

ADOPTED

AMERICAN BAR ASSOCIATION

**INTERNATIONAL LAW SECTION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CENTER FOR HUMAN RIGHTS
CRIMINAL JUSTICE SECTION**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association urges the United States Department of
- 2 State Office of Global Criminal Justice to investigate and publish updated findings on the
- 3 question of genocide, crimes against humanity, and other human rights violations in Tibet;
- 4 and
- 5
- 6 FURTHER RESOLVED, That the American Bar Association urges the United Nations
- 7 Human Rights Council to appoint a special rapporteur on the situation concerning Tibet
- 8 and to include the situation of Tibet on its agenda.

REPORT

Between 1949 and 1950, the People's Republic of China (PRC) invaded Tibet. The PRC maintained then, as it does now, that Tibet is an "integral" part of China. In 1951, China and Tibet signed the Agreement on Measures for the Peaceful Liberation of Tibet (known as the 17-Point Agreement), whereby China would keep Tibet's government and religion in place.¹ In 1959, an uprising took place in Tibet challenging the PRC's rule. It was at this time that the Tibetan Spiritual Leader, His Holiness The 14th Dalai Lama, fled to Dharamsala, India.

Since that time, the Geneva-based non-governmental organization, International Commission of Jurists (ICJ) issued a series of reports which documented human rights abuses in Tibet. The first preliminary report was issued in 1959, titled, "The Question of Tibet and the Rule of Law."² In 1960, the ICJ published a report of its "Legal Inquiry Committee on Tibet."³ In 1997, the organization published a further report titled "Tibet: Human Rights and the Rule of Law."⁴

I. *ICJ Reporting*

a. *1959 Preliminary Findings*

The ICJ found, in its preliminary findings, "that the evidence points at least to a *prima facie* case of Genocide against the PRC. This case merits full investigation by the United Nations."⁵ The 1959 report highlighted violations of the 17-Point Agreement by the PRC, corroborated by public statements and documents. The ICJ concluded:

(a) The authority of the Dalai Lama was deliberately undermined in temporal matters, a matter of the utmost gravity in a theocratic society. (b) The constitutional structure of Tibet was formally changed by the establishment of new organs of state by the Chinese. (c) Tibetan institutions and new institutions with Tibetan representation had no effective power in the government of the country. (d) These and other methods were used with the design of establishing Chinese government in Tibet as part of a larger plan to assimilate the Tibetans to the Chinese Communist way of life.⁶

¹ Madhur Sharma, Explained: The China-Tibet 17-Point Agreement, The Conflict's History, and India's Place In It, Outlook, May 23, 2022, <https://www.outlookindia.com/national/explained-the-china-tibet-17-point-agreement-the-conflict-history-and-india-place-news-198184>.

² International Commission of Jurists, The Question of Tibet and the Rule of Law, Geneva, 1959, <http://www.icj.org/wp-content/uploads/1959/01/Tibet-rule-of-law-report-1959-eng.pdf>.

³ International Commission of Jurists, Geneva 1960, <https://icj2.wpenginepowered.com/wp-content/uploads/1960/07/Tibet-China-thematic-report-1960-eng.pdf>.

⁴ International Commission of Jurists, Tibet: Human Rights and the Rule of the Law, Geneva 1997, <https://www.icj.org/wp-content/uploads/1997/01/Tibet-human-rights-and-the-rule-of-law-thematic-report-1997-eng.pdf>.

⁵ Note 1, at 18.

⁶ *Id.* at 23.

