

**POPULATION TRANSFER
AND
THE SURVIVAL OF
THE TIBETAN IDENTITY**

by

Michael C. van Walt van Praag

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Prepared for the
Seventh Annual International
Human Rights Symposium
and Research Conference at
Columbia University

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POPULATION TRANSFER
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The immigration of Chinese into Tibet is reaching alarming proportions, causing fears that Tibetans will in the near future be reduced to an insignificant minority in their own country and will lose their distinct national cultural and religious heritage and identity. The evidence indicates that the government of the People's Republic of China (PRC) is actively encouraging the transfer of Chinese from Chinese provinces to Tibet and establishing Chinese settlements throughout the country, while simultaneously advocating a policy of segregation of Tibetan communities from the more affluent Chinese communities and assimilation of the young Tibetans with the Chinese. The object of this policy is to "resolve" China's territorial claims over Tibet by means of a massive and irreversible population shift.

In pursuing this policy, the Chinese government is violating the universally accepted rule of

international law which prohibits the transfer of citizens to and from occupied territory and it is violating the fundamental human rights of the Tibetan people including their right to self-determination.

1. Background

Tibet is situated in the heart of Asia, on a plateau between China and the Indian subcontinent. It covers an area of over 500,000 square miles. Approximately 6 million Tibetans live in Tibet, and some 115,000 live in exile.^{1/}

The Tibetan people are a distinct people with their own rich cultural and spiritual heritage, language, and way of life. Their history dates back at least two thousand years, when the Yarlung Dynasty was established in 148 B.C.

^{1/} No exact figures on the population are available. Discrepancies in the various official figures given is mostly due to differences in the description of Tibet's surface area and differing definitions of "Tibetan."

The entire Tibetan plateau was unified and the greater Tibetan state created in the seventh century. Though Tibet occasionally was subjected to varying degrees of influence by foreign states, namely the Mongols, the Manchus, the British and the Nepalese, the Tibetan state never ceased to exist and maintained its legal independence.

When Tibet was invaded by the armed forces of the People's Republic of China in 1949-50, Tibet was an independent state in fact and in law.^{2/} It became the largest territory to be robbed of its sovereignty since the Second World War. The motives for China's action, though in part political and economic in nature, were primarily strategic: The Tibetan plateau provides a commanding position in central and southern Asia giving China access to the entire Indian subcontinent. Another principal motive for the invasion of Tibet became apparent within months of

^{2/} Michael C. van Walt van Praag, The Status of Tibet: History, Rights, and Prospects in International Law, (Boulder/London, 1986--in print).

the occupation: Chairman Mao Dzedong announced plans to dramatically increase the population of Tibet.^{3/} He proposed a five-fold increase which could only be achieved by means of a massive population transfer from China to Tibet.

Since 1951, Tibet has been divided into numerous zones for the purpose of administration. Almost half of the country is today under Chinese provincial administration: Tibet's northeastern province of Amdo which incorporates the Kokonor region, has been renamed Qinghai and is administered as a separate province of China. A small area of Amdo has been annexed by the Chinese province of Gansu and Tibet's eastern province of Kham has, for the most part, been annexed by the bordering Chinese provinces of Yunnan, Sichuan and Gansu and also the new province of Qinghai. Within these provinces, the Tibetan areas

^{3/} Address by Leosha Thudtentarpa printed in Renmin Ribao, November 22, 1952, quoting speech by Chairman Mao. Union Research Institute, Tibet 1950-1967, Document 9, at 45 (1968).

are administered as "autonomous" prefectures and districts (see map) inhabited by over four million Tibetans. The south and west of Tibet, comprising slightly more than half the nation, is administered as the "Tibet Autonomous Region" (TAR). This area includes the Tibetan capital, Lhasa, and the major cities of Shigatse, Gyantse, and Chamdo.

Parts of Tibet are extremely fertile, while other parts, especially the northern plains (Chang-Tang), are largely uninhabitable. The south, the east and the northeast of the country consist for the most part of agricultural land, and the land along the numerous rivers and in the valleys is extremely fertile and includes large forests. Before 1950, Tibet was populated virtually exclusively by Tibetans.

In the early 1950s Chinese settlers from Sichuan were sent to the Kham area and those from Gansu were sent to Amdo to settle. They were allotted plots of land by the Chinese authorities for farming.^{4/}

^{4/} See, G. Ginsburgs and M. Mathos, Communist China and Tibet, 65-66 (The Hague, 1964); Kashag [Cabinet

[Footnote continued next page]

Following the crushing of the Tibetan national uprising in 1959 and the flight of H.H. the Dalai Lama and some 100,000 refugees, the Chinese adopted policies throughout Tibet which were aimed at destroying the distinct Tibetan identity, culture and religion. Tens of thousands of people were imprisoned or sent to labor camps because of their social background or religious beliefs; temples and monasteries were closed and were destroyed in the decade that followed.^{5/} The International Commission of Jurists found, after a preliminary investigation, that there was prima facie evidence that genocide was being committed. The Legal Inquiry Committee set up to investigate the available evidence concluded in a lengthy report published in 1960, that acts of genocide had been committed in Tibet "in

[Footnote continued from preceding page]

of the Tibetan Government, now in Exile] Document 11(4)7 and 11(4)9.

