

# RESEARCH ARTICLES

Jaspreet K. Sandhar\*

---

jassi\_sandhar@hotmail.com  
School of Law, Birkbeck College, Malet Street  
London WC1E 7HX, United Kingdom

## Cultural Genocide in Tibet: The Failure of Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples in Protecting the Cultural Rights of Tibetans

**Abstract:** The importance of culture has been present in the international human rights field since the compilation of the 1948 Universal Declaration of Human Rights (UDHR),<sup>1</sup> but its prominence re-emerged in the 1990s following the surge of indigenous peoples' movements. For the attainment of peace and stability, the right to culture needs to be encouraged and "cultural genocide", the non-physical destruction of an ethnic group, should be punished.<sup>2</sup> International human-rights frameworks, in particular Article 8 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>3</sup>

---

\* **Jaspreet K. Sandhar** is an LLM Human Rights Law graduate from Birkbeck College, University of London, and holds a BA in Geography from King's College London. Her particular areas of interest are children in armed conflict, self-determination and civil resistance struggles, feminism and international law, and minority rights. She is also senior editor of the Birkbeck Law Review and currently Programme Manager at the Overseas Development Institute.

<sup>1</sup> 10 December 1948, UNGA Res 217 A(III); see J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, University of Pennsylvania Press, Philadelphia 2000.

<sup>2</sup> S. Mako, *Cultural Genocide and Key International Instruments: Framing the Indigenous Experience*, "International Journal on Minority and Group Rights" 2012, Vol. 19, pp. 175-194.

<sup>3</sup> 13 September 2007, UN Doc. A/RES/61/295 (2007).

have attempted to protect such groups and their cultural identity.<sup>4</sup> Despite these developments, cultural rights are the least developed and understood category of human rights, largely with regards to their enforceability, legal understanding, and scope. The granting of cultural rights to minority groups or indigenous people furthermore remains a contested and controversial subject, and one full of complexity. Though it is incorporated in human rights legislation, there exists a lack of understanding about how it works in tandem with other human rights categories. The occupation of China in Tibet has embodied a destructive colonialism that is denying the Tibetan people the freedom to exercise their fundamental cultural rights. Robert Badinter described the disappearance of Tibetan culture as cultural genocide in 1989,<sup>5</sup> a stance that has since been adopted by those challenging China's rule in Tibet. By exploring Article 8 of the UNDRIP and the importance of cultural identity to the Tibetan people, this paper explores how China's nationalist policies are in breach of Article 8 and, consequently, China is carrying out cultural genocide in Tibet. In concluding, the essay examines how China's refusal to recognise Tibetans as indigenous leaves them at an impasse, as protection offered by the frameworks is compromised by other factors.

---

**Keywords:** cultural genocide, Tibet, indigenous peoples, colonialism, cultural rights, human rights, international law, cultural heritage, nationalism, cultural identity

---

## Introduction

Despite the brutal and unjustifiable era of Western colonialism and the omnipresent modern global society, indigenous peoples have maintained their valued intrinsic identity and continue to thrive as communities.<sup>6</sup> The struggles of these groups in the past few decades has brought international attention to their aspirations; the desire for the continuation of their cultural and spiritual identity, one that is manifested through their connection to ancestral land.<sup>7</sup>

---

<sup>4</sup> E. Pulitano (ed.), *Indigenous Rights in the Age of the UN Declaration*, Cambridge University Press, New York 2012.

<sup>5</sup> *60 Years of Chinese Misrule: Arguing Cultural Genocide in Tibet*, International Campaign for Tibet, Washington DC 2012.

<sup>6</sup> S. Wiessner, *The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges*, "European Journal of International Law" 2011, Vol. 22, pp. 121-140.

<sup>7</sup> B. Kingsbury, "Indigenous Peoples" in *International Law: A Constructivist Approach to the Asian Controversy*, "American Journal of International Law" 1998, Vol. 92, pp. 414-457.

The importance of culture has been present in the human rights field since the compilation of the 1948 Universal Declaration of Human Rights (UDHR),<sup>8</sup> but its prominence re-emerged in the 1990s following the surge of indigenous peoples' movements.<sup>9</sup> For the attainment of peace and stability, the right to culture needs to be encouraged and "cultural genocide", the non-physical destruction of an ethnic group, needs to be addressed.<sup>10</sup> Thus, international human-rights frameworks, in particular Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), have been created to protect these groups and their cultural identity from such attempts of cultural destruction.<sup>11</sup> Cultural rights, as basic entitlements, have nonetheless received significantly less consideration within international human rights law than civil, political, economic and social rights, and remain somewhat of a weak and unstructured category.

The Chinese occupation of Tibet has embodied a destructive colonialism that is denying the Tibetan people the freedom to exercise their fundamental cultural rights. Robert Badinter described the disappearance of Tibetan culture as cultural genocide in 1989,<sup>12</sup> a stance that has since been adopted by those challenging China's rule in Tibet. The human-rights instruments designed to safeguard the group and ensure their cultural protection are, however, insufficient and their collective rights as an ethnic minority in China are compromised by the State's national sovereignty.

The first part of this paper explores interpretations of culture and how these have manifested themselves in international human rights law. Through doing so, it will outline the existing frameworks designed to protect groups from cultural genocide, in particular Article 8 of the UNDRIP. The second part of this article will follow by examining the status of Tibet and Tibetans: both exploring how the Tibetans fulfil the definition of an indigenous group and providing a brief historical analysis of their geopolitical relationship with China. By exploring article 8 of the declaration and the importance of cultural identity to the Tibetan people, the final part of this paper will argue that China's policies are in breach of Article 8 and, as a result, China is carrying out cultural genocide in Tibet. Consequently, this section will provide a critique to Barry Sautman's analysis of the situation, in which he denies the cultural destruction of the Tibetans. In concluding, the essay will look at how

---

<sup>8</sup> See further A. Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, Cambridge University Press, Cambridge 2007, pp. 196ff.

<sup>9</sup> K. Engle, *Culture and Human Rights: The Asian Values Debate in Context*, "New York University Journal of International Law and Politics" 2000, Vol. 32, pp. 291-331.

<sup>10</sup> S. Mako, *op. cit.*, pp. 175-194.

<sup>11</sup> See the commentaries by E. Stamatopoulou, *Taking Cultural Rights Seriously: The Vision of the UN Declaration on the Rights of Indigenous Peoples*, and J. Gibson, *Community Rights to Culture: The UN Declaration on the Rights of Indigenous Peoples*, in: S. Allen, A. Xanthaki (eds.), *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Hart, Oxford 2011, pp. 387-412; 433-456, respectively.

<sup>12</sup> *60 Years of Chinese Misrule...*

China's refusal to recognise Tibetans as indigenous leaves them at an impasse, as protection supposedly offered by the frameworks, government and international community is compromised by other factors. This article will draw on the limits of the existing legal frameworks and the need for international human rights law to develop effective and binding instruments to punish acts of cultural genocide.