The ICJ also analyzed violations of religious freedom in Tibet which were taking place in violation of the 17-Point agreement. The ICJ concluded that it is “irresistible that the Chinese were determined to use all methods at their disposal to eliminate religious belief and to substitute Communist doctrines.”⁷ The ICJ evidence showed that:

(a) Anti-religious propaganda was carried on in newspapers, through personal discussion and by subjecting monks to tests demanding outward and visible demonstrations of supernatural powers. (b) The monasteries were taxed and deprived of food reserves in order to break up the monastic community. (c) Subjecting the monks to forced labour, deportation to China and to forced marriages. (d) Destruction of monasteries and sacred objects and desecration of holy places. (e) Torture and killing of monks and lamas.⁸

Finally, the ICJ determined, based on its review of the evidence, that the following human rights violations had occurred or were occurring in Tibet:

(a) Life, liberty and security have been violated. (b) Forced labour has been inflicted on the Tibetans. (c) Torture and cruel and degrading treatment have been inflicted. (d) Rights of home and privacy have been violated. (e) Freedom of movement within a state, and the right to leave and return to Tibet have been denied. (f) Marriages have been forced upon unwilling parties. (g) Property rights have been arbitrarily violated. (h) Freedom of religion and worship have been systematically denied. (i) Freedom of the expression and communication of ideas is totally lacking. (j) Freedom of association is denied. (k) The right to representative government is denied. (l) There is a wanton disregard for the economic rights of man in relation to his country's resources. (m) The right to a free choice of employment is denied. (n) Conditions of labour do not conform to minimum standards in respect of rest and limitations of hours. (o) The right to an adequate standard of living is denied. (p) The right to a liberal and efficient, non-discriminatory educational system is denied. (q) The right to participate in the cultural life of the community is denied. (r) The limitations imposed on the rights of the Tibetans far exceed any which are reasonably referable to the requirements of public morality, public order and the welfare of society.⁹

Regarding the crime of genocide, the ICJ's report concluded that as there was “a prima facie case of acts contrary to Article 2 (a) and (e) of the Genocide Convention of 1948” and “a prima facie case of a systematic intention by such acts and other acts to destroy in whole or in part the Tibetans as a separate nation and the Buddhist religion in Tibet,”¹⁰ the matter would be assigned to the Legal Inquiry Committee on Tibet to analyze the evidence and answer the question.

⁷ *Id.* at 35.

⁸ *Id.* at 35- 36.

⁹ *Id.* at 58-59.

¹⁰ *Id.* at 71.

b. 1960 Legal Inquiry Findings

The Legal Inquiry Committee (the “Committee”) was an independent body that reported its findings with regard to genocide and human rights violations to the ICJ in 1960. The Committee found that “the evidence . . . satisfied them that the Chinese in Tibet intended to destroy as such a religious group, namely Buddhists in Tibet.”¹¹ The Committee, using statements from both Chinese and Tibetan sources, stated:

The evidence shows that conspicuous religious figures have been killed in an attempt to induce others to give up their faith. It also shows that large numbers of the new generation of Tibetans are being transferred by force to an environment where the old religion of their parents cannot reach them. These acts are part of a general design to eradicate religious faith in Tibet, and by so doing to destroy the religious group. In brief, acts condemned as genocidal have been committed to destroy Buddhism in Tibet, and the intent is that there shall be no Buddhists left there.¹²

The Committee documented that serious bodily harm such as flogging, public degradations, and starvation were taking place.¹³ In addition, the Committee had “no doubt” that “large numbers of children many being tiny babies, have been taken under force or the threat of force from homes and transferred from Tibet to China.”¹⁴

The Committee analyzed human rights violations within the framework of the Universal Declaration of Human Rights (“UDHR”)¹⁵ with an emphasis on inquiring about economic and social rights prior to the invasion by China and afterwards. The Committee found that “Chinese communist authorities in Tibet had violated human rights of both kinds” which included economic, social rights, and civil liberties.¹⁶ The Committee found numerous violations of the UDHR: Article 3 (right to life, liberty, and security of person); Article 5 (prohibition against torture and cruel, inhuman and degrading treatment); Article 9 (prohibition against arbitrary arrests); Article 12 (right to privacy); Article 13 (freedom of movement within, to and from one’s own country); Article 16 (denial of voluntary marriage); Article 17 (deprivation of property); Article 18 (freedom of thought, conscience and religion); Article 19 (freedom of expression and opinion); Article 20 (right of free assembly); Article 21 (right of democratic government); Article 22 (violations of economic, social, and cultural rights); Article 24 (reasonable working conditions); Article 25 (reasonable standard of living); Article 26 (right to liberal education); and Article 27 (right to participate in cultural life).¹⁷

c. 1997 Human Rights and the Rule of Law report

¹¹ Note 3, at 27.

