



Tibet: a case of cultural Genocide?



C.M. Dunnink

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Tilburg University

Supervisor: mr.dr. A.K. Meijknecht

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Tibet: a case of cultural genocide?

To what extent can the intentional destruction of a culture, in casu the culture of the Tibetans, be qualified as a violation of an international legal standard?

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1. Introduction

1.1 General introduction

“Last October two Tibetans were executed due to their participation in violent revolts in March 2008. These two executions are the first ones who are related to these unrests in Tibet which led to the death of at least 22 people. According to Tibetans in exile, more than 200 people died while China tried to suppress these revolts. However it is for the first time that Chinese authorities affirm that people have been executed with regard to these uprisings.

These disturbances arose after peaceful demonstrations under the support of Buddhist Monks. In Lhasa, Tibet’s capital, stores were set on fire and demonstrators attacked the Han-Chinese. The uprisings and the violence were spread over other Chinese provinces, like Qinghai, Gansu and Sichuan.”¹

On October 1st, 1949, the People’s Republic of China (PRC) was established and, as Chairman Mao Zedong proclaimed in Tiananmen Square, “China has stood up”. On coming to power, the Chinese Communist government made it clear that the last remaining task for the victorious People’s Liberation Army (PLA) was the ‘liberation’ of Tibet. China had already developed strategies for the incorporation of what they regarded as ‘Chinese national minorities’ within the framework of the PRC. The Chinese Communist Party (CCP) used a combination of persuasion and threat in the early years of their occupation of Tibet. They were trying to win the leading elite over while leaving no doubt of China’s military might. And in October 1950, China launched a full scale invasion and it fully occupied Tibet.²

The first years of China’s occupation, the policies towards the Tibetan could be described as tolerant and supportive. In a later period, policies changed and China ruled in Tibet with a firm hand. During the years of the Cultural Revolution, which were the worst years under a foreign ruler, the Tibetan culture was badly damaged. After that period, China created the Tibetan Autonomous Region (TAR), which should give the Tibetans more autonomy. However, the CCP tried to increase their control within Tibet with the establishing of the TAR.³

¹ BBC Reuters ‘China executeert Tibetanen voor rellen’ Rotterdam: NRC Handelsblad, 27 October 2009.
<http://www.nrc.nl/buitenland/article2398164.ece/China_executeert_Tibetanen_voor_rellen>

² International Campaign for Tibet, ‘A Great Mountain Burned by Fire: China’s crackdown in Tibet’, International Campaign for Tibet, March 2009, p.2-3.

³ Minority Rights Group International, ‘World Directory of Minorities and Indigenous Peoples – China: Overview’, London: Minority Rights Group International, July 2008, p. 4 & A Writenet Report by Professor Colin P. Mackerras, ‘People’s Republic of China: Background paper on the situation of the Tibetan population’ New York: The leading immigration law publisher, February 2005, p. 10-11.

The Tibetans were not happy with a foreign ruler and throughout the years there were several uprisings in Tibet. China, who had a zero-tolerance policy concerning separatist movements, tried to crack down the uprisings as soon as possible.⁴ The revolts in March 2008 were linked with the Beijing Olympic Games and could not be cracked down immediately, since Tibetans and Human Rights activists all over the world tried to get a hold on the attention of the international community for the problems in Tibet. To get a hold on that specific attention had been rather difficult, since China has been successful in averting attention concerning this issue. On International level, China blocked the Human Rights issues in Tibet with a procedural move called a Motion for No Action. This means that the Commission on Human Rights will take no further action to the human rights violations in China. Thus, it gives China a free passage to do what they want in Tibet.⁵

As a result of China's policy, thousands of monasteries and cultural sites were destroyed or badly damaged by the Red Guards throughout the years. Also sacred books were burned and thousands of monks and nuns were imprisoned, tortured and killed.⁶ Alongside the restrictions and the violence against Tibet's religion, other aspects of China's policy in Tibet are the population transfer of Han Chinese into Tibet, family planning and language discrimination. According to the president of the International Campaign for Tibet, today the main human rights problems in Tibet are: 'the violations which includes the areas of arbitrary detention, disappearances, torture, administration of justices, religious freedom, right to development, forced eviction and population transfer'.⁷

Eventually, this policy of China concerning Tibet could destroy the cultural and national identity of the Tibetan people and it may even create a form of cultural genocide."⁸

⁴ Ibid

⁵ Jennifer Brainard, 'When the Iron Bird Flies: The Disappearance of Tibet.Cultural genocide', Historywiz. <<http://www.historywiz.com/cultgenocide.htm>>

⁶ Ibid & Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples – China: Tibetans', London: Minority Rights Group International, July 2008, p. 2.

⁷ Bhuchung K. Tsering the Vice President of International Campaign for Tibet, 'At the Hearing on the UN Human Rights Council's Universal Periodic Review of China by the House of representatives' Tom Lantos Human Rights Commission, 27th of January 2009, p. 1.

⁸ Barry Sautman, 'Cultural genocide and Tibet', Austin: Texas International Law Journal, 2003: Vol. 38:173, p.196-197.

1.2 The problem

The Human Rights of Tibetans are grossly violated by China and the Tibetan culture is in danger. However, nothing seems to be done by the international community. An explanation could be that China is a permanent member of the UN Security Council and other States do not want to have a bad relationship with China or States want to be friendly with China with regard to the economic interest.

Yet this is a legal research. Human Right violations and the intentional destruction of a culture are serious allegations towards China. Destroying a culture can also be defined as cultural genocide, which could be described as attacks beyond the physical and/or biological elements of a group and attempts to eliminate its wider institutions. This is done in a variety of ways, and often includes the abolition of a group's language, restrictions upon its traditional practices and ways, the destruction of religious institutions and objects, the persecution of clergy members, and attacks on academics and intellectuals.⁹ However, there are uncertainties about what cultural genocide exactly means.

Cultural genocide is an egregious crime and therefore it will be widely discussed in this research. However, it is not the only aspect of this research and therefore this research also deals with other international legal standards. The central question will be: to what extent can the intentional destruction of a culture, in casu the culture of the Tibetans, be qualified as a violation of an international legal standard?

1.3 The structure of the research

This research is structured around the central question mentioned above.

To what extent can the intentional destruction of a culture, in casu the culture of the Tibetans, be qualified as a violation of an international legal standard?

The research consists of four chapters and each one will contribute to the answer of this question.

⁹ David Nersessian, 'Rethinking cultural genocide under International Law', New York: Carnegie Council for Ethics in International Affairs, April 22, 2005.
<http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html>

Chapter 2 deals with China's minority policy. It gives an overview of the legal obligation to which China is bound on national and international level. In addition to this legal framework, the chapter also deals with the historical background of Tibet and it shows China's policy concerning Tibet.

Chapter 3 highlights the claim for cultural genocide in Tibet. On the one hand, it explains why the Dalai Lama and the Tibetan Government in Exile (TGIE) claim cultural genocide in Tibet and on the other hand it seeks an empirical basis for this claim of cultural genocide.

Chapter 4 explores the international theoretical framework. In this chapter several international legal standards will be discussed in order to find suitable international provisions which can denounce the events in Tibet. The legal standards which shall be discussed are: genocide, cultural genocide, ethnocide, destruction of cultural heritage, freedom of religion and the right to language.

And finally, chapter 5 will contain the answer to the central question.

2. China's minority policy and its story of Tibet

2.1 China's policy concerning minorities

It was shortly after the founding of the PRC that they established the State Nationalities Commission to identify ethnic minority groups within China. Since then, more than 400 groups applied for minority designation. Today there are only 56 ethnic groups officially registered¹⁰, even though the 1964 census registered 183 nationalities.¹¹ The majority of China's population is the Han ethnic group; together they are representing 91.6 percent of China's population. The other 55 ethnic groups are customarily referred to as ethnic minorities.¹²

The Han people speak seven languages, with Mandarin or Putonghua as the official and most-used language. The second most-spoken language is Cantonese, which is spoken in Hong Kong and southern China. These Han people can be found throughout the country, but they are mainly living in the central, east and southeast areas. The other 55 ethnic groups, speaking in their own language, are also spread over vast areas and can be found in approximately 64.3 percent of China. They are mainly living in the border areas of northeast, north, northwest and southwest China. The province Yunnan in the southwest has the greatest diversity of ethnic groups and is home to more than 20 ethnic groups.¹³

When the PRC came into existence, the policies towards minorities could be described as tolerant and supportive. Nevertheless, these minority policies changed throughout history towards repressive and also back again towards supportive. However, since the mid-1990s, the Chinese authorities changed to a more repressive and less tolerant attitude towards minorities, especially with regard to the largest minority groups. This period is for minorities a time of increasing limitations concerning their languages and a consequent loss of employment and educational opportunities.¹⁴

Providentially, the PRC is party to many international treaties and conventions and therefore they have the obligation to respect, protect, promote and to fulfill human rights of all its

¹⁰ Richard H. Thompson, 'Ethnic Minorities and the Case for Collective Rights', Hoboken: Wiley-Blackwell, American Anthropologist, New Series, Vol. 99: No. 4, December 1997, p. 795 – 796.

¹¹ Joshua Castellino & Elvira Dominguez Redondo, 'Minority Rights in Asia: A Comparative Legal Analysis', New York: Oxford university press 2006, p. 115.

¹² Chinese Government's Official Web Portal, 'Fifty-six ethnic groups', 2006. <http://english.gov.cn/2006-02/08/content_182626.htm>

¹³ Ibid

¹⁴ Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples – China: Overview', London: Minority Rights Group International, July 2008, p. 4.

citizens and thus, they also have the obligation to protect the rights of ethnic minorities.¹⁵ Under international law there have been two ancient problems concerning minorities. First, there is the problem of non-discrimination and equality and second, there is the issue concerning the protection and promotion of the identity of minorities. The principles of non-discrimination and equality are established in the UN Charter and they can also be found in the ICCPR and the ICESCR. Additionally, article 27 of the ICCPR also provides for a more specific elaboration of minority rights:¹⁶

“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.”¹⁷

Despite the fact that China has not ratified the ICCPR yet, international law still requires that States take measures to effect human right obligations. With respect to minority rights, States are obligated to:¹⁸

1. recognize minority rights in their national laws and policies;¹⁹
2. adopt legislative and financial measures to ensure the effective implementation of minority rights;²⁰
3. adopt legislative and enforcement measures to ensure that minority rights are not threatened by the State or third parties;²¹
4. provide effective remedies for violations of minority rights;²²

¹⁵ Minority Rights Group International: HRIC, ‘*China: Minority Exclusion, Marginalization and Rising Tensions*’, London: Minority Rights Group International, February 2007, p. 10 – 11.

¹⁶ Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 33- 34.

¹⁷ Article 27 of the International Covenant on Civil and Political Rights

¹⁸ Ibid, nr. 16: p. 35

¹⁹ Ibid, nr. 16: p. 35 & Article 2.2 of the International Covenant on Civil and Political Rights & Article 1.2 of the International Covenant on Economic, Social and Cultural Rights.

²⁰ Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 36 & Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination.

²¹ Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 36 & General Comment No. 23: The rights of minorities (Art. 27): 08/04/94. CCPR/C/21/Rev.1/Add.5, General Comment No. 23.

²² Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 36 & Article 2.3 of the International Covenant on Civil and Political Rights.

5. Undertake regular evaluations, planning, and oversight to ensure accountability and progressive realization of minority rights.²³

On top of these obligations forthcoming from international law, there are also domestic obligations. The protection of ethnic minority rights in the PRC is based on two concepts. First, ethnic minorities are guaranteed the same basic civil and political rights as all other groups. Second, minorities are given additional protections due to their minority status through a couple of policy instruments. The fundamental element of the minority policy of the PRC can be found in Article 4(1) of the PRC Constitution of 1982.²⁴ The Article reads as follows:

“All nationalities in the People’s Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China’s nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.”²⁵

It is remarkable to notice that this Article highlights the importance attributed to national unity. This reflects, together with the importance of the maintaining of the public order, China’s attitude towards minority rights. This attitude is further reflected in Article 28 of the Constitution:²⁶

“The State maintains public order and suppresses treasonable and other criminal activities that endanger State security; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals.”²⁷

Furthermore, in accordance with the ‘special characteristics and needs’ of the minorities, the State shall assist minority areas with the development of their economy and culture. Also

²³ Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 36 & Article 2 (3) of the Declaration on Minority Rights.

²⁴ Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 7.

²⁵ Article 4 of the Constitution of the People’s Republic of China (1982).

²⁶ Joshua Castellino & Elvira Dominguez Redondo, ‘*Minority Rights in Asia: A Comparative Legal Analysis*’, New York: Oxford university press 2006, p. 118.

²⁷ Article 28 of the Constitution of the People’s Republic of China (1982).

autonomy shall be implemented in those areas where minorities are concentrated. The basic structure for this autonomy can be found in the Constitution but also in the Law of the People's Republic of China on Regional National Autonomy (Autonomy Law) of 1984.²⁸ Regional autonomy is defined in the preamble of the Autonomy Law and reads as follows:²⁹

“Regional national autonomy means that the minority nationalities, under unified State leadership, practice regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. Regional national autonomy embodies the State's full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all its nationalities.”³⁰

Thus, regional autonomy is aimed at areas where minority nationalities live in concentrated communities, whether in regions, prefectures or counties. Nevertheless, it is important to realize that these autonomous areas are still ‘integral parts of China’.³¹

The organs of the self-government of these areas are delegated local legislative powers. They have the authority to engage in foreign trade, to manage and use natural resources and to manage the provisions of education, health care and media. However, the Autonomy Law also contains limits in terms of legislative authority. For example, autonomous regions are monitored and controlled by the central government and CCP policy, and therefore in some cases autonomous areas have less power than provinces.³² An illustration, which reflects this statement, is Article 7 of the PRC Autonomy Law:

“Place the interest of the State as a whole above anything else and make positive efforts to fulfill the tasks assigned by State organs at higher levels.”³³

Ultimately, the entire construction for the protection of minority nationalities is built on Article 4 and 28 of the Constitution, which are highlighting the need for State stability and unity.

