

Tibet & UN

TIBET AND THE UNITED NATIONS

Introduction

Tibet is once again on the international agenda. The killings, arrests, torture and imprisonment of Tibetans peacefully demonstrating for independence and human rights in Lhasa and elsewhere in Tibet drew attention to the plight of the Tibetan people. His Holiness the Dalai Lama's initiatives for a negotiated solution to the question of Tibet focused the world on the source of the problem: the illegal occupation of Tibet by China.

This paper explores the role of the United Nations in the search for a solution. First, it discusses the chief international legal principles which bear on the systematic violation of the Tibetans' human rights by the People's Republic of China (PRC). Next, it reviews Tibet's record at the United Nations.

A. China's Record of Human Rights Abuses in Tibet

Self-Determination. Four decades of military occupation by the People's Republic of China (PRC) bear witness to numerous, fundamental human rights abuses in Tibet. The gravest abuse is deprivation of the Tibetan people's right to self-determination--their right as a distinct people to "freely determine, without external interference, their political status and freely pursue their economic, social and cultural development."¹

There can be no question that the PRC today denies Tibetans their right to self-determination. The PRC has carved up Tibet, rendering it less than half of its territory into a so-called "autonomous region" and appending the rest to historically Chinese provinces. The PRC has imposed its own political and economic system on Tibet, suppressing resistance with an estimated quarter million troops. It has exploited and exported Tibet's natural resources. It has restricted and in some cases exterminated the indigenous practice of Buddhism which has become a national characteristic of Tibet. In short, in virtually every detail of their lives, Tibetans are denied the right to "freely determine, without external interference, their political status and freely pursue their economic, social and cultural development."

Perhaps the cruelest mark of this denial of self-determination lies in the deliberate policy of population transfer of Chinese into Tibetan territory. While appropriating and exporting so much of Tibet's resources, the PRC has been importing settlers and soldiers. They come to stay. Tibetans and outside observers have voiced alarm at this practice, warning that Tibetans may very soon become a minority in their own country. The arrival of large numbers of Chinese has produced "Tibetan ghettos" in the principle cities. It has brought inflation and unemployment. It has resulted in discrimination in housing, education and health care. What the PRC originally obtained by force of arms, it now seeks to secure by force of numbers.

* Prepared by the International Committee of Lawyers for Tibet.

Individual Human Rights Violations. Self-determination is a prerequisite to the enjoyment of the other fundamental rights. Linked to the denial of self-determination is a wide array of other reported human rights violations. These include:

- a systematic pattern of discrimination in housing, employment, health care, and education;
- denial of freedom of expression;
- denial of the freedom of assembly and association;
- denial of the freedom of exercise of religion; and
- denial of freedom to travel.

There are reliable reports that Tibetans have been arbitrarily detained, tortured in custody, and executed for peaceful protest against the PRC's continued occupation of Tibet. Outside observers report that Tibet's natural resources have been stripped from it for the economic benefit of the PRC.

The imposition of martial law in Lhasa on 8 March 1989 failed to deter the Tibetans' willingness to speak out for independence and suffer the consequences. When the PRC nominally lifted martial law on 30 April 1990, it did so without evidence of significant improvement in the human rights conditions or indications that dissent had ceased. To the contrary, reports of unrest, which continue to emerge despite the PRC's clampdown, indicate that the situation continues to deteriorate.

B. Recognition by the International Community of the Tibetan People's Claim.

In 1959, in 1961 and again in 1965, the United Nations General Assembly passed Resolutions expressing "grave concern" at the "violation of fundamental human rights of the Tibetan people", the suppression of their distinctive cultural and religious life and "the autonomy which the Tibetans has traditionally enjoyed."² The most comprehensive of these resolutions, Resolution 1723 (XVI), recognized the right to the self-determination for the Tibetan people. From the debates leading up to its adoption it is evident that the resolution was primarily founded upon Articles 1³ and 55⁴ of the United Nations Charter, on the Universal Declaration of Human Rights, and on the Declaration on Granting Independence to Colonial Countries and Peoples.⁵

In the course of discussing Resolution 1723 (XVI), many Member States considered it to be "the minimum pronouncement" that the United Nations should make. Moreover, in 1959, 1960, 1961 and 1963 the Member States debated whether it was appropriate to discuss Tibet when the PRC was not a member. On each occasion they overwhelmingly voted to leave the item on the agenda, concluding that violation of the fundamental rights and freedoms of peoples is an urgent situation and that it was the obligation of the U.N. to address the problems facing Tibet.