^{5/} See, J. Avedon, In Exile From the Land of Snows, 221-319 (New York, 1984).

an attempt to destroy Tibetans as a religious group."^{6/} The Commission further found that the Chinese authorities in Tibet had violated sixteen articles of the Universal Declaration of Human Rights.^{7/} The findings of the International Commission of Jurists have since been confirmed by Tibetans inside and outside Tibet,^{8/} and the Chinese Communist Party Secretary General, Hu Yaobang, admitted that serious mistakes had been made in Tibet.^{9/}

^{6/} International Commission of Jurists, Tibet and the Chinese Peoples Republic, 3 (1960).

^{7/} Id. 4-5. In the earlier report the Commission recorded: "On the basis of the available evidence, it would seem difficult to recall a case in which ruthless suppression of man's essential dignity had been more systematically and efficiently carried out." International Commission of Jurists, The Question of Tibet and the Rule of Law, 59 (1959). In later publications, the Committee found that such violations were continuing. See, e.g., Bulletin Of The International Commission of Jurists, No. 20 and 21, Nov. and Dec., 1964, resp.

^{8/} See, for various accounts, J. Avedon, supra; P. H. Lehmann and J. Ullal, Tibet: Das Stille Drama auf dem Dach der Erde (Hamburg, 1981).

^{9/} Xinhua, Beijing, May 30, 1980. See also New York Times, June 1, 1980; Jjang Shu, "New Changes on the Plateau," Beijing Review, May 25, 1981.

Statistics compiled by the Tibetan

Government-in-Exile show that over 1,200,000 Tibetans, i.e. one sixth of the population, have died as a direct result of the Chinese occupation of Tibet.^{10/} Virtually all religious, historic and cultural buildings, monuments, artifacts and books have been destroyed, and what little is left is seriously damaged (6,254 monasteries and temples, the cultural and spiritual core of Tibetan civilization, have been razed, their invaluable artifacts either destroyed or sold for foreign exchange on the Tokyo and Hong Kong antique markets. Only 13 religious monuments survived the destruction).^{11/}

^{10/} This number is broken down as follows:
433,000 - combat, including uprisings; 343,000 - famine; 173,000 - imprisonment; 157,000 - execution; 93,000 - torture; 9,000 - suicide. See, 19 News Tibet 1, at 4 (Jan.-Aug. 1984).

^{11/} See, T. Lhundup, "A Brief Summary of Conditions in Tibet," 20 News Tibet 1, at 5 (Jan.-April 1985). See also, Xinhua, Beijing, May 30, 1980.

In 1979 and 1980, Chinese figures showed that there were 130,000 Chinese cadres, i.e., government employees, in the TAR alone. This figure does not include the Chinese military personnel or private settlers.^{12/} Estimates of Chinese troops in the TAR at the time, varied from 150,000 to 600,000.^{13/} While the number of Chinese settlers in the TAR in 1979 is not known, but was probably relatively low.

Following an inspection tour of Tibet by Hu Yaobang in 1980, it was announced that, in an effort to ameliorate conditions in the Tibet Autonomous Region, 85% of all Chinese cadres would be withdrawn within three years.^{14/} But in 1984 that policy was reversed, resulting in

^{12/} Cited in P.A. Donnet, "Tibetan Traditions Slowly Disappearing," South China Morning Post, September 23, 1985.

^{13/} See e.g., N.Y. Times, July 9, 1964 and January 24, 1965; Intelligence Digest August 1, 1975; Sweeny, "Keeping the Gentle Faith," Sheffield Morning Telegraph, June 23, 1983.

^{14/} Kulkarni, "Tibetans Adopt Wait and See Stance on Chinese Reforms," Christian Science Monitor, July 1, 1983.

[Footnote continued next page]

a massive influx of Chinese into Tibet.^{15/}

The real fear exists that if the present Chinese policy is successful -- and indications are that it is -- Tibetans will be reduced to a small and insignificant minority in their own country in the same way as the Manchus, the Turkik peoples and the Mongolians have been. Early this century, the Manchus were a distinct race with their own culture and traditions. Today only 2 to 3 million Manchurians are left in Manchuria, where 75 million Chinese have settled. In Eastern Turkistan, which the Chinese now call Xinjiang, the Chinese population has grown from 200,000 in 1949 to 7 million, more than half of the total population of 13 million. In the wake of the Chinese

[Footnote continued from preceding page]

1981. See also, Xinhua, Beijing, May 26, 1980 and May 30, 1980; New York Times, June 1, 1980; Jiang Shu, "New Changes on the Plateau," Beijing Review May 25, 1981.

15/ T. Lhundup, "A Brief Summary of Conditions in Tibet," *supra*.

colonization of Inner Mongolia, Chinese now outnumber the Mongols by 8.5 million to 2 million in the Inner Mongolian Autonomous Region. The 4 million Hui, or so-called Chinese Muslims of the Ninxia Hui Autonomous Region have been entirely encompassed by Chinese settlers.^{16/}

II. The Recent Transfer of Chinese to Tibet

To this day, the Chinese have sent a total of 6.2 million civilians into Tibet, in addition to which they maintain at least 500,000 troops in the country. Since the Tibetan population is around six million, the Chinese have already outnumbered the Tibetans on the Tibetan plateau. Recent reports from Tibet and from China show a steady and alarming increase in the transfer of Chinese into

16/ See, The Dalai Lama, "A Vast Sea of Chinese Threatens Tibet," New York Times, August 9, 1985, Op. ed. page. See also, T. Lhundup, "A Brief Summary of Conditions in Tibet," *supra*.