²⁸ Minority Rights Group International: HRIC, ‘*China: Minority Exclusion, Marginalization and Rising Tensions*’, London: Minority Rights Group International, February 2007, p. 11-12 & Theodore C. Sorensen & David L. Phillips, ‘*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*’, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 7 – 8.

²⁹ Joshua Castellino & Elvira Dominguez Redondo, ‘*Minority Rights in Asia: A Comparative Legal Analysis*’, New York: Oxford university press 2006, p. 130.

³⁰ The Preamble of the Law of the People's Republic of China on Regional National Autonomy

³¹ Ibid, nr. 29

³² Ibid, nr. 28

³³ Article 7 of the Law of the People's Republic of China on Regional National Autonomy

Furthermore China has many other laws, regulations, policies and statements which are addressing the importance of equality among the ethnic group. Therefore, it could be argued that Chinese law is well prepared to protect and to promote minority rights.³⁴

In practice, it could hardly be said that the minority rights in China are well protected. There are major violations of the rights in chiefly three groups, namely, the Tibetans, the Uygurs and the Mongols. The obstacles are gaps between central policies and local implementation, the lack of a legal definition of discrimination, the lack of systematic and effective monitoring and assessment of implementation and poor institutional capacity. A more general obstacle is the weak development of a rule of law in China. There is a lack of accountability, transparency and independence from the CCP Party.³⁵

However, it is a long and difficult process to effectively implement legal standards and in addition a good political climate is needed for realizing these objectives. Despite the violations, there is still room for optimism that the direction of Chinese politics is moving towards the creation of such a political environment.³⁶

2.2 The historical background of Tibet

Shangri-La is a kind of exotic, mystical and harmonious paradise with stunning scenery in very high-lying territory and it is isolated from the rest of the world. This was once Tibet's reputation, however you cannot call something a paradise, while human rights are seriously violated.³⁷

Under the great king Songtsen Gampo, Tibet reached its peak as an independent kingdom during the period 627-649. King Songtsen Gampo married a Chinese princess and a relation with China was for the first time clearly established. Buddhism was also introduced in Tibet in the seventh century, and was to become the most significant hallmark of Tibetan culture. Ultimately, it was not until the thirteenth century that both China and Tibet were ruled over by one

³⁴ Joshua Castellino & Elvira Dominguez Redondo, *'Minority Rights in Asia: A Comparative Legal Analysis'*, New York: Oxford university press 2006, p. 137 & Minority Rights Group International: HRIC, *'China: Minority Exclusion, Marginalization and Rising Tensions'*, London: Minority Rights Group International, February 2007, p. 11-12.

³⁵ Minority Rights Group International: HRIC, *'China: Minority Exclusion, Marginalization and Rising Tensions'*, London: Minority Rights Group International, February 2007, p. 11-12.

³⁶ Joshua Castellino & Elvira Dominguez Redondo, *'Minority Rights in Asia: A Comparative Legal Analysis'*, New York: Oxford university press 2006, 145-146.

³⁷ A Writenet Report by Professor Colin P. Mackerras, *'People's Republic of China: Background paper on the situation of the Tibetan population'* New York, The leading immigration law publisher: February 2005, p. 1.

government.³⁸ The Mongols dominated the two countries and brought both of them into a complex relationship. Because of this particular moment that Tibet came under the power of the Mongol empire, Chinese historians are claiming that it marks the incorporation of Tibet in China. However, others are of the opinion that both Tibet and China had been added to the Mongol empire as different nations.³⁹

On century later, the dominant form of Buddhism was founded by a monk named Tsongkapa (1357-1419). The order he founded was named the Gelukpa Order of Buddhism and is also known as the Yellow Hat Sect, as his followers wear yellow hats. Out of this form of Buddhism, three great monasteries were established: Ganden, Drepung and Gendundrup. This last one became later the First Dalai Lama, which means 'ocean' and 'implying vast wisdom'.⁴⁰ The theocratic system, whereby the Dalai Lamas held political and religious power, reached its top with the Fifth Dalai Lama during the period 1617-1682. After that period, their power declined, however it did not die until the twentieth century.⁴¹

The last imperial dynasty in China and Tibet was the Qing dynasty and was ruled by the Manchu people (1644-1911). The Qing dynasty regarded Tibet as a part of their empire, however the Tibetans kept a lot of autonomy and they were never a Chinese province. But then in 1912, the Republic of China replaced this imperial dynasty by their own and they stated that Tibet was part of their nation. The Tibetans, however, thought differently. In February 1913, the thirteenth Dalai Lama formally declared the independence of Tibet and he sent the Manchu and Chinese officials and troops home.⁴² After 1942, it seemed that Tibetan authorities started to present their independence more clearly, however, only few other States responded openly and favourably to these developments. Eventually, this lack of support from the international community laid the ground for the later occupation of the Tibetans.⁴³

On the 1st of October 1949, the CCP came to power and they established the PRC. This new government regarded Tibet as a part of China's territory and they were determined to

³⁸ A Writenet Report by Professor Colin P. Mackerras, *'People's Republic of China: Background paper on the situation of the Tibetan population'* New York: The leading immigration law publisher: February 2005, p. 2.

³⁹ Minority Rights Group International, *'World Directory of Minorities and Indigenous Peoples – China: Tibetans'*, London: Minority Rights Group International, July 2008, p. 1.

⁴⁰ A Writenet Report by Professor Colin P. Mackerras, *'People's Republic of China: Background paper on the situation of the Tibetan population'*, New York: The leading immigration law publisher: February 2005, p. 2.

⁴¹ Ibid, p. 2 -3

⁴² Ibid, p. 3

⁴³ Ibid, nr. 39: p. 2

complete “the liberation of all the territory of China”. Their policy concerning minorities was to ban discrimination and to create equality.⁴⁴

Before 1950 Tibet was a quasi-feudal theocracy, however Chinese authorities would soon began to attack many of these aspect of Tibetan society. Land reforms and the loss of the lamas’ traditional power led to unrest⁴⁵ and in October 1950, the People’s Liberation Army (PLA) took Chamdo in eastern Tibet after a brutal week of battle and it also took the western area since there was only little resistance. Meanwhile the Lhasa regime asked the United Nations for help against Chinese aggression, however with China as a permanent member of the Security Council, the international community did nothing. Therefore the Sino-Tibetan negotiations started and resulted in the Seventeen-Point Agreement on 23 May 1951. This agreement was full of promises toward the Tibetan and for a couple of years the situation was quite stable. But then, in March 1959, there was an insurrection in Lhasa against the Chinese rule and for the Tibetan independence. First the Chinese did nothing, but suddenly Chinese troops attacked and they suppressed the uprising within a week. This event marked the end of the attempt to forge a co-existence between China and Tibet and the Dalai Lama fled to India and went into exile at the end of March. He accused the Chinese for suppressing the Tibetan people and for not giving the autonomy which they promised in the Seventeen-Point Agreement.⁴⁶

Now that the Dalai Lama was into exile, the Chinese government tried to establish socialism, like it was already customary elsewhere in China. In order to do so, they created the Tibet Autonomous Region (TAR) in 1965. With the creation of the TAR it does not mean that the Tibetan gained autonomy; it was an important measure in terms of strengthening the power of the Chinese authorities in Tibet. And still, the worst years of the PRC history were yet to come. Mao Zedong, the Chairman of the CCP at that time, introduced the Cultural Revolution in 1966, which lasted until 1976.⁴⁷ Thousands of monasteries and cultural sites were destroyed or badly damaged by the Red Guards. Also the religious harassment intensified: sacred books were burned and thousands of monks and nuns were imprisoned, tortured and killed.⁴⁸

⁴⁴ A Writenet Report by Professor Colin P. Mackerras, ‘*People’s Republic of China: Background paper on the situation of the Tibetan population*’, New York: The leading immigration law publisher: February 2005, p. 4

⁴⁵ Minority Rights Group International, ‘*World Directory of Minorities and Indigenous Peoples – China: Tibetans*’, London: Minority Rights Group International, July 2008, p. 2

⁴⁶ Ibid, nr. 44: p. 4 - 5

⁴⁷ Ibid, nr. 44: p. 6 -7

⁴⁸ Ibid, nr 44: 6-7 & Ibid, nr. 45

After the death of Mao Zedong in 1978, a new path was taken. There was more space for minorities in the new constitution of 1982. Ethnic areas, including Tibet experienced a great boost in autonomy rights after the period of reform had begun. However, in 1987-1988 several demonstrations for independence took place in Lhasa, with monks taking the lead and again these demonstrations were suppressed brutally. One year later on the 5th of March demonstrations for independence broke out again and this time police opened fire and killed a group of demonstrators and eventually this led to the introduction of the martial law in Lhasa which would not be lifted until 1990.⁴⁹

2.3 China's policy concerning Tibet

Autonomy increases stability and is preferable for the ethnic areas. By giving minorities autonomy, the State can maintain its territorial integrity while offering protection from discrimination and promoting the specific character of the minorities. When minorities are able to have control over their own territory and can keep their identity, they are more likely to accept the foreign ruler. If minorities are unable to secure their basic rights through legal means, they may come into resistance and use violence towards that foreign ruler. The State is allowed to suppress the insurrection, however when harsh measures are taken they run the risk to stimulate the opposition. Using development as an excuse, the government can try to integrate in the economic situation and they can regulate the movement of peoples and as a result it may create differences, which can polarize the situation. However, when the situation is more stable, it is wise to find a way of returning power to the local level in order to increase the minority's participation in the national political process. A flexible solution will create a compromise and consent of the minority.⁵⁰

Today there are five autonomous regions within the PRC: Inner Mongolia, Xinjiang Uygur, Guangxi Zhuang, Ningxia Hui and Tibet. Furthermore there are also 30 autonomous prefectures, 120 autonomous counties and 1.100 ethnic townships.⁵¹ However the

⁴⁹ A Writenet Report by Professor Colin P. Mackerras, *'People's Republic of China: Background paper on the situation of the Tibetan population'*, New York: The leading immigration law publisher: February 2005, p. 8-9

⁵⁰ Theodore C. Sorensen & David L. Phillips, *'Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case'*, Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 49

⁵¹ Rayburn House, *'China's regional ethnic autonomy law: does it protect minority rights?'*, Congressional-Executive Commission on China, June 29, 2009 <<http://www.cecc.gov/pages/roundtables/041105/index.php>>

implementation of the Autonomy Law has varied greatly across China. The Chinese government systematically denies particular minorities their right and arrests their members if they try to exercise legally protected freedoms. In particular, China has failed to uphold the legal rights of the minorities living in the Tibetan Autonomous Region (TAR), the Xinjiang Uygur Autonomous Region (XUAR) and the Inner Mongolian Autonomous Region (IMAR).⁵² According to Bhuchung K. Tsering, vice President of the international campaign for Tibet, the main human rights problems in the TAR are: 'the violation of which includes the areas of arbitrary detention, disappearances, torture, administration of justices, religious freedom, right to development, forced eviction and population transfer'.⁵³

China has exercised a zero tolerance for separatist movements in Tibet since the events in the late-eighties. The Tibetans maintained a limited form of autonomy; however China tried to increase their control and suppressed any signs that Tibetan cultural establishes a threat to the Chinese State. According to the CCP, this zero-tolerance policy has been generally successful, given that the years following the lifting of the Martial law in May 1990 have been calm. The most serious demonstrations for independence were in May 1993; however it is interesting to notice that these revolts were initially about the rising inflation.⁵⁴

Another concern about China's policy in Tibet is the economy. In 2000, the Chinese government began its Great Western Development Strategy, which aims to develop the economy of the western areas. Tibet's gross domestic product has grown from 3.053 million in 1991 to 16.142 million in 2002. Despite large state investments into Tibet, it has still the lowest domestic product within the PRC and if Tibet was a nation, it would be ranked at the very bottom of the UN's list of nations, along with the poorest nations in Africa.⁵⁵ Thus, on the one hand life may have got better in Tibet, but on the other hand many Tibetans are still sadly poor. According to the Chinese government there were 70.000 people living below the poverty line in 2001, however if they take the normal boundary mark of 1.300 Yuan a year, then there would be 1.2 million Tibetans living below the poverty line. Most stricken of all is that 1.300 Yuan works out

⁵² Rayburn House, 'China's regional ethnic autonomy law: does it protect minority rights?', Congressional-Executive Commission on China, June 29, 2009 <<http://www.cecc.gov/pages/roundtables/041105/index.php>>

⁵³ Bhuchung K. Tsering the Vice President of International Campaign for Tibet, 'At the Hearing on the UN Human Rights Council's Universal Periodic Review of China by the House of representatives' Tom Lantos Human Rights Commission, 27th of January 2009, p. 1

⁵⁴ A Writenet Report by Professor Colin P. Mackerras, 'People's Republic of China: Background paper on the situation of the Tibetan population', New York: The leading immigration law publisher: February 2005, p. 10-11

⁵⁵ Gangchen Kyishong, 'Human Rights Situation inside Tibet', Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 3

at about US \$0.45 per day. This figure stands against the US \$1 that the World Bank takes as its boundary mark for poverty.⁵⁶

