conference in Saskatoon, Canada, called to honour his late brother Martin Ennals, one of the founders of Amnesty International, alas also since deceased. Seeing together these two champions of human rights was a marvellous privilege. Martin seemed taller and more languid. But perhaps that was because he was in the grip of a fatal condition that was soon to claim his life. David moved about him, incessant and insistent. He was absolutely determined that the conference should be at an appropriately high intellectual and ceremonial level to do credit to a brother who deserved the honour of the many experts who gathered on the plains of Canada. There again, the topic was self-determination of peoples.

David Ennals had little patience with the voices of caution and hesitation that were expressed in Saskatoon. For him the notion of self-determination was one of liberty. He was a living example of the demand for liberty. It was not enough for David Ennals that liberty should be shared in the countries linked by history to the United Kingdom. For him the whole world was the object of his attention. Those communities forgotten by others drew his concentrated gaze.

The last time I worked with David Ennals was in New Delhi in March 1994 at the All Party Indian Parliamentary Forum for Tibet. Using his Parliamentary links, he helped gather together members of legislatures in all parts of the world. It was a grand occasion. For the first time there were representatives in attendance from the newly freed parliaments of Eastern Europe and the former Soviet Union. In my mind's eye I can still see David Ennals, weaving in and out of the throngs of excited lawmakers. They were pleased to catch his infectious enthusiasm for the cause of liberty. He worked closely with me in little meetings in which we drafted the *New Delhi Action Plan for Tibet*. Not for David Ennals a friendly meeting and a few generalities on departure. Instead, an Action Plan of seven pages, closely typed. Ten new commandments were handed down. David, like Moses, produced ten practical ways in which the legislators of the world could go back to their parliaments to support the cause of self-determination of the Tibetan people. The price of enjoying freedom ourselves was an obligation to share it with others. The MPs were sent forth with stern instructions to propose resolutions to their parliaments; to exert pressure on their governments; to involve sub-national branches of government; to organise delegations to China and Tibet; to make representations to the Chinese Embassy in the homelands; to support meetings of Tibetans in exile and their supporters; to use inter-parliamentary association to raise the issue of Tibet; to encourage visits of His Holiness the Dalai Lama to their home countries; to target international bodies with the campaign for

the people of Tibet; and to encourage the promotion of human rights in China and at home as the true path by which would ultimately be won the basic human right of determining the kind of polity in which the people of Tibet might choose to live¹. As you will see, this was a very practical shopping list. The 1996 visit of His Holiness the Dalai Lama to Britain to address the All Party Parliamentary group for Tibet is one outcome of David's practical idealism.

David Ennals was a sweet mixture of idealistic visionary and practical politician. We are told by political pundits that such people rarely hold for long the levers of great power. But history teaches us that, in the long-term, the power of ideas is the most potent force for change. David Ennals was a man of incessant ideas and indomitable idealism. The public record of his life goes nowhere close to capturing the remarkable stimulus which he gave to supporters of freedom all around the world. It is therefore fitting that I should come from the other side of the world to pay tribute to him in the presence of his family, friends and colleagues. On behalf of citizens of unknown lands who depend upon people like David Ennals, I say thanks. His restless,

¹ *International Covenant on Civil and Political Rights, Art 1; International Covenant on Economic, Social and Cultural Rights, Art 1.*

determined, idealistic spirit is now, at last, at rest. But the energy of his life passes to us. We must be encouraged by it to take up the causes to which he devoted himself to the very end. In the certainty that we will do this, rest quietly brave Pilgrim.

A JOURNEY OF SELF DETERMINATION

At the London conference where I first met, and worked with David Ennals in 1991, I traced, in his presence, the journey which had taken me to the meeting place in Regent's Park. It was, in a sense, a journey of self-determination. First I crossed my own continental country where issues of the self-determination of Aboriginal people and of Torres Strait Islanders are now, at least, being addressed. Many people think that self-determination necessarily means a separate political government. It may. But it does not necessarily do so. For indigenous people, the fulfilment of self-determination may be a political arrangement which gives recognition to the special identity of the people whilst preserving the unity of the land they now share with others.

