“Cultural Genocide” and Tibet

BARRY SAUTMAN†

SUMMARY

I. INTRODUCTION.................................................................................................................. 174

II. CULTURAL GENOCIDE IN INTERNATIONAL LAW AND POLITICS......................... 177
   A. Unquestioned Cultural Genocide.............................................................................. 177
   B. The Convention and Cultural Genocide................................................................. 181
   C. Indigenous Peoples, Cultural Genocide, and Ethnicity ........................................ 187

III. THE CLAIM OF CULTURAL GENOCIDE IN TIBET.................................................. 196
   A. The Émigré Conception of Cultural Genocide......................................................... 196

IV. THE EMPIRICAL BASIS OF “CULTURAL GENOCIDE” IN TIBET............................ 207
   A. Tibetan Buddhism and Cultural Genocide............................................................. 208
      1. Participation in Religious Activities ................................................................. 211
      2. Attacks on the Dalai Lama.............................................................................. 212
      3. Regulation of Monasteries.............................................................................. 214
   B. The Tibetan Language and Cultural Genocide...................................................... 219
   C. Arts, Vices, and Cultural Genocide..................................................................... 226

V. WORDS MATTER: “CULTURAL GENOCIDE” AND THE QINGHAI RESETTLEMENT
   PROJECT ..................................................................................................................... 232

VI. CONCLUSION.................................................................................................................. 240

“[I]n ten years there won’t be a Tibet anymore.”

Samdhong Rinpoche, president, Tibetan exile parliament (now Kalon Tripa, chief minister of the cabinet), 1994†

“Tant de gens se sont crus traqués et ont écrit une littérature de traqués sans tracas.” [So many people have believed they were persecuted and have written a literature of persecution, without any persecution taking place.]

Jean Genet†

† Associate Professor, Division of Social Science, Hong Kong University of Science and Technology. J.D., University of California at Los Angeles; L.L.M., New York University; Ph.D., Columbia University. Professor Sautman is a political scientist and lawyer, whose principal research focus is on nationalism and the ethnic politics of China.

I. INTRODUCTION

In the 1930s, the sociologist Karl Mannheim famously described ideologies as instruments for use in political action by ruling groups that seek to retain or regain power. Ideologies, he advised, should be approached critically to gain what insights they possess, but should never be confused with reality, which Mannheim deemed to be a socially and historically determined set of meanings. While nationalism may not be independent of such host ideologies as liberalism, conservatism, and fascism, it is a Mannheimian ideology because of its association with political integrity. A leading proponent of liberal nationalism contends that if nationalist myths suppress what is negative in the history of a nation, they do so to facilitate moralizing that encourages its members to live up to ancestral virtues. A conservative defender of nationalism argues that even deliberate falsehoods should be condoned where mythmaking is essential to a merited nationalist project.

Nationalism is often based upon what Liah Greenfeld calls ressentiment, the cognitive dissonance between a conviction that a people should be well placed in the hierarchy of nations and the fact that it is not. Ressentiment is displayed as righteous anger at the purported victimization of a people by a powerful state. While examples of national oppression abound and give rise to many legitimate grievances, claimed aggrievement is ubiquitous among nationalist movements and serves the main function of an ideology, which is mobilization. Nationalists often seek to activate their nation or putative nation and garner international support by invoking “nationalist myths” of moral grievance—even where there is no clear pattern of ethnic oppression or where some deleterious policies exist alongside countervailing practices. The nationalist penchant for magnifying ethnic particularities in order to reinforce national identities, combined with the not uncommon nationalist practice of hyperbolizing moral grievance, leads to the political mystification that Mannheim wrote about and that the Tibet case exemplifies.

The ideology of the Tibetan émigré leaders headquartered in Dharamsala, India centers on the notion that Tibet has been occupied by China for five decades and has thereby experienced a particularly destructive form of colonialism. The Dalai Lama has stated that “Tibet was an independent country before its occupation by China . . . . There is

no justification claiming that Tibet was ‘part of China’ as Peking claims today.’”\(^\text{13}\) He has further said: “Fundamentally, the issue of Tibet is political. It is an issue of colonial rule: the oppression of Tibet by the People’s Republic of China (PRC) and resistance to that rule by the people of Tibet.”\(^\text{14}\) This position is upheld even though every state in the world recognizes that Tibet is part of China, and no state deems Tibet a colony.

Émigré leaders attribute a malign purpose and effect to all actions of “the Chinese” in Tibet but do so especially where Tibetan culture is concerned. The Dalai Lama has stated: “The Chinese authorities view Tibet’s distinct culture and religion as the source of threat of separation. Hence as a result of deliberate policies an entire people with its unique culture and identity are facing the threat of extinction.”\(^\text{15}\) Émigré leaders claim that the impetus for their demarches to China is “to preserve the unique cultural identity of Tibet.”\(^\text{16}\) The Dalai Lama acknowledges that the claim that Tibetanness is threatened by a Chinese effort to undermine Tibetan Buddhist culture is a drawing card for support of his cause because Buddhism enjoys a growing international following.\(^\text{17}\) To magnify this appeal, he has emphasized the redemptive features of this culture, stating: “My main concern is the protection of Tibetan culture because [it] has the potential to create a peaceful human society, a compassionate society at peace with nature and the environment.”\(^\text{18}\) Émigré leaders advance this claim while simultaneously applauding the theocracy that existed before Chinese state authority was reasserted in Tibet.\(^\text{19}\) They do so even though the Dalai Lama acknowledges that the social system of old Tibet was feudal\(^\text{20}\) and even though his most longstanding foreign supporter has characterized the monastic supremacy of old Tibet as “a stern dictatorship.”\(^\text{21}\)

The émigré discourse of Tibetan culture is framed in the stern terms in order to force the hand of international elites. Introducing a study of the purported PRC plan to “crush an ancient civilization” in Tibet, which was released in 2000,\(^\text{22}\) Kalon T.C. Tethong

---


stated that “Tibet today is in the throes of a second Cultural Revolution as the Chinese authorities step up their long-term strategy to exterminate Tibet’s distinct cultural and ethnic identity” and “accomplish their Final Solution to the Tibet problem.”23 Invocations of the Holocaust and other genocides24 have caused leaders of European and North American states—states that do not endorse the émigré stance of rightful independence—to demand that China refrain from actions that imperil Tibet’s culture, the assumption being that the émigrés veridically point out the clear danger to Tibet that PRC cultural policies or Han Chinese migration to the region supposedly pose.

After the Dalai Lama visited the U.S. President in 2001, his representative averred that the United States had offered “moral and material support to help preserve Tibet’s unique linguistic, cultural, and religious identity.”25 Meanwhile, Secretary of State Colin Powell has stated that Han Chinese migration to Tibet “seems to be a policy that might well destroy that society” and pledged “solidarity with the Dalai Lama and the people of Tibet.”26 In introducing the “Tibet Policy Act”27 in 2001, Diane Feinstein, a U.S. senator who has often sought better relations with China, stated that she crafted legislation to support the émigré cause because “Beijing has repeatedly ignored promises to preserve indigenous Tibetan political, cultural and religious systems.”28 Concomitantly, the émigré leaders try to foreclose any response to their charges by dismissing those who disagree as “pro-Chinese” or dupes of “Chinese propaganda.” Gabriel Lafitte, a pro-Tibet independence scholar and activist, observes that for the émigré leaders:

The picture is black and white, without ambiguities. China is often viewed monolithically, so the multivocality of Chinese elite contestation goes unheard. Chinese data is dismissed wholesale as propaganda—even the data used by China’s still enormous machinery of central planning.29

This essay analyzes the émigré claim that China commits cultural genocide by directly or indirectly extirping Tibetan culture. It first discusses the origins of the concept of cultural genocide and its tenuous subsistence in international law. Genocide, cultural

---

24. John Colvin, Books: Peking’s Destructive Raze, DAILY TELEGRAPH (London), Dec. 5, 1992, at 21, 1992 WL 9079448 (quoting the Dalai Lama concerning “the holocaust in which one and a fourth million Tibetans have lost their lives”); Lynne O’Donnell, China’s Frontier Stacking Borders on the Genocidal, AUSTRALIAN, Oct. 2, 2000, at 37, LEXIS-NEXIS Academic Universe (quoting Melbourne University Tibet activist Gabrielle Lafitte regarding the economic development of the PRC as a “final solution”). While invocations of the Holocaust affect people generally, the Dalai Lama’s Jewish constituency is especially strong. A Jewish outreach program in Dharamsala estimates that three out of four Western visitors to the town are Jewish, and an Israeli news service has commented that “Little Lhasa” seems like “Little Israel” at times. Tibor Krausz, Shalom Haverim, JERUSALEM REP., Mar. 12, 2001, at 26, LEXIS, News Library, News Group File.
genocide, and ethnocide (“the extermination of a culture that does not involve physical extermination of its people”) are distinguished, and the deployment of the term “cultural genocide” in political discourse is analyzed. An overview is presented of the state of culture in Tibet, with a focus on religion, language, and the arts—key aspects of culture in any society and featured factors of the émigré discourse of cultural genocide in Tibet. The essay concludes that the inclusion of the concept of “cultural genocide” as a stock in trade of Tibetan émigré ideology is meant to be provocative and incitory, rather than an intellectually appropriate conceptual framework for assessing PRC state policy as it affects culture in Tibet. Designed to bolster the legitimacy of the émigré ethno-territorial movement, much of the émigré discourse on cultural genocide is a systematic misreading of the effects of the cultural transformation that attends social and economic change in Tibet. It ascribes to Tibet’s subsumption into China changes that are connected to late modernity that affect people throughout China and the world. The discourse is used by émigré leaders to foster a polemical polarity between themselves as the torchbearers of “authentic” Tibetanness—and thus the rightful rulers of an independent or quasi-independent Tibet—and “the Chinese,” who as negators of Tibetanness, are disentitled to the exercise of sovereignty in Tibet.

II. CULTURAL GENOCIDE IN INTERNATIONAL LAW AND POLITICS

A. Unquestioned Cultural Genocide

Days before the International Olympic Committee met in Moscow in 2001 to award the 2008 Games, the Dalai Lama’s envoy in Russia, Ngawang Gelek, told a journalist that Beijing should be denied the Games because “China has been executing a policy in Tibet of ethnic and cultural genocide against the Tibetan people” intended to “erase the Tibetan people from the face of the Earth.” He also claimed that there “has not been one single [terrorist] incident in all the 50 years of [Tibetan] emigration,” and he endorsed Russia’s policies in Chechnya, stating that “Chechens within the Russian Federation have a hundred times more freedom than the Tibetans inside the PRC,” and that “Russia has given the Chechen people full autonomy.”

The Dalai Lama’s representative could not help but know of the Tibetan guerrillas who fought China for almost two decades and have been repeatedly praised by the Dalai Lama. The latter’s stance on violence is pragmatic: “Buddhists believe if the motivation is good and the goal is good, then the method, even the apparently violent kind is permissible. But here in our situation, in our case whether it is practical or not, that I think


31. Speaking of the émigrés, Lafitte has stated, “The Tibetans appeal to the nostalgia and yearning inherent in modernity, presenting themselves as bastions of authenticity in a world seduced by materialism.” Lafitte, supra note 29, at 159.