The growth of the economy is thus still not very noticeable for Tibetans and another concern for the Tibetans which is linked to the economy is the employment. An important question to rise is whether Tibetans suffer from discrimination in finding jobs?⁵⁷ Tibetans have a weak position within the structures of government and in the labour force and they are disproportionately left out of employment created by the government. The reasons for the high number of unemployment among the Tibetans are most likely the lack of fluency in Putonghua and the prejudice against the recruitment of ethnic Tibetans.⁵⁸ Putonghua is the official language in Tibet and according to Article 19 of the Constitution of the PRC this language need to be promoted throughout the entire country.⁵⁹ Article 4(3) of the Constitution of the PRC states that:

“The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.”⁶⁰

And on top of this the PRC even protects linguistic rights within the autonomous regions. Article 121 of the Constitution provides for the following:

“In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the regulations on the exercise of autonomy in those areas, employ the spoken and written language or languages in common use in the locality.”⁶¹

Regardless of the legal guarantees for linguistic rights to minorities, Prof. Badeng Nima stated that: “during the years that Tibet has been influenced by the Chinese economy, the language problem has steadily worsened”.⁶² An important cause for worsening the language problem is that the Chinese language is used for employment in administration and commerce.⁶³

⁵⁶ A Writenet Report by Professor Colin P. Mackerras, ‘*People’s Republic of China: Background paper on the situation of the Tibetan population*’, New York: The leading immigration law publisher: February 2005, p. 12-13

⁵⁷ Ibid, p.14

⁵⁸ Minority Rights Group International, ‘*World Directory of Minorities and Indigenous Peoples – China: Tibetans*’, London: Minority Rights Group International, July 2008, p. 3 - 4

⁵⁹ Article 19 of the of the Constitution of the People’s Republic of China

⁶⁰ Ibid, Article 4(3)

⁶¹ Ibid, Article 121

⁶² Gangchen Kyishong, ‘*Human Rights Situation inside Tibet*’, Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 5

⁶³ Ibid

One of the projects from the Great Western Development Strategy is the railway of about 1.100 km, linking Golmud in Qinghai to Lhasa. From the 27.000 workers who started the construction were from inland China and were almost all Han. It was not before 2003, that 6.000 Tibetans were hired for mostly manual and carrying jobs, which were at a much lower payment rate. In addition to the supposed ethnic discrimination in employment another criticism of the railway line is that it aims merely to strengthen China's political control over Tibet. This railway will integrate the Tibetan economy more into the Chinese through approved transportation of goods and it will also enable the Chinese military to send troops and equipment effortlessly into Tibet. However, the Tibetan economy will also benefit from it in a variety of ways.⁶⁴

Thus, China's purpose is to increase its power in Tibet. Next to the domestic methods, it also tries to increase its power on the international playground. The Dalai Lama became an important figure in the international community, as a consequence of his Nobel Peace Prize and of his travels to foreign countries to visit their leaders. The Chinese government tried hard to undermine his influence and they are disapproving it when foreign countries welcome the Dalai Lama. Furthermore, there are also two global aspects affecting the international situation concerning Tibet. First there is China's increasing economic power and secondly there are the incidents on 11 September 2001 in New York and Washington. These incidents have changed American policy towards fighting terrorism and their priority towards the protection and promotion of human rights is not that high anymore.⁶⁵

A different concern about China's policy in Tibet is the damage done to the Tibetan Buddhism. Chinese law does protect religions and forbids discrimination against any religion. In Article 36 of the Constitution of the PRC the right to freedom of religion is protected:

"No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination."⁶⁶

⁶⁴ A Writenet Report by Professor Colin P. Mackerras, '*People's Republic of China: Background paper on the situation of the Tibetan population*', New York: The leading immigration law publisher: February 2005, p. 14

⁶⁵ Ibid, p. 14-15

⁶⁶ Article 36 of the Constitution of the People's Republic of China

This Article prohibits the use of religion to disturb the public order or to threaten the unity of the State and people are only free to practice their religion within the boundaries set by Chinese law and policy, given that only normal religious activities are protected.⁶⁷

In 2005 the Chinese government implemented the Regulations on Religious Affairs and according to this document the state should regulate “the administration of religious affairs”.⁶⁸ Apparently it seems that the Chinese government is trying to improve legal constructions in the sphere of religious affairs. However, a closer look at these regulations exposes a different story. According to these regulations, new religious centers may only be developed with state authorization through a registration process. Such a monitoring system of religious activities by the State is contradictory to an atmosphere of religious freedom.⁶⁹ Paradoxically, the Chinese government stated that:

“Since the peaceful liberation of Tibet in 1951, and particularly since the introduction of the reform and opening policies of 1979, citizens’ right to freedom of religious belief has been thoroughly carried out in Tibet”.⁷⁰

In reality, the Chinese government tries to maintain strict control over all religious activities in Tibet.⁷¹ For instance, as a consequence of the revolts in Tibet in 2008, China even increased the strength and frequency of the “patriotic re-education” campaign for the monastic and general population. The aim of this campaign is to criticize the Dalai Lama and to strengthen the ties between the public and the Communist Party.⁷² Another religious aspect of which the Chinese government tries to maintain control is the election of Lama’s. In 1989 the Tenth Panchen Lama died and the Chinese wanted to select the Eleventh one. However, in cooperation

⁶⁷ Fourth session of the UPR Working Group, ‘*Submission to the UN Universal Periodic Review. China*’, p. 2. <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/IHRC_CHN_UPR_S4_2009_TheIslamicHumanRightsCommission.pdf>

⁶⁸ Article 1 of the Regulations on Religious Affairs

⁶⁹ Ibid, nr. 64

⁷⁰ International Coalition for Religious Freedom, ‘*Report on Tibet*’, 12 July 2008. <<http://www.religiousfreedom.com/wrpt/tibet.htm>>

⁷¹ Ibid

⁷² Henry Sanderson, ‘*China launches "patriotic education" campaign in Lhasa to combat Dalai Lama*’ The Associated Press, April 21st 2008. <<http://www.encyclopedia.com/doc/1A1-D90634K80.html>> & Barry Sautman, ‘*Cultural genocide and Tibet*’, Austin: Texas International Law Journal, 2003: Vol. 38:173, p.213. (“explaining the campaign to enhance patriotic education at lamaseries has taught many lamas about promoting the concept of the motherland and has resulted in many lamas abrogating their allegiance to the Dalai Lama”: *Education Improves Lamaseries Administration*, XINHUA News Agency, June 18, 2001, 2001 WL 23440294).

with the Dalai Lama, the Tibetans announced the identity of the true reincarnated Panchen Lama. The Chinese were furious and imprisoned the boy. And due to this event, the Seventeenth Karmapa Lama had to flee to India, where he arrived in 2000. This Lama was a well-trained incarnate lama who could be reasonably loyal to China, but the Dalai Lama also admired him as a good Buddhist and in 2001 India gave him a refugee status.⁷³ On 19 September 2006, the TAR People's Government adopted the TAR-Specific Implementing Measure and the Reincarnation Measure. The Implementing Measure identifies state control over religious practitioners, reincarnated lamas, religious practice and the places of Tibetan Buddhism. In addition to this control and together with the Reincarnation Measures it codifies a widespread method to control the selection, installation and education of reincarnated lamas.⁷⁴

At last there is the issue of immigration of Han people into Tibet. What we can say is that it is very unclear what to believe. However, it seems that there is a very little permanent Han migration in to the TAR itself, apart from Lhasa. Chinese official estimates put the number of Han in Lhasa at some 100.000 out of 409.500 people. But some other observers estimated the Han population in Lhasa as high as half the total population. However, in most of the Tibetan areas Tibetans remain in the majority.⁷⁵

2.4 Conclusion

China has international and domestic obligations concerning their minorities, they ratified many international Conventions and there exists some UN Declarations. On top of that, China also created many national legislative tools to protect minorities. However, the problem is that the implementation of these even limited domestic provisions is not done correctly or completely and there is also no systematic and effective monitoring organism. Furthermore, it is an actual problem that the rule of law is not fully developed yet. The consequence is that there is a lack of accountability, transparency and independence from the Chinese government.⁷⁶

⁷³ A Writenet Report by Professor Colin P. Mackerras, *'People's Republic of China: Background paper on the situation of the Tibetan population'*, New York: The leading immigration law publisher: February 2005, p. 14-15.

⁷³ Article 36 of the Constitution of the People's Republic of China, p. 16-18.

⁷⁴ Gangchen Kyishong, *'Human Rights Situation inside Tibet'*, Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 6.

⁷⁵ Ibid, nr.73: p. 22-23

⁷⁶ Joshua Castellino & Elvira Dominguez Redondo, *'Minority Rights in Asia: A Comparative Legal Analysis'*, New York: Oxford university press 2006, p. 137 & Minority Rights Group International: *HRIC, 'China: Minority*

In practice, it could hardly be said that the minority rights in China are well protected. It seems that human rights are grossly violated in Tibet. Even though the economy is growing, Chinese statistics do not divide wealth along ethnic lines.⁷⁷ Consequently a lot of Tibetans are still living below the poverty line. Furthermore the right to freedom of religion is greatly violated, they suffer from discrimination regarding language and employment, and together with the immigration of Han people to the Tibetan area; it seems that the Tibetan culture is under great pressure of destruction.⁷⁸

Exclusion, Marginalization and Rising Tensions, London: Minority Rights Group International, February 2007, p. 11-12 & Bhuchung K. Tsering the Vice President of International Campaign for Tibet, *'At the Hearing on the UN Human Rights Council's Universal Periodic Review of China by the House of representatives'* Tom Lantos Human Rights Commission, 27th of January 2009, p. 2.

⁷⁷ Gangchen Kyishong, *'Human Rights Situation inside Tibet'*, Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 14.

⁷⁸ Ibid, p.10-23

3. Cultural genocide and Tibet

3.1 The Claim of cultural genocide in Tibet

The concept of Genocide is passionately debated by scholars, but political actors have abused this concept while making a claim of Genocide for their own political agenda.⁷⁹ Furthermore, there has also been an academic trend to increase the boundaries of genocide beyond the embodiment in international law. Their aim is to force States to intrude when large-scale human rights violations take place.⁸⁰ In this chapter we will learn to know why people and in particular his Holiness the Dalai Lama and the TGIE claim that cultural genocide is taking place in Tibet.

Already in 1959 and 1960 the CIA-funded International Commission of Jurists claimed that China was committing genocide in Tibet. This claim was based on the restrictions on the Tibetan religion.⁸¹ To be a Tibetan is to be a Buddhist⁸², and thus the fundamental basis of their existence was damaged.

Cultural Genocide was used in 1980, when a delegation of the TGIE returned from a fact-finding trip to Tibet. Since then, Cultural Genocide has been the focus of their discussion.⁸³ Their evidence that China was planning Cultural Genocide is the overhearing of a secret meeting of 12 May 1993 by the CCP's United Front Work Department. In this meeting it was decided to transfer a large group of Chinese settlers into Tibet so that it is impossible for Tibetans to rise, to break the unity of the TGIE and to manipulate important and religious people in Tibet for propaganda reasons. Thus, the plan was to transform the demographic balance in order to prevent a separatist revolt.⁸⁴ According to the émigré Tibet Bureau in Geneva, "the fulfillment of these plans would destroy the cultural and national identity of the Tibetan people and it would create a form of cultural genocide."⁸⁵

⁷⁹ Barry Sautman, '*Colonialism, Genocide, and Tibet*', London: Routledge, October 1st 2006: Asian Ethnicity, Vol. 7:3, p. 243.

⁸⁰ Ibid, p. 257

⁸¹ Barry Sautman, '*Cultural genocide and Tibet*', Austin: Texas International Law Journal, 2003: Vol. 38:173, p.196-197

⁸² Ibid, nr. 79: p. 244

⁸³ Ibid, nr. 81: p.196-197

⁸⁴ Ibid, nr. 81: p 201

⁸⁵ Ibid, nr. 81: p.196-197

Official statistics say that there is a very little permanent Han migration in to the TAR itself, apart from Lhasa.⁸⁶ Annual migration rates from 1950 to the 1970 were low, varying from three to fourteen Han people per thousand Tibetans. In 1980 there were about 122.000 households (*hukou*) registered of Han people in the TAR. This number fell back to 70.000 in 1985. The Han who were actually transferred to the TAR on command of the PRC is a small fraction of the latest migrants to Tibet. The Chinese government has stated that 1268 cadres were sent to the TAR from 1994-2004. The most of these people were assigned for three years, but in the end they spend only half of the time in Tibet due to extended leaves. Around 1995 there were 17.000 Han cadres in the TAR, while in 2000 there were living 155.000 Han people in Tibet. The people who were transferred is thus something about 11% of the total TAR Han population, therefore it is not reasonable to say that most of the Han people living in Tibet are there on China's order.⁸⁷

However, according to human rights activists, these official statistics do not imitate the actual Han population in Tibet. In 1959 there were about 30.000 Han people living in Lhasa and by the end of 1999 the estimates were about 200.000. Today the guesstimates are that the Han people are representing 60% of Lhasa's population and this does not even include the army presence mentioned above. And the total presence of the Han now living in the lands that was once Tibetan would be about 8 million, versus 6 million Tibetan.⁸⁸ Nevertheless, there is no evidence of a government program which promotes mass emigration of Han people into Tibet.⁸⁹ But, Wang Lixiong, a Chinese scholar, believes that "though the government does not organize large-scale immigration, it nevertheless encourages it. And this has resulted in the Chinasization of Tibet, which is the main cause of the conflict today."⁹⁰

⁸⁶ A Writenet Report by Professor Colin P. Mackerras, '*People's Republic of China: Background paper on the situation of the Tibetan population*', New York: The leading immigration law publisher: February 2005, p. 22-23.

⁸⁷ Barry Sautman, '*Cultural genocide and Tibet*', Austin: Texas International Law Journal, 2003: Vol. 38:173, p.196-197.

