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The Indo-Sino Agreement On Tibet Of 1954 (With Exchange Of Notes)

The *Agreement Between The Republic Of India And The People's Republic Of China On Trade And Intercourse Between Tibet Region Of China And India (1954)* consists of a bi-lateral treaty with conditions stated in exchange of notes signed by the plenipotentiaries of both nations which are legally binding.

India agreed to withdraw all Indian Military Escorts from Tibet proper as well as handing over outposts known as "rest houses" under the control of the Dominion of India in Tibet before India's independence, to the People's Republic of China (PRC). This has been viewed as a *de-facto* transfer of Tibet to the PRC by India according to some historians since India withdrew its military from Tibet after both countries declared independence in the late 1940's. Tibet is considered both Hindu as well as Buddhist holy land since Buddhism, started by Gautama Buddha, is the 10th reincarnation of the sole and supreme God in Hinduism.

In exchange, as per Articles 2 and 3 of the Agreement, India gained several trade offices within what is the Tibetan Autonomous Region (TAR) as well as access to holy sites in Tibet such as Mount Kailash, Lhasa, Manasarova, etc for Hindu, Buddhist as well as Lamaist (Tibetan Buddhism) pilgrims.

China also gained access to several holy sites in India for its pilgrims in Banaras (Varanasi) and several other cities in the Indian state of Uttar Pradesh (U.P.) of significance to Buddhists as well as Hindus.

As per Article 5, it was agreed that pilgrims from either nation need not have any certifications but receive registration; today on-arrival visas, to Indian and Chinese passport holders with the condition that they abide by procedures of either party.

The main purpose of the Agreement was to enter into peaceful relations between the two new large independent nations based on the five principles of Panchasheel:

(1) Mutual respect for each other's territorial integrity and sovereignty.

(2) Mutual non-aggression.

(3) Mutual non-interference in each other's internal affairs.

(4) Equality and mutual benefit; and

(5) Peaceful co-existence.

The Plenipotentiary of the Republic of India had written to the Vice-Foreign Minister of China regarding the withdrawal of Indian Military Escorts from Tibet, transfer of 12 “rest houses”, ending its postal services, as well as ending telegraph and public telephone services in Tibet for a considerable amount which the Vice-Foreign Minister of China accepted as a condition with the Agreement. As previously mentioned, the government of India gained several trade offices within Tibet such as in the Yatung as well as Gyantse areas and gained the right to develop Tibet in concurrence with the PRC.

Under the provisions of Article 6, the Agreement can be renewed for a period determined via negotiations but can be cancelled within 6 months notice. Today, the government of India does not seek to regain its military positions in Tibet as larger interests are at stake with regards to new international banks and cooperation between Asian nations via various inter-governmental agencies such as the Shanghai Cooperation Organisation (SCO), etc. The Agreement has been renewed, which is governed by customary international law concerning the abrogation and adherence of treaties codified in the “Vienna Convention on the Law of Treaties (1969)” which the PRC is a signatory to.

A key term of this Agreement as per Article 2 is that whenever the Ari District of Tibet, situated in the south-western region of TAR near the Ladakh (Leh) area of the Indian state of Jammu & Kashmir (J&K) requires increased development in trade; the government of India shall be ready to reciprocate the same to the PRC due to the various trade agencies it maintains in Tibet.

Therefore, the Tibetan Autonomous Region (TAR) of the PRC can gain increased autonomy with negotiations as further explained.

Special Administrative Regions (SAR's)

The People's Republic of China has given a high level of autonomy to several regions such as Hong Kong and Macau by establishing Special Administrative Regions (SAR's) under the powers of Article 31 of the *Constitution of the People's Republic of China (1982 – amended up to 2004)*.

The SAR's of China enjoy the right to have their own constitution, their own Head of State, their own executive, their own legislature, their own currency, their own passports, and control over how the People's Liberation Army (PLA) operates in their region. Nevertheless, the Chinese Armed Forces or PLA is responsible for the defence of the SAR's.

SAR's are also allowed to participate as well as have membership in United Nations (U.N.) international organisations under the names of "Hong Kong, China" and "Macau, China". This is known as "one government, two systems" and is in concurrence with the "One China Policy" which member-States of the U.N. with diplomatic relations with the PRC follow. A few exceptions remain for some which have extended diplomatic recognition to Taiwan, further explained in this article.

The rationale for granting SAR status to the two areas of Hong Kong and Macau is that both have been a historical trade hub between China and the rest of the world. The Gross Domestic Product (GDP), one of the indicators of the economy, is higher than most developed nations as it is in the hundreds of billions of U.S. Dollars (USD).

Special interest groups of China have helped welcome foreign investment into the SAR's with Wholly Foreign Owned Enterprises (WFOE), whereas other areas of China are more difficult to invest in due to local laws and regulations surrounding the operation of business. In short, the SAR's have been designed by the Chinese government for foreigners wishing to do business in the nation as an entry point and/or hub for trade as foreign equity in shares can be up to 100%.