Then my jet took me over the Indonesian Archipelago. Over East Timor. Over Ache. Onward the jet leapt across the skies. It crossed Burma with its ancient ethnic battles. It passed over the Chittagong Hills which harbour the tribal people who claim self-determination. Over the Punjab and past Kashmir the jet continued on its path. Then over the great plains of Asia.

Somewhere to the right, nestling behind the mighty Himalayas, is the ancient land of Tibet. Down there, I observed, there were millions of people who knew nothing of our deliberations or of David Ennals' work but who would be warmed by the support of fellow human beings far away for their right to decide their own future.

Onward the jet pressed across the land of the Kurds who were promised self-determination in 1919, still unfulfilled. Down to the left is Palestine, now at last finding a place for its people in its ancient lands. To the right, the new republics of the Commonwealth of Independent States. Chechnya and the Dniestria Republic show the power of this idea in lands newly freed from an autocratic and military yoke of Soviet power. Onward the jet continued: past the former Yugoslavia with its bloodshed and suffering. Through Poland, whose struggle for self-determination finally lit the flames of the war in which David Ennals served. In a great sweep of the arc the jet passed over the Baltic States: Lithuania, Estonia and Latvia. Now they enjoy their self-determination. But now there are complaints that they deny rights and dignity to the Russian people left as remnants of a departed empire. Down to Heathrow the jet brings the traveller. To the left of the wing is Brittany and Normandy. On the right is Scotland and Wales. Further away is Ireland, the land of my forebears.

My journey to meet David Ennals was a journey of self-determination of peoples. So has been my journey to this Memorial Lecture. Let no one deny the power of the idea of this notion. It has always been a powerful idea. But now, on the brink of a new millennium, it can be seen as one of the most potent at work in the mind of humanity today. Some condemn it as a retrogression to primitive "tribalism" unsuitable to an age of science and modernity. Others celebrate it as a fundamental right of peoples. But good or bad, desirable or to be feared, it is a reality of our world. It will not disappear. On the contrary, it is one of those powerful ideas whose time is certainly upon us. It is important for international law. It is also important for international politics and for the peace and security of the world. We ignore or neglect this idea at our peril for it lights our way into the new millennium.

THE RIGHT TO SELF-DETERMINATION

The claim of different peoples to govern themselves, and to be rid of the yoke of alien rule, can be traced to Biblical times. Yet it is in more recent centuries, and often in the writings of English-speaking peoples that the notion has been given voice

and dimension. In the *Declaration of Independence*² of the founding fathers of the American Republic there is as bold an assertion of the peoples' right to self-determination as one could find:

"When in the course of Human Events it becomes necessary for one people to dissolve the political bonds which have connected them with another ..."

Woodrow Wilson's fourteen points for the allied cause in the Great War found reflection in the *Treaty of Versailles* but not always fulfilment in the political events that followed.

The *Charter* of the United Nations contains, in the very first Article, amongst the stated purposes of the new world organisation:

"[T]o maintain international peace and security, and
[T]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

2 Declaration of Independence of the United States of America. See also by the author "Peoples' rights and Self-Determination" in A E S Tay (ed) *Rights, Human Rights and the Rights of Peoples* - a special issue of the *Bulletin of the Australian Society of Legal Philosophy*, vol 18 No 61, 1993, 25 at 27.

The first Articles of the *International Covenants*, forming part of the International Bill of Rights, contain the common declaration:

"All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

In 1960, the General Assembly of the United Nations, by resolution, took a "tremendous step forward"³. It proclaimed the right of self-determination of "all peoples" in a way that denied the limitation of the principle to peoples who had formerly been ruled by European colonial powers. Until that time some experts suggested that this was a limited notion of self-determination - effectively a principle of de-colonisation. But the International Court of Justice gave its blessing to the wider concept for self-determination as a legal right of peoples generally recognised by international law. It did so in its opinions on Namibia⁴ and later on Western Sahara⁵.