34. Dalai Lama, AUTOBIOGRAPHY, supra note 20, at 190; Dalai Lama, March 10 Statement 1970, in SELECTED SPEECHES, supra note 13, at 376–77. See also Claudia Dreifus, The Dalai Lama, N.Y. TIMES, Nov. 28, 1993, sec. 6 (Magazine), at 52, LEXIS-NEXIS Academic Universe; Dalai Lama, March 10 Statement 1994, in SELECTED SPEECHES, supra note 13, at 441, 443.
is the big question.\textsuperscript{35} Gelek must be aware of bombings in Lhasa, eight of them from 1995 to 2000, and of endorsements of terrorism by the largest émigré organization, the Tibetan Youth Congress (TYC).\textsuperscript{36} TYC presidents of the late 1980s and early 1990s held that, because no Chinese in Tibet is innocent, war should be waged on civilians there,\textsuperscript{37} while the Dalai Lama allegedly encouraged extreme nationalist expressions “to make him[self] look more conciliatory.”\textsuperscript{38} “A steady hate-China diet” and talk of martyrdom through violence have been observed in Tibetan settlements in India.\textsuperscript{39}

A faction of émigré notables fantasizes about terrorism—without public rebuke from exile leaders—and instead accuse China of “state terrorism.”\textsuperscript{40} For example, an ex-guerrilla leader has called for a “force [to] rise up in Tibet, killing Chinese one by one.”\textsuperscript{41} After the September 11, 2001 terrorist attacks in the United States, a journal fostered by mainstream émigré leaders published a missive by a proponent of the discourse of cultural genocide,\textsuperscript{42} who urged émigrés: “In future, if any individual is determined to take his or her

---

\textsuperscript{35} The Priest, the CIA, and Their Guerillas, GOLD COAST BULL. (Austl.), June 7, 2001, at T31, LEXIS-NEXIS Academic Universe. See also Videotape: The Shadow Circus: The CIA in Tibet (Tenzing Sonam & Situ Sarin 1999) (on file with the University of California Extension Center for Media and Independent Learning). The Dalai Lama’s statement could be read as directly contradicting his assertion that the Tibetan émigrés have “abandoned war as an instrument of national policy. For us Tibetans the path of non-violence is a matter of principle.” Dalai Lama, March 10 Statement 1997, in SELECTED SPEECHES, supra note 13, at 454, 455. The thirteenth Dalai Lama in his “political testament” stated, “Use peaceful means where they are appropriate, but where they are not appropriate, do not hesitate to resort to more forceful means.” John Billington, Power Before Prayer, INDEPENDENT (London), Oct. 12, 1997, at 5, 1989 WL 4030023. Robert Thurman, the Dalai Lama’s closest academic associate, observes, “There is a Buddhist theory [that] sometimes you have to do a little violence to prevent a larger violence.” Barbara Crossette, The World: Searching for Tibet; The Shangri-La That Never Was, N.Y. TIMES, July 5, 1998, sec. 4, at 3, LEXIS-NEXIS Academic Universe.


\textsuperscript{37} PIERRE-ANTOINE DONNET, TIBET: SURVIVAL IN QUESTION 186 (1994); John Gittings, Tibetan Exiles Defy Dalai Lama in Call to Arms, GUARDIAN (London), July 22, 1988, LEXIS, News Library, Guardian File. A well-known U.S. “free Tibet” advocate has stated that “Chinese” who live in Tibet are “the purveyors of Tibet’s destruction . . . .” John F. Avedon, The Rape of Tibet, WASH. POST, Mar. 29, 1987, at C7, 1987 WL 2056613. TYC leaders continue to speak of using force. For example, TYC member Pema Lhundup stated, “Unless and until we do any forceful action there won’t be any chance for the Tibetan issue to get up onto an international level.” China Tightens Yoke 40 Years After the Tibet Uprising, DEUTSCHE PRESSE-AGENTUR, Mar. 8, 1999, LEXIS-NEXIS Academic Universe.

\textsuperscript{38} Robert Barnett, Violated Specialness: Western Political Representation of Tibet, in IMAGINING TIBET: PERCEPTIONS, PROJECTIONS AND FANTASIES 269, 315 n.82 (Thierry Dodin & Heinz Rather eds., 2001).


life, why not use this final act in a gesture of heroism? For example, like those Palestinians, carrying suicide bombs, in their freedom struggle.”

The Dalai Lama’s representative must also know that specialists find Chechen autonomy much less than full. Chechen separatists are up in arms because Russia does not permit in Chechnya what Tibetan émigrés seek in Tibet—a regime based on a preferred religion. Gelek sought Russian support by implying that Tibetan émigrés, in contrast to Chechens, uniformly practice non-violence, a notion linked to the essentialist discourse of the unique magnanimity and equanimity of Tibetans.

The Kalon Tripa Samdhang Rinpoche speaks of “Tibet’s gentle civilisation,” but power struggles among Tibet’s spiritual and temporal lords were often violent. The seventeenth century Dalai Lama, who was called the “Great Fifth” by émigré leaders, ordered that his enemies, their families, descendants, and servants be annihilated without a trace. The present Dalai Lama’s immediate predecessor instigated violence against both Tibetan and non-Tibetan opponents. Émigré leaders have only recently claimed that non-violence is essential to Tibetan culture and underlies their strategy. Along with armed actions in Tibet, there has been violence against émigrés who criticize the administration, which has suppressed publications that “do not conform to the desired image of traditional Tibetan society.”

Ngawang Gelek’s other assertion—that unlike Chechens, Tibetans are deprived of any say in how their region is run—is also a political myth. Tibetans are numerous at all rungs of the Tibet Autonomous Region (TAR) political hierarchy, except as Regional Party Secretary. Their political participation is unlike the situation in Ladakh, which is a


45. For example, Lafitte has put it that “tolerance and forbearance are classic Tibetan strengths, taught at mother’s knee.” Lafitte, supra note 29, at 157.


49. Barnett, supra note 3, at 275, 308 n.23. The first instance in which the Dalai Lama mentioned non-violence in his annual March 10 Lhasa uprising commemorative speech was in 1988. See SELECTED SPEECHES, supra note 13, at 421.


52. Barry Sautman & Irene Eng, Tibet: Development for Whom?, 15 CHINA INFO. 20, 57 (2001). Here, “Tibet” is equated with the TAR, which in contrast to “ethnographic Tibet” encompasses the territory ruled by
largely Tibetan Buddhist area of India, a country whose political system the émigré leaders fulsomely praise. See Melvyn C. Goldstein, The Dalai Lama’s Dilemma, FOR. AFF., Jan.–Feb. 1998, at 83, 1998 WL 12052603 (outlining the evolution of China’s Tibet policy).

Ngawang Gelek’s disregard of well-understood aspects of the politics of the place where he is from and the place where he is stationed did not lead the interviewer to question his assertions of “ethnic and cultural genocide.” The international mass media, self-represented challengers of received truths, curb their skepticism where émigré representations of the Tibet Question are concerned. They likely do so to avoid the accusations of being tools of the authoritarian PRC regime, accusations made by émigré leaders and their Western supporters against those who question their claims and perhaps also out of awe of a world religious leader and Nobel Prize winner. The Dalai Lama has himself observed that the Western “media is very favourable, very supportive” of his cause. Public opinion as expressed through the media “gives inspiration for more support, and more concern in Parliament or Congress.” The media is especially receptive to claims of cultural genocide, despite a consistent lack of evidence proffered by émigré leaders. Even where the phrase itself is not used, Western media reflexively allude to the concept. For example, in a report about how the head of the German parliament’s human rights committee had invited the actor Richard Gere as “someone who is ‘knowledgeable about the political situation’ in Tibet,” to testify before the committee, a wire service stated, “Under Chinese rule, the Tibetan language and culture have been suppressed.”

Allegations of cultural genocide in Tibet resonate in the West because it is a largely unexamined concept that allows for individualized imaginings and because the notion intersects with continuous Western efforts to construct culturally homogenous nation-states in Europe, usually by ethnic cleansing. Westerners aware of their own countries’ genocide of ethnic minorities and indigenous peoples may intuit that any majority will do the same. “Cultural genocide” does, however, have a known origin and a more-or-less accepted definition derived from its tenuous link to international law. Its grounding in law contrasts with metaphorical uses of the term by activists to denote any undesired, exogenous change in the culture of a subaltern ethnic group, a usage that diminishes the analytical utility of the concept and the forcefulness of condemnation that it brings to appropriate cases.

---


54. If Justice is Not Done to Us, This Northern Frontier Will Go, STATESMAN (India), Sept. 25, 2001, LEXIS, News Library, News Group File.

55. Thurman, supra note 17 (noting the impact of international public opinion on government action).

56. Id.


59. Robert N. Clinton, The Rights of Indigenous Peoples as Collective Group Rights, 32 ARIZ. L. REV. 739, 745 (1990) (explaining the historical pattern of interaction between Western cultures and indigenous groups as being one of oppression by the West).

60. See id.
B. The Convention and Cultural Genocide

Referring to the ongoing Nazi genocide in 1944, Winston Churchill stated that “[t]here is no doubt that this is . . . the greatest and most horrible single crime ever committed in the whole history of the world.”61 In that year, a Polish-born lawyer in the United States first used the term “genocide” in a study of German atrocities. Rafael Lemkin, *animateur* of the Convention on Genocide,62 created the neologism “genocide” from *genos*, Greek for “race” or “nation,” and *caedere*, the Latin verb “to kill.” Lemkin defined genocide as “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.”63 As means of this annihilation, he included mass murder, defined as “the prevention of life (abortions, sterilizations) and also devices considerably endangering life and health (artificial infections, working to death in special camps, deliberate separation of families for depopulation purposes and so forth).”64

In the years since then, scholars and activists have argued over how genocide should be defined, with “definitions of genocide often revolving around particular political agendas of inclusion and condemnation.”65 Differences in definition have naturally led to debates among scholars about which modern cases should be denominated as genocide, with the number ranging from one (the Jewish Holocaust)66 to scores.67 Some scholars and activists have attempted to broaden the definition beyond the one found in the Convention,68 but as a recent study argues,

[R]egardless of how many varying and conflicting academic opinions there may be on the “best” definition of genocide, there is only one universally accepted *legal* definition of genocide upon which effective international prevention, suppression, and punishment can be authoritatively based . . . . Besides being the only legally acceptable definition of genocide, the definition found in the Convention is the only practical, workable definition of genocide, if the international community is ever to have any hope of cooperating in halting genocide. International law offers the one authoritative source for legitimate collective action, as it represents the highest level of political unity among nation-states on a difficult issue . . . . Any attempt at broadening the definition, without first demonstrating a willingness to enforce the present definition, would make multilateral action to stop genocide less likely rather than more.69

---

63. RAFAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (1944) [hereinafter LEMKIN, AXIS RULE IN OCCUPIED EUROPE].
64. Rafael Lemkin, *Genocide As a Crime Under International Law*, 41 AM. J. INT’L L. 145, 147 (1947). The means discussed by Lemkin are sometimes labelled as “physical” and “biological.”
68. Genocide Convention, supra note 62, art. II.
When in 1946 the UN General Assembly first discussed genocide, it was noted that among its incidents are “great losses to humanity in the form of cultural and other contributions.”70 A Secretary-General’s commentary on the draft convention proposed that an article prohibit cultural genocide, including proscriptions of national languages and the systematic destruction of monuments or other historical, artistic, or religious objects.71 A UN Ad Hoc Genocide Committee produced an initial draft convention, Article III of which proposed to prohibit

any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group 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;
2. destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.72

Another amendment was soon proposed: “The addition of a third paragraph worded as follows: ‘Subjecting members of a group to such conditions as would cause them to renounce their language, religion or culture.’”73

The rationale for including Article III in the draft treaty was articulated by one of its proponents on the Ad Hoc Committee:

The 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 group to survive. The physical destruction of individuals was not the only possible form of genocide; it was not the indispensable condition of that crime.74

There was also a proposal that “cultural genocide” be covered in the Universal Declaration of Human Rights,75 which the Third Committee was drafting while the Ad Hoc Committee worked on the Genocide Convention. Several European states proposed that a UDHR article guarantee minorities a right to have their own schools and cultural or religious institutions and to use their languages in the press and public assemblies and before courts and other state authorities. The United States, through its delegate Eleanor Roosevelt, asserted that it had no minorities and insisted that minority rights be excluded from the UDHR because there were no minority problems anywhere in the Western Hemisphere. It then misrepresented the degree of support for the article by other Member States in order to defeat it in a committee maneuver. Communist states had supported the

clause and proposed that it be expanded to provide that minorities be entitled to public funds for use in preserving their cultures.\textsuperscript{76}

In the Ad Hoc Committee that drafted the Genocide Convention, the United States was the only member to oppose inclusion of a ban on cultural genocide. It argued that matters covered by the Article should be dealt with elsewhere and in connection with protection of minority rights. At the same time, the United States opposed a UDHR minority rights provision. When the draft Convention reached the Sixth Committee, Britain also opposed Article III, arguing that the concept of cultural genocide was so indefinite that it would render meaningless the idea of genocide \textit{tout court}. Communist and some Middle Eastern states argued for a cultural genocide provision, pointing out that physical and cultural genocide are related and have been used to destroy ethnic groups.\textsuperscript{77}