Tibet. 17/

While few Chinese lived in the Tibetan province of Amdo, now known as Qinghai, prior to 1950, the Chinese settlers today outnumber the Tibetans three to one.

This region now has a population of 3.8 million, of which of 2.5 are Chinese and only 800,000 are Tibetans. 18/ This figure does not include the Chinese military personnel nor does it include the inmate population of China's -- indeed the world's -- largest prison camps complex, the so-called "Qinghai Gulag", which currently has several million inmates. 19/ The majority of Chinese settlers in Amdo today are released prisoners who are allowed to settle only in

17/ See, Information Office, Central Tibetan Secretariat, Recent Influx of Chinese Settlers Into Occupied Tibet, report compiled in November 1985 (hereinafter, Information Office report).

18/ See, Beijing Review, February 27, 1984.

19/ See, J. Avedon, "Prisons and Prisoners in Tibet," 19 News Tibet I, at 29 (Jan.-Aug. 1984). See also, The Economist, June 15, 1985; T. Lhundup, "A Brief Summary of Conditions in Tibet," supra.

Amdo. A fact-finding delegation sent to parts of Amdo by the Dalai Lama in the summer of 1985, reported a "massive influx of Chinese into Tibetan areas" which are now "dominated by non-Tibetans" 20/

Kham, Tibet's eastern province, is now most threatened by Chinese colonization. The number of Chinese settlers in Kham at the present time is estimated at 2 million. Currently there are 2 to 3 million Tibetans in the region. The lower altitudes of Kham's eastern valleys and their proximity to the PRC's most populous province, Sichuan, makes wide spread incursion inevitable. 21/

The Tibet Autonomous Region has the lowest concentration of Chinese civilians in Tibet, 1.7 million, and it is precisely to that region that the Chinese are now being encouraged to migrate. Virgin forests have been cleared to

20/ Tibetan Bulletin, October-November 1985, at 5.

21/ Information Office report. See also T. Lhundup, "A Brief Summary of Conditions in Tibet," supra.

house exclusively Chinese communities; Chinese settlements have been constructed along side all major Tibetan cities and towns while many Tibetans are made to move to the undeveloped and arid parts of the country.^{22/}

With the arrival of the Chinese, the distinct Tibetan identity is being destroyed and unemployment among the Tibetans is becoming a serious problem.^{23/} In a recent report from Tibet, AFP correspondent Pierre Antoine Donnet wrote: "Tibet's two largest cities, Lhasa and Shigatse, house 200,000 and 50,000 people respectively and look thoroughly Chinese with residential districts and administrative buildings indistinguishable from their Beijing counterparts. Colorfully clad Tibetans are hard to spot among the Chinese who crowd the streets and make up more

^{22/} Id.

^{23/} This is confirmed by Tibetans from different parts of Tibet interviewed in December 1985. Their names cannot be revealed because these Tibetans fear for their safety.

than half the population of Tibet's capital, Lhasa. . . . The overwhelming majority of the merchants are Chinese. . . . In this way, [the Chinese] may quietly but definitely complete the integration of this region called 'the roof of the world' with the rest of China".^{24/} Radio programs reinforce the penetration of the Chinese language in Tibet and the Central Television Station, recently introduced in Lhasa and transmitted by satellite from Beijing, will have an even greater effect. Furthermore, Donnet reports, the education provided in Chinese schools in Tibet is better than that offered in Tibetan schools, and reports reaching India indicate that large numbers of Tibetan children are being taken to China for schooling, away from their families and isolated from their culture.

^{24/} P.A. Donnet, 'Tibetan Traditions Slowly Disappearing,' South China Morning Post, September 23, 1985. In fact, in the Lhasa valley, the entire population comprises some 300,000 Chinese and only 35,000 Tibetans: i.e., Tibetans are outnumbered 8 to 1. This is partly due to the heavy troop concentrations around the city.

The government in Beijing officially denies the existence of a policy to relocate Chinese in Tibet. At the same time, there are numerous references in Chinese publications, such as the official Beijing Review, to government encouragement for the settlement of Chinese nationals in Tibet. This is mostly justified by citing an urgent need for Chinese personnel -- both skilled and unskilled -- to help develop an economically and culturally "backward" Tibet.

Beijing Review reported on September 12, 1983 that in order to encourage young people "to dedicate themselves to the construction of border regions", the State Planning Commission, the Ministry of Education and the Ministry of Labor and Personnel decided "to appropriately raise the pay of those graduates who work in the remote areas and countryside." The Chinese Government promised further favorable treatment in pay and home leave "to those who go to work in Tibet, Qinghai and other [Tibetan] plateau areas for a long time." In a later issue of Beijing Review (October 10, 1983) it was announced that "the Chinese Government

has adopted a series of measures to encourage scientists and technicians from all over China to work in regions inhabited by the minority nationalities." The report explained:

These regions of Inner Mongolia, Xinjiang, Tibet, Qinghai, Ningxia, Yunnan, Guizhou, Guanxi, and Guangdong make up 60% of the nation's total territory and are inhabited by 67 million minority peoples, or 6.7% of China's total population. 90% of China's grasslands and seven of its ten major forest areas are located in these regions, which also boast a wide variety of cash crops and abundant mineral and water resources . . . From these facts, it is clear why the government is attaching increasing importance to the development of these regions.

