

1-1-1990

Michael Van Walt's *The Status of Tibet: History, Rights and Prospects in International Law* (book review)

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Recommended Citation

Rebecca R. French, *Michael Van Walt's The Status of Tibet: History, Rights and Prospects in International Law* (book review), 84 Am. J. Int'l L. 996 (1990).

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former long comments on the exclusively political nature of self-determination.

The entire investigation shows that the author, consciously or not, tends to grant political viewpoints predominance over legal reflections. Whether or not the conclusion of this research, namely, that the Moroccan sovereignty established in former times should continue, is correct, remains an open question. The author disregards nearly all opposing points of view. Of course, international law requires an understanding of political relations, but the political issues should never overshadow established principles of international law, even if one concedes that international law cannot always render clear-cut answers.

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The Status of Tibet: History, Rights, and Prospects in International Law. By Michael C. van Walt van Praag. Boulder, Colo.: Westview Press, 1987. Pp. xxiv, 381. Index. \$35.

Taking a walk down the main street of McLeod Ganj, the major Tibetan refugee town in India adjacent to the compound of the Tibetan Government-in-exile, a visitor has a choice of cuisines in the many small restaurants. Food and conversation are available in equal measure there. If one then asked in Tibetan who the lawyer of the Dalai Lama was, the answer would be "Michael Van" or some Tibetanization of the name Michael van Walt, the author of this book. Such has been his renown among the more knowledgeable of the refugee community as a representative of their leader on the international legal stage, a champion of Tibet and the interpreter of things legal for Tibetans.

His work, *The Status of Tibet*, is a review from the viewpoint of a modern international lawyer of the historical and current arguments for and against the independent position of Tibet in relation to China. The question of Tibet has provoked constant argument since the Chinese takeover of 1950 and van Walt's book is the first to address formally each legal issue seriatim from the Tibetan perspective.

The bewildering array of justifications offered for the Chinese actions over the past forty years have included historical arguments rejecting Tibet's status as a state, arguments for its protectorate status, arguments based on the lack of intrinsic cultural cohesion of the Tibetan people, arguments based on the lack of political control over the territory of Tibet by the Tibetan Government, arguments based on treaties concluded both before and after the takeover, sphere-of-influence arguments, and the argument that Tibet has been an integral part of China for hundreds of years. Chinese commentators such as H. Chiu, Luke Chang, Wang Furen and Li Tieh-Tseng have used events as small as the payment of money to Tibetan emissaries by the Chinese Government and as ancient as the wedding of the first historical king to a Tang princess in the seventh century¹ to substantiate

¹ See WANG FUREN & SUO WENQING, HIGHLIGHTS OF TIBETAN HISTORY (1984).

Chinese claims to the vast plateau area that now constitutes over one-fifth of the entire Chinese landmass.

What was needed from the Tibetan point of view was a counterstatement, grounded in modern international law theory and acceptable to all modern states, which presented, discussed, pointed out the contradictions in, and then rebutted every current or possible Chinese argument. This would be useful not only as background but in any debate at the United Nations or in other international forums. Michael van Walt has produced such a book. While his conclusions—that Tibet was an independent state throughout its history, that its status with China was never more than that of a limited protectorate, that the current occupation of Tibet by the Chinese is illegal, and that the Tibetan people have a right to self-determination—are not surprising, the copiousness of his research, the thoroughness of his presentation and the depth of his understanding of international law work together to make this a forceful statement.

The first part of the book is a good review of Tibetan history, with an eye toward the international legal questions that van Walt wants to address. Chapters 1 through 6 and chapter 9 move rapidly through the thirteen hundred years of recorded Tibetan history, giving the historical context for the political motivations of the Tibetan rulers and foreign powers. Reading this report, one finds it hard indeed to imagine that China has been able to make a valid claim that Tibet was not a distinct state, no matter what definition of the term was used. Chapter 7 presents van Walt's analysis of the pertinent concepts in international law that apply to the Tibetan situation. Chapters 8 and 10 are an analysis of the historical and recent status of Tibet in light of those legal concepts. He concludes chapter 10 with a section on the present status of Tibet (p. 177) stating that the Tibetan Government now in exile and the Tibetan people on the plateau have never accepted Chinese rule, that opposition to this rule remains widespread, that the Chinese Government has no legal title to sovereignty over Tibet, and that the position of other states toward Tibet remains, at best, noncommittal.

Perhaps the most important aspect of the book for both the international and East Asian scholar is van Walt's discussion of the *Chö-yön* (priest-patron) relationship, which was first established between the Sakya lamas of Tibet and the Mongol khans in the thirteenth and fourteenth centuries. It was a personal and religious tie that "cannot be categorized or defined adequately in current international legal terms and must be regarded as a *sui generis* relationship" (p. 12). Based on an important interrelation in Tibetan Buddhism between the religious person who practices and gives religious teachings and the layman who supports, worships and protects him or her, *Chö-yön*, as van Walt uses the term, is this relationship writ large and carried out on the international stage. The Fifth Dalai Lama of Tibet, for example, was established as the ruler of Tibet by his devotee, the Qoshot Mongol leader Gushri Khan, who invaded Tibet with his armies, set the Dalai Lama on the throne and then withdrew.