Two of three experts consulted by the Secretary-General had opposed including a ban on cultural genocide in the treaty, on the ground that protection of culture would be an undue extension of the struggle against genocide, which is designed to protect the physical integrity of groups. It was contended that forced assimilation did not constitute the crime of genocide and could be dealt with through a system for the protection of minority rights.\textsuperscript{78} Rafael Lemkin favored a cultural genocide clause because it would protect groups that could not continue to exist without the “spirit and moral unity” provided by their culture.\textsuperscript{79} He added, however, that a ban on cultural genocide must not be directed against policies designed to assimilate a group into a larger society, but only against “drastic methods aimed at the rapid and complete disappearance of the cultural, moral and religious life of a group of human beings.”\textsuperscript{80}

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 not be placed on the same level; that a ban might be “interpreted so as to inhibit the assimilation of cultural or linguistic groups and thus would prevent various states from ratifying the Convention”;\textsuperscript{81} that an article barring cultural genocide “would lead to spurious claims, which would detract from the legitimacy of the convention’s overarching goal” of preventing the “physical extermination of protected groups”;\textsuperscript{82} and that cultural genocide claims would prove problematic because of the Convention’s intent requirement.\textsuperscript{83} Delegates from several countries, including the United States and Canada, were also nervous about potential claims from indigenous groups.\textsuperscript{84} In rejecting “cultural genocide,” the United Nations limited genocide to “essentially physical acts.”\textsuperscript{85}


79. LEMKIN, AXIS RULE IN OCCUPIED EUROPE, supra note 63, at 90–95.


82. STEVEN RATNER \& JASON ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 29 (1997).


84. William A. Schabas, \textit{Problems of International Codification—Were the Atrocities in Cambodia and Kosovo Genocide?}, \textit{35 NEW ENG. L. REV.} 287, 292 (2001) [hereinafter Schabas, \textit{Atrocities in Cambodia}], according to Macquarie University’s Konrad Kwiet, Australia has thus far not incorporated the Genocide Convention into domestic law because it fears that the Convention may be used against it by Aborigines. Patrick}
The United Nations of the 1940s in which the major Western powers prevailed against the concept of cultural genocide was an exclusive organization, but there is no indication that in an expanded, post-colonial United Nations most states would favor a ban on cultural genocide, as the actions of many states may give rise to charges against them. U.S. leaders, for example, were aware that their actions during the Vietnam War might subject them to a claim of cultural genocide. A report prepared for the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1985 recommended consideration of a cultural genocide provision, perhaps through an optional protocol. However, no change has taken place, and “[r]ecent United Nations activity in this area suggests that ratification of [a contemporary equivalent of] Article III... would take a long time and might find only a few signatories.” While at least one scholar urges that cultural genocide be incorporated into the Convention, international lawmakers have shown no interest in doing so. The Rome Statute of the International Criminal Court, for example, brings genocide, but not cultural genocide, within its ambit. Critics of a ban on cultural genocide remain wary that it may impede assimilationist policies. Arguing in favor of a prohibition of cultural genocide, a leading scholar nevertheless recognizes that it can be realized only if framed as an adjunct of physical genocide:

[T]here is a distinction between [assimilationist] programs and the deliberate destruction and desecration of icons, libraries, monuments, and coercive religious conversion. The latter violent acts might be prohibited when undertaken in conjunction with acts of physical genocide. In such cases there is little doubt that there is an intent to both physically exterminate the group and eliminate all remnants of its existence.

A conjunction of physical and cultural destruction was precisely the conclusion reached by analysts about the wars of the 1990s in the former Yugoslavia, where ethnic-based organized mass murders and expulsions were accompanied by a systematic destruction of hundreds of mosques, churches, museums, libraries, archives, and ancient houses.

It has been observed that “[w]hat was left out of the Convention is as important as what was included.” That proposals were made in the 1940s for a ban on cultural genocide and were not adopted in a binding legal instrument has implications for how

88. Morsink, supra note 76, at 1055.
91. Lippman, Forty-Five Years Later, supra note 81, at 77.
malign state actions affecting culture should be characterized. Proposals to the United Nations more than a half-century ago did provide parameters for the concept, which were the essential link of cultural genocide to physical and biological genocide and a requirement of intent. Their rejection by the United Nations mandates that no implication be made that a crime of cultural genocide exists and that the concept be strictly construed. Thus, William Schabas, the foremost specialist of the law of genocide, argues that although the defrocking of Buddhist monks and nuns and repression against Muslim Chams in Khmer Rouge-ruled Cambodia (1975–1979) may be crimes against humanity, defined as “persecutions on political, racial, or religious grounds” during wartime, and may also violate the International Covenant on Civil and Political Rights (ICCPR), these actions would not amount to genocide. Under Article II of the 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.

The Genocide Convention requires “a very specific intent . . . not only the intent to kill or destroy people but to kill or destroy them because they form a group such as referred to in Article II.” Genocide is a “premeditated, calculated, systematic, malicious crime, authorized by a state’s political leaders” and is distinguishable from atrocities such as ethnic cleansing, which may be intended to drive a people from a territory, but not to exterminate them. Studies of late twentieth century civil wars and ethnic conflicts include only two instances of genocide (Rwanda and Bosnia) among scores of cases. The International Law Commission has pointed out that in genocide “the destruction in question is the material destruction of a group either by physical or by biological means. . . .” As

---


96. International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 56, U.N. Doc. A/6316 (1966) [hereinafter ICCPR] (“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 process and practise their own religion, or to use their own language.”).

97. Schabas, Atrocities in Cambodia, supra note 84, at 291.

98. Genocide Convention, supra note 62.


100. CAMPBELL, supra note 69, at 34.


two leading scholars of genocide point out, “The suppression of a culture, a language, a religion, and so on is a phenomenon that is analytically different from the physical extermination of a group.”

The Khmer Rouge, for example, intended not to destroy Buddhists as such, but to eliminate Buddhist cultural institutions in order to diminish popular adherence to religion. It sought not to wipe out the Chams as such, but to force their assimilation into the Khmer majority. The Khmer Rouge killed people to accomplish these goals, but there was no “cultural genocide” as the original proponents of the concept conceived it because the actions were not an adjunct to physical destruction of protected ethnic or religious groups as such. As William Schabas has put it, “[I]n 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.” The effort to attach a label of “genocide” to these actions is, under a reasonably strict construction of the Convention, merely “an attempt to stigmatise behavior [with] a word loaded with such terrible connotations.”

Despite the idiosyncratic preferences of some scholars, the acts originally contemplated as cultural genocide would not have been crimes under international law unless they had taken part of a program to exterminate a protected group and were demonstrably intentional. In genocide, physical or cultural, “organizers and planners must have a racist or discriminatory motive, that is, a genocidal motive, taken as whole. Where this is lacking, the crime cannot be genocide.”

The International Criminal Tribunal for Rwanda (ICTR) has said of the mass murders of 1994–1995 in that country that “many facts show that the intention of the perpetrators of these killings was to cause the complete disappearance of the Tutsi people.” ICCPR Article 27, which states that group members cannot be denied the right to enjoy their own culture, 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 a showing of scienter or knowledge of

104. Schabas, Atrocities in Cambodia, supra note 84, at 291.
105. Id. See also Simon, Defining Genocide, supra note 85, at 254–55.
106. SCHABAS, GENOCIDE IN INTERNATIONAL LAW, supra note 62, at 187.
107. Schabas, Atrocities in Cambodia, supra note 91, at 292, 301. See also Simon, Defining Genocide, supra note 92, at 252. The label of genocide is much more supportable in the case of anti-Vietnamese killings by the Khmer Rouge, which were intended to and virtually succeeded in the annihilation of 400,000 Vietnamese Cambodians. See generally BEN KIERNAN, THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE (1996).
110. SCHABAS, GENOCIDE IN INTERNATIONAL LAW, supra note 62, at 255.
112. ICCPR, supra note 96, art. 27.
113. See Lippman, Forty-Five Years Later, supra note 81, at 37 n.277.
the circumstances of the act. A fortiori, there can be no unintentional or unconscious cultural genocide.

Acts destructive of minority cultures are chargeable under the ICCPR against states that have ratified it (China has not), but neither the ICCPR nor any other treaty denominates a violation as “cultural genocide.” To do so would require that the acts be deemed violative only if they are genocidal, i.e., part of an intended program of mass killings of a protected group. Such an implication would raise the bar on the protection of minority cultural rights that should be guarded by law even where the violation of a culture is not part of a concerted extermination of an ethnic or religious group.

That there is no binding international law of cultural genocide reflects UN and state reluctance to mandate the protection of minority rights. For example, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities is not binding and has no enforcement mechanism. The same is true of a draft UN instrument on indigenous peoples’ rights that speaks of cultural genocide.

C. Indigenous Peoples, Cultural Genocide, and Ethnocide

Although not inscribed in binding international instruments or customary law, the concept of cultural genocide has been introduced into proposed protections of the rights of indigenous peoples. The latter are defined not by treaty, but in a variety of ways by international organizations and diplomats. The most common definitions relied upon suggest “indigenous peoples” include only those who were affected by classic modern colonialism. A somewhat more encompassing definition appeared in a draft entitled “International Covenant on the Rights of Indigenous Peoples” which was prepared for the World Council of Indigenous People. It stated that an indigenous people is one:

a. who lived in a territory before the entry of a colonizing population, which colonizing population has created a new state or states or extended the jurisdiction of an existing state or states to include the territory, and
b. who continue to live in the territory and who do not control the national government of the state or states within which they live.

114. Richard L. Herz, Litigating Environmental Abuses Under the Alien Tort Claims Act: A Practical Assessment, 40 Va. J. Int’l L. 545, 629 (2000). For a violation of Article 27 to be established, however, the action in question must have “effects as severe as might be expected in a cultural genocide claim . . . .” Id. at 631.
116. See Beanal v. Freeport-McMoran, Inc., 969 F. Supp. 362, 373 (E.D. La. 1997), aff’d, 197 F.3d 161 (5th Cir. 1999) (enumerating the differences between genocide, which is prohibited by law, and cultural genocide, which is not); Whitaker, Revised Report, supra note 87, at 17.
That definition, however, was dropped from the final text. The only definition that fully dispenses with a link between indigenous peoples and colonialism is that of the World Bank, but it counterintuitively and counterfactually eliminates the criterion of historical continuity and the implied notion of historical priority by terming as indigenous all “groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged.”

This overinclusive definition erases any distinction between indigenous and ethnic minority peoples, while a UN Special Rapporteur has adjured that indigenous peoples is a category that “should not be confused with ethnic, religious or linguistic minorities.”

The most widely-cited definition of indigenous peoples and one that to some extent has guided UN practice is that of UN Special Rapporteur Martinez Cabo:

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 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.

Martinez Cabo’s definition likely influenced the definition in International Labour Organization Convention No. 169, which refers to indigenous peoples as descended from inhabitants of a country “at the time of conquest or colonisation.” Mobilizations among the 300 million indigenes led to the 1981 formation of a UN Working Group on Indigenous Populations and to UNESCO meeting on “ethnocide” in Costa Rica. A Latin American meeting produced the Declaration of San Jose, which states that “ethnocide, i.e. cultural genocide, is a crime against international law, as is genocide, the subject of the Convention on the Prevention and Punishment of the Crime of Genocide.” The conferences erred in calling cultural genocide a violation equivalent to genocide: The latter is the most serious of crimes, while “the crime of cultural genocide” has only been an unsuccessful proposal. In addition to the Declaration drafters, other scholars have also been mistaken in equating ethnocide and cultural genocide.

Unlike cultural genocide, which is invariably connected to mass ethnic murder on a grand scale, ethnocide, as envisaged by proponents of the concept, is not necessarily tied to killing. An influential early work on ethnocide identified it exclusively with the Western capitalist state, while cultural genocide has not been so circumscribed. Scholars have defined ethnocide in many ways. Alex Alvarez calls it “the assassination of a culture and of identity. It is the murder of the ties that bind a group of people together and make them unique.” Kazuo Sumi terms it “a dislocation of indigenous people from their homeland, destruction of their way of life, and denial of their culture and language.” For Maivan Clech Lam, ethnocide “is the destruction, or severe disruption, of the social and material bases necessary to a people to sustain its human relations, body of knowledge, and sense of existential purpose, such that an essentially ‘de-knowledged’ community now looks out at a world of chaos in which it may never again find its place.” The Declaration of San Jose, while not as lyrical as academic pronouncements, assigns the term to actions of unambiguous malignancy:

Ethnocide means 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.