Once again, special wage benefits were promised exclusively to college and secondary technical school graduates moving to "the Tibet-Qinghai plateau." Furthermore, in order to encourage them to stay in Tibet, the government announced that "[t]hose who wish to stay on after 8 years enjoy further pay raises. . . . Those who have worked there for more

than 20 years and stay on after retirement will have their pensions increased by 10 percent."25/

The government policies evidently had some effect, for Beijing Review reported on February 27, 1984 that Tibetans were now "fighting shoulder to shoulder with the large numbers of Hans [Chinese] who have sacrificed the comforts of their home towns and dedicated themselves to modernizing the Tibetan areas." Radio Beijing announced on May 14, 1984, that over 60,000 workers, representing the vanguard of a large Chinese workforce, were on their way to the Tibet Autonomous Region where they would be employed in the electricity department, in schools, hotels, cultural institutions and factories. An editorial in Beijing Review explained the Central Government's policy in terms of the need to revitalize the economy of Tibet and "overcome its economic and cultural backwardness."26/

25/ Beijing Review, October 10, 1983, at 22.

26/ Beijing Review, May 27, 1985.

In October, Beijing Review reported that unsparing help is flowing in steadily from China's more developed regions, bringing the much needed labor, funds and expertise [to the TAR]. Sichuan alone sent 10,000 construction workers. Large numbers of technicians and skilled workers have also arrived from 8 of the provinces and municipalities to join the the construction of Tibet's 43 new projects. 27/

With regard to these "43 projects" it was specified, in an earlier issue, that "[A]ll phases of construction, including designing, building and interior decorating are handled by personnel supplied by the cooperative provinces and cities [of China]."28/ In Lhasa alone, 70,000 workers were announced, 50,000 of whom had arrived by the end of the year. In the Shigatse area, south of Lhasa, 20,000 Chinese had already arrived in July.

27/ Beijing Review October 15, 1984.

28/ Beijing Review September 24, 1984.

By April, 1985, 230,000 Chinese workers had arrived in Tibet: 100,000 in and around Lhasa and the remainder in the Shigatse, Lokha and Nagchukha areas. The number has grown since then, but precise figures are not available. This large influx is causing food shortages (which are being relieved temporarily by the supply of rations from the army camps) and has put many Tibetans out of work. In Lhasa, about 30,000 Tibetans who were employed in the Lhasa Region were replaced by newly arrived Chinese and sent to the villages to find jobs.^{29/} As of the first week of August of 1985 at least 20,000 Tibetans lost their jobs in other parts of the TAR.^{30/}

^{29/} See, The Economist, June 15, 1985.

^{30/} 20 News Tibet 1, at 2 (Jan.-April 1985).

III. China's Policies are Violative of the Prohibition Against Population Transfer in International Law

The transfer of civilians by an occupying Power into the territory it occupies is a violation of fundamental principles of international law governing all forms of armed conflict and occupation. The applicable rule of international law and its foundation is concisely formulated by the International Commission of Jurists, as follows:

Insofar as there existed any doubt about it in the period preceding World War II, the Charter of the United Nations in 1945 unambiguously rejected the 'right to conquest'. It was on the basis of this purported right that colonial powers throughout history invaded other territories and settled part of their own population in them. With the right to conquest, the right to create settlements has also disappeared, and what is left is the bare right of temporary military occupation where necessary in lawful self-defense. This does not include a right to establish settlements of a civilian nature or settlements of a permanent character.^{31/}

^{31/} International Commission of Jurists, "Israeli Settlements in Occupied Territories", in The Review of the

[Footnote continued next page]

Rules of warfare have been codified since the Hague Conventions of 1907, which were modified in 1929. These originally dealt mainly with military personnel. Continuing efforts to reach agreement concerning civilian populations, interrupted by the war in 1939, resulted in the conclusion of a Convention in Geneva in 1949 designed to regulate the effects of war and its aftermath on civilians in the zones of hostilities.

The Geneva Convention Relative to the Protection of Civilian Persons In Time of War,^{32/} generally referred to as the "Fourth Geneva Convention", prescribes rules to mitigate the hardship and suffering that can be imposed on civilian populations, "[n]ot only during the

[Footnote continued from preceding page]

International Commission of Jurists, No. 19, at 35 (December 1977).

^{32/} Signed at Geneva, August 12, 1949.

hostilities themselves, but also after a cease fire or truce, when civilians could be subjected to military occupation in the absence of a final political settlement".^{33/}

The overriding aim of the Convention is to insure that claims of military expediency do not result in the violation of basic political and human rights of the civilians in the territory under occupation. It includes customary law on the subject as well as conventional or treaty law and is "human rights law in the most fundamental sense."^{34/} "The governments which have created this law," Professor W.T. Mallison testified before the Committee on the Judiciary of the United States Senate, "have acted on the assumption

^{33/} United Nations, The question of the Observance of the Fourth Geneva Convention of 1949 in Gaza and the West Bank Including Jerusalem Occupied by Israel in June 1967, at 1 (New York, 1979).