## Understanding Culture

Whilst definitions of culture differ, there is a general consensus that it refers to shared values, histories and meanings that determine individual and group behaviour and allow a group to perpetuate itself. Dismissing earlier ideas that culture is fixed and static, modern anthropological theorisations understand it to be continually evolving and creating new meaning and practices determined by the relationships of group members.<sup>13</sup>

Notable anthropologist, Edward Burnett Tylor in 1920 defined culture as: "that complex whole which includes knowledge, beliefs [religion], arts, morals, laws, customs, and any other capabilities and habits acquired [...] as a member of society."<sup>14</sup>

The importance of each element varies depending on the group, but religion, arts and language serve as the symbolic ways of transferring cultural values amongst generations, the latter being fundamental to the communication of culture. Culture also serves as an important component of nationalism and global nationalist movements.<sup>15</sup> As a political ideology, nationalism looks to culture to strengthen group solidarity and to define the group as a people.<sup>16</sup>

Historically, the idea of rights and culture were seen as mutually exclusive as they embodied different ideologies.<sup>17</sup> However, ideas of culture in the international human rights arena have risen, mainly in response to the plight of minority groups

---

<sup>13</sup> S.E. Merry, *Changing Rights, Changing Culture*, in: J.K. Cowan, M.-B. Dembour, R. Wilson, *Culture and Rights: Anthropological Perspectives*, Cambridge University Press, New York 2001, p. 258; eadem, *Constructing a Global Law - Violence Against Women and the Human Rights System*, "Law and Social Inquiry" 2003, Vol. 28, No. 4, pp. 941-977.

<sup>14</sup> E.B. Tylor, *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Language, Art and Custom*, John Murray, London 1920.

<sup>15</sup> Rupert Emerson defined nationalism as: "A community of people who feel that they belong together in the double sense that they share [...] common heritage and [...] have a common destiny [...] [it] has become the body which legitimizes the state". R. Emerson, *From Empire to Nation: The Rise to Self-Assertion of Asian and African People*, "Political Science Quarterly" 1960, Vol. 76, pp. 416-418; M. Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, "International and Comparative Law Quarterly" 1994, Vol. 32, pp. 241-269.

<sup>16</sup> Cfr. R.J. Johnston, D.B. Knight, E. Kofman (eds.), *Nationalism, Self-Determination and Political Geography*, Routledge Publishers, London - New York 1988.

<sup>17</sup> J.K. Cowan, *Culture and Rights after Culture and Rights*, "American Anthropologist" 2006, Vol. 108, pp. 9-24.

or those who consider themselves and their cultural identity at threat. Accordingly, discourse during the past three decades has incorporated debates about the significance of culture and the right to culture.<sup>18</sup> Despite the difficulty in framing an agreed definition for culture, it has nonetheless become recognised as too important a concept to abandon.

## Cultural Genocide

The systematic and deliberate annihilation of culture and cultural heritage was recognised by Raphael Lemkin, a Polish-Jewish lawyer and public prosecutor, as early as 1933, whereby he described the acts of vandalism and barbarity as new crimes that warrant punishment under international law. The term genocide was officially introduced by Lemkin in 1944, during the aftermath of the Holocaust where he provided a written legal analysis of the term in his influential text *Axis Rule in Occupied Europe* (1944); a combination of the Greek word *genos* (meaning tribe) and the Latin word *cide* (killing).<sup>19</sup> The act of genocide is broadly defined as the intentional destruction of a nation or ethnic group; it can, according to Lemkin, be committed either through barbarity (physical genocide) or vandalism (cultural genocide).<sup>20</sup>

Vandalism is as much of a method of group destruction as physical annihilation, given the importance of culture to the realisation of individual and group needs, and thus should constitute genocide.<sup>21</sup> Lemkin had a holistic understanding of genocide; he acknowledged the interdependency of cultural and physical elements within the body of a nation.

Cultural genocide has since been used as the core definition of the intentional destruction of a group's culture by non-physical means, carried out to dominate or destroy a group.<sup>22</sup> Lemkin articulated that it employs "drastic methods aimed at the rapid [...] disappearance of the cultural, moral and religious life of a group of human beings".<sup>23</sup>

---

<sup>18</sup> K. Engle, op. cit.

<sup>19</sup> D. Short, *Cultural Genocide and Indigenous Peoples: A Sociological Approach*, "International Journal of Human Rights" 2010, Vol. 14, pp. 831-846.

<sup>20</sup> R. Lemkin, *Genocide as a Crime under International Law*, "American Journal of International Law" 1947, Vol. 41, pp. 145-151; J. Docker, *Are Settler-Colonies Inherently Genocidal? Re-Reading Lemkin*, in: A.D. Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern in World History*, Berghahn Books, Oxford 2009, p. 502.

<sup>21</sup> A.D. Moses, *Raphael Lemkin, Culture and the Concept of Genocide*, in: D. Bloxham, A.D. Moses (eds.), *The Oxford Handbook of Genocide Studies*, Oxford University Press, New York 2010, p. 696.

<sup>22</sup> S. Mako, op. cit.; L. Davidson, *Theoretical Foundations*, in: L. Davidson, *Cultural Genocide: Genocide, Political Violence, Human Rights*, Rutgers University Press, New Jersey 2012, p. 162.

<sup>23</sup> Draft Convention on the Crime of Genocide, 26 June 1947, UN Doc. E/447 (1947).

This includes the eradication of a shared language, suppression of religious beliefs and demolition of sacred monuments, attacks on historical and academic works and buildings, as well as the assimilation into the dominant culture.<sup>24</sup> As culture is continually evolving, Lemkin acknowledged the existence of cultural change. However, this change is considered gradual and the result of a group's adaptation to new circumstances, occurring without intent, whereas cultural genocide is a *deliberate* attempt at assassinating group culture.<sup>25</sup>

## Cultural Genocide in International Law

Human Rights jurisprudence sufficiently lacks adequate laws and regulations to redress cultural genocide, which largely differs from other forms of cultural rights violation.<sup>26</sup> Unlike physical genocide, cultural genocide is not illegal under customary international law or present in the UN Convention on the Prevention and Punishment of the Crime of Genocide.<sup>27</sup>

During the initial drafting of the Genocide Convention in 1946, Lemkin encouraged an inclusive description that entailed physical, biological and cultural genocide.<sup>28</sup> There was, however, strong opposition to the inclusion of cultural genocide from some UN members, who argued that cultural destruction should not be aligned with the mass murder of groups. Indeed, key resistance came from colonial powers, who feared subsequent prosecution for having dominated natives' culture; done as a means of integration without physical eradication, but still resulted in a great deal of mistreatment.<sup>29</sup> Consequently, cultural genocide was intentionally revoked from the 1948 Convention.<sup>30</sup>

The 1993 drafting of UNDRIP<sup>31</sup> saw the reappearance of the concept of cultural genocide. Article 7<sup>32</sup> of the 1993 draft stated, "Indigenous people have the [...]"

---

<sup>24</sup> S. Mako, op. cit.

<sup>25</sup> Ibidem.

<sup>26</sup> D. Nersessian, *Rethinking Cultural Genocide under International Law*, "Human Rights Dialogue" 2005, No. 2, pp. 1-3.

<sup>27</sup> Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277; see L. Davidson, op. cit.

<sup>28</sup> R.F. Coelho, *Cultural Genocide and the Conservative Approach of the Genocide Convention*, "Teoria e Cultura" 2008, Vol. 2, pp. 95-113.

<sup>29</sup> W.A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2<sup>nd</sup> edn., Cambridge University Press, New York 2009; S. Mako, op. cit.

<sup>30</sup> A.F. Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, Cambridge University Press, Cambridge 2006, 168 ff.

<sup>31</sup> UN Draft Universal Declaration on the Rights of Indigenous Peoples, 23 August 1993, UN Doc. E/CN.4/Sub.2/1993/29; UN Doc. E/CN.4/Sub.2/1994/2/ Add.1.