⁸⁸ Subhuti Dharmananda, '*FROM TIBET TO INDIA: History of the Attempted Destruction of Tibetan Culture in Tibet and the Efforts at Preservation of Tibetan Culture in Exile*', Portland: Institute for Traditional Medicine, May 2000.

⁸⁹ Ibid, nr. 87: p. 198-199

⁹⁰ Gangchen Kyishong, '*Human Rights Situation inside Tibet*', Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 3.

Another element of China's policy which is establishing cultural genocide according to the TGIE is family planning and birth control as it is applying in Tibet.⁹¹ Article II (d) of the Genocide Convention also states that birth limitation can institute genocide:

Article II: "In the present Convention, Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(d) Imposing measures intended to prevent births within the group."⁹²

Birth limitation applies indeed to Tibetans; however the family planning in the PRC is stricter for the Han Chinese than for minorities. Urban TAR Tibetans are limited to two children and urban Han are only allowed to have one child. In some areas within the TAR more than 30% of the women have three or more children and the number of children in farming and pastoral areas is even higher.⁹³ It is thus not reasonable to say that this birth limitation policy has the actual aim to destroy Tibetans culture and national identity.

More recently the Dalai Lama stated that: "whether intentionally or unintentionally, some kind of cultural genocide is taking place."⁹⁴ The Dalai Lama believes that China commits intentional cultural genocide by controlling and limiting Buddhist study through political study in monasteries and by letting bilingual Tibetan University students to be more successful than monolingual Tibetan students. The unintentional cultural genocide involves the population transfer and sarcastic policies that result in Han craftsmen and shopkeeper being in Lhasa and Tibetans who speak Chinese among themselves in public.⁹⁵ Thus the main reasons for the Dalai Lama to claim that there is indeed a form of cultural genocide are the restrictions on their religion, the population transfer, family planning, language discrimination and also the change of life and food style from the Tibetans living in Tibet. The Dalai Lama even stated that "it is very clearly noticed that those Tibetans who were born in India remain more Tibetan than those Tibetans who were born in Tibet".⁹⁶

⁹¹ Barry Sautman, '*Colonialism, Genocide, and Tibet*', London: Routledge, October 1st 2006: Asian Ethnicity, Vol. 7:3, p. 244.

⁹² Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide

⁹³ Barry Sautman, '*Cultural genocide and Tibet*', Austin: Texas International Law Journal, 2003: Vol. 38:173, p.203-206.

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ His Holiness the Dalai Lama, '*Tibet: The Dalai Lama speaks about the risks of Tibet cultural genocide*', Tokyo: Youtube.com, November 2008. Video: < <http://www.youtube.com/watch?v=4LbKH6EjK8k>>

3.2 A foundation for the claim of cultural genocide in Tibet

According to Robert A.F. Thurman, “anyone who knows the Tibetan language and has met Tibetan people knows the distinctness of the Tibetan culture.”⁹⁷ However what is the Tibetan culture? Or what is a “national culture”?

A people seem to think of themselves as a single nation when they “have come together in a common territory through history, share a common language fixed on a writing system, live under a common system of laws, are imbued with common sense of history, tolerate an understood range of religious beliefs and intuitively feel common sense of identity through any of these commonalities, often supported by a sense of racial similarity”.⁹⁸

The Buddhist art and culture of Tibet are unique in world history. The Tibetan Buddhism and art versions are mainly directed from north-eastern India and in Tibet they were transformed into characteristically Tibetan forms. With this influence of north-eastern India between the seventh and tenth century Tibet became a relatively peaceful country, focused intensely on its religion and art.⁹⁹ Essential elements of the Tibetan culture are thus in any case religion and art.

In case studies of assumed cultural genocide of indigenous people and minorities, the focus lays on religion and language. Therefore this paragraph will discuss whether there is an empirical basis for cultural genocide by focusing on religion, language and other elements of culture like art.¹⁰⁰

3.2.1 Religion

The claim of cultural genocide in Tibet that concentrates on religion concerns the freedom to participate in religious activities, regulations on monasteries and attacks on the Dalai Lama.¹⁰¹

According to the TGIE, the Tibetans are not permitted to undertake routine religious activities.¹⁰² They declared that during the Cultural Revolution, the Chinese government was

⁹⁷ Professor Robert A.F. Thurman, ‘*An Outline of Tibetan Culture*’, New York: International Campaign for Tibet, Reprinted from Cultural Survival Quarterly 1988: Vol. 12, p. 1.

⁹⁸ Ibid

⁹⁹ Philip Rawson, ‘*Sacred Tibet*’, London: Thames and Hudson Ltd, 1991, p. 5 + 17.

¹⁰⁰ Barry Sautman, ‘*Cultural genocide and Tibet*’, Austin: Texas International Law Journal, 2003: Vol. 38:173, p.208-209.

¹⁰¹ Ibid, p.210

¹⁰² Ibid, p.211-212 + 217

responsible for the destruction of more than 6000 monasteries and that millions of ancient and priceless manuscripts were burned.¹⁰³ The remaining monasteries are being used as museums to attract tourist and other monasteries are used as public toilets and barracks. And additionally the number of monks dropped from 114.000 in the beginning of China's occupation to 46.000 today.¹⁰⁴

It is true that there are restrictions on the freedom of religion in Tibet. However, this does not mean that Tibetans are not allowed to practice their religion at all. Human Rights officials from the USA who visited Lhasa "saw pilgrims crowded in front of the Jokhang to perform ritual prostrations".¹⁰⁵

Concerning the regulations on the monasteries it is a fact that they became tougher in the 1990s. This was because of the revolts during the last years of the 1980s but it was also in part because religious organizations had a key role in the collapse of the Communist-ruled States in Eastern Europe.¹⁰⁶

The Democratic Management Committees (DMC) who had run the monasteries since the 1970s also changed their policy during the 1990s. Many of the DMCs had a confusing political attitude and they persecuted lamas who love their country and religion and they also showed no concern for the monks and nuns in the monasteries.¹⁰⁷ Another restriction on the monasteries is that there is a minimum age of admission to a religious vocation. Traditionally monasteries began educating children at a very young age, however under Chinese law it is illegal for people under the age of 18 to enter monastic life¹⁰⁸ and therefore China is trying to hold back the monasteries of growing.¹⁰⁹

Finally, there are the attacks on the Dalai Lama. In the previous chapter we already saw that China is trying to control the selection, installation and education of reincarnate lamas, through the TAR-Specific Implementing Measure and the Reincarnation Measure.¹¹⁰

¹⁰³ Anne Holmes, 'No faith in the State. Tibetans speak about religious restrictions', London: Tibet Watch, 2007, p.9. <[http://www.freetibet.org/files/NoFaithFINAL\(1\).pdf](http://www.freetibet.org/files/NoFaithFINAL(1).pdf)>

¹⁰⁴ Barry Sautman, 'Cultural genocide and Tibet', Austin: Texas International Law Journal, 2003: Vol. 38:173, p. 211-212 + 216-217

¹⁰⁵ Ibid, p. 212. (Jokhang is Tibet's most important Temple)

¹⁰⁶ Ibid, p. 214

¹⁰⁷ Ibid, p. 215

¹⁰⁸ Ibid, nr. 103: p. 21

¹⁰⁹ Ibid, nr. 104: p. 219

¹¹⁰ Gangchen Kyishong, 'Human Rights Situation inside Tibet', Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p 6.

Nevertheless, there are also other measures to alienate the Tibetans from the Dalai Lama. Public displays of his image are not allowed in the TAR since 1994 and in the monasteries there are no prayers for the Dalai Lama. In addition, as we also saw in the previous chapter, there is the Patriotic Education Campaign, which tries to force monks to criticize the Dalai Lama. Monks were told to distance themselves from him in order to gain more freedom to pursue their religious studies.¹¹¹

This practice and almost every aspect of the restrictions on the Buddhism in China are noticeably similar to the practice of the emperors of the Tang and Song dynasty. They were all taking these measures under the concern of anti-state activities and economic harm that would arise from the complete freedom of religion.¹¹²

3.2.2 Language

Language is often closely linked to an ethnic group's culture.¹¹³ According to the Tibetan Language Institute people lose their culture if they lose their language and this is not only the loss of that particular people, but it is the world's loss too.¹¹⁴ As a consequence of the Chinese migration into Tibet, the Dalai Lama claims that the Tibetan language is endangered and that their language has no longer any value in their own country.¹¹⁵

In 1996 Tibetan was still the main language of instruction of the TAR primary schools, though Putonghua is now introduced in the early grades in urban schools. In the secondary schools the main language is Putonghua, however it is worthwhile to notice that there are only four out of ten Tibetans participating in this level. And regarding the language of instruction, there are two trends going on. On the one hand, the instructional material in Tibetan is available and on the other hand, parents want bilingual education for their children, so that they can compete with native Putonghua speakers.¹¹⁶

¹¹¹ Barry Sautman, 'Cultural genocide and Tibet', Austin: Texas International Law Journal, 2003: Vol. 38:173, p. 213

¹¹² Ibid, p. 216.

¹¹³ Ibid, p. 219-220

¹¹⁴ David Curtis, 'Tibet Language Institute', Hamilton: Tibetan Language Institute, 2005.

<<http://www.tibetanlanguage.org/donating/donate.htm>>

¹¹⁵ Ibid, nr 111: p. 219-220

¹¹⁶ Ibid, nr 111: p. 221-222

Moreover, in 2002 a TAR law which protects the Tibetan language was finally passed. Regulations provide that public signs and documents by public institutions are also in Tibetan, despite the reality that Tibetan is by no means dominant in urban areas of Tibet.¹¹⁷

Nevertheless, the language problem has worsened over the years¹¹⁸ and the true cause for the Tibetan language to turn into a less important language is not a direct consequence of Tibetans learning Putonghua. It is due to the fact that higher education is in Putonghua and that within the employment in administration, commerce and in the state sector Putonghua prevails.¹¹⁹

3.2.3 Other elements of culture

The TGIE represent the performing arts in Tibet as impure and they have stated that “in this calculated ‘cultural genocide’ the Chinese make every effort to remove any vestige of Tibetan character in the performing arts.”¹²⁰ Also the artistic director of the Dharmasala-based Tibet Institute of Performing Arts, Lobsang Samten, argues that “there has been an annihilation of Tibetan opera, folk dances, monastic music, Buddhist writings and literature”¹²¹ in order to allow the PRC government to claim that Tibet never had a separate cultural identity.¹²²

On the contrary, other people say that the Tibetan culture is still very strong, since the society in Tibet is so rural. In the villages, the traditional performing arts are stronger, because the artistic life of people in rural areas depends much more on the old customs than in the cities.¹²³

It is true that the Tibetan culture has combined many different cultures. The Tibetans adopted Chinese food, Indian philosophy and Mongolian clothing. Nonetheless, they are actually undergoing a cultural hybridization in the context of the state in which they live in. This means

¹¹⁷ Barry Sautman, ‘*Cultural genocide and Tibet*’, Austin: Texas International Law Journal, 2003: Vol. 38:173, p. 224

¹¹⁸ Gangchen Kyishong, ‘*Human Rights Situation inside Tibet*’, Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 5.

¹¹⁹ Ibid & Minority Rights Group International, ‘*World Directory of Minorities and Indigenous Peoples – China: Overview*’, London: Minority Rights Group International, July 2008, p. 4.

¹²⁰ Ibid, nr. 117: p. 227

¹²¹ Ibid, nr. 117: p. 227

¹²² Ibid, nr. 117: p. 227

¹²³ Colin Mackerras, ‘*Tibetan Culture: Change, Survival, Prosperity*’, China Association for Preservation and Development of Tibetan Culture, October 10 2006. <http://www.capdtc.org/en/en-lunwenzhy/t20061019_164910.htm>

that the Tibetan culture is under the great influence of the Chinese culture and cultural adoptions which seem to be Western or just modernistic are actually adopted because the Han are introducing them to Tibetans.¹²⁴

3.4 Conclusion

The Dalai Lama and the TGIE claim that cultural genocide is taking place in Tibet as a result of the restrictions on their religion, the population transfer, family planning, language discrimination and also because of the change of life and food style from the Tibetans living in Tibet.¹²⁵

Nevertheless, the question mark is whether there is an empirical basis for this claim of cultural genocide. Concerning religion we can conclude that there are many limitations on the freedom of religion and that much damage had been done to the Tibetan religion. In the early years of China's occupation the Cultural Revolution damaged their religion enormously, but also lately the Patriotic Education Campaign and the new measures in controlling the reincarnated lamas are damaging and limiting the Tibetan religion. All things considered, it even seems that there is a violation of the right to freedom of thought, conscience and religion.

Furthermore the language problem has steadily worsened.¹²⁶ Despite the different legal guarantees for linguistic rights to minorities, Putonghua is the most important language in daily life. For better opportunities, Tibetans need to speak Putonghua as it is used in higher education and in the employment.¹²⁷

And in relation to other elements of the Tibetan culture, it is reasonable to argue that the Tibetan culture is changing. Their culture is under enormous pressure by the Han people. They are influencing the Tibetan culture with their own culture and also with the Western culture and modernistic changes that they adopted in their culture.

¹²⁴ Barry Sautman, 'Cultural genocide and Tibet', Austin: Texas International Law Journal, 2003: Vol. 38:173, p. 231

¹²⁵ His Holiness the Dalai Lama, 'Tibet: The Dalai Lama speaks about the risks of Tibet cultural genocide', Tokyo: Youtube.com, November 2008. Video: < <http://www.youtube.com/watch?v=4LbKH6EjK8k>>

¹²⁶ Gangchen Kyishong, 'Human Rights Situation inside Tibet', Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 5.

¹²⁷ Ibid & Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples – China: Overview', London: Minority Rights Group International, July 2008, p. 4.