The *Chö-yön* tie did not reflect the inequality of the superior and inferior, but the symbiosis of religious lama and secular devotee. It was a personal relationship between two heads of state acted out across history and finally

recanted in the early part of the twentieth century. As such, it hardly fits most of the modern international legal terms that van Walt must attempt to apply to it; instead, he takes the tack of asking what sorts of political exchanges actually occurred under this relationship and then analyzes them in terms of modern theory.

Van Walt does not stress another aspect of the relationship; the Buddhist prohibition against killing was interpreted by some religious Tibetan leaders as a general prohibition against a large military, whose function was then fulfilled at various points in Tibet's history (although certainly not all) by the patron. It was, arguably, this general lack of a strong military that precipitated the continuation of sporadic foreign interference throughout Tibet's history and the ultimate demise of the state in 1950. Also, van Walt does not discuss the development over the last three hundred years of a xenophobic, isolationist style in Tibetan foreign affairs, which would be even harder to explain in modern legal terms. Tibetan rulers constantly balanced foreign pressures against one another, even taking totally contradictory positions with different parties, if it allowed them to remain neutral.² The author takes perhaps the wiser course of looking at the actual events and documents themselves for their cogency in terms of international legal concepts.

Van Walt highlights Tibet as an interesting case study for various aspects of international law: particularly, statehood (pp. 93–110), independence (pp. 133–41), protectorates (pp. 102–4, 127–29), suzerainty (pp. 104–7), acquisition of territory (pp. 177–88), annexation (pp. 183–88) and self-determination (pp. 189–97). He relies heavily for his analysis of the issue of statehood on the work of K. Marek and J. Crawford, and for protectorates and suzerainty on J. H. W. Verzijl, G. B. Davis and L. Oppenheim. Throughout, his range and use of sources is good. He culled all of the standard legal treatises; treatises on Tibetan history and culture; newspapers from England, India, the United States, China, the refugee community and Hong Kong; all of the United Nations reports, cases and resolutions; unpublished records from the wonderful files of the India Office Records in London; published and unpublished Chinese documents that he had had translated; international case law; and a wide selection of books and journals. The work is extensively footnoted (79 pages), appendixed (35 pages) and blessed with an excellent bibliography and index, making it a research tool as well.

In the last chapter, "Beyond the Status Quo; Toward an Equitable Resolution," the author takes a more conciliatory approach and proposes three possible forms for the future status of Tibet: actual autonomy, free association with China or integration with China. Principle 7 of the 1960 UN resolution is the basis for his suggestion of free association, an arrangement that has been employed largely by smaller entities than Tibet. He states that there are "significant similarities" between the modern institution of free association and the traditional *Chö-yön* relationship between Tibet and China, a point that requires a definite stretch of the imagination. Given the aftermath of the events in Tiananmen Square, one is hard pressed to retain a sanguine attitude toward the Chinese with respect to an innovative idea such

² See C. BELL, *TIBET: PAST AND PRESENT* 56 (1924).

as “free association,” but van Walt’s work was concluded two years earlier and he took a more optimistic view toward Chinese domestic policy. Nevertheless, this is an excellent and much-needed case study of the status of Tibet as a distinct political entity, which should be consulted by any scholar interested in the complex, and now-tragic, consequences of the Chinese-Tibetan relationship.

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Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland. Vols. I–VI. Munich: Verlag C. H. Beck, 1974–1987.

Literally, the German word *Wiedergutmachung* means “to make good again.” It encompasses *Entschädigung*, which means “to wipe away injury” and *Rückerstattung*, which is “to restore what has been taken away.” These form the subject of six volumes that describe legal proceedings in the Federal Republic of Germany to compensate some of those who were persecuted and plundered by the Third Reich of Adolf Hitler. The terms are all misnomers. Some things cannot be made good again. Some injuries can never be wiped away and many things taken can never be restored. As a former Bavarian minister, Governor-General of Poland and President of the Academy of German Law, Dr. Hans Frank, stated at Nuremberg before he was hanged for admitted participation in mass annihilations, “A thousand years will pass and this guilt of Germany will still not have been erased.”

The *Wiedergutmachung* program by the West German Government is most impressive. Thirty authors (mostly former officials), who worked on the project for ten years, describe dozens of laws, hundreds of amendments, thousands of decisions, and millions of claims costing billions of dollars. All of this is meticulously detailed in over three thousand pages of careful legal analysis published by the Ministry of Finance in collaboration with Walter Schwarz, a successful restitution practitioner and scholar (now deceased) who initiated the publication. He concluded that, despite many errors and inequities, a great job was done. One hopes that the precedents set in compensating victims of incomprehensible brutality and repression will never have to be used again.

For those who wish to understand the enormous complexity of the program and to measure its accomplishments and shortcomings, these volumes are indispensable. Volume I deals with restitution of identifiable property.¹ Volume II focuses on monetary claims against the Reich for assets that could not be returned. The third volume describes the origins and evolution of the programs to compensate individuals for personal injuries and losses, such as imprisonment, damage to health, disability and economic losses of many kinds. Volumes IV and V spell out how those indemnification laws were implemented. Volume VI describes partial compensation for special groups

¹ Reviewed at 69 AJIL 707 (1975).