“An extreme form of massive violation of human rights” presupposes intent, which can be inferred from the nature of the acts, not actions that are “unintentional” or “unconscious.” As one scholar has observed, “Usually the term ethnocide is applied to intentional acts resulting in culture death.” The intent that underlies ethnocide may not be identical to the intent that underlies cultural genocide because ethnocide is not tied to the physical or biological destruction of a group, and is thus typically aimed at forced

ANTHROPOLOGY 113, 114 (1979) (stating that it is not necessary for physical genocide, which is linked to cultural genocide, to occur in relation to ethnocide). For a definition of cultural genocide that is also descriptive of ethnocide, see Vahakn N. Dadrian, A Typology of Genocide, 5 INT’L REV. MOD. SOC. 201, 205 (1975) (“[T]he destruction of the defining characteristic and qualities of a group involves forced assimilation and suppression of their ethnic characteristics.”).


129. See PIERRE CLASTRES, ARCHEOLOGY OF VIOLENCE (Jeanne Herman, trans., Semiotext(e), 1994) (1980).

130. ALVAREZ, supra note 65, at 51.


133. Declaration of San Jose, 1982, Preamble. See also Herz, supra note 114, at 633. (“Cultural genocide is an extreme form of discrimination in that it consists of an effort to obliterate an entire culture.”).


assimilation, not population decimation. In any case, because “ethnocide” does not exist in UN human rights instruments, it is indeterminate, as everyone imagines what they will about it. Indeed, the term has been applied to scenarios where forced assimilation and other obviously intentional acts were carried out as well as to situations where no intent to harm is apparent.

The Draft Declaration on the Rights of Indigenous Peoples speaks moreover of “cultural genocide and ethnocide,” with use of the conjunctive indicating that the drafters held the two concepts not to be identical. In international law, the term “ethnocide” has only been applied to indigenous peoples and not to colonized peoples or ethnic minorities. It is found only in the Draft Declaration and not in other UN documents. The experiences of many minority and colonized peoples nevertheless resemble ethnocide. For example, from 1895 to 1945 in Japan’s Taiwan colony, school curricula were purged of anything that might remind students that they were Chinese, and students who spoke Chinese in schools were penalized or even assaulted. In its Korean colony from 1919, Japan enforced a policy of “cultural control” or “material assimilation.” This entailed the enforcement of Emperor worship and prohibition both of the teaching of Korean history and of the use of the Korean language in public places. Koreans were obliged to learn Japanese and to adopt Japanese names.

In Turkey during the 1920s, the secular republican regime attempted to suppress Kurdish identity. A then-Minister of Justice, Mahmut Esat Bozkurt stated: “Those who are not of pure Turkish stock can have only one right in this country, the right to be servants and slaves.” The Kurdish language was outlawed, Kurdish organizations banned, and Kurdish land expropriated for settlement by Turks. Kurds, a fifth of Turkey’s people, were deported across the country to force their assimilation and to guarantee that no area

138. Joe Thomas, Ethnocide: A Cultural Narrative of Refugee Detention in Hong Kong 33–34 (2000) (temporary detention of Vietnamese refugees). “Cultural genocide,” of course, is even more often applied to situations where there is no apparent intent to harm an ethnic group. For example, an executive officer of the Orange Order termed the ban on marching through an Irish nationalist community “a policy of cultural genocide against the loyalist community of Northern Ireland.” Parade Barred from Garvaghy Road, IRISH TIMES, July 3, 2001, at 7, 2001 WL 23510033.
was more than five percent Kurdish.‡146 Kurds were designated as “mountain Turks,” and the term “Kurd” officially promoted as an insult.‡147 Kurdistan was termed the “East” of Turkey.‡148 It was only in 2001 that it became legal in Turkey to publish or broadcast in Kurdish; the language is still banned from schools.‡149

Cultural repression against colonized peoples and ethnic minorities has been more than matched by similar actions against indigenous peoples. These include an arguable form of cultural genocide that, due to English-mediated hegemony, is most associated with Native Americans, First Nations Canadians, and Australian Aborigines. Genocide Convention Article II(e) bans the forcible transfer of children of a protected group to another group, a process that indigenous activists term “cultural genocide.” However, the Convention framers rejected that concept; the Convention specifies that forcible transfer is genocide per se if committed with the intent to destroy, in whole or part, a protected group.‡150 The International Law Commission (ILC) treats Article II(e) as a type of “biological genocide.”

Drafters framed Article II(e) because the Nazi Germanization policy in Poland and other occupied states included mass kidnapping and transfer of children to German families or orphanages to be raised as Germans who would disdain their former Slavic ethnic group and its culture.‡152 The Nazi transfer program in Poland precipitated the slaughter of several million other Poles and included plans to eventually murder Poles not deemed of “good blood,” to Germanize part of the remainder, and to reduce the rest to serfs.‡153 Attending the slaughter of Serbs by Croatian fascist forces, thousands of Serbian Orthodox children were forcibly transferred to Croatian Catholic orphanages and homes.‡154 Forcible transfer was thus an adjunct to physical genocide, as were, in varying degrees, transfers of indigenous children in the United States and Australia.

By the mid-nineteenth century in the United States, after two centuries of warfare intended to destroy Native Americans in whole or in part, including their cultures,‡155 “public sentiment overwhelmingly favored destruction by civilization rather than by

‡146. Id. at 6.
‡147. Id.
‡150. Genocide Convention, supra note 62, art. II.
‡152. Polish Government-in-Exile, The Quest for German Blood: Policy of Germanization of Poland (1943) (on file with author). SS leader Heinrich Himmler stated, “What happens to a Russian, a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we take. If necessary, by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur, otherwise it is of no interest to me.” 1 Trial of the Major War Criminals Before the International Military Tribunal 237 (1947).
killing.\textsuperscript{156} Ninety boarding schools for Native American children were established between 1878 and 1902.\textsuperscript{157} Richard Pratt, an “Indian fighter” who founded the first school, stated that “the sooner all tribal relations are broken up; the sooner the Indian loses all his Indian ways, even his language, the better it will be for him and for the government.”\textsuperscript{158} In contrast, European immigrants to the United States were allowed to have schools taught in their mother tongue.\textsuperscript{159} The Native American boarding schools existed until the mid-twentieth century and “attempted to break the cultural continuity of tribal peoples by radically altering the cultural and social identities of Indian children,” who were expected to become laborers or servants alienated from Native America.\textsuperscript{160} Claims of cultural genocide of Native Americans have been made long after the end of physical genocide.\textsuperscript{161}

There has been an upsurge in the past decade of works on the colonial and post-colonial assault on Australia’s aborigines.\textsuperscript{162} Several books have appeared recently that directly take up the question of a historical genocide.\textsuperscript{163} In Australia’s controversy over the “Stolen Generation,”\textsuperscript{164} at least one scholar has argued that cultural genocide was implicated in the use from 1910 to 1970 of the Aborigines Protection Amending Bill to remove some 100,000 aborigine children from their biological parents and place them in white foster homes or state orphanages.\textsuperscript{165}

The Canadian government generally did not wage a war of extermination against the First Nations, although some were annihilated.\textsuperscript{166} It is nevertheless charged that

\begin{itemize}
  \item \textsuperscript{157} Debra Barker, \textit{Kill the Indian, Save the Child: Cultural Genocide and the Boarding School, in American Indian Studies: An Interdisciplinary Approach to Contemporary Issues} 47, 52 (Dane Morrison ed., 1997).
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} James Crawford, \textit{Endangered Native American Languages: What Is To Be Done and Why?, in Language and Politics in the United States and Canada: Myths and Realities} 17 (Thomas Ricento & Barbara Burnaby eds., 1998).
  \item \textsuperscript{163} See, e.g., HENRY REYNOLDS, AN INDELIBILE STAIN? THE QUESTION OF GENOCIDE IN AUSTRALIA’S HISTORY (2001); Tony Barta, \textit{Relations of Genocide: Land and Lives in the Colonization of Australia, in Genocide and the Modern Age, supra note 30, at 237–53; ALISON PALMER, COLONIAL GENOCIDE (2000); COLIN TATZ, GENOCIDE IN AUSTRALIA (1999).}
  \item \textsuperscript{166} JOHN BOYKOE, \textit{LAST STEPS TO FREEDOM: THE EVOLUTION OF CANADIAN RACISM} 176 (1995).}
\end{itemize}
Canada’s Native people have survived an intentional, sustained, well financed, and cleverly executed program of cultural genocide perpetrated by the government of Canada [waged by] stealing their past through eradicating their culture, by stealing their future through kidnapping their children, and by stealing their present by attacking their pride.167

The Canadian government aimed to absorb the First Nations into the general population through a scheme that used treaties to acquire their lands without promised payments and through forced inclusion of native children in residential schools that trained them as laborers, punished them for any use of native languages, and taught them to despise native culture.168 While most residential schools were phased out by the 1950s, the forcible transfer of thousands of native children to distant foster homes began. By the end of the 1960s, First Nations members, who constituted four percent of Canada’s population, were 40 percent of children in “protective custody.”169

Despite a misapprehension of the concepts of cultural genocide and ethnocide, the Declaration of San Jose did provide impetus for the composition, beginning in 1985, of the Draft Declaration on Indigenous Rights, which was presented in final form in 1994 to the Sub-Commission and adopted by it without change.170 Since then, debate on the Draft Declaration in the Commission on Human Rights continues, but only two of its forty-five articles have been adopted as of 2001.171 The Draft Declaration provides:

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 administration or other measures;

e. Any form of propaganda directed against them.172
Under the Draft Declaration and in contrast to the evident intentionality prescribed in the Declaration of San Jose, either “aim or effect” may provide the basis for a claim of ethnocide. The Draft Declaration, however, “is not binding upon UN member states . . . does not currently comport with internationally accepted definitions of genocide and does not establish a recognized norm of customary international law.” It applies only to “indigenous peoples” and not to ethnic minorities. In contrast to the situation of colonies, whose status the UN Special Committee on Decolonization determines, no international body judges whether a population is an indigenous people or an ethnic minority. This is not surprising, given the lack of generally accepted definitions of “indigenous peoples” and “minority” in the international community. Because it is within the reserved sovereignty of states to make a designation, the Draft Declaration applies only to those groups that are recognized as indigenous peoples in their homelands. While the labels ‘ethnic minority’ and ‘indigenous peoples’ are . . . both highly political and subjective, reflecting competing efforts to define the social basis of nation-states, most Asian states reject the idea that there are indigenous peoples within their borders. Some UN officials assert that Asia is home to most of the world’s indigenous people, but UN and state practice does not designate any indigenous peoples outside the Americas, Australasia, and Oceania. As an ILO official who formerly worked for the International Commission of Jurists explains:

“Indigenous” implies historical precedence in a particular area, and this is sufficiently true in the Americas and in parts of Oceania to be a useful term. However, only some ten percent of the indigenous and tribal peoples in the world live in North and South America. In much of the rest of the world, those who are covered by the two ILO Conventions [No. 169 and No. 107] were probably not in the region before other groups that now form the dominant population.

Some Western scholars argue that China has indigenes, but 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.\textsuperscript{184}

The Chinese government contends that there are no indigenous peoples or issues in China because “[a]s in the majority of Asian countries, the various nationalities in China have all lived for aeons on Chinese territory.”\textsuperscript{185} A PRC spokesman told a UN International Conference on Indigenous People in 1993 that

“China’s nationalities, including the Han nationality, have lived and multiplied in China for generations. Since no people of a particular nationality came from outside, differences between indigenous peoples and outsiders do not exist. The issue of indigenous people does not exist in China . . . .”\textsuperscript{186}

While the idea of long-fixed Chinese borders is ahistorical, China is not associated with the “invasion” and “colonizing” referents of definitions of “indigenous people”; namely, colonial-era aggression and settlement that have implicated several West European states, the United States, and Japan. It is thus not unreasonable for China to deny that people it designates as minorities are indigenous people, despite their historical priority to Han migrants in minority areas, the statelessness of these autochthonous peoples at the time of their incorporation into China, and other popular indicia of the indigenous. Whatever protections for indigenous peoples emerge will not bind China.