4. International legal standards

In the previous chapters we learned what China's policy is regarding to their minorities and in particular to the Tibetans. We also learned to know why the Dalai Lama, the TGIE and human rights activists claim that the Chinese government is guilty to the act of cultural genocide in Tibet and that the empirical basis for this claim can be found in religion, language and other cultural elements.

This chapter on the contrary, will be focusing on international law. It discusses several international legal standards in order to qualify the intentional destruction of a culture as a violation of these standards. Thus, the axis is changing from why Tibetans could claim cultural genocide to whether this claim for cultural genocide could be made in international law.

4.1 Genocide

The roots of genocide are lost in distant millennia; however the word 'genocide' is relatively new. The man who named the crime was a Polish-Jewish jurist, a refugee from Nazi-occupied Europe, named Raphael Lemkin (1900-1959). Growing up, Lemkin developed a talent for languages and a passionate curiosity for the national cultures that produced them. In the end he created a lifelong obsession with mass killing in history and the contemporary world.¹²⁸

The central question in Lemkins head was why? "Why did states kill their own and other citizens on the basis of nationality, ethnicity or religion. Why did people ignore the killing, or applaud it? Why didn't someone intervene?"¹²⁹ Lemkin worked through his impressive linguistic resources for a term that was concise and memorable and in the end he settled on a neologism with both Greek and Latin roots. The Greek word 'genos' means race or tribe, and the word 'cide' is Latin for the word killing.¹³⁰

So now that we can name the concept, the first question that arises is what genocide means. It is important to mention that scholar's opinions about what genocide means are

¹²⁸ Adam Jones, *'Genocide: A Comprehensive Introduction'* United Kingdom, Oxon, Routledge 2007, p. 3.

¹²⁹ Ibid p.9

¹³⁰ Ibid p. 10

different from each other, there are wide definitions but also narrow ones.¹³¹ A general description can be found by Jones and reads as follows:

“By ‘genocide’ we generally mean the destruction of a nation or an ethnic group. Genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killing of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.”¹³²

Thus, genocide means something like the intentional killing, destruction or extermination of a group or members of a group as such. Genocide was first conceived as a category of crimes against humanity. Neither Article 6 (c) of the Charter of the International Military Tribunal nor Article II (1)(c) of Control Council Law no. 10 (Nuremberg Tribunal) explicitly envisaged genocide as a separate category of crimes against humanity.¹³³

When in 1946 the UN General Assembly first discussed genocide, it was noted that among its incidents, there are ‘great losses to humanity in the form of cultural and other contributions’. A Secretary-General’s commentary on the draft convention proposed that an article prohibits cultural genocide, including proscriptions of national languages and the systematic destruction of monuments or other historical, artistic or religious objects. Therefore an UN Ad Hoc Genocide Committee produced an initial draft convention. Article III of this draft proposed to ban: ¹³⁴

“Any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious groups on grounds of national or racial origin or religious belief such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;

¹³¹ Adam Jones, ‘*Genocide: A Comprehensive Introduction*’, United Kingdom, Oxon: Routledge 2007, p 10.

¹³² Ibid

¹³³ Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmhurst, *An Introduction to International Criminal Law and Procedure*, United Kingdom: Cambridge university press, 2007, p. 168.

¹³⁴ Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan, 2006, p.4.

2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group;¹³⁵
3. Subjecting members of a group to such conditions as would cause them to renounce their language, religion or culture.”¹³⁶

During the drafting process, it was clear that the communist and Arab delegations favored a cultural genocide article in the Genocide Convention.¹³⁷ Mr. Tsien, the Chinese delegate to the Sixth Committee, supported the inclusion of Article III in the Genocide Convention because, while cultural genocide seemed less brutal, “it might be even more harmful than physical genocide or biological genocide, since it worked below the surface and attacked a whole population attempting to deprive it of its ancestral culture and to destroy its very language”.¹³⁸

In contrast to the communists and the Arabs, the nations from both the Americas were wedded to their respective policies of assimilation and, therefore, opposed these provisions. In the end, the balance of the votes lay with the delegations from Western Europe. Having witnessed Hitler’s acts of ethnic cleansing first-hand, the Western delegates understood the connection between cultural genocide and physical genocide, which the communist and Arab delegations were making.¹³⁹

It was already in 1948 that the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The standard setting of the ‘binding legal definition of genocide’ had a detailed and quite technical definition as a crime against the law of nations.¹⁴⁰ Thus, finally genocide acquired autonomous significance as a specific crime.¹⁴¹ However, the European States voted to delete the Article about cultural genocide from the Convention and therefore the Sixth Committee rejected Article III in the face of arguments that physical genocide was so much more serious a crime than cultural genocide that the two should

¹³⁵ Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan , 2006, p.4 & Summary record of meetings 175-225, U.N. ESCOR, 3rd year, 7th Sess., at 6-7, U.N. Doc. E/447 (1947).

¹³⁶ Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan , 2006, p.44 & U.N. ESCOR Ad Hoc Comm. On Genocide, 5th Sess., 14th mtg., U.N. Doc. E/AC.25/SR.14 (1948).

¹³⁷ Johannes Morsink, ‘*Cultural genocide, the Universal Declaration, and Minority Rights*, Baltimore: The Johns Hopkins University Press, 1999, Human Rights Quarterly 21.4, p. 1.

¹³⁸ Ibid, p. 14

¹³⁹ Ibid, p. 1

¹⁴⁰ Adam Jones, ‘*Genocide: A Comprehensive Introduction*’, United Kingdom, Oxon: Routledge 2007, p 12-14 & the Convention on the Prevention and Punishment of the Crime of Genocide.

¹⁴¹ Antonio Cassese, ‘*International Law*’, United States: Oxford University Press (maker) 2005, p.443.

not be placed on the same level.¹⁴² And with this rejection, the standard definition of genocide reads as follows:

Article I. “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

Article II. “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”¹⁴³

Thus, cultural genocide was not mentioned and after reading the definition carefully, it is clear that not all groups of people are protected by the Genocide Convention. The Convention lists only ‘national, ethnical, racial and religious groups. Since this list is a closed one, social and political groups are excluded. This narrow focus on the concept of genocide has been criticized ever since. However, at the domestic level, States are entitled to use broader definitions but other States are not required to accept those definitions.¹⁴⁴

Given that these four groups are the exclusive beneficiaries of the protection of the Genocide Convention, it is unfortunate that there is no internationally recognized definition of any of the terms it uses. However, since the acts must be directed at the members of the group, a subjective approach has its attractions; that is, taking the fact that a perpetrator considers the victims to be members of a group, he or she is targeting as the criterion for the identification of members of the group. However, the better view is that the group must have some form of objective existence in the first place; otherwise the Convention could be used to protect entirely fictitious national, ethnic, racial or religious groups. Thus, whether a group can be protected under this Convention, should be ‘assessed on a case-by-case basis by reference to the objective

¹⁴² Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan, 2006, p. 6.

¹⁴³ The Convention on the Prevention and Punishment of the Crime of Genocide

¹⁴⁴ Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmhurst, *An Introduction to International Criminal Law and Procedure*, United Kingdom: Cambridge university press 2007, p. 168- 185.

particulars of a given social or historical context, and by the subjective perceptions of the perpetrators’.¹⁴⁵

Furthermore, the *actus reus* can only be formed by the crimes mentioned in Article II of the Genocide Convention. This part of the concept of genocide is also narrow; however these five specific crimes can be interpreted differently and therefore be broadened by Tribunals and the ICC. For example, it was the ICTR who broke new ground in deciding that acts of sexual violence and rape can constitute genocide (Article II(b)); sexual violence was found to be an integral part of the process of destruction in the Rwanda genocide.¹⁴⁶

Unlike crimes against humanity, genocide does not explicitly include any objective requirement of scale. The threshold for a crime against humanity is its connection to a widespread or systematic attack directed against a civilian population, and for a war crime, it is the commission during an armed conflict. In contrast, the gravity of genocide is primarily marked not by an objective circumstantial element but by the subjective *mens rea*, the intent to destroy a national, ethnic, racial or religious group.¹⁴⁷ This intent amounts to *dolus specialis*, that is, to an aggravated criminal intention, required in addition to the criminal intent accompanying the underlying offence. In other words, it must be proved that the perpetrators, in addition to willing, for instance, the death of the victims, also intended to destroy in whole or in part, the group to which they belonged. Murder was thus one way of achieving the goal of partial or total destruction of the group.¹⁴⁸

Finally, the other acts of participation in genocide are listed in Article III of the Genocide Convention:

Article III: “The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.”¹⁴⁹

¹⁴⁵ Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmhurst, *An Introduction to International Criminal Law and Procedure*, United Kingdom: Cambridge university press 2007, p. 168- 185.

¹⁴⁶ Ibid. *Actus Reus*: guilty act. Without the *actus reus*, there can be no criminal liability.

¹⁴⁷ Ibid

¹⁴⁸ Antonio Cassese, ‘*International Law*’, United States: Oxford University Press (maker) 2005, p. 444-445.

¹⁴⁹ The Convention on the Prevention and Punishment of the Crime of Genocide

Even though it was a huge achievement that there was a Genocide Convention, one should not be unmindful of the flaws of the Convention. These are the most blatant ones: (1) The definition of genocide does not embrace the extermination of a group on political grounds, nor cultural genocide. (2) The enforcement mechanism envisaged in the Convention is ineffective.¹⁵⁰

On the other hand, since 1948, much headway has been made both at the level of prosecution and punishment of genocide by international criminal tribunals, and at the normative level. The crime of genocide was incorporated in the Statutes of the ICTY and the ICTR as well as the ICC. At the normative level, some major advances should be emphasized. The major subjective provisions of the convention have gradually turned into customary international law, as was held, by the ICJ in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide (at 23).¹⁵¹ In addition, at the level of State responsibility it is now widely recognized that customary rules on genocide impose community obligations that is, towards all other members States of the international community, and at the same time confer on any State the right to require that acts of genocide be discontinued. Finally, those rules now form part of *jus cogens* norms, that is, they may not be derogated from by international agreement or by national legislation.¹⁵²

4.2 Cultural genocide

The rationale for including Article III in the draft treaty was formulated by Mr. Perez-Perozo, a representative of Venezuela:¹⁵³

“[T]he cultural bond was one of the most important factors among those which united a national group and that was so true that it was possible to wipe out a human group, as such, by destroying its cultural heritage, while allowing the individual members of the groups to survive. The physical destruction of individuals was not the only possible form of genocide; it was not the indispensable condition of that crime.”¹⁵⁴

¹⁵⁰ Antonio Cassese, ‘*International Law*’, United States: Oxford University Press (maker) 2005, p. 443.

¹⁵¹ Ibid, p. 443 - 444

¹⁵² Ibid, p. 444

¹⁵³ Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan, 2006, p. 4-5.

¹⁵⁴ Ibid & U.N. ESCOR Ad Hoc Committee On genocide, 6th Sess., 5th mtg., at 2-3, U.N. Doc E/AC.25/SR.5 (1948).

Cultural genocide is an egregious crime, however at this moment cultural genocide is not within the scope of the Convention and we are also not able to find it in customary law. However, we can still find the concept ingrained in Article II(e): forcibly transferring children of the group to other groups.¹⁵⁵

The current description of cultural genocide indicates that it is properly conceived as an adjunct of physical and biological genocide. Like William Schabas stated: “in the light of the *travaux préparatoires* of the Genocide Convention, it seems impossible to consider acts of cultural genocide as punishable crimes if they are unrelated to physical or biological genocide.”¹⁵⁶ Only intentional and systematic state actions qualify as cultural genocide, not the unintended harmful by-products of positive policies or even negative policies not purposed on the destruction of an ethnic or religious group.¹⁵⁷ Thus, the problem with cultural genocide is that there needs to be a connection with physical genocide, otherwise it cannot be punished.

Because they chose to limit the genocide definition of the Sixth Committee to its physical and biological manifestations, a group can be kept alive even though their collective identity suffers in a dreadful manner. Therefore the present understanding of genocide comes down to protecting the body of the group; however it allows the groups very soul to be destroyed. And even though human rights jurisprudence lacks flexibility to properly redress cultural genocide, broader cultural considerations do play two important roles in prosecuting genocide under the Genocide Convention. First, acts of cultural genocide can establish the genocidist’s specific intent to destroy the protected group, since those acts destroy the very foundation of the group. The ICTY held that Serbian destruction of Muslim libraries and mosques and attacks on cultural leaders established genocidal intent against Muslims in the former Yugoslavia. Second, since there are no universally accepted definitions of racial, ethnic, religious or national groups, cultural characteristics are used to help define the contours of the protected group.¹⁵⁸

¹⁵⁵ Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmhurst, *An Introduction to International Criminal Law and Procedure*, United Kingdom: Cambridge university press 2007, p. 168- 185.

¹⁵⁶ Ibid

¹⁵⁷ Barry Sautman, ‘*Cultural genocide and Asian state peripheries. Cultural genocide in international context*’ New York: Palgrave Macmillan , 2006, p. 8.