3 See C Tomuschat, "Self-Determination in a Post-Colonial World" in C Tomuschat (ed) *Modern Law of Self-Determination*, 1993, Kluwer, 1. The resolution is 1524(XV).

4 *International Court of Justice Reports* 1975 at 16, 31

5 *International Court of Justice Reports* 1975 at 12, 31ff.

Yet, international law remains ambivalent about the concept. The United Nations is made up of States. States are fearful of secession which would require the redrawing of borders which could, in turn, undermine international peace and security. When Biafra declared its independence from Nigeria, as a homeland for the Ibo people, only five of the member States of the United Nations ever recognised it⁶. Similarly, Bangladesh was ushered into this world without enthusiasm. Only when the severance of East Pakistan was an accomplished political fact did realism attract supporters to the recognition of the new State. Effectively it was created by the Bengali people as a result of revolution, turmoil, war and bloodshed. Thoughtful observers of the world scene at that time, and since, have concluded that there must be a better and more peaceful way.

“Barbed wire enclosed an arbitrary spot
 Where bored officials lounged (one cracked a
 joke)
 And sentries sweated for the day was hot:
 A crowd of ordinary decent folk
 Watched from without and neither moved nor
 spoke
 As three pale figures were led forth and bound
 To three posts driven upright in the ground.

The mass and majesty of this world, all
 That carries weight and always weighs the
 same
 Lay in the hands of others; they were small

⁶ H Hannum, “Rethinking Self-Determination” 34 *Virginia J Int Law* 1, (1993) at 5.

And could not hope for help and no help came:
 What their foes liked to do was done, their
 shame
 Was all the worst could wish; they lost their pride
 And died as men before their bodies died."

The meetings which I shared with David Ennals reinforced this conviction on my own part. They demonstrated that the notion of self-determination is one full of paradoxes⁷. The latest edition of the standard text on international law contains the authors' admission that:

"the injection of a legal principle of self-determination into the law about acquisition and loss of territorial sovereignty amounts to a fundamental change"⁸.

The right of self-determination of peoples is a kind of universal principle. Seeing it in the *Charter* and in the *International Bill of Rights*, many are willing to endorse it *in abstracto* until it comes knocking on the door of their own state or the interests of peoples' of their community⁹. The very

7 M Koskenniemi, "National Self-Determination Today: Problems of legal Theory and Practice" (1994) 43 *ICLQ* 241 at 245.

8 *Oppenheim's International Law* (9th Ed, ed R Y Jennings and A Watts, London, Longman 1992) vol 1 at 715. This point is also made by J Crawford *Democracy in International Law*, Inaugural Lecture, Cambridge, 1993 at 10.

9 Koskenniemi, above n 7 at 264.

indeterminacy of the notion allowed it to gather supporters who might have had serious reservations of its contours and perimeters had been clearly spelled out. The idea had been a welcome banner for the cause of decolonisation. It also set the objectives of the international community for the mandated, and later trust, territories. In truth, the notion was simply the other side of the coin of "internal self-determination", ie the notion of democracy with its complex intermixture of acceptance of majoritarian will and respect for the human and other rights of minorities¹⁰.

Yet part of the ambivalence about the idea of self-determination of peoples derives from simple observation of the way in which assertions of that right have, until now, worked out in practice. The battles in the former Yugoslavia were hotting up as David Ennals and I gathered in Saskatoon. The catastrophes in Rwanda and Chechnya lay ahead.

Professor Richard Falk¹¹, whom David Ennals invited to the London Conference on Tibet and its peoples acknowledged this ambivalence in a paper which he presented to that conference:

10 See Crawford, above n 8.

11 R Falk "the Content of Self-Determination", R McCorquodale and N Orosz (eds) *Tibet: The Position in International Law*, 1994, Serindia, London, 81.