The offer of a SAR has been made to the Republic of China (ROC), or what is known as Taiwan, as the PRC views it as an area which was separated during political disputes and needs to be rejoined with the PRC as stated in the *preamble* of the PRC Constitution. The political disputes stem from the ROC expelled from the United Nations (U.N.) via the U.N. General Assembly as the official representatives of China. Taiwan's Mainland Affairs Council (MAC), which is responsible for negotiations with the PRC, is lobbying for independence for full diplomatic recognitions; something the PRC has outright rejected and has threatened invasion of the small island.

While Taiwan maintains independence on the ground, its *de-jure* diplomatic recognitions are limited to 20 or so member-States of the U.N. so it is overlooked by the international community. This is with exception to trade as Taiwan also yields a high amount of revenue from its trade due to the democratic system of governance. Foreign nations in the west find it easier to business with a democratic country as the

U.S. has been actively involved in arms sales to Taiwan under the PRC's watch for many years. The offer for Taiwan to become a SAR is on the table but unlikely to be taken up by Taiwan as alternative options exist for the country to become a part of the U.N. via non-violence.

Taiwan meets the legal conditions to join the U.N. Specialised Agencies of the International Monetary Fund (IMF) as well as the World Bank Group. Article 2 of the *IMF Articles of Agreement (1944)* requires that the entity be a "country", not "state", and have the support of the IMF Board of Governors. The IMF's Board of Governors consisting of the U.S., U.K., Japan, etc are supportive of Taiwan's participation in international organisations so a vote for Taiwan's full membership in the IMF will likely be accepted. If accepted, Taiwan will be able to invoke the *Vienna Formula* under international law to join other international organisations with similar status and re-join the U.N. as a "Permanent Observer Entity" since it will have full membership in at least one U.N. Specialised Agency which is the condition for joining the U.N. with the mentioned status.

TAR As A SAR Vis-à-Vis Symmetry

The Tibet Autonomous Region has never been given the offer of becoming a SAR despite the various calls by Tibetans within Tibet proper to remain a part of the PRC but with increased autonomy as mentioned in the Central Tibetan Administration (CTA) issuance of the *Memorandum on Genuine Autonomy for the Tibetan people*.

H.H. Dalai Lama, the CTA, and Tibetan diaspora are not requesting independence but increased autonomy to practice their religion as human rights violations with regards to religious discrimination have been reported for years leading to the self-immolation of Tibetans within Tibet proper.

Never has the PRC considered to establish a rich area of the TAR, a SAR publically, nor has it been discussed by Tibetans. Many within the PRC are of view that Tibetan calls for increased autonomy are a guise for moving towards independence despite the fact that no member-State of the U.N. has or is considering any recognition of Tibet. This is similar to Taiwan as even with independence on the ground, Taiwan is not *de-jure* recognised by the U.N. as a "state" despite its limited diplomatic recognitions.

The TAR is a large area; asymmetrical to Hong Kong, Macau, and Taiwan which are very small compared to the size of the TAR. Establishing the TAR as a SAR would create large national security risks for the PRC as the PLA would not be able to interfere in the TAR, which borders nations such as India and Myanmar under normal SAR privileges. Thus, Tibetans have never requested becoming a SAR publically, despite their negotiations with the central government of the PRC for decades which can be for a *modified* SAR under Article 31 of the PRC Constitution to address security concerns of the PRC.

Economically, the TAR's GDP is around \$11 Billion USD, has doubled from 2006 to 2010. However, the PRC encourages more growth in the TAR as it has one of the lowest GDP of all PRC Provinces, without any sacrifices to national security interests as visas to enter for

foreigners are not normally issued for purposes other than tourism. Due to the border dispute of the Indian state of Arunachal Pradesh (A.P.), the SAR of Tibet can be established in an area negotiated between the concerned parties.

Political demands of Tibetans can be met while benefiting the PRC at the same time without any risks. This can be done by creating a smaller SAR within the TAR, symmetrical to as Hong Kong or Macau. As previously stated, Article 2 of the Agreement between India is important if the PRC chooses to establish a SAR as the trade agencies India are required to reciprocate increase in development if the Ari District of the TAR requests.

Establishing a SAR within the TAR symmetrical to the size of Hong Kong would not pose a risk to Chinese national security and would allow the TAR to attract foreign investment into the vast natural resources the region possesses as one of the areas of interest to businesses as well as investors.

For the PRC, this would be addressing two issues with one solution; the political demands of Tibetans while increasing the overall GDP of the TAR, where the main source of revenue is from tourism and requires growth. Negotiations towards this end with the willingness of H.H. Dalai Lama to meet with Chinese officials and vice-versa, not refusing meetings due to past history or statements made in the media, can yield results.

With the legally binding obligations and privileges the government of India has in relation with the Tibetan economy, such a solution is a win-win situation for all parties involved.

The PRC will receive increased revenue, the Tibetans choice of their political status as per Article 2 (4) of the U.N. Charter will be met, and the government of India will also receive increased revenue as it will reciprocate the development of the TAR via its trade offices in the TAR as well as otherwise due to the Brasil, Russia, India, China, South Africa (BRICS) alliance.

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