The delegate from Malaysia stressed that passing Resolution 1723 (XVI) was:

"consistent with the spirit of the resolutions which the Assembly has passed on the elimination of colonialism, such as resolution 1514 (XV). As stated in that resolution, the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation."⁶

Ireland, a co-sponsor of the resolution, stated that the terms of the 1960 U.N. Declaration on Granting of Independence to Colonial Countries and Peoples was "just as applicable to Tibet as to any other territory", and reminded the U.N. Members that the Belgrade Conference of 1961, which endorsed the Declaration, called for the eradication of colonialism in "all its manifestations."⁷

The United States expressed its position in a statement by the Secretary of State, Mr. Christian Herter, on 20 February 1960 as follows:

"While it has been the historical position of the United States to consider Tibet an autonomous country under the suzerainty of China, the American people have also traditionally stood for the principle of self-determination. It is the belief of the United States Government that this principle should apply to the people of Tibet and that they should have the determining vote in their own political destiny."

The United States confirmed this position in the General Assembly debated on 19 December 1961 when it added that "the United States believes that our objectives must include the restoration of human rights of the Tibetan people and their national right of self-determination."⁸

The Republic of China (Taiwan), in arguing for the passage of Resolution 1723 (XVI), said it represented "the minimum that the General Assembly can do for the Tibetan people."⁹

Thailand, which also sponsored the Resolution, concluded that for any state not to support the right of the Tibetans to self-determination "would be tantamount to denying to the Tibetan people the very right that has been advocated for all."¹⁰

Subsequent to Resolutions 1723 (XVI), Tibet was not mentioned again at the United Nations until 1985. A number of factors contributed to the silence. Perhaps chief among them was pressure by the PRC, which gained admissions to the United Nations in 1971. During those years of silence by the UN, the Tibetan people struggled with the urgent demands of establishing an exile community. But at no time did they act in any way to abandon their non-derogable right to self-determination, or cease resistance to the PRC occupation.

It was only in 1985, at the Forty-first Session of the Commission on Human Rights¹¹, that the representative of the International Fellowship of Reconciliation, a non-governmental organization (NGO), expressed concern over the inability of PRC officials to implement the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief¹². The PRC delegation replied that religious intolerance could not possibly exist in Tibet. It quoted the Constitution of the PRC and listed religious associations set up by the government.

The following year, at the Forty-second Session of the Commission on Human Rights, the International Fellowship of Reconciliation requested the United Nations offer assistance to PRC in implementing the Declaration on Religious Intolerance. At the Forty-third Session of the Commission on Human Rights in 1987, the International Fellowship of Reconciliation welcomed the appointment of the Special Rapporteur on Religious Intolerance. The NGO representative cited systematic attempts of the PRC government to eradicate Tibetan culture and religion.

C. Revival of the United Nations Option

In September and October 1987, Tibetans in Lhasa took to the streets following the public trial and execution of two Tibetans who had peacefully expressed their opposition to the Chinese occupation. At the February 1988 meeting of the Forty-fourth Session of the Commission on Human Rights, the question of Tibet was taken up with renewed intensity. In great part the response was due to eyewitnesses who, under the auspices of the International Fellowship of Reconciliation, provided documentation, notarized statements and testimony regarding the situation in Lhasa.

The Special Rapporteur on Summary or Arbitrary Executions, Mr. S. Amos Wako, included information regarding Tibetan victims in his report,¹³ and the Special Rapporteur on the Elimination of Religious Intolerance, Mr. Angelo Vidal d'Almeida Ribero, listed three instances of non-compliance with the Declaration on Religious Intolerance¹⁴. Amnesty International, among other NGOs, condemned PRC repression of the Tibetan people. The PRC responded that the "order prevailed" and that there would be no recurrence of what it viewed as an isolated incident.

At the Fortieth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August, 1988 NGOs, including Amnesty International, Minority Rights Group and Pax Christi, charged the PRC with continued repression in the wake of the political demonstrations. These NGOs expanded the discussion to include the PRC's colonization of Tibet, discrimination in employment and systematic destruction of the Tibetan religion and culture. When Sub-Commission expert, Louis Joinet, requested more information in the plenary meeting and drafted a resolution to that effect, opposition by the PRC delegation became intense. But it was clear that the question of Tibet had not escaped scrutiny by the members of the Sub-Commission.