¹⁵⁸ David Nersessian, ‘*Rethinking cultural genocide under International Law*’, New York: Carnegie Council for Ethics in International Affairs, April 22, 2005.
<http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html>

4.3 Other possibilities

4.3.1 Ethnocide

In the mid-twentieth century the earth was still inhabited with great cultural diversity, with many different languages, unique religions and many variations in traditions and ways of life.¹⁵⁹ Unfortunately indigenous populations and minorities have suffered from vicious mistreatment, discrimination and lack of equal opportunities over the last centuries. Even these days' indigenous peoples and minorities have to face threats in numerous countries. And the deaths among them are attributable directly to state actions and to the unwillingness of non-indigenous and non-minority agencies and individuals to assess the impacts of their policies on those societies. Although many international human rights standards exist concerning indigenous peoples and minorities, the problem seems to be that these standards are not always respected at local, national and international level.¹⁶⁰

Earlier we saw that indigenous peoples and minorities can find some protection against unwilling governments and civilians in Article 27 of the ICCPR. It states that group members cannot be denied the right to enjoy their own culture. This differs from the proposed ban on cultural genocide under the Genocide Convention precisely because the latter 'expressly prohibited acts intended to destroy culture on grounds of racial origin or religious belief,' while Article 27 does not require knowledge of the circumstances of the act.¹⁶¹ *A fortiori*, there can be no unintentional or unconscious cultural genocide. Acts which will destroy minority or indigenous cultures are chargeable under the ICCPR, whenever that state ratified the Covenant. But neither the ICCPR nor any other treaty dominates a violation like 'cultural genocide'.¹⁶²

Regarding to these two types of people we can conclude that they differ from each other. Minorities can find the same sort of protection like Article 27 of the ICCPR in the Article

¹⁵⁹ Biblelands.com, 'cultural genocide' Huntsville: biblelands.com. < www.Culturalgenocide.org >

¹⁶⁰ Samuel Totten and William S. Parsons, 'Century of genocide: critical essays and eyewitness accounts. Physical and Cultural Genocide of Indigenous Peoples': Robert K. Hitchcock and Tara M. Twedt, 'Physical and Cultural Genocide of Indigenous People', New York: Routledge, 2009, p. 414-413.

¹⁶¹ Ibid & Richard Herz, "Litigating environmental abuses under the Alien Tort Claims Act. a practical assessment," Charlottesville, Virginia: Virginia Journal of International Law, Vol. 40 (2000), p.629.

¹⁶² Samuel Totten and William S. Parsons, 'Century of genocide: critical essays and eyewitness accounts. Physical and Cultural Genocide of Indigenous Peoples': Robert K. Hitchcock and Tara M. Twedt, 'Physical and Cultural Genocide of Indigenous People', New York: Routledge, 2009, p. 414-413 & Richard Herz, "Litigating environmental abuses under the Alien Tort Claims Act. a practical assessment," Charlottesville, Virginia: Virginia Journal of International Law, Vol. 40 (2000), p.629.

2 of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.¹⁶³ And indigenous people can find protection in the Declaration on the Rights of Indigenous People. There is no universal accepted and binding definition for Indigenous People, but the most widely-cited definition which covers the core of the those peoples is the definition of UN Special Rapporteur Martínez Cobo¹⁶⁴:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of that 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 systems.”¹⁶⁵

A different concept, which looks like cultural genocide and what can be used in combination with indigenous peoples, is ethnocide. In the past scholars have been mistaken in comparing those two concepts. Unlike cultural genocide, ethnocide is not necessarily connected to mass ethnic murder on a grand scale.¹⁶⁶ The Declaration of San José assigns the term ethnocide as:

“That an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually. This involves an extreme form of massive violation of human rights and, in particular, the right of ethnic groups to respect for their cultural identity...”¹⁶⁷

Thus ethnocide will be distinguished from genocide as it refers to the destruction of cultures rather than people.¹⁶⁸ Then again ‘an extreme form of massive violations of human

¹⁶³ Article 2.1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

¹⁶⁴ Asbjorn Eide, ‘*Rights of Indigenous Peoples – Achievements in international law during the last quarter of a century*’ The Hague: Netherlands Yearbook of International Law: Volume XXXVII 2006, p. 186.

¹⁶⁵ Martínez Cobo study, E/CN.4/Sub.2/1986/7/Add.4, para. 379.

¹⁶⁶ Barry Sautman, ‘*Cultural genocide and Tibet*’, Austin: Texas International Law Journal, 2003: Vol. 38:173, p.187-188.

¹⁶⁷ Preamble of the Declaration of San José. Adopted by the UNESCO meeting of Experts on Ethno-Development and Ethnocide in Latin America, San José, Dec. 11, 1981. UNESCO Doc. FS 82/WF.32 (1982). In this Declaration it is said that: ‘For the past few years, increasing concern has been expressed at various international forums over the problems of the loss of cultural identity among the Indian population of Latin America...the UNESCO organized an international meeting on ethnocide and ethno-development in Latin America, in collaboration with FLACSO (Facultad Latino Americana de Ciencias Sociales: the Latin American School of Social Sciences).’

rights' indicates the intent just like cultural genocide. This intent that underlies ethnocide is not the same intent as the intent of cultural genocide, for the same reason that it is not tied to physical or biological destruction of a group. The intent is therefore typically aimed at forced assimilation and not on population decimation. Thus the intent that underlies ethnocide is an intentional act resulting in cultural death.¹⁶⁹

The Declaration of San José provided for the composition of the UN Draft Declaration on Indigenous Rights. This Draft Declaration provides:

Article VII: "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;
- (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."¹⁷⁰

The UN Draft Declaration is not binding for UN member States and it applies only to indigenous peoples and not to ethnic minorities. Moreover, the first paragraph of this draft changed into "indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture" when the draft changed into the UN Declaration on the Rights of Indigenous Peoples in 2007.¹⁷¹ So once again cultural genocide failed to be adopted in an International instrument

Another important expedient for States is that these documents only apply to these indigenous people who are recognized as such in their homelands. In Asia, the most States reject the idea that there are indigenous people living within their territory. Some UN officials even

¹⁶⁸ Samuel Totten and William S. Parsons, *'Century of genocide: critical essays and eyewitness accounts. Physical and Cultural Genocide of Indigenous Peoples'*; Robert K. Hitchcock and Tara M. Twedt, *'Physical and Cultural Genocide of Indigenous People'*, New York: Routledge, 2009, p. 415.

¹⁶⁹ Barry Sautman, *'Cultural genocide and Asian state peripheries. Cultural genocide in international context'* New York: Palgrave Macmillan, 2006, p. 189-190 & U.N. ESCOR Ad Hoc Committee On genocide, 6th Sess., 5th mtg., at 2-3, U.N. Doc E/AC.25/SR.5 (1948).

¹⁷⁰ Draft Declaration of San Jose, 1982

¹⁷¹ Barry Sautman, *'Cultural genocide and Tibet'*, Austin: Texas International Law Journal, 2003: Vol. 38:173, p.193-194.

stated that “Asia is home to most of the world’s indigenous people”, but in practice there are no indigenous peoples recognized in China.¹⁷² Concerning this matter the PRC has stated:

“The indigenous issues are a product of special historical circumstances. By and large, they are the result of the colonialist policy carried out in modern history by European countries in other regions of the world, especially on the continents of America and Oceania.”¹⁷³

The Chinese government voted in favour of this convention; however it is like other Asian States of the opinion that there are no indigenous peoples or issues in China because as in the majority of Asian countries, the various nationalities in China have all lived for ever on the Chinese territory. Since China has never experienced colonial-era aggression and settlement it is not unreasonable for China to deny that people it sees as minorities are indigenous people. Thus whatever protections for indigenous peoples emerge, it will not bind China.¹⁷⁴

There are some Western opinion leaders who refer to Tibetans as indigenous people, however the émigré administration of Tibet does not use this term. Émigré leaders stated that they see that label “as conflicting with their insistence that Tibet is an occupied state since, in popular conception, indigenous people were mainly stateless before the advent of the colonizers”. One of those émigré scholars also said: “most of China’s ethnic minorities that such pre-literature tribes cannot be compared with Tibetan people” and that “as far as the Tibetans are concerned, they are neither a tribe nor an ethnic group; they constitute a distinct civilizational category”.¹⁷⁵

4.3.2 Destruction of cultural heritage

Destruction and loss of cultural heritage has constantly occurred throughout history. The violent destruction of the Buddhas of Bamiyan by the Taliban government of Afghanistan in 2001 could be seen as an ordinary example in this history of cultural loss. The international community was

¹⁷² Barry Sautman, ‘*Cultural genocide and Tibet*’, Austin: Texas International Law Journal, 2003: Vol. 38:173 p. 194-195

¹⁷³ Ibid, p. 195-196

¹⁷⁴ Ibid, p. 195-196

¹⁷⁵ Ibid, p. 195-196

affected by this attack and there was a great concern regarding the role of international law in preventing and suppressing such a form of cultural vandalism.¹⁷⁶

Since the loss of cultural heritage will damage the international community, the UN included an article in the Universal Declaration of Human Rights (UDHR) especially devoted to culture. Article 27 states that:

(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.”¹⁷⁷

And it was only six years later, in 1954, that the UNESCO and the Contracting Parties adopted the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The preamble of the convention affirms the relevance of the protection of cultural heritage as a global value pertaining to the international community as a whole, proclaiming that:¹⁷⁸

“Damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”¹⁷⁹

And that

“The preservation of the cultural heritage is of great importance for all people of the world and that it is important that this heritage should receive international protection”¹⁸⁰

The States that ratified this Convention need to safeguard cultural property during the event of an armed conflict. In Article 3 of this Convention it is said that Contracting Parties also need to undertake measures for the safeguarding of cultural property during a time of peace. Furthermore

¹⁷⁶ Barbera T. Hoffman, ‘*Art and cultural heritage: law, policy and practice*’: Francesco Francioni and Federico Lenzerini, ‘*The obligation to prevent and avoid destruction of cultural heritage: From Bamiyan to Iraq*’, United States of America: Cambridge university press 2006, p. 28.

¹⁷⁷ Article 27 of the Universal Declaration of Human Rights

¹⁷⁸ Barbera T. Hoffman, ‘*Art and cultural heritage: law, policy and practice*’: Francesco Francioni and Federico Lenzerini, ‘*The obligation to prevent and avoid destruction of cultural heritage: From Bamiyan to Iraq*’, United States of America: Cambridge university press 2006, p. 34.

¹⁷⁹ Preamble of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

¹⁸⁰ Ibid

Article 19 states that this Convention is also applicable for conflicts of a non international character.¹⁸¹

If you are not party to the Hague Convention, the provisions are not applicable. However, there are also general norms of customary law. Article 16 of the 1977 Protocol II to the Geneva Conventions on humanitarian law, entitled “Protection of Cultural Objects and Places of Worship,” states that:¹⁸²

“without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of arts or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.”¹⁸³

Customary international law is *ex se* of binding character for all countries of the world because it needs no formal acceptance by governments, whereas treaties must be ratified by the State concerned, in order to produce any binding effect for such a State.¹⁸⁴

In addition to “ordinary” destruction of cultural heritage, there is also the “intentional” destruction of cultural heritage. The Acts of ‘seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of arts of science’ are included by article 3(d) of the Statute of the ICTY among the violations of the law or customs of war. This approach is followed by the statute of

¹⁸¹ The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

¹⁸² Barbera T. Hoffman, ‘*Art and cultural heritage: law, policy and practice*’: Francesco Francioni and Federico Lenzerini, ‘*The obligation to prevent and avoid destruction of cultural heritage: From Bamiyan to Iraq*’, United States of America: Cambridge university press 2006, p. 34.

¹⁸³ Article 16 of the 1977 Protocol II to the Geneva Conventions of 12 August 1949 on humanitarian law

¹⁸⁴ Ibid, nr: 182. “A differens between customs and treaties is that customs are binding towards all members of the international community, whereas treaties are only binding to those States who ratified the particular treaty. According to Article 38.1 (b) of the Statute of the ICJ, ‘international custom is the evidence of a general practice accepted as law’. However, for rules to turn into custom, two fundamental elements are essential. There needs to be a State practice (*usus*) and a corresponding view of States (*opinio juris* or *opinio necessitatis*). According to (§74) of the North Sea Continental Shelf cases ‘State practice, including that of States whose interests are specially affected, should... [be] both extensive and virtually uniform’. However, the ICJ stated in Nicaragua (§186) that ‘possible instances of non-compliance with a rule do not necessarily mean that the rule has not come into being’. Thus State practice does not need to be absolutly uniform. Furthermore the *opinio necessitatis* needs to turn into *opinio juris*. Generally, practice develops among States under the impulse of economic, political or military needs (*opinio necessistatis*). If States are beginning to believe that they must conform to this practice not for the initially reasons, but because an international rule command them to do so, then *opinio juris* will exist and a custom may be realized. If a State disagrees with a rule of soft law, they are not bind by the custom, only if they object from the beginning and keep on doing that (persistent objector)”. Antonio Cassese, ‘*International Law*’, United States: Oxford University Press (maker) 2005, p. 156-158.

ICC, whose Articles 8(2)(b)(IX) and 8(2)(c)(IV), concerning, respectively, international and non-international armed conflicts, qualify as a war crime any intentional attack directed against buildings dedicated to religious, educational, artistic, or humanitarian purposes, or historical monuments.¹⁸⁵

When the Taliban intentionally destroyed the cultural heritage of the great rock sculptures of the Buddhas of Bamiyan, the General Conference of the UNESCO prepared a new declaration for their meeting in Paris at its thirty-second session in 2003. In the Declaration concerning the Intentional Destruction of Cultural Heritage, the UNESCO recalled that this tragic destruction affected the international community as a whole and that cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights.¹⁸⁶

Thus, this declaration recognizes the importance of cultural heritage and addresses intentional destruction of cultural heritage including cultural heritage linked to a natural site.¹⁸⁷ In Article 2(1) of the Declaration, the UNESCO explained what intentional destruction means in the light of this convention:

“An act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in latter case in so far as such acts are not already governed by fundamental principles of international law”.¹⁸⁸

Like the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, this Declaration also covers the destruction of cultural heritage during a time of peace and during the event of an armed conflict.¹⁸⁹ In applying this Declaration, States recognize the need to respect international rules related to the criminalization of gross violations of human

¹⁸⁵ Barbera T. Hoffman, ‘*Art and cultural heritage: law, policy and practice*’: Francesco Francioni and Federico Lenzerini, ‘*The obligation to prevent and avoid destruction of cultural heritage: From Bamiyan to Iraq*’, United States of America: Cambridge university press 2006, p. 34 & Article 3(d) of the Statute of the International Criminal Tribunal for Yugoslavia & Articles 8(2)(b)(IX) and 8(2)(c)(IV) of the Rome Statute of the International Criminal Court.