<sup>32</sup> Article 7: "Article 7. – Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

right not to be subjected to [...] cultural genocide”,<sup>33</sup> and proposed a ban on forced assimilation, forced population transfer, and action that removes them from their land. Though the words “cultural genocide” were removed from the final version in 2007, the rest of the conditions remain, which provides us with an authoritative basis to judge cultural genocide.<sup>34</sup>

Article 8 states (please note, the Article’s reference changed from 7 to 8 in the final version):

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Despite specific reference to the destruction of culture as a violation of peoples’ rights in the UNDRIP, the notion of cultural genocide, and its weight within international law, remains contested, with some scholars and experts accepting its importance as an obligatory framework whilst others reject the notion completely. The non-binding element of the declaration has implications for both its compliance and enforcement, as, though it exists as a framework to guide states on best practice, the inability to hold states accountable for cultural genocide remains a serious hindrance.

The impact and destruction caused by cultural genocide, however, remains on the radar of the United Nations and the international human rights agenda, and attempts have been made to include these violations within other human rights frameworks.<sup>35</sup>

---

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;  
(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;  
(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;  
(e) Any form of propaganda directed against them.”

<sup>33</sup> See J. Gilbert, *Indigenous Peoples’ Land Rights under International Law: From Victors to Actors*, Martinus Nijhoff Publishers, 2012.

<sup>34</sup> *60 Years of Chinese Misrule*, op. cit.

<sup>35</sup> B. Sautman, ‘*Cultural Genocide and Tibet*’, *Texas International Law Journal*” 2003, Vol. 38, pp. 173-248.

# RESEARCH ARTICLES

Jaspreet K. Sandhar

---

The United Nations does indeed place importance on the attainment of cultural identity and cultural rights.<sup>36</sup>

International human rights law first recognised and documented cultural rights in the UDHR, most notably under Articles 22 and 27.<sup>37</sup> This was further affirmed with the creation of two international treaties in 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15 in particular,<sup>38</sup> and the International Covenant on Civil and Political Rights (ICCPR), Article 27 of which specifically addresses the cultural rights of minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>39</sup>

The rights outlined in the UDHR were codified into these treaties, creating legal obligations for those States who have ratified it. Thus, this collection of human rights frameworks and instruments carries significant weight in international law and States are accountable for protecting and encouraging cultural diversity and rights. Nonetheless it does not resolve the existing gap in international law whereby

---

<sup>36</sup> See further M.A. Freeman, *Human Rights: An Interdisciplinary Approach*, 2<sup>nd</sup> edn., Polity Press, Cambridge 2011.

<sup>37</sup> Article 22 of the UDHR:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Article 27 of the UDHR:

“(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” in The United Nations. (1948). Universal Declaration of Human Rights.”

<sup>38</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171; Article 15 of the ICESCR:

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.”

<sup>39</sup> 16 December 1966, 993 UNTS 3.

acts of cultural genocide largely go unpunished, unless they are related to the physical destruction of the targeted group. By exploring the lack of protection provided to the Tibetans by these frameworks, this article will underpin why there is a strong requirement to incorporate cultural genocide into customary international law.

## Tibetan Indigenous Identity

Tibet, a remote territory located in the People's Republic of China (PRC), is home to the ethnic Tibetan people and culture. The region falls outside of what the world traditionally refers to as China and, for many centuries, prior to China's invasion in 1949, operated as a sovereign nation.<sup>40</sup>



Figure 1: Map of South Asia, highlighting Tibetan Plateau

Source: Territorial Map of Tibetan Plateau Region – World Atlas 2012.

To determine whether, in accordance to the UNDRIP, the Tibetan people have a right not to be subjected to cultural genocide, their status as indigenous peoples needs to be assessed. Since neither UNDRIP nor international law offers a distinct definition, a commonly cited one by Jose Martinez-Cobo (1982) is used here:

Indigenous communities [...] form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.<sup>41</sup>

<sup>40</sup> L. Davidson, op. cit.

<sup>41</sup> J.R.M. Cobo, *Study of the Problem of Discrimination against Indigenous Populations*, General: United Nations Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 20 June 1982, pp. 1-70.

The key characteristics of indigenous groups, according to the UN, are:

- a) Self-identification as indigenous
- b) Close connection to ancestral land and territories
- c) Possess their own indigenous language
- d) Adhere to social and political institutions, different from the state
- e) Share distinct history, traditional customs and practices
- f) Economic activity usually reliant on land.<sup>42</sup>

The Tibetan people have developed a distinctive civilisation over 2,000 years, characterised by its own language (Tibetan), calendar and astrology, spiritual traditions and practices, livelihoods (reliant on agriculture and subsistence-farming), arts and literature.<sup>43</sup> Additionally, Buddhism has been integral to Tibetan identity since its introduction in the 7<sup>th</sup> century: the religion's monastic education system is at the core of Tibet's intellectual and spiritual development but, more importantly, it functions as a political body with power to make decisions regarding the development of the Tibetan people.<sup>44</sup> Tibetans identify themselves as indigenous and continuously proclaim their identity is unique to that of the Han-Chinese.

## Chinese Occupation in Tibet

Whilst Tibet has experienced volatile relations with China for more than 1,500 years, the past 70 have seen larger levels of human-rights violations, subjugation of Tibetan practices and cultural destruction.<sup>45</sup> To understand the region's instability, a brief review of events in the past 70 years is required.

In 1949, China's People's Liberation Army invaded Tibet. By undermining the Lhasa government, territory was signed over to China and the Tibet Autonomous Region (TAR) was joined to China under the Seventeen Point Agreement.<sup>46</sup> In 1959, following tensions between the Dalai Lama's government and the Chinese Communist Party (CCP), the first anti-Chinese uprising occurred, after which the Dalai Lama fled to India and set up the Tibetan government in exile there.<sup>47</sup>

---

<sup>42</sup> *The Concept of Indigenous Peoples*, Workshop on Data Collection and Disaggregation for Indigenous Peoples, United Nations, Department of Economic and Social Affairs, New York, 19-21 January 2004, pp. 1-4.

<sup>43</sup> A. Kolas, M.P. Thowsen, *On the Margins of Tibet: Cultural Survival on the Sino-Tibetan Frontier*, University of Washington Press, Seattle 2006.

<sup>44</sup> *60 Years of Chinese Misrule*, op. cit.

<sup>45</sup> W.W. Smith, *China's Tibet?: Autonomy or Assimilation*, Rowman & Littlefield Publishers, Lanham 2006; D. Norbu, *China's Tibet Policy*, Routledge Publishers, Durham 2001.

<sup>46</sup> The Seventeen Point Agreement is a contract which was signed by the Tibetan de facto government and the People's Republic of China. It affirmed sovereignty to China on the condition of autonomy in Tibet. Tibet dismisses the legal binding of the agreement as it was signed under political pressure, and China has continuously broken the conditions stipulated in the contract. J. Norbu, *Exile: Resistance and Diplomacy*, in: R. Barnett, S. Akiner (eds.), *Resistance and Reform in Tibet*, C. Hurst & Co. Publishers Ltd., London 1994, pp. 186-196.

<sup>47</sup> J. Norbu, *Exile: Resistance and Diplomacy...*, op. cit.

During 1966-1976, as part of Mao's Cultural Revolution, the CCP tried to bring an end to the Four Olds: Customs, Culture, Habits and Ideas. This had devastating effects on Tibetan cultural identity.<sup>48</sup> Following Mao's death, in 1977, there were brief attempts at reconciliation between the Tibetan government in exile and the PRC, however 2008 saw renewed instability, with Tibetans protesting against religious suppression, the lack of socioeconomic opportunities and ethnic destruction.<sup>49</sup> In response, the Chinese authorities shut down the major monasteries, detained thousands of people and tortured and executed others.<sup>50</sup>

## Cultural Genocide in Tibet

The existence of Tibetan people and their culture is severely under threat.<sup>51</sup> Despite Chinese propaganda that China is like a "caring parent to the Tibetan people",<sup>52</sup> the policies in Tibet are on par with those of China proper, namely a combination of Chinese chauvinism and Marxist language, which are anathema to Tibetan cultural values.