Heightened interest in the Tibetan situation was confirmed when Canada and the Netherlands raised the issue of Tibet at the Forty-fifth Session of the Commission on Human Rights in 1989. During the meeting, the reports of the Special Rapporteur on Torture¹⁵, Summary and Arbitrary Executions¹⁶, and Religious Intolerance¹⁷, as well as the Working Group on Enforced or Involuntary Disappearances¹⁸, all mentioned violations by the PRC in Tibet. During the last week of the Commission, repeated demonstrations and bloodshed in Lhasa culminated in the imposition of martial law on 7 March 1989. The ranks of NGOs involved on behalf of Tibet swelled, producing a seventeen organization appeal to the Commission to address the deteriorating situation in Tibet.

In August 1989, the Forty-first Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities focused its attention on the 4 June 1989 massacre in Tiananmen Square. Support for Tibet continued to grow with statements by four Sub-Commission experts, acceptance of NGO documents for publication on the issues of self-determination (Pax Christi)¹⁹, torture (International Association of Educators for World Peace)²⁰ and children in detention (Defense for Children International)²¹. Although submitted in a timely manner, written statements on forced abortions (International Commissions of Health Professionals) and discrimination (Minority Rights Group) were not published. Fourteen NGOs signed a joint statement addressing the right of the Tibetan people to self-determination. Ten included Tibet in oral statements before the plenary session.

On 9-10 August 1990, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) reviewed the PRC's third and fourth periodic reports. CERD was established in 1970 to oversee the implementation of the Convention of the Elimination of Racial Discrimination. The experts asked detailed questions regarding the PRC's record in Tibet. Questions covered a range of topics, including reports of discrimination in restrictions on travel and religious training and practice; in employment, education, housing, and health care; in representation in local government; and in forced sterilization of women. The experts discussed allegations of Chinese racial superiority, vastly disproportionate illiteracy among Tibetans, transfer of Chinese settlers into Tibet, exploitation of Tibet's natural resources and exploitation of Tibetan art and religious artifacts. They noted reports that Tibetan demonstrators had been tortured in custody -- despite PRC's ratifications of the Torture Convention. The experts requested supplementary information from the PRC on these issues.

At the Forty-Second Session of the Sub-Commission in 1990 Nyima Tsamchoe, a Tibetan school girl representing the International Association of Educators for World Peace, testified about her separate and unequal education and the conditions she faced during several months in detention. Sangye, a Tibetan who served as a Judge of the People's High Court prior to escaping into exile stated that because the PRC considered him a member of a minority, he was not allowed to study international law. In his testimony on behalf of the International Fellowship of Reconciliation he described restrictions on his right to travel. Both individuals spoke Tibetan on the plenary floor for the first time in U.N. history.

At this session NGOs addressed the issues of martial law, discrimination, population transfer and self-determination. Pax Christi proposed a resolution on the Human Rights dimensions of Population Transfer, and a resolution on the subject was adopted by the Sub-Commission (Res.1990/17). Two experts discussed Tibet and one drafted a resolution calling for the assistance of U.N. Advisory Service to address conditions in Tibet. The Tibetan representatives present declined the resolution on the ground that submission to U.N. Advisory Services (which would work with the PRC as the member country involved) might imply an admission that the PRC has authority to administer affairs in Tibet. Their position comported with the Tibetans' long standing refusal to compromise their right to self determination.

At the Forty-fifth Session of the General Assembly in 1990, Sweden, Australia, Norway, Canada and the European Community criticized the human rights record of the PRC. At the Third Committee the PRC reiterated its position that in discussing human rights at the UN, non-interference in the internal affairs of Member States is essential and the human rights bodies had exceeded their mandate under the UN Charter in their treatment of country situations. The PRC further stated that collective rights preempt individual rights and that economic, social, and cultural rights prevail over civil and political rights. An initiative led by the PRC in the Third and Fifth Committees to decrease available resources and funding for the UN Human Rights Centre failed.

At the Forty-seventh Session of the Commission on Human Rights in 1991 representative of the European Committee, the United States, Norway, Canada, Sweden and Austria expressed concern over the human rights situation in Tibet. In addition to generally addressing human rights violations, the United States referred to the use of overwhelming force against pro-independence demonstrators. Norway discussed the denial of freedom of expression for Tibetans. Tibet was again addressed by the Special Rapporteur on Torture³¹, Religious Intolerance³², and Summary or Arbitrary Executions³³, as well as the Working Group on Enforced or Involuntary Disappearances³⁴.