Although Western opinion leaders sometimes refer to Tibetans as “indigenous people,”\textsuperscript{187} the émigré administration does not use the term, and international law scholars sympathetic to the émigré cause find it uncertain that Tibetans come under its rubric.\textsuperscript{188} The Draft Declaration on the Rights of Indigenous Peoples has been occasionally cited in connection with the Tibet Question\textsuperscript{189} and one émigré activist has proposed that Tibetans “take the indigenous route.”\textsuperscript{190} However, émigré leaders 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.\textsuperscript{191} They may also be influenced by the social evolutionism still pervasive in India and China. One émigré scholar has said about most of China’s ethnic minorities that “such pre-literate tribes cannot

\begin{footnotes}
\footnotetext[188]{188. See, e.g., Hurst Hannum, The Limits of Sovereignty and Majority Rule: Minorities, Indigenous Peoples, and the Right to Autonomy, in NEW DIRECTIONS IN HUMAN RIGHTS 3 (Ellen Lutz ed., 1989).}
\footnotetext[190]{190. See Yodon Thonden, The Indigenous Route to Independence: Arguments for a Path Not Yet Taken, TIBET REV., April 1995, at 15–16.}
\footnotetext[191]{191. Id.; Eric Cleven & Chungkak Koren, The Correct Route to Independence: For Tibet, the Indigenous Route Is, at Best a Detour, TIBETAN REV., April 1995, at 17–18. Ironically, some pro-Tibet independence Western scholars regard Tibet as having been stateless or “almost stateless.” Lafitte, supra note 29, at 164. See also Geoffrey Samuel, Tibet as a Stateless Society and Some Islamic Parallels, 41 J. ASIAN STUDIES 215, 218–19 (1982).}
\end{footnotes}
be compared with Tibetan people” and that “[a]s far as the Tibetans are concerned, they are neither a tribe nor an ethnic group; they constitute a distinct civilizational category . . .” .192 Because claims to indigenous status are eschewed, 193 the concept of ethnocide and a de-linking from intentionality are not relevant to Tibetan émigré discourse, which from the outset has been framed in terms of genocide 194 and, latterly, cultural genocide. Even if special scrutiny is needed, however, because Tibetans are a “pre-existing nationality” if not an indigenous one, 195 state practices in Tibet do not amount to cultural genocide.

III. THE CLAIM OF CULTURAL GENOCIDE IN TIBET

A. The Émigré Conception of Cultural Genocide

In the first years after the emigration of 1959, the Dalai Lama charged that China had “a view to the total extermination of the Tibetan race,” 196 had brought “the danger of total destruction” to Tibetans, 197 and had instituted a form of oppression “a thousand times worse than the system of apartheid.” 198 At the same time, he implied that China’s aim was not physical annihilation, but assimilation and subordination, stating that China “seems to attempt the extermination of religion and culture and even the absorption of the Tibetan race.” 199 In reports from 1959 and 1960, the CIA-funded International Commission of Jurists (ICJ), claimed that China was committing genocide in Tibet by eradicating the Tibetans through restrictions on religion that were destroying their way of life. 200 Émigré leaders took up the term “genocide” 201 but at times fixed on the idea of a supposed effort to destroy Tibetan culture, with the Dalai Lama stating in 1973 that “our unique culture is being deliberately undermined.” 202 The émigrés’ first use of the term “cultural genocide” dates back to at least the return of an émigré delegation from a 1980 “fact-finding” trip to Tibet. 203 Cultural genocide has since been the centerpiece of émigré discourse, with hundreds of documents referring to it. 204 Western politicians sympathetic to the émigré cause also refer to “cultural genocide.” 205

193. Self-identification as indigenous has been considered an important defining element for indigenous status. INDEPENDENT COMMISSION ON INTERNATIONAL HUMANITARIAN ISSUES, INDIGENOUS PEOPLES: A GLOBAL QUEST FOR JUSTICE (1987).
196. Dalai Lama, Letter to Secretary-General, United Nations, in SELECTED SPEECHES, supra note 13, at 6, 8.
197. DALAI LAMA, AUTOBIOGRAPHY, supra note 20, at 30.
198. Dalai Lama, March 10 Statement 1964, in SELECTED SPEECHES, supra note 13, at 359.
205. See, e.g., Lorien Holland, Chinese Poor ‘Invaide’ Tibet, INDEPENDENT (London), June 27, 1999, at 23, LEXIS, Foreign News Section (quoting U.S. Sen. Connie Mack’s description of China’s resettlement project in
Statements by émigré leaders and their supporters about cultural genocide in Tibet rarely examine the concept and almost never include direct evidence that the PRC intends to de-culture Tibetans. The one instance in which the émigrés did assert that they had direct evidence that the Chinese government was “planning cultural genocide” concerned a “secret meeting” dubbed “512,” after the May 12, 1993 date on which it was convened near Chengdu, Sichuan, by the Chinese Communist Party’s (CCP) United Front Work Department (tongzhan bu). The conferees are said to have decided to “transfer” large numbers of Chinese settlers into Tibet with the aim of making it demographically “impossible for Tibetans to rise,” to break the unity of the Tibetan émigrés, and to manipulate “international figures and religious personages in Tibet for propaganda purposes.” The émigré Tibet Bureau in Geneva, Switzerland asserted that the realization of these aims would “destroy the cultural and national identity of the Tibetan people and amount to a form of cultural genocide.”

Neither the existence nor the content of the “512” meeting has been independently verified. The claims about it, however, exemplify how the émigré leaders and their supporters seek to own the idea of cultural genocide by assimilating to the concept virtually every policy or action undertaken or even permitted by the state in Tibet. In the instance of the “512” meeting, their all-inclusive conception of cultural genocide encompasses the ordinary political acts of mobilizing allies and dividing and discrediting opponents that they claim were mooted at the meeting. Only the émigrés’ implication of ethnic swamping raises the issue of cultural genocide. Chalk and Jonassohn argue that population transfer plays a part in settler genocide against indigenes, but only “when the victim group is numerically small” and have in mind the brutal settler infusion into the Amazon region. A large state-organized population transfer program is said to be circumstantial evidence of genocidal intent in the Indonesian regime’s massive killings in East Timor. This program can be contrasted with the transmigration before the New Order period (1966–1998), which mainly aimed at diminishing social tensions around Jakarta and populating border areas in aid of Indonesia’s confrontation with Malaysia, rather than extirpating ethnic groups. The Dalai Lama, incidentally, has recognized that there are substantial differences between the East Timor and Tibet cases.

A state plan for large-scale migration of Han Chinese into Tibet would amount to cultural genocide only if three pre-conditions could be demonstrated: (1) if there were an intent to organize a transfer (as opposed to permitting voluntary migration); (2) if the intent

---


208. Id.

209. Id. The émigré leaders did not reveal their source on the meeting, except to say that it was inside China.

210. CHALK & JONASSOHN, supra note 103, at 28.

211. See Christopher Goebel, A Unified Concept of Population Transfer, 22 DENV. J. INT’L L. & POL’Y 1, 24–26 (1993) (giving the example of East Timor to support the proposition that people subjected to massive population transfer have been threatened with genocide).


of the transfer were to damage Tibetan culture (as opposed to securing Tibet politically and developing it economically); and (3) if the transfer were an adjunct to the physical extermination of Tibetans as such (as opposed to undertaking repressive action to curb separatist activities). None of these conditions apply.

First, there is no evidence of a “government program to promote mass emigration of Chinese to water down the native Tibetan population,” or an “official effort to shift the ethnic balance” in Tibet, as the Dalai Lama and “Tibet supporters” claim.214 The PRC government has not transferred most Han migrants who live in Tibet today, either by ordering their migration or by offering them inducements to settle in Tibet. Annual net migration rates from the 1950s to the 1970s were low, ranging from three to fourteen Han Chinese per thousand Tibetans.215 The number of Han with household registration (hukou) in the TAR peaked in 1980 at about 122,000,216 but fell to 70,000 in 1985.217 Ironically, in the same year, the Dalai Lama complained that Tibetans were threatened with loss of identity by “the complete assimilation and absorption of our people by a vast sea of Chinese settlers streaming across our borders.”218 The U.S. government, however, disparaged as “inaaccurate, incomplete and misleading” the émigré claims made at the time that the PRC government was swamping Tibet with migrants.219

From 1964 to 1994, there was a net intake of 98,500 migrants who transferred their hukou to the TAR, but 70% were ethnic Tibetans from adjacent provinces.220 Han with TAR hukou in 1999 numbered almost the same as in 1985,221 and many Han who formerly lived in Tibet keep their hukou there even though they do not live in the TAR anymore.222 Han transferred to the TAR are a small part of recent migrants to Tibet. The PRC government has stated that 1268 cadres were sent to the TAR from 1994–2001. Most are assigned for three years but spend only half that time in Tibet due to extended leaves.

---

216. Tibetan Population Grows by 19 Percent in 10 Years, XINHUA NEWS AGENCY, Mar. 30, 2001, 2001 WL 19012743. A PRC source stated in 1981 that the TAR then had a population of 1.8 million. Tibet’s Development Praised by Dalai Lama’s Former Secretary, XINHUA NEWS AGENCY, June 18, 1981, LEXIS-NEXIS Academic Universe. The TAR population in 2000, including all those who had resided there for six months or more and not including the military, was 2.61 million, of which 205,200 were non-Tibetans.
218. Stewart Slavin, Dalai Lama Hopes for Return to Tibet, UPI, Nov. 9, 1985, LEXIS, Nexis Library, UPI File.
220. MA RONG, XIZANG DE RENKOU YU SHEHUI [POPULATION AND SOCIETY IN TIBET] 65 (1996). Some 122,800 Tibetans moved to the TAR in the period 1965–1990. Ma Rong & Pan Naigu, The Tibetan Population and Their Geographic Distribution in China, in 1 TIBETAN STUDIES: PROCEEDINGS OF THE 6TH SEMINAR OF THE INTERNATIONAL ASSOCIATION FOR TIBETAN STUDIES, 507–16 (Per Kaverne ed., 1992). A significant number of these Tibetans were rural people or people from small towns who migrated to Tibet’s cities. Ironically, the Tibetan émigré administration’s vision of a future independent Tibet, written by the present Kalon Tripa, includes the interdiction: “Migration of people from towns and villages to industrial areas will be strictly forbidden.” SAMDHONG RINPOCHE, TIBET: A FUTURE VISION 23–24 (1997).
223. LIXIONG, supra note 217, at 32. This practice may be changing. Some aid-Tibet cadres were mobilized to participate in workteams during the winter of 2001–2002, a season in which they normally would have expected to return to their home provinces. Liu Liangmarg & Wang Jianxin, Take Affirmative Action to Change Work Style—Cadres at Various Levels in Tibet Go to Grass-Roots Levels to Perform Actual Deeds to Spur Development, REMIN RIBAO (P.R.C.), Jan. 20, 2002, reprinted in BBC MONITORING, Jan. 28, 2002, 2002 WL 11680397.
There were 17,000 Han cadres in the TAR in the mid-1990s, while TAR Han in 2000 (all Han civilians who had lived there for six months or more) numbered 155,000. The “transferred” thus amount to about one tenth of the total TAR Han population. It is inaccurate to say that “[m]ost of the Han people in Tibet are there on government order, not out of choice,” while reasonable for a leading demographer of China to conclude that “there has been no policy of promoting massive permanent migration of Han Chinese people to the TAR.”

The vast majority of Han who go to Tibet engage in spontaneous migration on their own initiative and struggle to get by. They are surprised to hear that they are represented in the West as induced by state incentives to settle in Tibet, as some claim, and that they are well off, since only the relatively few transferred cadres receive incentives that raise their pay to a level already provided to the Tibetan and other cadres in Tibet. Most Han in Tibet’s cities have less than a high school education, are from peasant and worker backgrounds, have blue-collar or lower middle-class jobs, and are ill regarded by the ethnic Tibetan and lao Xizang (old Tibet-based Han) elites. Most of this “floating population” (liudong renkou), moreover, are not “settled” in the sense of expecting to live long-term in a place. Many Han come to Tibet’s cities for only the summer months to work on construction projects or engage in small businesses, such as repair work or making and selling handicrafts, and then return home for the rest of the year. Others secure employment or set up businesses for longer periods of time, but they seldom intend to stay for many years. As one scholar who has studied the Han in Lhasa observes, “Most Han migrants stay for a period of perhaps five or six years and then go back taking with them the money they have accumulated.” Another has noted that, in Tibet, “many of the young [non-Tibetan] traders are not families but single men; professionals also will try to keep the hukou of at least one key family member in their place of origin.” Similarly, Han traders from outside Qinghai, most of whose territory is on the Tibet Plateau, are said to generally stay there only for one to two years.