Barry Sautman has widely criticised the idea of cultural genocide in Tibet, leaning heavily on Lemkin's definition.<sup>53</sup> The notion of *intent* to destroy, he argues, is not part of Chinese policy and any evidence of cultural deterioration is the result of cultural change. This section will contest this by identifying how China's actions, historic and current, are intentional and strongly oppose Article 8 of the UNDRIP.

Any action which has the aim or effect of depriving them  
of their integrity as distinct peoples...

### Religion

The Marxist-Leninist ideology that China was devoted to during Mao's reign criticised religion and thus Chinese authorities enforced atheism.<sup>54</sup> During the 1959

---

<sup>48</sup> Ibidem, A. Kolas, M.P. Thowsen, op. cit.

<sup>49</sup> W.W. Smith, *Tibet's Last Stand? The Tibetan Uprising of 2008 and China's Response*, The Rowman & Littlefield Publishing Group, Lanham 2009.

<sup>50</sup> Ibidem.

<sup>51</sup> K. Gyaltzen, *Preventing Cultural Genocide: The Case for Genuine Autonomy for Tibet*, Symposium on Cultural Diplomacy & Human Rights, 31 May 2013, Berlin, pp. 1-4; A. A. Shiromay (ed.), *The Spirit of Tibet, Universal Heritage: Selected Speeches and Writings of HH the Dalai Lama XIV*. Allied Publishers, New Delhi 1995.

<sup>52</sup> F. Ching, *Its Wake Up Time for the CCP*, "The China Post", 9 April 2008.

<sup>53</sup> Barry Sautman's arguments will not be explored in depth in this essay, for further readings refer to: B. Sautman, *Cultural Genocide in International Contexts*, in: B. Sautman (ed.), *Cultural Genocide and Asian State Peripheries*, Palgrave Macmillan, New York 2006, p. 286, and B. Sautman, 'Cultural Genocide' and Tibet, pp. 173-248.

<sup>54</sup> W.W. Smith, *The Nationalities Policy of the Chinese Communist Party and the Socialist Transformation of Tibet*, in: R. Barnett, S. Akiner (eds.), *Resistance and Reform in Tibet*, C. Hurst & Co. Publishers Ltd., Delhi 1994, pp. 51-75.

uprising, sacred Buddhist texts were publicly burnt during political demonstrations, religious and historical monuments destroyed and monasteries looted and demolished. Tibetan monks and nuns were forced to leave their monasteries<sup>55</sup> and approximately 90,000 Tibetans were massacred.<sup>56</sup> The attempt to destroy Tibetan Buddhism almost succeeded: only eight of the 6,000 + (97%) Tibetan monasteries were left standing.<sup>57</sup>

The religious ban was lifted following the death of Mao, and Buddhism re-emerged in 1980.<sup>58</sup> The PRC have allowed for its practice but have adopted a policy that encourages religion to “naturally wither away”,<sup>59</sup> firstly by denouncing the importance of the monastic institutions and the role they play in Tibetan society and politics; and secondly by undermining the educational element of monastic institutions by introducing non-monastic schools and controlling the curriculum of the monastic ones. It has further tightened its clutch on the latter with recent measures<sup>60</sup> calling for the appointment of teachers who need to meet certain criteria, including supporting the Communist Party and its socialist ideologies, and being patriotic to China.<sup>61</sup>

## Language

Language is also seen as a barrier to achieving China’s nationalist ideology. Government officials in Tibet are now encouraged to speak Chinese, despite Tibetan being the official working language, and any economic opportunities require candidates to speak Chinese before Tibetan.<sup>62</sup> This highlights three things: firstly the desired assimilation through China’s chauvinistic policy, secondly the lack of respect for the Tibetan language and its importance to the indigenous culture, and thirdly the threat felt by China over the Tibetan language undermining their sovereignty and aiding resistance to the adoption of Han culture. With economic opportunities in Tibet requiring spoken Chinese as a minimum, parents are encouraged to send their children to schools teaching predominantly in Mandarin,<sup>63</sup> reducing the younger

---

<sup>55</sup> C. Jian, *The Tibetan Rebellion of 1959 and China’s Changing Relations with India and the Soviet Union*, “Journal of Cold War Studies” 2006, Vol. 8, pp. 54-101.

<sup>56</sup> D. Lal, *Indo-Tibet-Conflict*, Kalpaz Publications, Delhi 2008.

<sup>57</sup> Ibidem.

<sup>58</sup> H.H. Lai, *The Religious Revival in China*, “Copenhagen Journal of Asian Studies” 2003, Vol. 18, pp. 40-64.

<sup>59</sup> Z. Luo (ed.), *Religion Under Socialism in China*, M.E. Sharpe Inc., Armonk – New York – London 1991.

<sup>60</sup> The Regulation is titled “Measures to determine qualification and employment of religious instructors in Tibetan Buddhist Monasteries” and was published on 3 December 2012.

<sup>61</sup> State Administration for Religious Affairs of the People’s Republic of China (2 December 2012). *Buddhist Temples by the Teacher Qualification and Appointment of the Tibetan Way*. *National Bureau of Religious Affairs of Political Division*, Beijing [not available in English].

<sup>62</sup> K. Wangdu, *China’s Minority Education Policy with Reference to Tibet*, “Tibetan Review” June 2011, pp. 19-23.

<sup>63</sup> B. Sautman, ‘*Cultural Genocide’ and Tibet...*

generation's ability to speak or understand Tibetan, restraining continuation of the language. In addition, Tibetan is spoken significantly less in educational institutions with much of the curriculum taught solely in Chinese.<sup>64</sup>

In this context, language may seem like a superficial element that, as many pro-China people would argue, is being exaggerated for claims of nationalism, but the demise of the Tibetan language is affecting the preservation of its religion and history, as much religious and historical text is available solely in Tibetan.

### Any action which has the aim or effect of dispossessing them of their lands...

During Mao's Cultural Revolution, "democratic reforms" were imposed. To sway the support of the poor and impressionable who had long suffered from class struggles,<sup>65</sup> the authorities abolished theocratic serfdom and redistributed the land recovered from the destroyed monasteries.<sup>66</sup> This reform dispossessed people of their land but also caused a great deal of religious and political instability, as monks and nuns were displaced and the monastic institutions ceased to hold political power.

In the past decade, as part of China's development strategy, the creation of "new socialist villages"<sup>67</sup> has seen the relocation of 2 million Tibetans in the TAR and of almost 500,000 nomadic farmers, in most cases forcibly, in the Tibetan Plateau,<sup>68</sup> ostensibly to improve their standard of living and access to public resources.<sup>69</sup> This has had significant negative effects: nomadism and pastoralism is not just about sustaining their livelihoods but has, for centuries, been a crucial element of Tibetan culture.<sup>70</sup> Human Rights Watch argues that the relocation of ethnic Tibetans is to break them from their cultural traditions but also to implement tighter political control. The Chinese government has also made it clear that these policies are part of a larger strategy to integrate Tibetans and prevent separatist ideas.<sup>71</sup> Prior to the relocation, farmers were self-sufficient; the relocation has meant they are now more dependent on government subsidies, and are therefore more susceptible to political control.

---

<sup>64</sup> K. Wangdu, *op. cit.*

<sup>65</sup> H. Jing, *The Tibet Issue: An Impasse or Entrapment?*, "East Asian Policy" 2009, Vol. 1, pp. 23-31.