Pax Christi addressed population transfer as a means of violating the Tibetans' right to self-determination and proposed that a Working Group on the right to self-determination be formed with active participation of peoples such as the Tibetans who currently have no representation at the UN. The comments drew a rebuttal from the PRC³⁵. The International Organization for the Elimination of All Forms of Racial Discrimination, the International League for Human Rights and Minority Rights Group discussed deaths from torture by prison officials, the use of model prisons for visiting journalists and delegations, and distributed dossiers on 20 cases of prison torture. The PRC responded that the allegations were not of "separatists and foreigners with ulterior motives" and an appeal was made to allow access by the International Red Cross. Amnesty International reproached the Commission for "failing to take action on the situation in Tibet despite convincing evidence...(and) the long-term pattern of...violations." The International Council of Voluntary Organizations recalled the U.N. resolutions on Tibet's right to self-determination and called on the PRC to accept the Dalai Lama's peace plan.

1 The collective right of self-determination is so defined in the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations (G.A. res. 2625 (XXV) of 24 October 1970). It assumes a prominent position in the United Nations Charter, and is similarly defined in Article 1 of both the International Covenant on Economic, Social and Cultural Rights and Cultural Rights. It is deemed "a prerequisite to the full enjoyment of all fundamental rights." U.N. General Assembly resolution 637A (VII) of 16 December 1952.

2 G.A. Res. 1353, 14 U.N., GAOR (1959); G.A. Res. 1723, 16 U.N. GAOR (1961); G.A. Res. 2079, 20 U.N. GAOR (1965). For the full wording of these resolutions, see Appendix.

3 Article 1(2) of the United Nations Charter provides that a purpose of the United Nations is:

(t) 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.

4 Article 55 of the United Nations Charter provides: With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination, the United Nations shall promote:

1. higher standards of living, full employment, and conditions of economic and social progress and development;
2. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

5 G.A. res. 1514 (XV) of 14 December 1960.

6 G.A. 16th Sess., 1961, Item a/4848, "Question of Tibet," December 19, 1961.

7 U.N. General Assembly, 16th Sess., 1961, Item A/4848 "Question of Tibet", December 19, 1961, Statement of Mr. Aiken.

8 Id. (statement of Mr. Plimpton, head of the U.S. delegation, on December 19, 1961).

9 Id. (statement of Mr. Hsueh, head of the Republic of China's delegation).

10 Id. (statement of Thailand).

11 Copies of statements pertaining to Tibet made at the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities from 1985 to the present are available from the offices of the International Committee of Lawyers for Tibet.

- 12 G.A. res. 35/36 of 25 November 1981.
- 13 U.N. Doc. E/CN.4/1988/22.
- 14 U.N. Doc. E/CN.4/1988/45.
- 15 U.N. Doc. E/CN.4/1989/15.
- 16 U.N. Doc. E/CN.4/1989/25.
- 17 U.N. Doc. E/CN.4/1989/44.
- 18 U.N. Doc. E/CN.4/1989/18.
- 19 U.N. Doc. E/CN.4/1989/NGO/2.
- 20 U.N. Doc. E/CN.4/1989/NGO/11.
- 21 U.N. Doc. E/CN.4/1989/NGO/1.
- 22 U.N. Doc. E/CN.4/1990/46.
- 23 U.N. Doc. E/CN.4/1990/17.
- 24 U.N. Doc. E/CN.4/1990/22.
- 25 U.N. Doc. E/CN.4/1990/13.
- 26 U.N. Doc. E/CN.4/1990/NGO/9.
- 27 U.N. Doc. E/CN.4/1990/NGO/8.
- 28 U.N. Doc. E/CN.4/1990/NGO/58.

29 Participating organizations include the following: Disabled Peoples' International, Friends of the Earth, Habitat International Coalition, Human Rights Advocates, International Association of Educators for World Peace, International Association for the Defense of Religious Liberty, International Commission of Jurists, International Coalition of Jewish Women, International Fellowship of Reconciliation, International League for Human Rights, International League for the Rights and Liberation of Peoples, International Organization for the Elimination of All Forms of Racial Discrimination, International Union of Students, Liberation, Minority Rights Group, Pax Christi International, Pax Romana, Regional Council for Human Rights for Asia, World University Service, and the World Union for Progressive Judaism.

- 30 U.N. Doc. E/CN.4/1990/52.
- 31 U.N. Doc. E/CN.4/1991/17.
- 32 U.N. Doc. E/CN.4/1991/56.
- 33 U.N. Doc. E/CN.4/1991/36.
- 34 U.N. Doc. E/CN.4/1991/20.
- 35 U.N. Doc. E/CN.4/1991/73.