"... [t]he ... impact of recent history, which for better and worse seems to be illuminating both the emancipatory role of self-determination, as well as its potentially destructive impact. On the one side, the end of the Cold War and the breakup of the Soviet empire constitutes one of the great triumphal moments for those who champion the morality, politics and lawfulness of self-determination of peoples. On the other side, the continuing strife in the former Yugoslavia, with the prospect of widening and deepening war in the Balkan region, dramatises a far broader potential for strife and bloodshed associated with what might be called 'indiscriminate self-determination', including arguably premature recognition of the right in inflammatory multi-ethnic settings previously stabilised by means of historic compromises ... Thus, arguably, the premature affirmation of self-determination by way of diplomatic recognition of a new political entity may be dangerously interventionary (arguably, in the recent cases of Croatia, Slovenia and Bosnia), but so may its denial in circumstances of severe subjugation and oppression (arguably, in relation to Tibet, East Timor and Inner Mongolia). Such geopolitically motivated State practice creates precedents that can either nurture respect for or discredit the legal conception of self-determination"¹².

We must therefore appreciate that ideas about self-determination of peoples are by no means set in stone - neither in international politics or international law. They are, in Richard Falk's description:

"variable in content, resistant to generalisation, dependent on context and intensely contested"¹³.

¹² *Ibid*, 82.

¹³ *Ibid*, 82.

This is why the notion has been described as inherently paradoxical. To a large extent the self-determination of peoples is an idea supporting the modern nation state. Historically, as power shifted from the individual sovereign (king) to the people, it became necessary to define precisely who that people were, to be the recipient of such great power¹⁴. When people lived in feudal circumstances and knew little more than their neighbourhood, the local baron or chief, notions of a distinct "people", and of nationalism, may have been of less importance than notions of neighbourhood. The ideas of democratic self-government which accompanied the break-up of this feudal society, stimulated by the growth of large anonymous cities and harnessed by the modern means of communicating ideas, presented a challenge to the state, to its government and even to its borders.

We are still working out where the notion of self-determination of peoples will take the international community. Indeed, we are still in the midst of the debate (reflected in these remarks) as to whether the idea is beneficial for humanity or an ugly reversion to its primitive past of ethnic hatreds and

14 Koskenniemi, above n 7, at 252.

xenophobic fears. For every champion of self-determination of peoples there is a critic. For instance, Amitai Entzoni has declared:

“... with rare exceptions self-determination movements now undermine the potential for democratic development in nondemocratic states and threaten the foundations of democracy in democratic states. ... [I]t is time to withdraw moral approval from most of the movements and see them for what they mainly are - destructive”¹⁵.

For all this, there will be no going back to the old days when peoples' wishes in the matter of the organisation of their government, regulation and self-fulfilment could be determined by others. People are not pawns. They are now better informed, including by the BBC, CNN and global media. Now it is not so easy to suppress their ideas of individual and group freedom.

THE GOOD AND BAD NEWS

With the honesty that David Ennals insisted upon, let us acknowledge both the good and bad news about the peoples'

¹⁵ A Etzioni, "The Evils of Self-Determination", *Foreign Policy* 89: 21-35 at 21 (1992-3).

right to self-determination. There is, I am afraid, some bad news. It lends support to Etzioni's verdict just quoted.

The return to the "sacred soil" notion of the state, as a reflection of the rights of some only of the peoples within it, has been revived to accompany the debates about the self-determination of peoples. It can be seen in the Indian government's reservation to the first article of the *International Covenants*¹⁶. It can be seen in the claims of the People's Republic of China to sovereignty over Tibet, based not on the will of Tibet's people but on the ancient deference paid by the predecessors to the Dalai Lama to the predecessor of the Peoples' Republic of China in title, the Chinese Emperor. As Kashmir, Croatia and Northern Ireland demonstrate, the notion of self-determination is inherently indeterminate. Alter the territory for the definition of the "self" and you have produced a different outcome¹⁷.

"The Ogre does what ogres can,
Deeds quite impossible for Man,
But one prize is beyond his reach,
The Ogre cannot master Speech.

16 H Hannum, above n 6 at 25, where the reservation by the Government of India is noted as are the formal objections thereto of the Netherlands and of Germany. See also Tomuschat, above n 3 at 3.