<sup>66</sup> L. Davidson, *op. cit.*

<sup>67</sup> K.E. Looney, *China's 'Building a New Socialist Countryside': The Ganzhou Model of Rural Development*, "American Political Science Association 2012 Annual Meeting Paper".

<sup>68</sup> "They say we should be Grateful": *Mass Relhousing and Relocation Programs in Tibetan Areas of China*, "Human Rights Watch", 27 June 2013.

<sup>69</sup> F. Robin, *The "Socialist New Villages" in the Tibetan Autonomous Region: Reshaping the Rural Landscape and Controlling its Inhabitants*, "China Perspectives" 2009, No. 3, p. 58.

<sup>70</sup> W.W. Smith, *China's Tibet...*

<sup>71</sup> "They say we should be Grateful"..., *op. cit.*

### Any form of forced population transfer...

The Third Work Forum of 1994 initiated policies for mass Han-migration and the PRC has since continued to push these forward. During the forum Jiang Zemin, then CCP General-Secretary, stated:

While [...] promoting Tibet's fine traditional culture, it is also necessary to absorb the fine cultures of other nationalities in order to integrate the fine traditional culture with the fruits of modern culture. This will facilitate the development of socialist new culture in Tibet.<sup>72</sup>

Delegates at the Forum, when discussing Tibet's instability, concluded that it was the result of the "Dalai Clique separatist activities", who were fuelling unrest in the region and using nationalism and culture to demand independence.<sup>73</sup> To overcome this, it was asserted that large levels of Han-migration were required to create a balance amongst the population and to create a more modern Tibetan culture in line with Maoist ideology. The opening up of Tibet's borders and job market has therefore been encouraged for the enjoyment of Chinese citizens, leading to large-scale Han-migration, an ongoing trend with economic incentives being offered by the government to those who do migrate.<sup>74</sup>

The 2006 launch of the Qinghai-Tibet railway further allows for the rapid influx of Chinese migrants,<sup>75</sup> with an estimated 6,000 Chinese entering Tibet daily and only 50% of them returning to China.<sup>76</sup> The railway had been proposed 40 years previously, as part of Mao ideology to fully control Tibet, and Tibetans now state that this is accelerating the rate of cultural genocide. Demographic statistics are hard to find for the region, but it is estimated that in Tibet 7.5 million Han-Chinese now live amongst 6 million ethnic Tibetans.<sup>77</sup>

### Any form of forced assimilation or integration

Sinicization (whereby Han-Chinese societies take over non-Han-Chinese societies and become the dominant cultural influence) is aimed at strengthening Chinese nationalism, and is a process of forced assimilation.<sup>78</sup> The population transfer, land rehousing and language and religion assimilation are part of this sinicization. Indeed, occupying the territory where Tibetan culture is manifested for the sake of integra-

---

<sup>72</sup> W.W. Smith, *China's Tibet...*

<sup>73</sup> Ibidem.

<sup>74</sup> *60 Years of Chinese Misrule*, op. cit.

<sup>75</sup> Ibidem.

<sup>76</sup> Ibidem.

<sup>77</sup> M.G. Chitkara, *Toxic Tibet under Nuclear China*, APH Publishing Corporation, New Delhi 1996.

<sup>78</sup> A. Bhattacharya, *China and its Peripheries: Strategic Significance of Tibet*, "Institute of Peace and Conflict Studies", May 2013, pp. 1-12.

tion is intimidating and undermines the Tibetan's native association to their land.<sup>79</sup> Unsurprisingly, the Tibetan government in exile has declared that these policies are fostering the disappearance of Tibetan culture.

Resistance to Chinese culture has been seen by pro-Chinese authorities as terrorism and is reportedly punished with detainment, torture and execution. However, Tibetan resistance is not about disrespecting Chinese culture but rather a great desire to preserve their own,<sup>80</sup> as Martinez Cobo notes in his definition of indigenous groups.

### Any form of propaganda designed to promote or incite racial or ethnic discrimination...

The level of censorship and media control in China allows the authorities to report negatively on the Tibetans and to spread nationalist rhetoric, both at social and State level.<sup>81</sup> Policies, driven by propaganda efforts, are devised to show Tibet as a tyrannical region, backward and requiring State-modernisation. Religion and spirituality are particularly condemned and practices are highlighted as an attack towards the State; self-immolations attract no sympathy from the Han-Chinese society who despise the 'antagonistic' anti-Chinese retaliations and do not appreciate the cultural aspirations of the Tibetans. The more positive reports present patronising and demeaning images of Tibetans, highlighting their lack of socioeconomic development and the need for government assistance.<sup>82</sup> This only serves to exacerbate the tensions between Han-Chinese and Tibetans, the former of whom believe themselves to be superior as a result of China's modernisation.

### Self-immolation as a consequence of cultural genocide

The unsettling, and increasingly common, practice of Tibetans self-immolating further underpins Lemkin's idea of group destruction. Since 2009, 139 Tibetans have self-immolated as a direct protest against Chinese rule and to escape tight cultural and religious restrictions. Sautman asserts these incidences are incited by a lack of social and economic opportunities in the region and dismisses them as senseless "suicidal politics",<sup>83</sup> despite some self-immolators leaving messages

<sup>79</sup> M.A. Michaels, *Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System*, "Fordham Law Review" 1998, Vol. 66, pp. 1565-1584.

<sup>80</sup> D. Norbu, *China's Tibet Policy*, op. cit.

<sup>81</sup> *60 Years of Chinese Misrule*, op. cit.

<sup>82</sup> Ibidem.

<sup>83</sup> B. Sautman, *Tibet's Suicidal Politics*, "East Asia Forum. Economics, Politics and Public Policy in East Asia and the Pacific", 21 March 2012.

outlining their wish to escape Chinese oppression and calling for support of the Dalai Lama.<sup>84</sup>

Sautman implies that there is no policy that penalises Tibetans on the basis of being Tibetan and that the Chinese authorities do not oppose religion. However, the PRC has targeted religion since its illegal annex of Tibet and continues to punish those who practise Buddhism. Ironically, if lack of economic opportunities is causing self-immolations, then this is the result of China's policies which a) penalise Tibetans who seek employment but cannot speak Chinese, b) have removed Tibetans from their land and thus their livelihoods, and c) forced practicing monks to leave the monasteries and seek a 'job' in the unfamiliar capitalist system.

## Is Tibet protected from Cultural Genocide?

China has consistently denied any allegations of cultural genocide in Tibet; the 1949 invasion was characterised as "liberation" for the subjugated Tibetan people, to release them from the suppression of the feudal monastic strains and to bring modernisation.<sup>85</sup> This makes the assumption that Tibet's cultural development is stagnant and traditional practices backwards<sup>86</sup> – a much-distorted view of culture. Monastic institutions were, and still are, committed to learning, teaching and contributing to the continual development of Tibetan culture.<sup>87</sup> Indeed, Tibetan Buddhism itself is a progressive religion which, based on the notion of enlightenment, teaches its followers the importance of development.<sup>88</sup> China's idea of modernisation therefore deeply patronises and undermines the meaning of culture.