¹² *Id.* at 27.

¹³ *Id.* at 62.

¹⁴ *Id.* at 65.

¹⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁶ *Id.* at 18.

¹⁷ *Id.* at 18-19.

The 1997 report reviewed the history of the situation in Tibet up until the mid-1990s. In 1994, the Third National Forum on Work in Tibet took place. The 1997 ICJ report stated, “the economic development and colonization strategy was confirmed”¹⁸ by this Forum. The ICJ posited that the Forum “endorsed a campaign to curtail the influence of the Dalai Lama and crackdown on dissent.”¹⁹ The 1997 report then detailed violations which “threaten[ed] to erode elements of Tibetan identity and culture.”²⁰ These violations included the population transfer of Chinese citizens into Tibet in order to create a new culture.²¹ The ICJ corroborated this statement with the Chinese policy statement and “other evidence” they analyzed in the report.²²

Other violations outlined were threats to cultural heritage, including traditional medicine.²³ The ICJ found that “Tibet's cultural landscape remains irrevocably altered.”²⁴

The ICJ report also discussed the marginalization and disappearance of the Tibetan language,²⁵ the lack of effective participation in development,²⁶ and environmental destruction.²⁷ The final portion of the report discussed China’s international obligation to protect and secure individual rights for the Tibetan people. Of all the reports published by the ICJ, the 1997 report remains the most comprehensive in outlining the history, violations, and the laws concerning the situation in Tibet.

II. United Nations Resolutions and Responses

After China invaded Tibet, on November 11, 1950, Tibet appealed to the United Nations for assistance. El Salvador subsequently asked that Tibet be included on the agenda of the General Assembly, at which point India urged that the PRC’s request to settle the matter through peaceful means should be given an opportunity.²⁸ “On November 24, the General Assembly’s General Committee voted unanimously to postpone consideration of the Tibet issue.”²⁹

The United Nations General Assembly has adopted three resolutions addressing the situation in Tibet. The first resolution was adopted in 1959, calling for “respect for the fundamental human rights of the Tibetan people.”³⁰ A second resolution was adopted in 1961, calling for the “cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination.”³¹ The

¹⁸ Note 4, at 80.

¹⁹ *Id.* at 80.

²⁰ *Id.* at 101.

²¹ *Id.* at 111.

²² *Id.* at 119.

²³ *Id.* at 120.

²⁴ *Id.* at 123.

²⁵ *Id.* at 129.

²⁶ *Id.* at 136.

²⁷ *Id.* at 169.

²⁸ *Id.* at 46.

²⁹ *Id.* at 47.

³⁰ 1959 UNGA Resolution 1353 (XIV) on Tibet.

³¹ 1961 UNGA Resolution 1723 (XVI) on Tibet.

third resolution, adopted in 1965, deplored the “continued violation of the fundamental rights and freedom of the people of Tibet.”³²

Despite these actions, there has been no evidence of improvements in the human rights situation in Tibet. In 2012, UN High Commissioner for Human Rights Navi Pillay called upon Chinese authorities to “release detainees, allow independent human rights monitors to visit Tibet, and to lift restrictions on media access.”³³ These sentiments were echoed by experts at the UN Human Rights Council in 2008³⁴ and by then-UN Secretary General Ban Ki-Moon.³⁵

Between 2022 and 2023, the violations once deplored by the ICJ have continued. In February 2023, UN experts warned that “a million children of Tibetan minority were being affected by Chinese government policies aimed at assimilating Tibetan people, culturally, religiously and linguistically through a residential school system.”³⁶