The lack of evidence that the Chinese government has intended to engage in large-scale population transfers to Tibet since the “secret meeting” of 1993 is underscored by the

---

226. DAWA NORBU, supra note 192, at 391.
228. See, e.g., Loretta Tofani, Tibetans Under Chinese Rule, in GENOCIDE 147, 151 (William Dudley ed., 2001) (“China offers economic incentives for working-class Chinese to emigrate to Tibet.”).
231. Interviews with Tibetan cadres, in Lhasa (July 2000).
absence of ethnic swamping since then. The 2000 census showed that ethnic Tibetans were 92.2% of the population. They were 96% in 1993, but that figure included only persons with a "hukou" in Tibet and thus failed to take account of all resident non-Tibetans. Tibetans were 95% of the 1990 population, when the census counted all those who had been living in the TAR for one year or more. The 2000 census covered all civilians who had lived in the TAR for six months or more. The increase in Han there since 1993 has thus not been large, calling into question émigré claims of a strategy "to flood Tibet with more Chinese settlers" and to "drown the Tibetans in a sea of Chinese." The appearance of a large increase in Han in the TAR derives almost solely from observations made in Lhasa, a city where most TAR Han concentrate, but which accounts for less than one tenth of the people in that still very rural region. In the Tibetan countryside, according to a Western scholar who had done fieldwork over six years, Han cadres were usually limited to the accountant or agronomic expert at county level, and occasional medical personnel; in some cases, their relatives ran roadside restaurants and other petty-trading facilities, but there was little presence if any at the township level or below. Even Samdhong Rinpoche has recently admitted that the ethnic demographic balance has changed "only in towns, not in the rural areas of Tibet" and not at all in nomadic societies.

While there is no evidence of a state endorsement of "ethnic swamping" of Tibet, the concept of ethnic swamping is supported by the ruling party of an area adjacent to the region. The Bharatiya Janata Party (BJP), the Hindu nationalist party in power in India, "stands for large-scale settlement of Hindus in the Vale of Kashmir, to overcome the Muslim majority." The Tibetan émigré leaders fully back India’s Kashmir policy. If

236. In the late 1980s and early 1990s, the Dalai Lama and "Tibetan exile organizations" were already claiming that there were two million "Chinese" in the TAR compared to 1.8–1.9 million Tibetans and that "Chinese" outnumbered Tibetans in Lhasa by ten to one. Dalai Lama Cautious About Tibetan Independence, JAPAN ECON. NEWSWIRE, Oct. 15, 1987, LEXIS-NEXIS Academic Universe; Yojana Sharma, China: Dalai Lama Presence at Rights Meet Will Anger China, INTER PRESS SERV., May 7, 1993, LEXIS-NEXIS Academic Universe. Even after several more years of alleged "ethnic swamping," however, a U.S. journalist could say of Lhasa that "claims by Tibetan exiles that Chinese are now in [the] majority appear to be overstated." Dele Olojede, Tibet Slowly Succumbs to Beijing’s Influence, NEWSDAY, Nov. 7, 1999, at A7, LEXIS, News Library, News Group File.


239. See Chinese Census, supra note 225.

240. TIBET INFO. NETWORK, NEWS REVIEW NO. 29: REPORTS FROM TIBET, 2000, at 99 (2001), at http://www.tibetinfo.co.uk/publications/news-reviews/nr29.htm (last visited Oct. 28, 2002); Banister, supra note 215, at 287. The 1990 census also included those present in the TAR for less than one year but who were away for more than a year from the area where they have had a residence permit. Clarke, Migration Paper, supra note 234, at 4.


243. Some 55% of Han with "hukou" in Tibet in the late 1990s lived in Lhasa prefecture. LIXIONG, supra note 217, at 28. It is likely that the percentage is much higher among "temporary" migrants.

244. The 2000 census gives a figure of 81.1% for the rural portion of the population. Xizang zizhi qu tonji ju, Guanyu Xizang di wu ci quan guo renkou puce zhyao shuju gongbao [A Public Report on the Main Statistics from the Fifth National Census in Tibet], XIZANG RIBAO (Tibet), Mar. 30, 2001, at 1. The rural population however contains almost no short-term migrants, while the urban population has many. For long-term residents, the rural proportion is thus significantly higher—85% or more.


privately organized migration of people of another ethnicity who settle in a region and dominate its trading sector is “ethnic swamping,” then ethnic Tibetans in India’s Ladakh have been “swamped” by Muslims at least as much as Tibetans in Tibet.²⁴⁸ A senior Chinese analyst has also pointed to another instance where, impelled by a political agenda, “ethnic swamping” might be alleged to have taken place, even though as in the Tibet case there is no evidence of a state plan.²⁵⁰ He noted that in the 1940s native Alaskans made up more than half the population in what would become the United States’ largest state, while today they constitute about fifteen percent.²⁵¹ The analyst asked his American interlocutor, “So are we both guilty of cultural genocide?”²⁵²

Second, there is no evidence that the PRC intends to eradicate Tibetan culture through population transfer. Émigré reports on the “secret meeting” claim that the plan was to change the demographic balance in order to avoid a separatist uprising, not to extirpate Tibetan culture. Under international law, a state-organized population transfer (a “settlement implantation” or “settlement infusion”) into an area that is neither a colony nor under alien occupation²⁵³ resulting from international war is not unlawful, let alone genocidal.²⁵⁴ Claire Palley, a leading international jurist and specialist on population transfers, has stated that “no international standard specifically addresses and outlaws the act of population transfer itself and its various forms.”²⁵⁵ The Dalai Lama has compared the influx of Han into Tibet with the “population transfer” of Russians into the Baltic states during the Soviet period,²⁵⁶ but Palley and other scholars have concluded that it is not clear that Russians were


²⁴⁹ See H. NORBER-HODGE, ANCIENT FUTURES: LEARNING FROM LADAKH (1991) (noting the large-scale migration of Muslim Indians to Ladakh).


²⁵¹ Id.

²⁵² Id.


²⁵⁶ McLaughlin’s One on One: Interview with the Dalai Lama, FED. NEWS SERV., Apr. 19, 1991, LEXIS-NEXIS Academic Universe.
unlawfully settled in the Baltic states after their 1940 annexation by the Soviet Union. This is so even though Baltic independence was firmly established, and several states, including the United States, refused to recognize the annexation. It was so even though many Balts opposed Russian migration, which, while largely individual, did alter the demographic balance and undercut Baltic nationalism. Although there is no indication that “settlers” were ever sent to Tibet to change the region’s ethnic composition in order to stabilize it politically, even were that the case, it would not violate international law as long as the program was premised on national consolidation, and not on ethnic discrimination.

Third, there has never been a credible showing that physical genocide has been committed in Tibet. Claims that a fifth of the Tibetan population was annihilated from 1959 to 1979 through executions, famines, imprisonment, and other means are without any evidentiary basis; indeed, the émigré leadership has never revealed its sources for the numbers of Tibetans whom it claims died state-caused, unnatural deaths. In fact, “[f]ar from being decimated by a demographic catastrophe, the Tibetan population of the PRC has likely doubled in a half-century.” The 1953 PRC census estimated that there were 2.75 million Tibetans; by 1990, the number had increased to 4.6 million, and there are more than 5.2 million today. The still-large Tibetan families—averaging 5.25 members in 1999, as compared to 3.63 members in China as a whole—have caused a few advocates of Tibetan independence to repudiate the conspiracism that characterizes the émigré discourse of “demographic annihilation.” U.S. academic journalist Barbara Erickson, for example, concludes, “Tibetans are more numerous today than at any time in recent history. Population growth has been rapid and continuous and there is no sign that China wants to wipe out the Tibetan race.”

Absent a nexus to genocide per se, a claim of cultural genocide amounts to no more than a rhetorical device. Therefore, some advocates of Tibet independence base assertions of cultural genocide not on killing, but on a limitation of births among Tibetans. As Article II(d) of the Genocide Convention states: “[I]mposing measures intended to prevent births within the group” is genocide if carried out with intent to destroy the protected group as such. Article II(d) was framed as war crimes trials produced evidence of the Nazis’ mass sterilizations and forced abortions against Jews and others, while in more recent times mass rapes involving ethnic animus can also be included within the “biological genocide” of Article II(d). Measures intended to prevent births need not be calculated to accomplish the destruction of a group in whole or in part, but they must be at least ancillary to a genocidal plan.

Paul Ingram, in a book circulated by the émigrés, states that population transfers + coercive birth control = cultural genocide. A lawyer who heads the U.S.-based Tibet

---

263. Genocide Convention, supra note 62, art. II(d).
264. Schabas, Atrocities in Cambodia, supra note 84, at 172–75.
Justice Center advances the same formula, and the Dalai Lama has stated that China is "forcing strict family planning rules on my people" in order "to make us a minority in our own land." Family planning, however, even where coercive, can be based on many objectives other than changing the ethnic balance, including the benign motive of improving the material well-being of those coerced. China’s policy links fewer births with increased prosperity [shao sheng kuai fit]. In Tibet, the rapid growth of the population over the past half-century has presented an obstacle to economic improvement in the countryside, where the bulk of the population lives. A TAR family planning document has indicated that the average landholding per capita in Tibet was 2.5 mu “in the early years after liberation,” but has now been reduced to 1.5 mu per capita due to population growth. Population growth offset two-thirds of the increase in grain production in the TAR from 1952 to 1992.

Coercive birth control, moreover, cannot be related to a genocidal intent where the purported perpetrators subject themselves to greater coercion than is applied to alleged victims. In Nazi-occupied Europe, state pro-natalism for Germans accompanied efforts to end or reduce births among victim groups. Family planning in the PRC, however, is stricter for Han than for Tibetans and other minorities. Urban TAR Tibetans are limited to two children, but urban Han to only one child. There can also be no plan to reduce the Tibetan population through coercive birth control if most Tibetans are not coerced either because they are exempt (most rural TAR Tibetans), want no more children than the state allows (urban Tibetans), or can pay nominal fines for exceeding state birth limitations

274. GUANYU XIZANG ZHIZHIQU DE RENKOU YU JIHUA SHENGYU GONGZUO [ON THE TIBET AUTONOMOUS REGION AND FAMILY PLANNING WORK] (1998); *Tibet Provisional Procedures for Birth-Planning Management (for Trial Use),* 32 CHIN. SOC. & ANTHROPOLOGY 82 (1992), reprinted in ZHONGGUO SHUOsho MIONZU JIHUA SHENGYU GAILUN [OUTLINE OF BIRTH PLANNING AMONG CHINA’S NATIONAL MINORITIES] 230 (Xu Xifa ed., 1995) [hereinafter *Tibet Provisional Procedures*].
For these reasons, most claims of genocide based on coercive birth control have focused on forced sterilization, forced abortions, and forced implantation of birth control devices. The existence of such practices would not imply genocidal intent—they are well-documented for Han areas—but a focus of the discussion of such distasteful practices as they supposedly affect Tibetans is useful to the émigré leaders in their effort to invoke visions of biological genocide.

An analysis of birth control policy in Tibetan areas by the U.K.-based Tibet Information Network (TIN) recounts one refugee’s allegation of forced sterilization of 300 women in sparsely populated Ngamring County, Shigatse Prefecture, TAR, and another refugee’s claim of coercive implantation of birth control devices in thirty-five women in Chamdo County, Chamdo Prefecture, TAR. A four-year study in the rural TAR by U.S. and Tibetan scholars, unaccompanied in the field by PRC officials, found no evidence of forced abortions or forced sterilizations in Ngamring County or other sites. In Ngamring, visited many times by Melvyn Goldstein and his co-researchers, including after the TIN report appeared, there was no two-child limit, as claimed by the refugee, nor, according to local nomads and officials, had any fines been imposed for having four or more births. In villages studied by Goldstein, while villagers complained to the researchers about many aspects of rural life and government regulation, “[n]o formal or informal discussions with villagers about family planning, birth limits or local problems revealed even a hint of forced abortions . . . .” The study did find, contrary to TAR officials’ claims of no restrictions on rural births, that in the four townships studied, local officials do mandate a modest fine for bearing more than three children. But in three of the townships, the fine had never been imposed and in the fourth township it was imposed at only one-third the specified level. Birth rates had fallen from very high to high over the past two decades and are comparable to those among ethnic Tibetans in Nepal, with voluntary contraception becoming more widespread since the early 1990s, due largely to the effect of high population growth on the land-to-people ratio. Erickson also interviewed peasants and nomads in the TAR and reports that they were unaware of any restraints on family size. She adds: “The Tibetans I met never spoke of birth control as a Chinese plot to exterminate their race. Many of them, in fact, supported family planning.”