Article 8 of the UNDRIP provides China with a useful framework to consult when devising policies in Tibet that would avoid cultural genocide. Analysis of Chinese doctrine shows, however, that its policies are morally unjust and strongly oppose both Article 8 and the Declaration;<sup>89</sup> not only do they disregard the importance of Tibetan indigenous culture but they are *intentionally* seeking to eradicate it. Whilst States have a commitment to abide by Article 8 and the UNDRIP,

---

<sup>84</sup> R.D. Sloane, *Tibet, Cynical Sinicism and the Tragedy of Self-immolations*, "East Asia Forum. Economics, Politics and Public Policy in East Asia and the Pacific", 9 May 2012; S.J. Hartnett, "Tibet is Burning": *Competing Rhetorics of Liberation, Occupation, Resistance, and Paralysis on the Roof of the World*, "Quarterly Journal of Speech" 2013, Vol. 99, pp. 283-316.

<sup>85</sup> N. Subramanya, *Human Rights and Refugees*, APH Publishing, New Delhi 2004.

<sup>86</sup> T.W. Shakya, *The Tibet Question* [written Interview], "New Left Review" 51, May-June 2008, pp. 5-28.

<sup>87</sup> M. Goldstein, *The Revival of Monastic Life in Drepung Monastery*, in: M. Goldstein, M. Kapstein (eds.), *Buddhism in Contemporary Tibet: Religious Revival and Cultural Identity*, University of California Press, Berkeley – Los Angeles – London 1998, pp. 15-52.

<sup>88</sup> M.A. Mills, *Identity, Ritual and State in Tibetan Buddhism: The Foundations of Authority in Gelukpa Monasticism*, Routledge Curzon Publishers, New York 2010.

<sup>89</sup> R.C. Rysler, *The UN Declaration on the Rights of Indigenous Peoples: Tibet*, "Fourth World Eye Blog", Center for World Indigenous Studies 2018.

the declaration is not legally binding under international law and therefore relies on the voluntary good faith of China to implement it.<sup>90</sup>

China voted in favour of the 2007 UNDRIP and has since conveyed that China has no indigenous-groups but acknowledges the contributions these groups make to the development of human societies.<sup>91</sup> By failing to recognise the Tibetan people as indigenous, the actions of the Chinese are justified as being Chinese nationalist promotion directed at all groups. Critics of China's assimilation policies argue that cultural genocide is carried out to suppress Tibet's nationalism and therefore their potential call for self-determination and independence. Independence is not the only desire of Tibetans; indeed, the Dalai Lama has consistently pleaded for autonomy rather than independence, whereby Tibetans would be free to practise their cultural and religious beliefs within their own territory, a condition stipulated in the Seventeen Point Agreement<sup>92</sup> but never granted. By recognising the Tibetans as indigenous, China would need to protect Tibetan cultural identity but also support these nationalism ideals.<sup>93</sup> Which it is not, evidently, keen to do.

The cultural genocide in Tibet is deliberate and one born out of politics: a modern-day colonial rule, similar to those which prohibited the inclusion of cultural genocide in the 1946 Genocide Convention. Tsering Shakya deems that the policies implemented in Tibet by the Chinese are not unlike those of the former Western colonial powers; in a bid to civilise the indigenous groups, all such scenarios led to disrupted cultural identity, loss of traditional epistemology, high levels of native exploitation, unjust claim to territory and disintegration of social structures.<sup>94</sup> In Tibet, these efforts, deemed as cultural homogenisation, seek to create a cultural standardisation that "nationalises" the Tibetans to communist Chinese society.<sup>95</sup>

The anti-Chinese unrests and self-immolations are a resistance to this cultural homogenisation, highlighting Tibet's desire for cultural and spiritual recognition. However, China dismisses these as acts of terrorism supporting the despotic Dalai Lama and has as such gained support by speaking of the "disruption" they cause to

---

<sup>90</sup> D. Nersessian, *op. cit.*, pp. 1-3.

<sup>91</sup> M.C. Davis, *Tibet and China's 'National Minority' Policies*, "University of Hong Kong Faculty of Law Research Paper" 2012, No. 31, pp. 1-17.

<sup>92</sup> The Seventeen Point Agreement is a contract which was signed by the Tibetan de facto government and the People's Republic of China. It affirmed sovereignty to China on the condition of autonomy in Tibet. Tibet dismisses the legal binding of the agreement as it was signed under political pressure, and China has continuously broken the conditions stipulated in the contract.

<sup>93</sup> L. Brilmayer, *Secession and Self-Determination: One Decade Later*, "Yale Journal of International Law" 2000, Vol. 25, pp. 273-321.

<sup>94</sup> T.W. Shakya, *op. cit.*

<sup>95</sup> D. Conversi, *Cultural Homogenization, Ethnic Cleansing and Genocide*, in: R.A. Denmark (ed.), *The International Studies Encyclopedia*, Wiley-Blackwell, Oxford 2010, pp. 719-742.

the national unit:<sup>96</sup> whilst culture has been deemed an important right for groups, its importance does not always hold up against territorial integrity.

This notion finds itself declared in various UN Resolutions:<sup>97</sup> “Any attempt aimed at the [...] disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and the principles of the Charter of the United Nations.”<sup>98</sup>

So whereas the UNDRIP and other human-rights instruments do make reference to the right to practise one’s culture, it permits this so long as it does not jeopardise the state’s sovereignty or disrupt national unity. This paradoxical notion thus indicates that the indigenous Tibetans, who are culturally and ethnically distinct from Han-Chinese populations, have a limited basis for expressing their cultural identity and can only do so if the state warrants it. So, not only are the Chinese authorities able to continue their acts of cultural genocide but any acts carried out by the Chinese following Tibetan resistance are justified under this notion. The protection of cultural identity and the safeguarding of ethnicity under the UNDRIP remains political rhetoric.

Article 27 of the ICCPR, whilst legally binding and thus holding more weight in international law, has also proved inadequate in protecting Tibetans from cultural genocide as, though China has signed the covenant, it has not put any structures in place for its implementation, in other words it has yet to ratify it. This strongly highlights that, despite signing the treaty over 17 years ago in 1998, the commitment to actually comply with the regulations set out in the convention is severely lacking, with no clear evidence to suggest otherwise. Ratification or accession of the treaty would indicate China’s willingness to be held accountable should any violations occur. By not doing so, China clearly demonstrates its position with regards to protecting Tibetans from cultural destruction.<sup>99</sup>

As Lemkin originally proposed, for culture to be protected it needs to be incorporated into the Genocide Convention, which would make it illegal under international law and, as it holds the status of *jus cogens*, would bind all member states to intervene in cases of cultural genocide.<sup>100</sup> Currently, the international community has

---

<sup>96</sup> W.W. Smith, *Tibet's Last Stand?*...

<sup>97</sup> Article 2(4) of the Charter of the United Nations (26 June 1945, 1 UNTS XVI, amended in 1963 [557 UNTS 143], in 1965 [638 UNTS 308], and in 1971 [892 UNTS 119]); UNGA Resolution 1514 (XXV), Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, UN Doc. A/RES/1514(XV) (1960); UNGA Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, UN Doc. A/RES/25/2625(XXV) (1970); see further J. Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*, Martinus Nijhoff Publishers, Leiden – Boston 2007.

<sup>98</sup> Article 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

<sup>99</sup> C. Dingding, *China's Participation in International Human Rights Regime: A State Identity Perspective*, “Chinese Journal of International Politics” 2009, Vol. 2, pp. 399-419.