III. Status Quo Violations Continue

The Tibetan Policy Act of 2002 (TPA) was enacted into law on September 30, 2002, part of the Foreign Relations Authorization Act, FY2003 (P.L. 107-228), its purpose being “to support the aspirations of the Tibetan people to safeguard their distinct identity.”³⁷ In 2020 President Donald Trump signed into law the Tibetan Policy and Support Act which affirms the right of “Tibetan Buddhist community in selecting and venerating their own religious leaders” and imposes sanctions on Chinese officials “who interfere in the selection of a successor to His Holiness the Dalai Lama.”³⁸

The United States Department of State noted in its *2020 Country Report on Human Rights Practices: China*,

“Significant human rights issues included: torture and cases of cruel, inhuman, and degrading treatment or punishment by the government; arbitrary arrest or detention; political prisoners; politically motivated reprisal against individuals located outside the country; serious problems with the

³² 1965 UNGA Resolution 2079 (XX) on Tibet.

³³ Stephanie Nebehay, UN rights boss chides China over Tibet protests, Reuters, November 2, 2012, <https://www.reuters.com/article/us-china-un-rights/u-n-rights-boss-chides-china-over-tibet-protests-idUSBRE8A10D220121102>.

³⁴ UN News, UN experts urge full access for independent observers, media in Tibet, April 10, 2008, <https://news.un.org/en/story/2008/04/255432>.

³⁵ UN News, Tibet: Ban Ki-Moon urges restraint by authorities amid reported violence, deaths, March 17, 2008, <https://news.un.org/en/story/2008/03/252832>.

³⁶ Office of the High Commissioner for Human Rights, China: UN experts alarmed by separation of 1 million Tibetan children from families and forced assimilation at residential schools, February 6, 2023, <https://www.ohchr.org/en/press-releases/2023/02/china-un-experts-alarmed-separation-1-million-tibetan-children-families-and>.

³⁷ See Susan Lawrence, The Tibetan Policy Act of 2002: Background and Implementation. Congressional Research Service, November 5, 2014, <https://sgp.fas.org/crs/row/R43781.pdf>.

³⁸ USCIRF, USCIRF Welcomes Enactment of the Tibet Policy and Support Act, December 29, 2020, <https://www.uscirf.gov/release-statements/uscirf-welcomes-enactment-tibet-policy-and-support-act>.

independence of the judiciary; arbitrary or unlawful interference with privacy; serious restrictions on free expression, the press, and the internet, including censorship and site blocking; substantial interference with the freedom of peaceful assembly and freedom of association; severe restrictions on religious freedom, despite nominal constitutional protections voided by regulations restricting religious freedom and effectively placing Tibetan Buddhism under central government control; severe restrictions on freedom of movement; the inability of citizens to change their government peacefully through free and fair elections; restrictions on political participation; serious acts of corruption; coerced abortion or forced sterilization; and violence or threats of violence targeting indigenous persons.”³⁹

The United States Department of State reported the same types of violations in 2021⁴⁰ and 2022.⁴¹ Restrictions and disintegration of religious freedom in Tibet continue. In 2022, the Office of International Religious Freedom reported that “authorities had collected DNA samples from between one-quarter and one-third of Tibet’s population, in some cases targeting clergy, for a “public security” database.”⁴² Further, “the government continued to restrict the size of Buddhist monasteries and other institutions and to evict monks and nuns from monasteries and prohibit them from practicing elsewhere. It forcibly resettled nomadic communities in government housing far from monasteries in what critics said were efforts to dilute religious belief and weaken the ties between monasteries and communities.”⁴³

The Tibet Action Institute published a report regarding the colonial boarding school system, which is still utilized by the PRC to this day. “The colonial boarding school system in Tibet is a core element of the Chinese Community Party’s systematic effort to co-opt, undermine, and ultimately eliminate Tibetan identity in an attempt to neutralize Tibetan resistance to Chinese rule.”⁴⁴ The authors of this report emphasize that “more than three-quarters of school-age Tibetan children” are now in Chinese state-run colonial boarding schools across Tibet.⁴⁵

³⁹ Bureau of Democracy, Human Rights, and Labor, 2020 Country Reports on Human Rights Practices: China (Including Macau, and Tibet) – Tibet, U.S Department of State, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/china/tibet/#:~:text=Significant%20human%20rights%20issues%20included,with%20the%20independence%20of%20the>.