^{34/} Testimony of Prof. W.T. Mallison in "Hearings before the Subcommittee on Immigration and Naturalization of the Committee on the Judiciary, United States Senate, on the Question of West Bank Settlements and the Treatment of Arabs in the Israeli-occupied Territories, October 17 and 18, 1977," at 47.

that even urgent military necessity cannot be allowed to deprive human beings of certain elementary protections. The overriding purpose of the Geneva Conventions of 1949, as reflected in negotiating history, was to avoid a repetition of the atrocities and massive deprivations of human rights which were afflicted upon civilian populations during the second World War by the Nazis in Europe and Russia and by the Japanese militarists in Asia."^{35/}

Article 49 of the Fourth Geneva Convention expressly deals with population transfers. The last paragraph reads:

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Apart from the clear wording of this article, the general principle of international law underlying the

^{35/} Id.

rules relating to military occupation requires that the occupying power "administer the [occupied] country, not only in the interest of his own military advantage, but also, at any rate so far as possible, for the public benefit of the inhabitants."^{36/} The Convention, in particular Article 49, should be given the broadest possible application. "Much of the Convention, including Article 49, is declaratory of pre-existing international law and such provisions in the Convention should be recognized as being of universal applicability and binding in all circumstances upon High Contracting Parties."^{37/} The International Committee of the Red Cross, in its commentary on the Fourth Geneva Convention, points to the prominent position at the beginning of each of the four 1949 Conventions of the clause contained in Article 1, which stipulates that "The High Contracting

^{36/} L. Oppenheim, International Law, ed. H. Lauterpacht, Vol. 2 at 433 (London, 1952).

^{37/} International Commission of Jurists, 'Israeli Settlements in Occupied Territories,' supra, at 34.

Parties undertake to respect and to ensure respect for the present Convention in all circumstances" (emphasis added), which is intended to stress the need for maximum applicability of the Convention:

It is not an engagement concluded on a basis of reciprocity, binding each party to the contract only insofar as the other party observes its obligations. It is rather a series of unilateral engagements solemnly contracted before the world as represented by the other Contracting Parties. Each State contracts obligations vis-a-vis itself and at the same time vis-a-vis the others. The motive of the Convention is such a lofty one, so universally recognized as an imperative call of civilization, that the need is felt for its assertion, as much out of respect for it on the part of the Signatory State, itself as in the expectation of such respect from an opponent, indeed perhaps even more for the former reason than for the latter.^{38/}

^{38/} J. Pictet (ed), Commentary: IV Geneva Convention, 15 (Geneva, International Committee of the Red Cross, 1948).

Article 2 is also designed to stress the Convention's broad applicability,^{39/} and so are articles 4 and 47, with respect to the protection of persons in occupied

^{39/} Article 2 provides:

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

territory.^{40/}

The International Committee of the Red Cross in its authoritative Commentary to the Fourth Geneva

40/
Article 4 provides:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Article 47, provides:

Protected persons who are in occupied territory shall not be deprived, in any case or any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, or by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or the part of the occupied territory.

Convention emphasized that "occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights . . . [and] cannot imply any right whatsoever to dispose of territory." The Committee stressed the fundamental principle that "an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory."^{41/}

The protection provided by the Fourth Geneva Convention, in particular the provision of Article 49, clearly extends to the people of Tibet.

Tibet was invaded and forcibly occupied by the armies of the Peoples Republic of China in 1949-50. The

41/
275-76. Commentary: IV Geneva Convention, supra, at

so-called "17-point Agreement for the Peaceful Liberation of Tibet" was forced upon the Tibetan Government following the invasion of the country by 80,000 troops and consequently never had any validity. Other attempts by the Chinese to annex Tibet were equally unlawful, so that today Tibet is still a country under illegal occupation.

The PRC is a Party to the Geneva Conventions, which it ratified in 1956.^{42/} The PRC does not

^{42/} Ratification instrument deposited with the Swiss Federal Council on 28 December 1956. 444 U.N.T.S. No. 973 (1957). The PRC noted in this instrument:

Although the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 does not apply to civilian persons outside enemy-occupied areas and consequently does not completely meet humanitarian requirements, it is found to be in accord with the interest of protecting civilian persons in occupied territory and in certain other cases, hence it is ratified [with reservations to Articles 11 and 45].

consider itself an "Occupying Power" because it contends that Tibet has been an integral part of China for centuries and its armies therefore neither invaded nor occupied Tibet in 1949-50. Tibetans are not protected by the Convention, the Chinese can then argue, since it is intended to protect only the "legitimate sovereign" and Tibet was and is not a sovereign State.

The sovereignty argument ignores the fundamental purpose of the Fourth Geneva Convention and the principles of international law it codifies. As Professor Mallison stressed, "the goal of the Conventions was not to respond to claims of sovereignty but to prevent the violation of basic human rights." As he points out, "[in] a number of the post World War II war crimes trials conducted by the Western Allies, Nazi defendants employed elaborate arguments, including questioning the title to "occupied territory" to avoid the application of the then effective customary and conventional international humanitarian law as criteria for judging the criminality or innocence of their conduct.

Although these arguments were rejected by the war crimes tribunals, the four Geneva Conventions of 1949 were written in careful language so as to avoid the possibility of raising these defenses again.^{43/}

The first two articles of the Convention and the negotiating history make it clear that, just as the lack of a declaration of war is irrelevant, so are questions as to de jure titles to territory, for "the Convention must be applied in occupied territory whatever the claims concerning the de jure status of that territory. . . . The idea that in order to apply the law of the belligerent occupation it is necessary for the belligerent to recognize the displaced government's title to the territory finds no support in either the text of the Convention or its negotiating history. In addition, it is contrary to the well-established customary law based upon state practice.^{44/}

^{43/} W.T. Mallison, supra, see International Commission of Jurists, 'Israeli Settlements in Occupied Territories,' supra, at 35.