A spokesman for the International Campaign for Tibet (ICT), the émigré leaders’ arm in the United States, responded to the findings of Goldstein by asserting that coercive birth control is mainly carried out in cities and in the Qinghai province on the northeast Tibetan Plateau, where Tibetans are a minority. The statement represents a tacit admission of the accuracy of PRC government assertions that it places no limits on rural births in the TAR, where 85% of the region’s ethnic Tibetans live. In Qinghai, where birth rates were

275. Tibet Provisional Procedures, supra note 274; Yan Hao, Tibetan Population in China: Myths and Facts Reexamined, 1 ASIAN ETHNICITY 11–36 (2000). Urban officials, factory workers, and military personnel are limited to two children. Id. at 27. However, there is no serious attempt to enforce birth control among Tibetan farmers and herdsmen. Id. at 28. Melvyn Goldstein & Cynthia Bell, China’s Birth Control Policy in the Tibet Autonomous Region, 31 ASIAN SURVEY 294 (stating that urban Tibetans outside the formal sector—i.e., not employed by the state—are limited to two children); New Generation of Tibetans Prefer Fewer Children, XINHUA NEWS AGENCY, Sept. 4, 2001, LEXIS-NEXIS Academic Universe (stating that more than sixty percent of urban Tibetan couples choose to have only one child).

276. For examples of coercive birth control tactics in Han areas, see THOMAS SCHARPING, BIRTH CONTROL IN CHINA 1949–2000: POPULATION POLICY AND DEMOGRAPHIC DEVELOPMENT (2003); see also JOHN AIRD, SLAUGHTER OF THE INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA (1990).


278. Melvyn Goldstein et al., Fertility and Family Planning in Rural Tibet, 47 CHINA J. 19, 31 (2002).

279. Erickson, supra note 262, at 195–96.

traditionally low, family planning regulations have since 1992 allowed Tibetans in cities and agricultural areas to have two children and those in pastoral areas to have three. A study conducted in a mixed agricultural/pastoral part of Qinghai that is mainly inhabited by Tibetans found that government policy was to allow three children and that the average family size was 6.2 people. TIN did not report any Qinghai cases of forced measures. The Independent Tibet Network UK, the group most adamant in making such claims, has reported a single, anonymous “eyewitness testimony” of forced sterilization among Tibetans in a Qinghai village, a report provided by an affiliate of the émigré administration.

The head of the TAR Committee for Family Planning, Purbu Zhoina, states that, in the Shigatse region, sterilization is mainly available for Tibetans with more than four children and abortion is not available at all. Meanwhile, more than 30% of TAR women have three or more children, and the birth rate in the region’s farming and pastoral area stands at a high twenty per thousand. Among urban Tibetan and in the émigré community, as in most parts of the world, a decrease in family size attends increases in education and the adoption of more secular and consumerist values. In China as a whole, “[a]s far as [most city residents] are concerned, there is no need to enforce a strict birth-control policy” because few [urban] parents want more than one child. Survey results presented in the PRC media indicate that 30% of Lhasa Tibetans want one child, 40% would be satisfied with two, and 19% want to have three or more.

Because physical genocide of Tibetans is clearly not evident, the Dalai Lama no longer speaks of genocide per se—either with respect to the past or present. However, many prominent Western “Tibet supporters,” including journalists, continue to do so.

286. JAYANTI ALAM, TIBETAN SOCIETY IN EXILE 170 (2000). According to a recent study by members of the Health Department of the Tibetan émigré administration, the birth rate in the émigré community in India is 16.8 per 1,000 and has been in decline. See Shumshum Bhatia et al., A Social and Demographic Study of Tibetan Refugees in India, 54 SOC. SCI. & MED. 411 (2002) (analyzing various social and demographic characteristics, including birth and death rates, of approximately 65,000 Tibetan refugees in India from 1994–1996). Between 1880 and 1940, in the absence of most of the contraceptives now available, the average fertility rate among whites in the United States dropped from 4.4 children per woman to 2.1, and among blacks it dropped from 7.5 children to 3. Barbara Seaman, The Secret History of Sex, The Nation, June 11, 2001, at 36, 2001 WL 2132643 (reviewing ANDREA TONE, DEVICES AND DESIRES: A HISTORY OF CONTRACEPTIVES IN AMERICA (2001)).
289. The last instance in which the Dalai Lama mentioned “genocide” in Tibet may have been his March 10 Statement 1987, in SELECTED SPEECHES, supra note 13, at 418, 419.
The Dalai Lama does often state that the Tibetan nation is “facing extinction,” sometimes implying that he means physical extinction, and at other times he conveys that what he refers to is the dissolution of the Tibetans as an ethnic group through the evisceration of their culture. He frequently uses the term “cultural genocide” and has said that it must end for peace to prevail in Tibet. In discussing his claim that “[t]here is an attempt to destroy the integral core of Tibetan civilization and identity,” he has cited “[n]ew measures of restrictions in the fields of culture, religion and education.”

Since the early 1990s, the Dalai Lama has wavered between arguing that the cultural genocide that he alleges is deliberate—in line with claims by other émigré leaders of a “calculated ‘cultural genocide’”—and arguing that China may or may not intend to engage in cultural genocide. Using the phrases like “intentional or not,” and “intentionally or unintentionally,” the Dalai Lama in recent years has repeated the formulation that “[w]hether intentionally or unintentionally, some kind of cultural genocide is taking place.” He contends that China commits intentional cultural genocide by controlling and restricting Buddhist study through political study in monasteries and by allowing bilingual Tibet University students to be more successful than monolingual Tibetan classmates. He avers that unintentional cultural genocide involves “population transfer and sinicization policies” that result in there being Han artisans and shopkeepers in Lhasa and Tibetans who speak Chinese among themselves in public, eat rice rather than barley, and display unruly behavior.

Emigré leaders thus term as cultural genocide any action that introduces Han Chinese or Han culture into Tibet or that “interferes with” practices the emigré leaders deem...

---

291. See, e.g., Dalai Lama, Interview to “The Times of India,” in SELECTED SPEECHES, supra note 13, at 201.
293. See Pico Iyer, OVER TEA WITH THE DALAI LAMA, SHAMBHALA SUN (Nov. 2001), available at http://www.shambhalasun.com/Archives/Features/2001/Nov01/Iyer.htm (last visited Mar. 13, 2003) (discussing the proposition that Tibetan cultural heritage is facing extinction); Dalai Lama Rails Against PRC Treatment of Tibetans, CHINA POST, Apr. 3, 2001, 2001 WL 9857137 (quoting the Dalai Lama as saying that “Tibetans are facing the threat of extinction . . . [as] Tibetan ethnicity, culture and environment (are under threat”)”.
traditional. The Tibetan émigré leaders have set up a straw man by positing that their construction of “traditional Tibetan culture” is the standard against which existing culture in Tibet is to be measured. The phenomenon of deploying the most conservative interpretation of the “traditional culture” of their homelands as a standard against which to measure “modernizing” change is common among other upper and middle class transnational migrants. In her study of identity among well-off Indian immigrants in New York City, Monisha Das Gupta found that first-generation migrants, by distancing themselves from what they perceive to be American, invent what they understand to be appropriately Indian. They do so in order to control their children by labeling as “American” any behavior of which they disapprove. In interviews with the second generation, Das Gupta found that

[t]he notions of “Indian tradition” that emerged from the tension between cultures ironically bore few resemblances to contemporary middle-class attitudes in India. What the first-generation immigrants rigidly enforced as “Indian” ways were, in fact, specific to the context they were familiar with before they left India. My respondents were only too aware of this museumization of practices.303

It is one thing for a migrant elite to choose to museumize an ethnic group culture,304 but quite another to charge others with cultural genocide if those others have a less “pure” and more hybrid conception of the culture. This inflated view of cultural genocide bears no resemblance to the crime that proponents of a ban on cultural genocide have sought to eradicate. There is moreover no evidence of a substantial erosion of the key elements of Tibetan culture.

IV. THE EMPIRICAL BASIS OF “CULTURAL GENOCIDE” IN TIBET

In a survey of genocide of indigenous peoples, Hitchcock and Twedt refer to denials by states of such peoples’ rights to practice their religions and speak their languages as “cultural genocide.”305 Most case studies of alleged cultural genocide of indigenous peoples or minorities also concentrate on religion and language.306 Charges of cultural genocide in Tibet have primarily focused on how migration,307 family planning,308 and

political repression\textsuperscript{309} are supposedly leading to cultural extinction.\textsuperscript{310} When they have been directly about culture, these charges have concerned religion,\textsuperscript{311} language,\textsuperscript{312} or both.\textsuperscript{313} There have also been allegations that changes in the performing arts are part of an effort to eradicate Tibetan culture and that “vices”—prostitution, drug use, billiards, karaoke—are promoted in Tibet to wean Tibetans away from their culture. There is, however, no evidence of an ongoing PRC government plan to destroy religion in Tibet, nor is there any indication that Tibetan religious institutions or religiosity are in sharper decline than those in other societies. Nor can it be inferred from available evidence that Tibetans in Tibet are losing their native language or that PRC authorities intend it to erode. Finally, the process of cultural hybridization in Tibet is not unusual or negative in a world context.

A. Tibetan Buddhism and Cultural Genocide

The Dalai Lama alleges that “the Chinese are anti-religion”\textsuperscript{314} and that “the Chinese have made it nearly impossible for Tibetans to practice their Buddhist beliefs.”\textsuperscript{315} He distinguishes, however, between culture and religion—the former relating to society, while the latter to the individual—and argues that Tibetan Muslims exemplify the principle that one can be Tibetan through association with Tibet’s language and customs without adhering to Buddhism.\textsuperscript{316} Thus, if Tibetans were to cease being Buddhists, their retention of other cultural elements would allow for a continuing Tibetan ethnicity. In any event, an attempt to extirpate a religion through conversion to another faith or to atheism is not cultural genocide—no matter how pious those affected or how central religion may be to their ethnic self-identity—unless forced conversion is accompanied by physical destruction of the religious group. For example, the Myanmar junta is involved in forced conversions of Burma’s seven million Muslims who return from exile. In addition, the junta forcibly assigns the children of these Muslims to Buddhist monasteries. Despite these acts, there is

\textsuperscript{309} Dalai Lama Calls for Talks, Urges China to Stop “Cultural Genocide,” AGENCE FRANCE-PRESSE, Nov. 28, 1996, LEXIS-NEXIS Academic Universe.

\textsuperscript{310} The émigrés have termed “population transfer” as the “indirect means of attempting to change and control the nature of Tibetan culture and identity.” Tibetan Centre for Human Rights and Democracy, Impoverishing Tibetans, at http://tchrd.org/pubs/impoverishing/3_economic.shtml#A_marginalisation (last visited Oct. 21, 2002) [hereinafter Impoverishing Tibetans].

\textsuperscript{311} Senior French Minister Sees Dalai Lama Despite Beijing’s Warning, AGENCE FRANCE-PRESSE, Oct. 29, 1996, LEXIS-NEXIS Academic Universe (quoting the Dalai Lama, who equates cultural genocide with “losing one’s culture, accepting the destruction of our spirituality, of Tibetan Buddhism . . . ”).

\textsuperscript{312} Richard Ehrlich, Taiwanese Spies, Reborn Mao Worry Tibet’s Spiritual Leader, TORONTO STAR, Sept. 13, 1992, at F3, 1992 WL 6567051 (exemplifying cultural genocide, Dalai Lama states that “the Tibetan language is becoming a useless language in our own country” because most urban shops in Tibet “are Chinese”).

\textsuperscript{313} Devinder Sharma, Dalai Lama, I Pray for Change of Guard in China, JERUSALEM POST, Sept. 16, 1992, at 1, 1992 WL 10516737.


no evidence that the junta intends to destroy the Muslim minority as such and thus no proof of genocide or cultural genocide. 317

Physical genocide based on the conjunction of ethnicity and religions been accompanied by cultural genocide of the kind that some states later sought to criminalize. During and after World War I, Turkish forces massacred between 500,000 and 2 million Armenians, sparing the 200,000 who converted to Islam. 318 In the process, the Armenians sustained huge cultural losses. 319 In World War II, Croatia’s Ustashe killed a half-million Serbs, but those who converted to Catholicism from Orthodoxy were generally spared. 320 Croatian fascists also attempted to extinguish the part of Serbian culture that differs from Croatian culture. 321 Tibet presents no parallel with these paradigmatic examples of ethnoreligious genocide and provides no evidence for the claim that cultural extinction is the goal of state restrictions on religion.