17 Koskenniemi, above n 7, at 260.

About a subjugated plain,
Among its desperate and slain,
The Ogre stalks with hands on hips,
While drivel gushes from his lips."

The colonisation of the mind is sometimes harder to eradicate than removing colonial governments. The liberation of Africa was achieved. Yet peoples remain artificially divided by the linguistic, legal and cultural legacies of the departed metropolitan powers.

There is a great deal of emotionalism in the talk about self-determination. It can result in phoney ethno-history. Moreover, it can invoke highly artificial definitions of who constitute a "people" for the purpose of enjoying the peoples' right to self-determination. The notion can also be destructive, as secessionist movements sometimes demonstrate in territories which have hitherto been quietly and peaceably governed, allowing different ethnic groups to live harmoniously with each other¹⁸. The self-determination of peoples is unfortunately vulnerable to populist politics. It can be swept up by religious intolerance. It can find a place for military mercenaries, who are now made potentially more dangerous by the proliferation of the nuclear weaponry of the former Soviet Union. It is prone to

¹⁸ *Ibid*, 250.

manipulation by the media. The technology can as readily bring messages of division and racial hatred as messages of liberty and tolerance¹⁹.

Thus, there are some who assert that the demands of peoples to self-determination amount to an attempt to turn back the clock upon the realities of a world increasingly bound together by global technology and the necessities of solving global problems. For these commentators a more relevant message, as we enter the next millennium, is that of internationalism or, at least, regionalism. Marxist supernationalism may have faded. But Islams fundamentalist cause reaches beyond the nation state or a particular people. Viewed from this perceptive, the self-determination debate is sometimes presented as a reversion to primitivism.

Yet just as the mind is giving way to these thoughts, it is tugged in the opposite direction by the positive, or at least inevitable, manifestations of the peoples' right to self-determination. Even Entzioni was prepared to allow two exceptions to his "evils" of self-determination, namely Tibet and

¹⁹ R S White, "Self-Determination, Time for a Re-assessment?" (1981) 28 *Netherlands Int L Rev* 147.

Mongolia²⁰. If he had known more about East Timor, perhaps it would be added to the list²¹. And if he had studied the broken promises given to the Kurds, denied self-government and scattered among three unwelcoming states, he might have added them. And many more besides.

Peoples should not be confined to the prison of a nationality whose badge they do not wish to wear²². They should not needlessly be locked into the falsehoods and potential oppression of living together with other peoples in a political organisation which they find uncongenial and even intolerable. At least where there are enough of them to constitute a "people" for international law purposes, and they otherwise qualify, they should be assisted to enjoy the right to self-determination which international law accords to them²³. It is not a right which belongs to governments or states. It belongs to the people as a "people": just as surely as human rights

20 Etzioni, above n 15.

21 See eg Amnesty International: *Indonesia and East Timor - Power and Impunity*, 1994, London, esp 110ff.

22 Koskenniemi, above n 7, at 258.

23 UNESCO, Meeting of Experts on Further Study of the Rights of Peoples, Paris, February 1990, *Report*. The description of a "people" provided by the Experts is found in McCorquodale and Oronsz above n 11) at 145f. Cf *Mandla (Sewa Singh) v Dowell Lee & Ors* [1983] 2 AC 548 (HL) at 562.

inhere in the individual and cannot be denied by any state or government, however powerful.

THE CASE OF TIBET

In one of the international committees on which I have been privileged to serve, a UNESCO Expert Group endeavoured to offer a description of the features of a "people", for the purposes of international law. Who, by that law, enjoy the peoples' right to self-determination? The final report and recommendations of the Expert Group noted four criteria²⁴:

1. Commonalities of history, language, culture, ethnicity, economics, religion, trade, geography etc;
2. Sufficient number to be a "people" for the purpose of international law;
3. Institutions to give expression and effect to the commonalities; and

²⁴ UNESCO Report, *ibid.*

4. The will of the people involved to be seen as a separate people for the enjoyment of the peoples' right to self-determination.