¹⁸⁶ The Preamble of the Declaration concerning the Intentional Destruction of Cultural Heritage

¹⁸⁷ Ibid, Article 2(1)

¹⁸⁸ Ibid, Article 2(2)

¹⁸⁹ Ibid, Article 5

rights and international humanitarian law, in particular, when intentional destruction of cultural heritage is linked to those violations (Article IX).¹⁹⁰ And Article VI explains that the State responsibility comes down to the following:

“A state that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law”.¹⁹¹

Thus, it is said that States need to bear the responsibility to the extent provided for by international law, if they intentionally destroy cultural heritage. However, what is provided for by international law? A Declaration is also known as an instrument of ‘soft law’. Normally ‘soft law’ is created within international organizations and they mainly relate to human rights, international economic relations and the protection of the environment. Instruments of ‘soft law’ have three features in common. They are indicative of the modern trend emerging in the world community, they deal with matters that reflect new concerns of the international community and for all kinds of reasons, it is hard for States to reach full convergence of views and standards on these matters so as to agree upon legally binding commitments.¹⁹²

As a consequence, a Declaration is not in itself a legally binding instrument and does not automatically create legal rights and obligations. The importance of this Declaration consist in its moral force, based on an universal and consensual adoption by the member States of the UNESCO gathered as its General Conference, representing the overwhelming majority of the international community of States.¹⁹³ Nevertheless, these legally unregulated matters become the object of agreed statements of common positions or policies and these may constitute the building blocks, for the gradual formation of customary rules or treaty provisions. Thus, it is possible for ‘soft law’ to turn into ‘hard’ or ‘proper law’.¹⁹⁴

¹⁹⁰ Article 9 of the Declaration concerning the Intentional Destruction of Cultural Heritage

¹⁹¹ Ibid, Article 6

¹⁹² Antonio Cassese, *‘International Law’*, United States: Oxford University Press (maker) 2005, p. 196

¹⁹³ United Nations Educational Scientific and Cultural Organization, *‘Cultural Heritage and its Intentional Destruction’*, unesco.org, 2008. < http://portal.unesco.org/culture/en/ev.php-URL_ID=35284&URL_DO=DO_TOPIC&URL_SECTION=201.html>

¹⁹⁴ Ibid, nr: 192

Nevertheless, the UNESCO provided also for other legal instruments. A Convention for instance needs to be ratified by State Parties and therefore it is legally binding and it creates legal rights and obligations. The Preamble of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions states that cultural diversity forms a common heritage of humanity and should be cherished and preserved for the benefit of all.¹⁹⁵ China who ratified this Convention has the obligation to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention,¹⁹⁶ which can be found in Article 1 of the Convention.¹⁹⁷

Another UNESCO Convention which is also ratified by China is the Convention for the Safeguarding of the Intangible Cultural Heritage 2003. Article 2 defines Intangible cultural heritage as follows:

“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.....”¹⁹⁸

In accordance with this Convention, Article 11(a) states that ‘each State Party shall take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory’.¹⁹⁹

Furthermore, China also ratified the Convention concerning the Protection of the World Cultural and Natural Heritage. In the preamble we can find that ‘cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction’.²⁰⁰

To prevent such damage and destruction, the General Conference of the UNESCO formulated an obligation in Article 4:

¹⁹⁵ The Preamble of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions

¹⁹⁶ Ibid, Article 5 (1)

¹⁹⁷ Ibid, Article 1

¹⁹⁸ Article 2 of the Convention for the Safeguarding of the Intangible Cultural Heritage 2003

¹⁹⁹ Ibid, Article 11

²⁰⁰ The Preamble of the Convention concerning the Protection of the World Cultural and Natural Heritage

“Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.”²⁰¹

China ratified these Conventions and is as a consequence bound by them. If China does not meet the obligations, which are laid down in the Conventions, it can be held accountable for its default by other States who are Party to the Conventions. Thus, next to the ‘soft law’ provision of the Declaration concerning the Intentional Destruction of Cultural Heritage, there also exist provisions in the form of ‘hard law’, which China is not allowed to violate.

4.3.3. Freedom of religion

It is a central concept of international human rights law that human rights are for all.²⁰² Article 2 of the UDHR states that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”²⁰³

The principles of equality and non-discrimination are inherent in the conception of human rights as universal entitlements. The Charter of the UN obliges states to recognize and to promote both equality of treatment and the enjoyment of the human rights.²⁰⁴

According to the right to freedom of thought, conscience and religion, it is recognized that “sensitivity to labels, is critically important for both religious and nonreligious people when trying to reduce intolerance and discrimination based on religion or belief. Passionate anger can

²⁰¹ Article 4 of the Convention concerning the Protection of the World Cultural and Natural Heritage

²⁰² Javaid Rehman and Susan C. Breau, *‘Religion, Human Rights and International Law’*: Prof. Kevin Boyle, *‘Freedom of Religion in International Law’* Dordrecht: Martinus Nijhoff Publishers, 2007, p. 28.

²⁰³ Article 2 of the Universal Declaration of Human Rights

²⁰⁴ Ibid, nr. 202

quickly arise if people perceive their deeply held beliefs being described unfairly.”²⁰⁵ Therefore the international method to guarantee religious freedom has advanced on a twin path. First, the positive elements or concrete requirements of religious freedom are codified and second, and in parallel some efforts have been made which dealt with discrimination and tried to eliminate practices that deny the rights to equal treatment to individuals and communities.²⁰⁶

In protecting the right to freedom of thought, conscience and religion on the international level, the UDHR and the ICCPR are important documents. Article 18 of the UDHR reads as follows:²⁰⁷

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”²⁰⁸

Earlier we saw that a Declaration is not in itself binding. In the preamble it is noticed that “the UDHR is as a common standard of achievement for all peoples and all nations”. However, this Declaration is adopted by the General Assembly in 1948 and perhaps it is more likely to say that after a half century, its adoption is far from being a common standard regarding to religious freedom. This is also due to the adoption of this article in Article 18 of the ICCPR:²⁰⁹

18.1. “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

18.2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

18.3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

18.4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”²¹⁰

²⁰⁵ Bahiyyih G. Tahzib, ‘*Freedom of Religion or Believe*’, The Hague: Kluwer Law international: 1996, p. 1-2.

²⁰⁶ Javaid Rehman and Susan C. Breau, ‘*Religion, Human Rights and International Law*’: Prof. Kevin Boyle, ‘*Freedom of Religion in International Law*’ Dordrecht: Martinus Nijhoff Publishers, 2007, p. 29.

²⁰⁷ Documents on Freedom of religion, <<http://www.tcd.ie/iiis/documents/pdf/Claire%20de%20la%20Hougue.pdf>>

²⁰⁸ Article 18 of the Universal Declaration of Human Rights

²⁰⁹ Ibid, nr 206: p. 33-34

²¹⁰ Article 18 of the International Covenant on Civil and Political Rights

This Article protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or believe. This Article is also not limited in its application to traditional religions.²¹¹ These four provisions together contain the core international law commitments on the protection of freedom of religion made by the States. Paragraph 1 confirms the individual and collective components of the freedom, which we can also find in Article 18 of the UDHR. The particular difference between this paragraph and the article in the Declaration is the sentence on the changing of religion or belief. Article 18 of the ICCPR was a compromise, because the Islamic States could not agree with the specific recognition in the law of the right of the individual to change religion.²¹² Paragraph 2 is the best international standard in prohibiting the issue of proselytism, which is the activity of seeking to persuade others to adopt their religion or belief. In paragraph 3 we find the basis for the limitation of the rights to manifest religion. Article 18 is an absolute right and thus are limitations not allowed. The manifestations on the other hand can be limited under the conditions which are described in that paragraph. And in paragraph 4 we find that parents have the freedom to ensure the religious and moral education of their children. This right can also be found in Article 13 (3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).²¹³

Thus Article 18 of the ICCPR guarantees freedom of religion for everyone. In practice, the members of a religious minority group need this freedom the most.²¹⁴ Therefore it is important to notice that Article 18 needs to be read in combination with Article 27 of the ICCPR, which protects minority rights.²¹⁵ Furthermore, the freedom of religion is also protected in the Declaration on the Rights of Minorities and the Declaration on the Rights of Indigenous Peoples.²¹⁶ Article 2 of the Declaration on the Rights of Minorities reads as follows:

2.1:“Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own

²¹¹ British Humanist Association, ‘*Law on freedom of 'religion or belief'*’, London 2009. <www.humanism.org.uk/campaigns/freedom-of-belief> & Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994), paragraph 2.

²¹² Javaid Rehman and Susan C. Breau, ‘*Religion, Human Rights and International Law*’: Prof. Kevin Boyle, ‘*Freedom of Religion in International Law*’ Dordrecht: Martinus Nijhoff Publishers, 2007, p. 39.

²¹³ Ibid, p. 39-42

²¹⁴ Yoram Dinstein and Mala Tabory, ‘*The Protection of Minority and Human Rights: Freedom of Religion and the Protection of Religious Minorities*’ Dordrecht: Martinus Nijhoff Publishers, 1992, p.155.

²¹⁵ Ibid, nr. 212

²¹⁶ The Declaration on the Rights of Minorities and the Declaration on the Rights of Indigenous Peoples

religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2.2: Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.”²¹⁷

And Article 13 of the Declaration on the Rights of Indigenous People:

13.1: “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”²¹⁸

These two articles are for two reasons by far not as binding as 27 of the ICCPR. First, these documents are Declarations and thus not in itself binding. Second, despite that many international human rights standards exist concerning indigenous peoples en minorities, the problem seems to be that these standards are not always respected at local, national and international level.²¹⁹

Finally there is also the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief. In this Declaration we can find a supplement of the freedom to manifest one’s religion. Accordingly, Article 6 of this Declaration pronounces:²²⁰

“In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3(*Article 1.3: Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others*)²²¹, the right to freedom of thought, conscience, religion or belief shall include, inter alia , the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;

²¹⁷ Article 2 of the Declaration on the Rights of Minorities

²¹⁸ Article 13 of the Declaration on the Rights of Indigenous Peoples

²¹⁹ Samuel Totten and William S. Parsons, ‘*Century of genocide: critical essays and eyewitness accounts. Physical and Cultural Genocide of Indigenous Peoples*’: Robert K. Hitchcock and Tara M. Twedt, ‘*Physical and Cultural Genocide of Indigenous People*’, New York: Routledge, 2009, p. 414-413.

²²⁰ Article 6 of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief

²²¹ Ibid, Article 1.3

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.”²²²

The freedom of Religion is well protected within international instruments. We can find this freedom in several Declarations, but also in the ICCPR and the ICESCR. However, China only signed the ICCPR; the ICESCR on the other hand is ratified by China. Thus, without the ratification of the ICCPR, China cannot fully be bound by the provisions proscribed in the Covenant. In addition, we saw in §2.3 that there exist domestic provisions concerning the protection of the freedom of religion. Nevertheless, it seems that in reality the Chinese government tries to maintain strict control over all religious activities in Tibet and their policies are contradictory to an ambiance of religious freedom.

4.3.4 Linguistic rights

For hundreds of years there have been existing international treaties with provisions relating to the use of language.²²³ Earlier we saw (§4.1) that the UN Ad Hoc genocide Committee tried to ban any deliberate act committed with the intent to destroy the language of a national, racial or religious group under the provision of cultural genocide, but ultimately failed.²²⁴

Then again, it was only two years later that the UDHR was adopted and the right and freedom to language was included in Article 2.²²⁵ However, this Declaration has certain limitations in relation to language.²²⁶ A stronger document is naturally the ICCPR and its Article 27. In a previous chapter we saw that this article gives among other thing protection to minorities for using their own language.

In the matter of education, the Convention against Discrimination in Education, prohibits under Article 1, “any distinction, exclusion or preference” based upon language or other grounds, which “has the purpose or effect of nullifying or impairing equality of treatment in education”.²²⁷ The Convention makes it also clear in Article 2(b) that it does not constitute discrimination to

²²² Article 6 of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief

²²³ Dr. Fernand de Varennes, *The right of Persons belonging to Linguistic Minorities. Working paper prepared for the UN Sub-Committee on the rights of minorities*, Australia: Murdoch University, 21 March 2007, p. 1.

²²⁴ Article 3 of the draft Convention on the Prevention and Punishment of the Crime of Genocide by the UN Ad Hoc Genocide Committee.

²²⁵ Article 2 of the Universal Declaration of Human Rights.

²²⁶ Ibid, nr. 223: p. 3

²²⁷ Article 1 of the Convention against Discrimination in Education

establish or maintain, for linguistic reasons, separate educational systems or institutions.²²⁸

Furthermore it addresses to minorities in Article 5 of this Convention:

1. “The States Parties to this Convention agree that:

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.”²²⁹

Other documents on the international level, who are protecting the linguistic rights of minorities and also indigenous people are the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the UN Declaration on the Rights of Indigenous People and the International Labour Organization Convention No. 107 and Convention No. 169.²³⁰

The need to protect linguistic rights exist already for centuries, however China did not ratify the Convention on Discrimination in Education and the ICCPR. Furthermore, we also saw in § 2.3 that there is some protection for the languages of all nationalities in the Chinese Constitution, however as can be found in Article 19 of the PRC Constitution, Putonghua, the most important language, is promoted by the government.