^{44/} United Nations, The Question of the Observation of the Fourth Geneva Convention of 1949, supra, at 12-14.

China's recognition or rejection of Tiberian claims to sovereignty are consequently irrelevant to the application of the Convention or the rules of law codified therein.

In a similar situation, Israel has consistently claimed that it cannot be regarded as the "occupying power" in the West Bank and Jerusalem -- where some 60,000 Israeli settlers live^{45/} -- because neither Jordan nor any other power can be considered the "legitimate sovereign" of those territories and that Israel has a better title in the territory of what was Palestine than do Jordan and Egypt.^{46/} The Israeli position, which is similar to that taken by the PRC, has been universally rejected on the grounds that Jordan and Egypt were in de facto occupation and control of the West

^{45/} International Commission of Jurists, 'Israeli Settlements in Occupied Territories,' supra, at 29.

^{46/} Y. Blum, quoted in United Nations, The Question of the Observance of the Fourth Geneva Convention of 1949, at 5.

Bank and Gaza Strip at the time of the Israeli occupation.^{47/} The International Committee of the Red Cross has faced directly the question of the Convention's applicability and from time to time has commented on the issue. In response to the Israeli contention the ICRC has held that "the Fourth Convention is applicable in toto to the . . . occupied territories"^{48/} and that "all conditions existed for [its] applicability."^{49/}

The United Nations clearly views the Convention as applicable to the Israeli occupied territories. In particular, the Commission on Human Rights and the General Assembly have repeatedly and consistently reiterated this view virtually since the Israeli occupation began, and the

^{47/} The primary method by which the government of Israel encourages settlers to transfer to occupied territories is with subsidies. See United Nations, Israeli Settlements in Gaza and the West Bank, (New York 1982).

^{48/} ICRC Annual Report 1975, 22 (Geneva 1976).

^{49/} ICRC Annual Report 1976, 11 (Geneva 1977).

Security Council has endorsed it.^{50/} Even the Israeli Supreme Court ruled, in a case concerning the Elon Moreh settlement, that

The decision to establish a permanent settlement intended from the outset to remain in its place forever -- even beyond the duration of military government which was established in Judea and Samaria -- count as a legal obstacle which is insurmountable, because the military government cannot create in its area facts for its military need which are designed at ab initio to exist even after the end of the military rule in that area, when the fate of the area after the termination of military rule is still not known.^{51/}

The facts in the Tibetan case are similar albeit not identical. The crucial point is that until the

^{50/} United Nations, The Question of the Observance of the Fourth Geneva Convention of 1949, supra, at 12-14.

^{51/} Quoted in id. at 27.

Sino-Tibetan conflict is resolved and parties can agree on the future status of Tibet and its relationship with China, the Chinese have no right to colonize Tibet so as force a "resolution" of the issue by transforming the composition of Tibet's population and destroying the national identity of the Tibetan people. Populations in occupied territories are protected not only during hostilities, but also after they have ceased until a final political settlement has been reached. The Tibetan people consequently have the right, on humanitarian and legal grounds, to be protected by the fundamental principle prohibiting the transfer of civilian populations into occupied territory, codified in Article 49 of the Fourth Geneva Convention. Whether the PRC maintains its political stand that Tibet has always formed a part of China or modifies that attitude is irrelevant in this respect, for the Convention and the principles of law it codifies should apply so long as the question of Tibet's status remains unresolved and China's presence in Tibet continues to be challenged. The United Nations General Assembly and Security Council's

determination that the establishment of settlements in occupied territories "constitute a serious obstruction of efforts aimed at achieving a just and lasting peace in the Middle East"^{52/} is equally as applicable to the settlement of Chinese in Tibet.

IV. China's Policies Violate the Fundamental Human Rights of the Tibetan People, Including the Right to Self-determination

The large scale and irreversible population transfer of Chinese into Tibet and the continued imposition of alien rule by the PRC over the Tibetans, both of which are destroying the Tibetan culture and religion as well as the national identity of the Tibetan people, deprive the Tibetans of their fundamental human rights including their right to self-determination.

^{52/} General Assembly Resolution 35/122 B of December 11, 1980 and Security Council Resolution 446 (1979) of March 22, 1979.

Tibetans are in every respect -- ethnically, culturally, linguistically, historically and religiously -- a distinct people with the inalienable right to preserve their own way of life, their rich cultural traditions and their religious beliefs and to determine their own destiny as a people. The Tibetan people are entitled to exercise the rights irrespective of the past or present status of Tibet.

The fact that Tibetans are a distinct people with a language, culture, religion and historical heritage separate from China is not disputed. The Chinese themselves declared, in an official repudiation of allegations made by the Dalai Lama in his first public statement after the flight to India: "[The [Dalai Lamais] statement, does, however, enunciate one truth: the Tibetans are different from the Hans [i.e., Chinese]."^{53/} One aspect of the Tibetan character that has influenced every expression of

^{53/} NCNA, Beijing, April 20, 1959, Commentary on the So-called Statement of the Dalai Lama.

the Tibetan culture and history is the devotion to religion, which dominates the thoughts and actions of every Tibetan. The Chinese today admit that virtually all Tibetans are devout adherents of Buddhism.^{54/} Most importantly, Tibetans have throughout history considered themselves as one people, distinct from any of their neighbors. Since the invasion of Tibet by communist China, all evidence points to the Tibetans' intense dissatisfaction with, what they clearly consider to be, alien domination. The continuing resistance to Chinese rule indicates that this feeling is not about to change. Clearly, the subjective perception of Tibetans of being a people and the assertion of a will to exist as a people is abundantly present.