<sup>100</sup> W. Morrison, *Criminology, Civilisation and the New World Order*, Routledge Cavendish, Abingdon 2006.

largely ignored the cultural suppression of the Tibetans. Indeed, upholding international human rights frameworks has become secondary to self-serving economic interests; with access to China's large and growing economic market, challenging the human-rights violations of the Tibetans poses a risk to future economic activities and potential business deals for States which benefit from friendly relations with China.<sup>101</sup>

## Conclusion

Regarding Tibet, a continuum between colonialism, cultural genocide and cultural homogeneity exists: one linked to China's nationalist dominance. Critics of the notion of cultural genocide say that ethnicity is persistently amplified to strengthen nationalist movements and, where nationalists are pressing for self-determination, used as a weapon to oppose assimilation.<sup>102</sup> Sautman argues that this is the case with Tibet, whereby proponents of a free Tibet consistently draw on the contrasts between the Tibetan and Han-Chinese cultures.<sup>103</sup> This research has explored Tibetans' status as an indigenous group and the significance of cultural identity to their development, which merits them to greater cultural protection.

Whilst culture has been placed on the international agenda, the understanding of what it means to human affairs, development and wellbeing is, at present, severely lacking at state level and secondary to economic and nationalist interests.<sup>104</sup> China's disregard of the importance of culture for the Tibetans is not a standalone case. Indigenous groups the world over are fighting for recognition and their right to culture.<sup>105</sup>

The status of indigenous groups may have improved in the last half-century, but much of this improvement remains on paper. The right to freely and without prejudice practise culture has the power to eliminate the mass suffering of the Tibetan people. Article 8 of the UNDRIP has, however, proved inadequate at protecting Tibetans from cultural genocide, despite clear evidence that China is violating the Declaration and other forms of international law, for example Article 27 of the ICCPR. China could argue that many of these events occurred prior to the implementation of the UNDRIP, however their policies show ongoing cases of cultural

---

<sup>101</sup> E. Herzer, *Occupied Tibet: The Case in International Law*, Tibet Justice Center, Oakland (CA) 2013.

<sup>102</sup> H. Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996.

<sup>103</sup> B. Sautman, *Colonialism, Genocide, and Tibet*, "Asian Ethnicity" 2006, Vol. 7, pp. 243-265.

<sup>104</sup> E. Nimni, *National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism*, "Ethnopolitics" 2007, Vol. 6, pp. 345-364.

<sup>105</sup> D. Champagne, *Rethinking Native Relations with Contemporary Nation-States*, in: D. Champagne, S. Steiner, K.J. Torjesen (eds.), *Indigenous Peoples and the Modern State*, Rowman & Littlefield Publishers Inc., Walnut Creek - Lanham - New York - Toronto - Oxford 2005.

suppression and no evidence of revoking them. Cultural genocide, therefore, needs to be addressed in customary international law and not to be seen as inferior or secondary to physical genocide.

Ironically, cultural genocide for Lemkin was the most important component of genocide, as *genos* depicted culture,<sup>106</sup> the group that exists by its social morality, which is indeed true for the ethnic Tibetans in China.

### References

- 60 Years of Chinese Misrule: Arguing Cultural Genocide in Tibet, International Campaign for Tibet, Washington DC 2012.
- Bhattacharya A., *China and its Peripheries: Strategic Significance of Tibet*, "Institute of Peace and Conflict Studies", May 2013.
- Brilmayer L., *Secession and Self-Determination: One Decade Later*, "Yale Journal of International Law" 2000, Vol. 25.
- Champagne D., *Rethinking Native Relations with Contemporary Nation-States*, in: D. Champagne, S. Steiner, K.J. Torjesen (eds.), *Indigenous Peoples and the Modern State*, Rowman & Littlefield Publishers Inc., Walnut Creek – Lanham – New York – Toronto – Oxford 2005.
- Charter of the United Nations, 26 June 1945, 1 UNTS XVI, amended in 1963 (557 UNTS 143), in 1965 (638 UNTS 308), and in 1971 (892 UNTS 119).
- Ching F., *Its Wake Up Time for the CCP*, "The China Post", 9 April 2008.
- Chitkara M.G., *Toxic Tibet under Nuclear China*, APH Publishing Corporation, New Delhi 1996.
- Cobo J.R.M., *Study of the Problem of Discrimination against Indigenous Populations*, General: United Nations Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 20 June 1982.
- Coelho R.F., *Cultural Genocide and the Conservative Approach of the Genocide Convention*, "Teoria e Cultura" 2008, Vol. 2.
- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277.
- Conversi D., *Cultural Homogenization, Ethnic Cleansing and Genocide*, in: R.A. Denemark (ed.), *The International Studies Encyclopedia*, Wiley-Blackwell, Oxford 2010.
- Cowan J.K., *Culture and Rights after Culture and Rights*, "American Anthropologist" 2006, Vol. 108.
- Davidson L., *Theoretical Foundations*, in: L. Davidson, *Cultural Genocide: Genocide, Political Violence, Human Rights*, Rutgers University Press, New Jersey 2012.
- Davis M.C., *Tibet and China's 'National Minority' Policies*, "University of Hong Kong Faculty of Law Research Paper" 2012, No. 31.
- Dingding C., *China's Participation in International Human Rights Regime: A State Identity Perspective*, "Chinese Journal of International Politics" 2009, Vol. 2(3).

---

<sup>106</sup> R. Lemkin, op. cit., pp. 145-151.

- Docker J., *Are Settler-Colonies Inherently Genocidal? Re-Reading Lemkin*, in: A.D. Moses (ed.), *Empire, Colony, Genocide: Conquest, Occupation, and Subaltern in World History*, Berghahn Books, Oxford 2009.
- Draft Convention on the Crime of Genocide, 26 June 1947, UN Doc. E/447 (1947).
- Emerson R., *From Empire to Nation: The Rise to Self-Assertion of Asian and African People*, "Political Science Quarterly" 1960, Vol. 76.
- Engle K., *Culture and Human Rights: The Asian Values Debate in Context*, "New York University Journal of International Law and Politics" 2000, Vol. 32.
- Freeman M.A., *Human Rights: An Interdisciplinary Approach*, 2<sup>nd</sup> edn., Polity Press, Cambridge 2011.
- Gibson J., *Community Rights to Culture: The UN Declaration on the Rights of Indigenous Peoples*, in: S. Allen, A. Xanthaki (eds.), *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Hart, Oxford 2011.
- Gilbert J., *Indigenous Peoples' Land Rights under International Law: From Victors to Actors*, Martinus Nijhoff Publishers, 2012.
- Goldstein M., *The Revival of Monastic Life in Drepung Monastery*, in: M. Goldstein, M. Kapstein (eds.), *Buddhism in Contemporary Tibet: Religious Revival and Cultural Identity*, University of California Press, Berkeley – Los Angeles – London 1998.
- Gyaltzen K., *Preventing Cultural Genocide: The Case for Genuine Autonomy for Tibet*, Symposium on Cultural Diplomacy & Human Rights, 31 May 2013, Berlin.
- Hannum H., *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996.
- Hartnett S.J., "Tibet is Burning": *Competing Rhetorics of Liberation, Occupation, Resistance, and Paralysis on the Roof of the World*, "Quarterly Journal of Speech" 2013, Vol. 99.
- Herzer E., *Occupied Tibet: The Case in International Law*, Tibet Justice Center, Oakland (CA) 2013.
- International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.
- Jian C., *The Tibetan Rebellion of 1959 and China's Changing Relations with India and the Soviet Union*, "Journal of Cold War Studies" 2006, Vol. 8.
- Jing H., *The Tibet Issue: An Impasse or Entrapment?*, "East Asian Policy" 2009, Vol. 1.
- Johnston R.J., Knight D.B., Kofman E. (eds.), *Nationalism, Self-Determination and Political Geography*, Routledge Publishers, London – New York 1988.
- Kingsbury B., "Indigenous Peoples" in *International Law: A Constructivist Approach to the Asian Controversy*, "The American Journal of International Law" 1998, Vol. 92.
- Kolas A., Thowsen M.P., *On the Margins of Tibet: Cultural Survival on the Sino-Tibetan Frontier*, University of Washington Press, Seattle 2006.
- Koskenniemi M., *National Self-Determination Today: Problems of Legal Theory and Practice*, "International and Comparative Law Quarterly" 1994, Vol. 32.
- Lai H.H., *The Religious Revival in China*, "Copenhagen Journal of Asian Studies" 2003, Vol. 18.
- Lal D., *Indo-Tibet-Conflict*, Kalpaz Publications, Delhi 2008.