4.4 Conclusion

Throughout history, we can find arguments for the ban of cultural genocide. However, we can conclude that until today, it has been too hard for States to reach full convergence of views and standards on Cultural Genocide so as to agree upon legally binding commitments.²³¹

²²⁸ Article 2(b) of the Convention against Discrimination in Education

²²⁹ Ibid, Article 5

²³⁰ Dr. Fernand de Varennes, ‘*The right of Persons belonging to Linguistic Minorities. Working paper prepared for the UN Sub-Committee on the rights of minorities*’, Australia: Murdoch University, 21 March 2007, p. 3-4.

²³¹ Antonio Cassese, ‘*International Law*’, United States: Oxford University Press (maker) 2005, p. 196.

Alternatively, there are also some indications, that cultural genocide can be punished. The ICTY stated that acts of cultural genocide can establish the genocidist's special intent, which can eventually lead to a conviction under the Genocide Convention.²³²

Furthermore, we noticed that there are also other international legal standards to protect a culture from destruction. Minorities and indigenous people can find protection in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, religious Minorities and in the UN Declaration on the Rights of Indigenous People. In addition, Article 27 of the ICCPR gives those people protection against the destruction of their cultures.

We also saw that the UNESCO provided for Declarations and Conventions which are protection culture in more than one way. The Declaration concerning the Intentional Destruction of Cultural Heritage protects culture against acts intended to destroy cultural heritage, however the provisions in this Declaration are an instrument of 'soft law' and therefore they are not in itself binding and they do not automatically create legal rights and obligations.²³³ Furthermore, there are also some UNESCO Conventions who are protecting cultural heritage. In contradiction to the Declaration, China is bound by these Conventions and it needs to fulfill the obligations which are deriving from the Conventions. If not, China can be held liable for its failure by other States who are Party to the Convention.

Additionally, we had a look at international instruments which are protecting the right to freedom of thought, conscience and religion. The ICCPR protects this right the strongest, however China did not ratify this Covenant.²³⁴ Furthermore we saw that there are some domestic regulations which are protecting the right to freedom of religion, nevertheless China maintains strict control over the religious activities and ultimately people are only free to practice religion within the boundaries set by Chinese law and policy.²³⁵

²³² David Nersessian, 'Rethinking cultural genocide under International Law', New York: Carnegie Council for Ethics in International Affairs, April 22, 2005.

<http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html>

²³³ United Nations Educational Scientific and Cultural Organization, 'Cultural Heritage and its Intentional Destruction', unesco.org, 2008. <http://portal.unesco.org/culture/en/ev.php-URL_ID=35284&URL_DO=DO_TOPIC&URL_SECTION=201.html> & Antonio Cassese, 'International Law', United States: Oxford University Press (maker) 2005, p. 196.

²³⁴ The International Covenant on Civil and Political Rights

²³⁵ Fourth session of the UPR Working Group, 'Submission to the UN Universal Periodic Review. China', p. 2. <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/IHRC_CHN_UPR_S4_2009_TheIslamicHumanRightsCommission.pdf>

Finally, linguistic rights were discussed. On the international level the ICCPR seems to protect the linguistic rights of minorities rather good, however China cannot be bound by this Covenant and hence the strongest obligations with regard to linguistic rights can be found in China's Constitution.

5. Conclusion

China has a firm foundation for the protection of minorities in their own legislation. We can find provisions for the protection of minorities in their constitution and in other laws, regulations, policies and statements. Yet it cannot be stated that minority rights are well protected in practice. The implementation of these provisions is not done correctly and completely and there is also a lack of a monitoring system and of the rule of law.²³⁶

As a consequence, there are all kind of human right violations and sensitive issues in Tibet. The economy in Tibet is, despite large investment, still the weakest of whole China and therefore a great number of Tibetans still live under the poverty line.²³⁷ Regarding to this poverty it is cheerless to notice that Tibetans are discriminated in the matter of employment and language. If they even can get a job, it is at a much lower payment rate than Han Chinese. And a brighter future for Tibetans can only be created if they learn Putonghua, since higher education and better jobs are generally applicable for people who speak Putonghua.²³⁸ Furthermore, there are major restrictions on the freedom of religion given that China wants to have control over all religious activities. All things considered, it seems that the Tibetan culture is under great pressure of destruction. And an empirical basis for the claim of cultural genocide can be found within the violation of the right to freedom of religion, the violation of linguistic rights and the infiltration of the Chinese culture in the Tibetan.

Nevertheless, the central question of the research is not whether and why people claim that cultural genocide is taking place in Tibet. It is whether this claim of cultural genocide can be made in international law and if not, to what extent can intentional destruction of a culture be qualified as a violation of an international legal standard?

The events happening in Tibet can indeed be qualified as intentional destruction of a culture. There are many restrictions on the Tibetan culture. Their right to freedom of religion is clearly violated under international law and this contributes to the destruction of their culture, in

²³⁶ Minority Rights Group International: HRIC, '*China: Minority Exclusion, Marginalization and Rising Tensions*', London: Minority Rights Group International, February 2007, p. 11-12.

²³⁷ Gangchen Kyishong, '*Human Rights Situation inside Tibet*', Dharamsala: Department of Information and International Relations Central Tibetan Administration, October 2009, p. 3.

²³⁸ A Writenet Report by Professor Colin P. Mackerras, '*People's Republic of China: Background paper on the situation of the Tibetan population*', New York: The leading immigration law publisher: February 2005, p. 14 & Barry Sautman, '*Cultural genocide and Tibet*', Austin: Texas International Law Journal, 2003: Vol. 38:173, p.221-222.

view of the fact that to be a Tibetan is actually to be a Buddhist and to be a Buddhist in Tibet is difficult under China's control.²³⁹ Their language, which is closely linked to their culture, has obviously no longer much value in a country, due to the fact that Putonghua triumphs over Tibetan.²⁴⁰ Furthermore, the Tibetans are undergoing a cultural hybridization in the context of the state in which they live in. This means that the Chinese are trying to coerce their culture to the Tibetan, which should as a consequence change the Tibetan culture.²⁴¹

However, in order to answer the central question we need to apply the international legal standards on the situation in Tibet.

Genocide

There is no violation of the Convention on the Prevention and Punishment of the Crime of Genocide. No evidence can be found, that there is a special intent to destroy, in whole or in part, the Tibetans through physical genocide.

Cultural genocide

If we look at the provision of cultural genocide as it was presented by the Sixth Committee, we could conclude that there is indeed cultural genocide taking place in Tibet. There are indeed some particular acts, with the intent to destroy the language, religion and culture. The restrictions on religion, like for instance the TAR-Specific Implementation Measure and the Reincarnated measure have the aim to control the selection, installation and education of reincarnated lamas. This is affecting the core of Tibetan Buddhism, since the lamas are guiding the ordinary Tibetans within this religion.

Nevertheless, the Article regarding cultural genocide was deleted from the Convention on the Prevention and Punishment of the Crime of Genocide and a claim of cultural genocide could not be made within international law, purely because there is no treaty or declaration which dominates a violation like cultural genocide.

²³⁹ Barry Sautman, 'Colonialism, Genocide, and Tibet', London: Routledge, October 1st 2006: Asian Ethnicity, Vol. 7:3, p. 244.

²⁴⁰ Barry Sautman, 'Cultural genocide and Tibet', Austin: Texas International Law Journal, 2003: Vol. 38:173, p. 219-220.

²⁴¹ Ibid, p. 231

Ethnocide

China did not recognize any people as indigenous and the TGIE also claims that the Tibetans are not an indigenous people. The Declaration on the Rights of Indigenous People is thus not applicable. And even if it was, there could be no violation of the standard ethnocide, as ethnocide was deleted from the later adopted Declaration.

Destruction of culture

The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage prohibits any act intended to destroy in whole or in part cultural heritage. Cultural heritage was intentionally destroyed during the years of the Cultural Revolution; however this document did not exist back then. Nevertheless, Tibetans are subjected to the destruction of their culture in a variety of ways. And as a consequence the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions could be violated. The cultural expression and the intangible heritage are not well protected within Tibet and thus is China violating these international obligations. However the obligations forthcoming from these Conventions are mainly to formulate and implement cultural policies, to take the necessary measures and to recognize the duty. Concerning these obligations, we can conclude that China has laws, regulations, policies and statements, which are protecting cultural expressions and intangible heritage.

Freedom of religion

Article 18 of the ICCPR protects the freedom of religion the strongest of all the international legal documents, however China did not ratify the ICCPR and as a consequence it cannot be bound by this Covenant. Furthermore, the freedom of religion is also for a part protected in the ICESCR. In Article 13 we can find that parents have the freedom to ensure the religious and moral education of their children. It cannot be proven that the Chinese are prohibiting people to be Buddhist and to learn to be a Buddhist, however whereas monasteries traditionally began

educating children at a young age, under Chinese law it is illegal for anyone to enter monastic life under the age of 18.²⁴²

Furthermore, the right to freedom of religion is also protected in the UN Declaration on the Rights of Minorities. Tibetans should have the right to profess their religion freely and without interference or any form of discrimination. However, with all the restriction on religious activities it could hardly be said that the Tibetans can profess their religion freely and without interference.

Linguistic rights

Alongside the protection of linguistic rights in the ICCPR, some protection can also be found in Convention against Discrimination in Education. However, after ratifying this Convention, China stated that “all signatures affixed to the Convention against Discrimination in Education by the Chiang Kai-shek Clique usurping the name of China are illegal and without force.”²⁴³

The Declaration on the Rights of Minorities gives minorities the right to use their own language without any form of discrimination. Tibetans have the right to use their own language; however there is indeed a form of discrimination. In education and within the employment, bilingual Tibetans or Han people are in a better position.

It seems that, the intentional destruction of a culture, in casu the Tibetan, can be qualified as a violation of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The obligation forthcoming from the UNESCO Convention for the Safeguarding of Intangible Heritage is that each State Party shall take the necessary measures to ensure the safeguarding of the intangible heritage present in its territory. We can conclude that, with the acceleration of globalization and modernization, dramatic changes have taken place in China’s cultural ecology and therefore, the protection of intangible heritage is needed. Recent years have witnessed a long standing development of the protection work of intangible cultural heritage,

²⁴² Anne Holmes, ‘No faith in the State. Tibetans speak about religious restrictions’, London: Tibet Watch, 2007, p.21. <[http://www.freetibet.org/files/NoFaithFINAL\(1\).pdf](http://www.freetibet.org/files/NoFaithFINAL(1).pdf)>

²⁴³ Status Report on the Convention against Discrimination in Education. (Paris, 14/12/1960).

which mainly reflects²⁴⁴ in the Regulations on the Protection of Traditional Handicraft, the Law on the Protection of Intangible Heritage of China and the Recommendations to Strengthen the Protection of China's Intangible Cultural Heritage.²⁴⁵ Thus, China does meet the obligation forthcoming from this Convention.

In the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions we can find that the Parties of this Convention reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention. China's general goal is to unite the people of all national groups to establish a powerful socialist State that is democratic and has a high level of cultural development. In the last decades China's culture has been through ups and downs and due to the effective implementation of socialist cultural policies, China's cultural undertakings have achieved so much, immediately after suffering serious destruction.²⁴⁶ Thus it cannot be said that China has violated their obligations forthcoming from this Convention.

And according to the linguistic rights and the freedom of religion in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, minorities have the right to profess their own religion and to use their own language, in private and in public, freely and without interference or any form of discrimination. Tibetans do have the right to use their own language, in private and in public. However, the Tibetans are facing discrimination in education and in employment. Bilingual Tibetans or Han people have better and more opportunities to find better jobs and they are more successful in higher education. Tibetans also have the right to profess their own religion, but they cannot profess it freely and without interference since there are so many restrictions on religious activities. Nevertheless, it cannot be unnoticed that a Declaration is an instrument of soft law and therefore it is not in itself a legally binding instrument and it does not automatically create legal rights and obligations.

Finally we can conclude, that the intentional destruction of a culture, in casu the culture of the Tibetans, can be qualified as a violation of the UN Declaration on the Rights of Persons

²⁴⁴ Ministry of Culture, 'Protection of Intangible Cultural Heritage in China', CHINAGATE.com.cn, p. 1 <<http://chinagate.cn/english/reports/48277.htm>>

²⁴⁵ UNESCO, 'Safeguarding Intangible Cultural Heritage. Legislation', unesco.org. <<http://www.unesco.org/culture/ich/index.php?pg=00034>>

²⁴⁶ Bai Liu, 'Cultural Policy in the People's republic of China. Letting a hundred flowers blossom', Paris: UNESCO 1983, p. 41-42 <<http://unesdoc.unesco.org/images/0005/000568/056872eo.pdf>>

Belonging to National or Ethnic, Religious and Linguistic Minorities. However, since the Declaration is an instrument of soft law, the violation cannot be condemned.

A way forward

The best chance to justify the violation of China's obligations under International Human Rights laws and standards could be by ratifying the ICCPR. If China would ratify this Covenant, it could be held liable for the violation of the right to freedom of religion, the violation of linguistic rights and naturally the violation of the right to enjoy culture.

However, it would be even better to solve the problem in Tibet. The Dalai Lama does not dispute that Tibet is part of China. He recognizes China's sovereignty and has embraced actual autonomy as an alternative to full independence. Now more than ever, the Tibetan issue appears ripe for settlement that would safeguard Tibetan culture and China's territorial integrity. If China could open up towards the Tibetans and if it is willing to go into peaceful negotiations with the Dalai Lama and the TGIE, this could be a remarkable opportunity.²⁴⁷

²⁴⁷ Theodore C. Sorensen & David L. Phillips, '*Legal Standards and Autonomy Options for Minorities in China: the Tibetan Case*', Cambridge, Mass.: Belfer Center for Science and International Affairs, September 2004, p. 77-78.

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