⁴⁰ Bureau of Democracy, Human Rights, and Labor, 2021 Country Reports on Human Rights Practices: China (Including Macau, and Tibet) – Tibet, U.S Department of State, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/china/tibet/>

⁴¹ Bureau of Democracy, Human Rights, and Labor, 2022 Country Reports on Human Rights Practices: China (Including Macau, and Tibet) – Tibet, U.S Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/china/tibet/>

⁴² Office of International Religious Freedom, 2022 Report on International Religious Freedom: China- Tibet, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/china/tibet/>

⁴³ *Id.*

⁴⁴ Tibet Action Institute, Separated From their Families, Hidden from the World, December 2021, pg 3, https://s7712.pcdn.co/wp-content/uploads/2022/12/2021_TAI_ColonialBoardingSchoolReport_Digital.pdf.

⁴⁵ *Ibid*, pg 37

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Allegations of horrific acts of violence against women and girls, and in particular, nuns, have also surfaced through credible reports. Those who have been able to share their testimonies have detailed the use of cattle prods to torture and control inmates and to insert them in women's private parts, particularly nuns who would then be unable to go back to monastic life.⁴⁶ As one nun who was in prison shared:

"I was beaten with chairs, sticks, and electric cattle prods. The latter were placed in my mouth and twisted around. When placed inside the mouth, they draw blood and rapidly deteriorate the body. The guards hit me on the head with the prods as well, then kicked me in the stomach...I was left in my cell for nine days without food. I became violently ill as a result of the beatings. A large lump appeared in my abdomen, and I had severe head injuries...After two years of continual beatings, underfeeding, and forcible blood extraction, my body was weakened to the point of near death. I suppose the Chinese officials wanted to avoid the embarrassment of having me die in prison, so they released me...I shook constantly from exhaustion and nerve damage, and could not walk for the initial two months in the hospital."⁴⁷

A 19-year-old woman, who was arrested for taking part in a peaceful demonstration, shared what happened to her in prison:

Dogs were set on us while we were naked. Lit cigarette butts were stubbed on our faces, knitting needles jabbed in our mouths...kicked in the breasts and in the genitals until they were bleeding...made to hang from trees and beaten on bare flesh by electric batons. Containers of human urine were poured over heads...many were[raped]. However, even those who were raped were very secretive because they were ashamed and embarrassed...I was hung up from the wall with my legs up and beaten with electronic rods in the genitals and in the mouth. After this I could not even go to the toilet...⁴⁸

In February 2024, Tibetan protestors engaged in a peaceful protest against a hydropower station which has been approved to be built on the Drichu River. The protestors wanted construction of the dam to stop because the hydropower project would submerge six monasteries and displace residents from at least two villages. The monasteries in question, particularly the Wonto Monastery, which dates back to the 13th Century.⁴⁹ Chinese police forces responded to the situation and are alleged to have used

⁴⁶ Massimo Introvigne, Women Routinely Raped in Tibetan Reeducation Camps Too, Bitter Winter, February 25, 2021, <https://bitterwinter.org/women-routinely-raped-in-tibetan-reeducation-camps-too/>.

⁴⁷ Tsewang Paljor, How Chinese Police Torture Tibetan Women & Nuns Inside Tibet – pt.1, Taiwan Times, February 4, 2021, <https://thetaiwantimes.com/how-chinese-police-torture-tibetan-women-nuns-inside-tibet-pt-i/>

⁴⁸ *Id.*

⁴⁹ Kalden Lodee and Tenzin Pema, Exclusive: Chinese authorities release dozens of Tibetans arrested for dam protests, Radio Free Asia, February 27, 2024, <https://www.rfa.org/english/news/tibet/dam-protests-02272024162905.html>.