## RESEARCH ARTICLES

Jaspreet K. Sandhar

---

- Lemkin R., *Genocide as a Crime under International Law*, "American Journal of International Law" 1947, Vol. 41.
- Looney K.E., *China's 'Building a New Socialist Countryside': The Ganzhou Model of Rural Development*, "American Political Science Association, 2012 Annual Meeting Paper".
- Luo Z. (ed.), *Religion Under Socialism in China*, M.E. Sharpe Inc., Armonk – New York – London 1991.
- Mako S., *Cultural Genocide and Key International Instruments: Framing the Indigenous Experience*, "International Journal on Minority and Group Rights" 2012, Vol. 19.
- Measures to determine qualification and employment of religious instructors in Tibetan Buddhist Monasteries, 3 December 2012.
- Merry S.E., *Changing Rights, Changing Culture*, in: J.K. Cowan, M.-B. Dembour, R. Wilson, *Culture and Rights: Anthropological Perspectives*, Cambridge University Press, New York 2001.
- Merry S.E., *Constructing a Global Law – Violence Against Women and the Human Rights System*, "Law and Social Inquiry" 2003, Vol. 28.
- Michaels M.A., *Indigenous Ethics and Alien Laws: Native Traditions and the United States Legal System*, "Fordham Law Review" 1998, Vol. 66.
- Mills M.A., *Identity, Ritual and State in Tibetan Buddhism: The Foundations of Authority in Gelukpa Monasticism*, Routledge Curzon Publishers, New York 2010.
- Morrison W., *Criminology, Civilisation and the New World Order*, Routledge Cavendish, Abingdon 2006.
- Morsink J., *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, University of Pennsylvania Press, Philadelphia 2000.
- Moses A.D., *Raphael Lemkin, Culture and the Concept of Genocide*, in: D. Bloxham, A.D. Moses (eds.), *The Oxford Handbook of Genocide Studies*, Oxford University Press, New York 2010.
- Nersessian D., *Rethinking Cultural Genocide under International Law*, "Human Rights Dialogue" 2005, No. 2.
- Nimni E., *National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism*, "Ethnopolitics" 2007, Vol. 6.
- Norbu D., *China's Tibet Policy*, Routledge Publishers, Durham 2001.
- Norbu J., *Exile: Resistance and Diplomacy*, in: R. Barnett, S. Akiner (eds.), *Resistance and Reform in Tibet*, C. Hurst & Co. Publishers Ltd., London 1994.
- Pulitano E. (ed.), *Indigenous Rights in the Age of the UN Declaration*, Cambridge University Press, New York 2012.
- Robin F., *The "Socialist New Villages" in the Tibetan Autonomous Region: Reshaping the Rural Landscape and Controlling its Inhabitants*, "China Perspectives" 2009, No. 3.
- Ryser R.C., *The UN Declaration on the Rights of Indigenous Peoples: Tibet*, "Fourth World Eye Blog", Center for World Indigenous Studies, 19 September 2008.
- Sautman B., *Colonialism, Genocide, and Tibet*, "Asian Ethnicity" 2006, Vol. 7.
- Sautman B., *'Cultural Genocide' and Tibet*, "Texas International Law Journal" 2003, Vol. 38.
- Sautman B., *Cultural Genocide in International Contexts*, in: B. Sautman (ed.), *Cultural Genocide and Asian State Peripheries*, Palgrave Macmillan, New York 2006.

- Sautman B., *Tibet's Suicidal Politics*, "East Asia Forum. Economics, Politics and Public Policy in East Asia and the Pacific", 21 March 2012.
- Schabas W.A., *Genocide in International Law: The Crime of Crimes*, 2<sup>nd</sup> edn., Cambridge University Press, New York 2009.
- Shakya T.W., The Tibet Question [written Interview], "New Left Review" 51, May-June 2008.
- Shiromay A.A. (ed.), *The Spirit of Tibet, Universal Heritage: Selected Speeches and Writings of HH the Dalai Lama XIV*. Allied Publishers, New Delhi 1995.
- Short D., *Cultural Genocide and Indigenous Peoples: A Sociological Approach*, "International Journal of Human Rights" 2010, Vol. 14.
- Sloane R.D., *Tibet, Cynical Sinicism and the Tragedy of Self-immolations*, "East Asia Forum. Economics, Politics and Public Policy in East Asia and the Pacific", 9 May 2012.
- Smith W.W., *The Nationalities Policy of the Chinese Communist Party and the Socialist Transformation of Tibet*, in: R. Barnett, S. Akiner (eds.), *Resistance and Reform in Tibet*, C. Hurst & Co. Publishers Ltd., Delhi 1994.
- Smith W.W., *China's Tibet?: Autonomy or Assimilation*, Rowman & Littlefield Publishers, Lanham 2006.
- Smith W.W., *Tibet's Last Stand? The Tibetan Uprising of 2008 and China's Response*, The Rowman & Littlefield Publishing Group, Lanham 2009.
- Stamatopoulou E., *Taking Cultural Rights Seriously: The Vision of the UN Declaration on the Rights of Indigenous Peoples*, in: S. Allen, A. Xanthaki (eds.), *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Hart, Oxford 2011.
- State Administration for Religious Affairs of the People's Republic of China (2 December 2012). Buddhist Temples by the Teacher Qualification and Appointment of the Tibetan Way. *National Bureau of Religious Affairs of Political Division*, Beijing [not available in English].
- Subramanya N., *Human Rights and Refugees*, APH Publishing, New Delhi 2004.
- Summers J., *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*, Martinus Nijhoff Publishers, Leiden – Boston 2007.
- The Concept of Indigenous Peoples*, Workshop on Data Collection and Disaggregation for Indigenous Peoples, United Nations, Department of Economic and Social Affairs, New York, 19-21 January 2004.
- "They say we should be Grateful": *Mass Rehousing and Relocation Programs in Tibetan Areas of China*, "Human Rights Watch", 27 June 2013.
- Tylor E.B., *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Language, Art and Custom*, John Murray, London 1920.
- UN Declaration on the Rights of Indigenous Peoples, 13 September 2007, UN Doc. A/RES/61/295 (2007).
- UN Draft Universal Declaration on the Rights of Indigenous Peoples, 23 August 1993, UN Doc. E/CN.4/Sub.2/1993/29; Un Doc. E/CN.4/Sub.2/1994/2/ Add.1.
- UNGA Resolution 1514 (XXV), Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, UN Doc. A/RES/1514(XV) (1960).
- UNGA Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, UN Doc. A/RES/25/2625(XXV) (1970).

## RESEARCH ARTICLES

Jaspreet K. Sandhar

---

Universal Declaration of Human Rights, 10 December 1948, UNGA Res 217 A(III).

Vrdoljak A.F., *International Law, Museums and the Return of Cultural Objects*, Cambridge University Press, Cambridge 2006.

Wangdu K., *China's Minority Education Policy with Reference to Tibet*, "Tibetan Review" June 2011.

Wiessner S., *The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges*, "European Journal of International Law" 2011, Vol. 22.

Xanthaki A., *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, Cambridge University Press, Cambridge 2007.