It is precisely the survival of this national identity which is being threatened by Chinese policies which deprive the Tibetans of the right to exist as a people.

^{54/} See, e.g., "Facts About Tibet," China Reconstructs, September 1985, at 43.

Human rights, including the right to self-determination have played a vital role in the twentieth century, particularly since the establishment of the League of Nations and the United Nations.^{55/} The very first article of the Charter of the United Nations declares, in its second paragraph, that a principle purpose of the United Nations is

To develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.^{56/}

^{55/} The principle of self-determination has its origins in philosophical, political and legal doctrine as fundamental and as old as the notion of democracy -- with which it is closely bound. See, for a discussion, Van Walt van Praag, "Tibet and the Right to Self-Determination," 26 Wayne L. Rev. 1 (1979).

^{56/} The other reference to self-determination in the Charter is Art. 55 in Ch. IX, reads:

"With a view to the creation of conditions of stability and well being which is necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the

[Footnote continued next page]

The Universal Declaration of Human Rights adopted unanimously in 1948 and the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted without a dissenting vote by the General Assembly in 1960, guarantee the right to religious and cultural freedom and denounce the subjection of peoples to alien governance as contrary to the Charter of the United Nations. Three paragraphs of the latter Declaration may be singled out:

2. All peoples 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.

[Footnote continued from preceding page]

United Nations shall promote:

- c. universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

3. Inadequacy of political, economic, social, or educational preparedness should never serve as a pretext for delayed independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territories shall be respected.

As a result of the overwhelming support which the Declaration on the Granting of Independence received from Member States and of the decisive language used in it, the Declaration is the most frequently cited resolution in the United Nations and is considered by most of the African and Asian Nations "as a document only slightly less sacred than the Charter."^{57/} It is indeed argued, that the Declaration makes the right to self-determination not only legally binding and obligatory but also directly enforceable.^{58/}

^{57/} Rosenstock, The Declaration of Principles of International Law Concerning Friendly Relations: A Survey, 65 A.J.I.L., 730, (1971).

^{58/} M.I. El-Kayal, The Role of the United Nations in the Protection of Human Rights, 314 (1975). This view is

[Footnote continued next page]

In 1966, on December 16, the two Human Rights Covenants^{59/} were adopted by the General Assembly, which elaborates on the principles of the Universal Declaration. Their common Article I, defines the right of all peoples to self-determination in exactly the same terms as does the 1960 Declaration on Granting Independence.^{60/} Four

[Footnote continued from preceding page]

supported by Res. 1654, adopted a year later. G.A. Res. 1654, 16 U.N. GAOR (1961). See R. Higgins, The Development of International Law Through The Political Organs of The United Nations, 100 (1963). It is sometimes suggested that self-determination is only applicable to colonies using the emphasis on decolonization in many of the United Nations resolutions as evidence. The history of the principle and its application in non-colonial as well as colonial situations, also since 1945, shows this view to be incorrect. The International Support for the right of the people of Bangladesh to self-determination and for the right of the Palestinian people to self-determination are obvious recent examples. See also Dunnett, Self-determination and the Falklands, 59 Int'l Affairs 3, 421 (Summer 1983).

^{59/} The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights, hereinafter referred to as the Human Rights Covenants. G.A. Res. 2200, 21 U.N. GAOR Supp. 16, at 49, (1966). The first Covenant entered into force on January 3, 1976; the second on February 23, 1976.

^{60/} Paragraph 2 of Art. 1 then states:

[Footnote continued next page]

years later, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, was adopted, reiterating those same principles.^{61/}

[Footnote continued from preceding page]

2. The people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

61/ G.A. Res. 2625, 25 U.N. GAOR (1970) incorporating the Declaration. Hereinafter, referred to as the Declaration on Principles of International Law.

The right to self-determination was confirmed also by the pronouncements of the International Court of Justice, in the Advisory Opinion on Western Sahara, 1975 I.C.J. 6. The Court there stressed a policy consistent with that of the United Nations, "which will respect the right of the population of Western Sahara to determine their future political status by their own freely expressed will." With regard to non-self-governing territories, the Court had already affirmed the right to self-determination in its Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Not-withstanding Security Council Resolution 276 (1970). 1971 I.C.J. 16 at 31.

[Footnote continued next page]

It is evident that the right to self-determination is not absolute. Where it conflicts with other rights or principles recognized by international law, a process of balancing these rights and their underlying values must take place. The furtherance of human rights and dignity is one value that is of paramount importance in this decision-making process. Self-determination is increasingly being defined and emphasized in terms or in the context of

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A recent reaffirmation of the universal right to self-determination of peoples is contained in the Helsinki Declaration, which stipulates, in part:

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

Cassese, "The Helsinki Declaration and Self-Determination," in Human Rights, International Law and the Helsinki Accord, Buergethal ed. 99-100, (1977).

human rights. Thus, the United Nations considers it to be a fundamental "collective right, appertaining to all peoples and nations, and . . . a prerequisite of the enjoyment of all the rights and freedoms of the individual."62/ It is with this understanding that the conflicting principles and rights must be viewed. This is particularly true for the, at times, conflicting right of self-determination with the principle of territorial integrity. Neither is absolute, consequently neither should be dogmatically applied: rather, they should be seen as a pair of complementary opposites subservient to the concern for human rights and dignity.63/

62/ 10 UN GAOR, Annexes (Agenda Item No. 28(11))
14 U.N. Doc. /2829 (1955)).