This is not the occasion for a detailed analysis of the arguments of the representatives of the people of Tibet, by their government in exile or the spokesman of the People's Republic of China, who claim Tibet as an autonomous region, indissolubly part of that great country. It is enough to say that by the criteria which have been identified by the international experts, there is an extremely powerful, and unanswered case that the "people" of Tibet are a separate people who, by international law, are entitled to enjoy the right to self-determination.

The People's Republic of China has continually laid emphasis upon Tibet's pre-modern tributary relationship with the Chinese Emperor in centuries past. It is this historical claim, rather than the will of the people of Tibet, which is at the heart of most modern Chinese expositions of their contention that Tibet must remain an undivided part of the People's Republic of China. Turning the tributary relationship of centuries past into a territorial claim overriding Tibet's strongly demonstrated elements of independence is highly problematical. To some extent, China appears to have acknowledged this by organising Tibet as an "autonomous region" in 1965, although within boundaries much reduced from the traditional boundaries of ancient Tibet.

But the important point to notice is that international law, like modern international politics, rests upon a new foundation. The legitimacy of political government depends, ultimately, not upon such historical claims. Like the *Charter* of the United Nations, the legitimacy of governmental control over the peoples rests today upon the will of the peoples governed. That is as it ought to be. Any other notion, however protective of international peace and stability for a time, is an unstable one. It rests on shifting sands of legalism and history. It does not have a solid foundation in the acceptance and will of the people governed.

As a country which was invaded by military forces of the People's Republic of China in 1951, Tibet has doubtless benefited with elements of modernity and civil government which were of utility to many of the people of Tibet. Colonial governments often have practical arguments of utility and efficiency to support them; yet they do not last. The Dalai Lama himself has made it clear that, in the realisation of self-determination for the people of Tibet, there can be no returning to the feudal regime formerly maintained by his predecessors and the lamas. Furthermore, his Holiness has tantalisingly made it clear that self-determination for the people of Tibet does not necessarily involve complete political severance and total independence from China. He made it clear in London that he

was willing to negotiate, putting independence to one side. In 1995, he said²⁵:

"I have often conveyed to the Chinese government that theoretically the 6 million Tibetans may get greater benefit if we remain with the People's Republic of China without big brother. After all, Tibet is a landlocked country. We need a lot of work for material development. In these fields, if the Chinese treat us as an equal and sincerely respect our culture and our way of life then I personally feel that it may be wise to remain with the Chinese".

Not all Tibetans may share this view. In the end, the right of self-determination of the Tibetan peoples belongs not to the government of China, still less to the government of the autonomous region. Nor does it belong to the government of Tibet in exile. It does not even belong to his Holiness. It belongs to the people of Tibet.

The Dalai Lama, whilst acknowledging mistakes and accepting that there have been some improvements in Tibet, even acknowledge Deng Xiaoping as his "old friend" and a "great person" and expressing admiration for some aspects of the Chinese revolution²⁶ nonetheless insists (as he is entitled to

25 H H the Dalai Lama, "I prefer China without total collapse" reprinted *Tibetan Bulletin* January/February 1995, 11.

26 *Ibid.*

do) on the right of the people of Tibet to determine their own fate in terms of political governance. They are a distinct and unique people. They fulfil the four-part requirements to qualify for an internationally acceptable exercise of the right to self-determination which international law gives them. The basic problem is that, at the moment, there is no effective machinery in the international community to test opinions and to conduct referenda in a way that contemplates the peaceful reorganisation of a state, if that be the will of a distinct people living within it²⁷.

A NEED FOR INSTITUTIONS

Striving to foresee some of the changes which will occur, presents each prophet with the limitations and perspectives of his or her own experience. Mine make me optimistic. My daily life in a court of justice which carries on a legal tradition of eight centuries which began close to this meeting room makes me full of hope. So does my work in the many agencies of the United Nations where it has been my privilege to witness institution building and improvement of the lot of humanity by practical good works. Many abiding problems remain. But more will be

27 See "Prominent Chinese dissidents support negotiations with Dalai Lama and plebiscite in Tibet" in [1995] 7 *Tibet Press Watch* (#5 at 3).

achieved by the path of non-violence than by the ruinous means of armed conflict that are the sad legacy of the past.