“unimaginable” force against protestors and subsequently arrested hundreds of protestors.⁵⁰

Penpa Tsering, President of the Central Tibetan Administration reported that “time is running out”⁵¹ and Tibet was dying a “slow death” under Chinese rule.⁵²

Given the ongoing situation in Tibet, and consistent with Resolution 21A502,⁵³ the American Bar Association should urge the United States Department of State to document international crimes which are currently taking place. In addition, the American Bar Association should encourage the United Nations to appoint a special rapporteur on Tibet and incorporate the question of Tibet into its current agenda.

Respectfully submitted,

David A. Schwartz, Chair
International Law Section

August 2024

⁵⁰ Aadil Brar, Chinese Police Arrest Hundreds of Tibetan Protestors, Newsweek, February 28, 2024, <https://www.newsweek.com/china-tibet-protest-dam-arrests-rights-police-1873609>. US House of Representatives Jim McGovern, D-Massachusetts, and Young Kim, R-California, introduced a Resolution on March 11, 2024, condemning the arbitrary arrests of the protestors. See Tsering Dhundup, New resolution on Tibet introduced in the US House, Phayul Newsdesk, March 15, 2024, <https://www.phayul.com/2024/03/15/49945/>.

⁵¹ Sanjeev Miglani and Cate Cadell, ‘Running out of time’: Tibetan president-elect warns of cultural genocide, Reuters, May 21, 2021, <https://www.reuters.com/world/asia-pacific/running-out-time-tibetan-president-elect-warns-cultural-genocide-2021-05-21/>.

⁵² Al Jazeera, Tibet dying a ‘slow death’ under Chinese rule, says exiled leader, March 29, 2023, <https://www.aljazeera.com/news/2023/3/29/tibet-dying-a-slow-death-under-chinese-rule-says-exiled-leader>.

⁵³ ABA Resolution 502, https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2021-annual-supplementals/502-rev.pdf

GENERAL INFORMATION FORM

Submitting Entity: International Law Section

Submitted By: David A. Schwartz, Chair

1. Summary of the Resolution(s). ABA urges the United State Department of State to investigate and publish findings regarding human rights violations in Tibet and encourages the United Nations to appoint a Special Rapporteur on Tibet.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

#4 – Advance Rule of Law – current human rights violations have not been addressed in any judicial setting nor has it been evaluated by the international community in recent years. Gross violations of human rights and possible international crimes are alleged to be taking place.

3. Approval by Submitting Entity. The International Law Section Council approved sponsorship of this Resolution on April 19, 2024.

4. Has this or a similar resolution been submitted to the House or Board previously? No

What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Reference 21A502

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) None.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Would include rule of law letters, further programming, and possible publications related to findings; ABA UN observers to make requests regarding Special Rapporteur.

8. Cost to the Association. (Both direct and indirect costs) None.

9. Disclosure of Interest. (If applicable) None.

10. Referrals.
(List ABA entities and use proper names. For a list of all entities click [here](#).)
Rule of Law Initiative

Representatives and Observers to the United Nations
Judicial Division
Section of Litigation
Young Lawyers Division

11. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

Steven Richman, srichman@clarkhill.com
Sara Sandford, sandford@benchmarknationaladr.com
Joseph Raia, jraia@gunster.com

12. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Steven Richman, srichman@clarkhill.com
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EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution requests the United States Department of State Office of Global Criminal Justice an independent re-evaluation of alleged atrocities being committed in Tibet in violation of several international treaties. It further calls for the endorsement of a recommendation made by the International Commission of Jurists for a Special Rapporteur to be appointed at the United Nations to further discuss this issue.

2. Summary of the issue that the resolution addresses.

This Resolution recommends measures to address ongoing atrocity crimes in Tibet.

3. Please explain how the proposed policy position will address the issue.

Proposed policy calls upon international community to begin examining this issue closely, as the impact of policies in Tibet are significantly threatening the Tibetan people.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None.