63/ Suzuki, Self-determination and World Public Order: Community Response to Territorial Separation, in 16 Vir. J. Int'l L., 801-802, 848 (1976). For this reason the United Nations organs do not permit Art. 2(7) of the United Nations-Charter to impede discussion and decision when the right to self-determination is in issue. See also Higgins, Internal War and International Law in 3 The Future Of The International Legal Order, 104.

In 1959, 1961 and again in 1965, the United Nations General Assembly passed resolutions64/ expressing "grave concern" at the "violation of fundamental human rights of the Tibetan people" and the suppression of the distinctive cultural and religious life and the autonomy which the Tibetans had traditionally enjoyed. The most complete of these resolutions65/ declared, in part:

The General Assembly,

...

Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life which they have traditionally enjoyed,

Noting with deep anxiety the severe hardships which these

64/ G.A. Res. 1353, 14 UN GAOR (1959); G.A. Res. 1723, 16 UN GAOR (1961); G.A. Res. 2079, 20 UN GAOR (1965).

65/ G.A. Res. 1723.

events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighbouring countries,

Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of peoples and nations, and have the deplorable effect of increasing international tension and embittering relations between peoples.

2. Solemnly renews its call for the cessation of practices which deprive the Tibetan people of the fundamental Human Rights and freedoms including their right to self-determination;
3. Expresses the hope that Member States will make all possible efforts, as appropriate, towards achieving the purposes of the present resolution.

In 1960, the International Commission of Jurists found, after an extensive investigation, that acts of

genocide had been committed in Tibet and that the Chinese authorities in Tibet had violated sixteen articles of the Universal Declaration of Human Rights.^{66/} Since these findings were published, and since the United Nations Resolutions were passed, violations of human rights in Tibet have continued. In the past twenty-five years, the Chinese have carried out a harsh and ruthless policy in Tibet, with the manifest purpose of eradicating the Tibetan political identity, and also its cultural, religious and ethnic personality. Hundreds of thousands of people have been sent to prisons and labor camps and many have been executed for alleged anti-Chinese activities. Food has been confiscated and rationed, and religious persecution has been intensive.^{67/}

^{66/} International Commission of Jurists, Tibet and the Chinese People's Republic, 3, 4-5 (1960).

^{67/} See, J. Avedon, Exile from the Land of Snows, supra: P. Wangyal, Tibet: A Case of Eradication of Religion Leading to Genocide, presented at the International Conference on Holocaust and Genocide, Tel Aviv June 20, 1982; Scientific Buddhist Association, Tibet: The Facts (1985) and Report to the UN Human Rights Commission (1985).

Alexander Solzhenitsyn has described the Communist Chinese regime in Tibet as "more brutal and inhuman than any other communist regime in the world."68/ Since that regime recently introduced some liberalizations, conditions in Tibet have improved somewhat. Nevertheless, Tibetans are still deprived of many fundamental human rights and freedoms, including religious and political freedoms, and are treated as second-class citizens in a manner typical in all colonial regimes. There may be today as many as 100,000 Tibetan political prisoners.69/

The Tibetans' continued existence as a people is severely threatened by the massive influx of Chinese into

68/ A. Solzhenitsyn, The Choice for Modern Japan, Address delivered in Tokyo, October 9, 1982.

69/ T. Lhundup, "A Brief Summary of Conditions in Tibet, supra. The Economist, June 15, 1985 reports that there may be as many as 400,000. Despite Chinese propaganda to the contrary, Tibetans from Tibet interviewed in December 1985, all state that the freedom to practice religion is extremely limited, publicly criticized, and at times severely punished.

Tibet. To the Tibetans, self-determination means the right to freely determine their own political, cultural and religious destiny as a people. "Whatever else it may mean," the International Commission of Jurists asserts, "the principle of right of self-determination of peoples must surely include the right of people who inhabit a disputed territory to determine their own future."70/ Consequently, China's imposition of alien rule over Tibet, and the introduction of Chinese settlements in the country before that determination has been made, is inevitably an infringement of the Tibetan people's right to self-determination. Similarly, the systematic sinification of the country and the conversion of Tibet into an area where Tibetans will in the near future be constrained to live as a minority among Chinese colonizers, is a fundamental violation of the Tibetans' individual and collective human rights.

70/ International Commission of Jurists, 'Israel Settlements in Occupied Territories,' supra, at 32. Even if the notion that self-determination should apply only to colonized peoples and countries were found to be correct, the Tibetan people have the right to exercise self-determination, for Tibet is in effect a Chinese colony.

The U.S. Tibet Committee

The U.S. Tibet Committee is dedicated to monitoring and advocating the human rights of the Tibetan people.

Founded in 1977, the Committee seeks to bring public attention to bear on human rights violations in occupied Tibet (including the provinces of Kham and Amdo, now incorporated into several Chinese provinces) and to support efforts to press the People's Republic of China to end such abuses.

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