A few years after any war there remains little of the heroism - simply gravestones beside busy highways. The modern media, fortunately, make it harder to fight wars today. Yet still the suffering of Bosnia, Rwanda, Chechnya and Haiti is brought into our living rooms. There has to be a "middle way" between a resigned acceptance of perceived injustice and resort to force of arms. That middle way is the path of non-violence and compassion taught by His Holiness the Dalai Lama strengthened with respect for international law and its institutions.

This is not a passive idea. Nor does it involve blind acceptance of the unacceptable. It commits the holder of this view to working for peace, equitable development and true human rights as the three foundations of global governance. Those who believe in these goals will strive to strengthen new institutions and to reinforce old ones. They will seek to educate friends and bring messages of education and understanding of would-be enemies.

There is an urgent need for enlightened leadership in the world today. There is a need for fresh ideas which adapt old ways of thinking to the realities of a world radically changed by economic and social movements and by global technology. New

thinking will involve us in apparent paradoxes. To be a friend of the Tibetan people is not to be an enemy of the great Chinese people. Wisdom often lies in paradoxes. Progress is not always apparent when it challenges orthodox ways of thinking. So it will be in the fulfilment of claims to self-determination: notably in the case of Tibet.

To the many insistent calls for changes in global governance, respect for the environment and protection of human rights we must add the calm, insistent voice of the Dalai Lama. In a world of materialism and violence his is a message of spirituality of compassion and reconciliation. Because the message is so different, many do not understand, still less heed its call. But the lesson of the twentieth century is that, after great suffering and unprecedented violence, a new path is clearly needed. It leads to peace, but with justice. It leads to development, but with equity. It leads to respect for the rights of peoples and of individuals but without war²⁸.

As the century draws to its end and the new millennium beckons, I believe that we can be optimistic. We are on the high path towards human progress and enlightenment. That journey

28 See H H the Dalai Lama, *Freedom in Exile*, John Curtis, London 1990, 273.

cannot be reversed. Our species is guided by the wellsprings of our human nature. It is our human nature which has us quest for peace in place of war. It is our human nature which urges us on to economic progress, in balanced harmony with our environment. And it is our human nature that insists upon respect for the essential dignity of everyone, who is human like ourselves, sharing with others who are of the same people, the privilege of self-determination. The international community and its many peoples are now taking this journey. So are the states and nations of the world. But each one of us has an individual responsibility. This responsibility should cause us to lift our voices and not to remain silent for a quest for justice is the privilege which we enjoy in our brief allotted span of human existence.

This was certainly the attitude which David Ennals held throughout his life. It was what caused him to lift his voice in support of so many good causes. It was the motivation that brought him to support the peaceful achievement of the rights of the peoples of Tibet. He did not live to see that fulfilment come to pass. But we can be sure that in time it will do so. In the meantime, we should be working with the same restless energy that David Ennals manifested to build new international institutions and to strengthen those which exist. Doing this will, in due course, provide a peaceful and just way of securing the peoples' right to self-determination that does not involve resort to bloodshed, suffering and death. The noble vision of a juster

world is David Ennals' legacy. We should strive to be worthy of it and to contribute to its achievement. Including in the case of the people of Tibet.

"From Archaeology
one moral, at least, may be drawn,
to wit, that all

our school text-books lie.
What they call History
is nothing to vaunt of.

Being made, as it is,
by the criminal in us:
goodness is timeless."²⁹

²⁹ The poems quoted are all by W H Auden. They are taken from *Auden Poems*, selected by Edward Mendelson, Everyman's, A A Knopf, New York, 1991, pp 32 ("Who's Who"); 29 ("O What is that Sound"); 178 ("The Shield of Achilles"); 236 ("August 1968") and 252 ("Coda").