TAR leaders recognize that theirs is “a region with a long religious history, where religion has great influence.” 322 Alongside the pious majority, there are a significant number of Tibetan cadres, intellectuals, and businesspeople detached from religious practice. 323 Some agree with official pronouncements that may claim that Tibetan Buddhism adversely affects development 324 or, alternately, with assertions that there is harm to development from separatist activities that use religion to justify the separatist cause. 325

---

321. Steinberg, supra note 320, at 175–93; TANNER, supra note 320, at 151–59.
323. See Erik Eckholm, China Wins the Wallets of Tibetans, but Hearts are Still Slow to Follow, N.Y. TIMES, Dec. 1, 2001, at A8, 2001 WL 30653456 [hereinafter Eckholm, China Wins]. These “atheist” Tibetans tend nevertheless to have a high degree of Tibetan ethnic consciousness; they are appreciative of “secular” Tibetan culture and promote prosperity for the region. Interviews with Lhasa Tibetans, in Lhasa (1995–2001) (on file with author). Tibetan Buddhists are also “atheists” in the sense of not recognizing a creator or interventionist god.
The state in Tibet demands that the devout “adapt to socialist society” and “establish a normal order [of] traditional Tibetan Buddhism.” State ownership of industry and socialist welfare practices are not at issue; indeed the Dalai Lama has repeatedly and recently said that there are good aspects to Marxism, that it has some common ground with Buddhism, and that he himself is a “true socialist.” What is in question is the CCP historical teleology in which secular modernist rule has supplanted that of feudal theocrats. “Socialist society” means a society shaped by the nominally socialist, but fulsomely nationalist, CCP. To adapt to it is to reconcile American mixtures of politics with religion.

Rebecca R. French, “totalizing religious state,” and émigré leaders still have

Allegations of cultural genocide in Tibet that focus on religion concern freedom to participate in religious activity, efforts to alienate Tibetans from the Dalai Lama, and the regulation of monasteries, particularly in terms of admissions. These aspects of an alleged link between cultural genocide and religion are considered ad seriatim.
1. Participation in Religious Activities

Views on what constitutes freedom to practice religion are often culture-bound, but some observers are able to transcend cultural boundaries when considering questions of religious freedom in an external context. The U.S. evangelist Billy Graham, visiting the Soviet Union in 1982, stated, “I think there is a lot more freedom here than has been given the impression in the United States because there are hundreds, thousands of churches open.”331 For Graham, the existence of many sites of Christian worship indicated substantial freedom of practice, even though U.S. culture tolerates virtually no state regulation of religious practice and allows religious bodies to adopt any political stance.332 On the other hand, Soviet laws limited religious activity to churches and associations registered with authorities and barred religious activities that undermined the state and social system.333 In contrast, “Tibet supporters” apply Western (especially U.S.) standards of religious freedom,334 giving the émigrés the opportunity to represent that there is no freedom of religion whatsoever in Tibet.

Émigré leaders claim that “Tibetans are not even permitted to undertake routine religious activities.”335 They assert that 6000 monasteries were destroyed before or during the Cultural Revolution336 and that “the handful of surviving monasteries are being used as

332. The U.S. legal system does distinguish between religious belief and action and has restricted some actions, for example the former Mormon practice of polygamy. See, e.g., Reynolds v. United States, 98 U.S. 145 (1878) (enforcing a Congressional statute banning polygamy). This dichotomy allows the legal system to be used to change beliefs as expressed through religious practices. See generally Elizabeth Harmer-Dionne, Once a Peculiar People: Cognitive Dissonance and the Suppression of Mormon Polygamy As a Case Study Negating Belief-Action Distinction, 50 STAN. L. REV. 1295 (1998) (arguing that the legal suppression of religious practices, like polygamy, changes religious beliefs); Phillip Hammond, Conscience and the Establishment Clause: The Courts Remake the Sacred, 35 J. FOR THE SCL STUDY OF RELIGION 356, 356–67 (1996).
334. There are, in fact, different standards of religious freedom among Western states. For example, the Church of Scientology has been under close government scrutiny. Gerhard Robbers, Religious Freedom in Germany, 2001 BYU L. REV. 643, 662. In a typical act of language inflation used to market political ideas in the United States, Scientologists protesting Germany’s scrutiny of their co-religionists compared it to the treatment of Jews by the Nazis. Id. (citing Hass und Propaganda [Hate and Propaganda] (Church of Scientology International ed., 1993)). The UN Special Rapporteur on religious freedom characterized this comparison as “childish.” Id. (citing Implementation of the Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief, U.N. ESCOR, 54th Sess., U.N. Doc. E/CN.4/1998/6/Add.2 (1998)).
336. Dalai Lama’s Envoy in Russia Urges Opposition to Beijing’s Olympic Bid (Ekho Moskvy radio broadcast, July 11, 2001), in BBC MONITORING, July 14, 2001, 2001 WL 24954182. Two decades ago, the Tibetan émigrés only claimed that there had been 2300 monasteries in Tibet, which for them includes all of “historical Tibet.” Harley, supra note 327. There was a wave of dismantling of monasteries and temples after the Lhasa uprising of 1959 was put down. According to Ma Chengyan, founder of the Shanghai Museum, who was in Qinghai and central Tibet at the time, “[t]he locals destroyed the temples themselves” and sold artifacts to the Cultural Relics Bureau. Jasper Becker, Guardian of the Past, S. CHINA MORNING POST, Jan. 3, 2001, at 1, LEXIS, News Library, News Group File. The Cultural Revolution destruction of monasteries was largely the work of Tibetan Red Guards. A dissident scholar who conducted extensive interviews among Han and Tibetans who lived in Tibet during the Cultural Revolution found that Tibetans were the most extensive and enthusiastic destroyers of monasteries. In Lhasa and other areas under PLA (i.e., Han) control, less damage was done. LIXIONG, supra note 217, at 314–23. See also Wang Lixiong, Cultural Introspection of the Tibet Issue, 1 CHINA AFFAIRS 79 (2000). A Canadian journalist reached the same conclusion based on interviews. Jan Wong, Life at the Top of the World, GLOBE AND MAIL (Toronto), Dec. 10, 1994, at D1, LEXIS-NEXIS Academic Universe. An anthropologist who studies the Labrang area of Gansu province has stated that “some of the most zealous activists . . . during the Cultural Revolution were young Tibetan women.” Charlene Makley, On the Edge of Respectability: Sexual
public toilets and barracks [while] monks and nuns in Tibet have been forced by the Chinese to desecrate religious objects.”337 Such claims are anachronisms designed to impart that a “second Cultural Revolution” is ongoing in Tibet. Yet mass participation in routine religious activities is evident to even sceptical observers. A U.S. journalist reports that in the TAR “many hundreds of Tibetans” prostrate themselves at temples daily, while U.S. human rights officials visiting Lhasa “saw pilgrims crowded in front of the Jokhang [Tibet’s most important temple] to perform ritual prostrations.”338 The PRC claim that every year more than one million people visit the Jokhang339 goes unchallenged. Speaking of the major monasteries outside the TAR, Western reporters have noted that Labrang “teem[s] with signs of religious activity,”340 and Kumbum “appears to thrive.”341 According to Chinese sources, the abbot of a monastery in Nagqu prefecture has stated that there are now 300 more lamaseries and temples in the TAR than existed in the region before 1951.344 The PRC government also claims that, since 1978, it has contributed 300 million yuan (U.S.$36.2 million) and much gold and silver to TAR monasteries.345 Again, such figures are not disputed, but even if they were, the obvious involvement of Tibetans in quotidian religious activity belies a claim of cultural genocide through the suppression of the religious element of their culture.

2. Attacks on the Dalai Lama

State authorities seek to curb support for the Dalai Lama, especially in monasteries, which are the prime sites of pro-independence sentiment.346 They insist that these attempts are not connected to his devotion to Buddhism, but to his refusal to acknowledge that Tibet has ever been part of China and his campaigns for “independence in disguise.”347 Public
The level of the campaign to alienate people from the Dalai Lama depends on the authorities’ perception of the degree of local separatist sentiment. There has been a more liberal attitude in eastern Tibetan areas than in the TAR, and in the TAR itself, attacks on displays of his image have been banned in the TAR since 1994, and in monasteries, prayers for his longevity are not offered. Additionally, efforts to compel monks to criticize him were carried out as part of a Patriotic Education Campaign in 1996–2000, although in some places, resistance by monks to denouncing the Dalai Lama have caused work teams to back away from that demand. In the mid- to late 1990s, monks were in essence told to “distance yourself from the Dalai Lama, and we can offer you the freedom to pursue your religious studies.”

State authorities thereby conveyed to monks who revered the Dalai Lama that official hostility toward his persona was not to be taken as hostility to Buddhism per se. The TAR CCP has nevertheless intertemporarily labeled the Dalai Lama a “hooligan politician” [liumang zhengke], implying that he is guilty of moral turpitude. PRC media have quoted “eminent monks” who question the Dalai Lama’s bona fides as a religious leader, based on his separatist political activity, but have also at times admitted that most Tibetans continue to respect the Dalai Lama and hope for his return.

The level of the campaign to alienate people from the Dalai Lama depends on the authorities’ perception of the degree of local separatist sentiment. There has been a more liberal attitude in eastern Tibetan areas than in the TAR, and in the TAR itself, attacks on displays of his image have been banned in the TAR since 1994, and in monasteries, prayers for his longevity are not offered. Additionally, efforts to compel monks to criticize him were carried out as part of a Patriotic Education Campaign in 1996–2000, although in some places, resistance by monks to denouncing the Dalai Lama have caused work teams to back away from that demand. In the mid- to late 1990s, monks were in essence told to “distance yourself from the Dalai Lama, and we can offer you the freedom to pursue your religious studies.”

State authorities thereby conveyed to monks who revered the Dalai Lama that official hostility toward his persona was not to be taken as hostility to Buddhism per se. The TAR CCP has nevertheless intertemporarily labeled the Dalai Lama a “hooligan politician” [liumang zhengke], implying that he is guilty of moral turpitude. PRC media have quoted “eminent monks” who question the Dalai Lama’s bona fides as a religious leader, based on his separatist political activity, but have also at times admitted that most Tibetans continue to respect the Dalai Lama and hope for his return.

The level of the campaign to alienate people from the Dalai Lama depends on the authorities’ perception of the degree of local separatist sentiment. There has been a more liberal attitude in eastern Tibetan areas than in the TAR, and in the TAR itself, attacks on displays of his image have been banned in the TAR since 1994, and in monasteries, prayers for his longevity are not offered. Additionally, efforts to compel monks to criticize him were carried out as part of a Patriotic Education Campaign in 1996–2000, although in some places, resistance by monks to denouncing the Dalai Lama have caused work teams to back away from that demand. In the mid- to late 1990s, monks were in essence told to “distance yourself from the Dalai Lama, and we can offer you the freedom to pursue your religious studies.” State authorities thereby conveyed to monks who revered the Dalai Lama that official hostility toward his persona was not to be taken as hostility to Buddhism per se. The TAR CCP has nevertheless intertemporarily labeled the Dalai Lama a “hooligan politician” [liumang zhengke], implying that he is guilty of moral turpitude. PRC media have quoted “eminent monks” who question the Dalai Lama’s bona fides as a religious leader, based on his separatist political activity, but have also at times admitted that most Tibetans continue to respect the Dalai Lama and hope for his return.

The level of the campaign to alienate people from the Dalai Lama depends on the authorities’ perception of the degree of local separatist sentiment. There has been a more liberal attitude in eastern Tibetan areas than in the TAR, and in the TAR itself, attacks on displays of his image have been banned in the TAR since 1994, and in monasteries, prayers for his longevity are not offered. Additionally, efforts to compel monks to criticize him were carried out as part of a Patriotic Education Campaign in 1996–2000, although in some places, resistance by monks to denouncing the Dalai Lama have caused work teams to back away from that demand. In the mid- to late 1990s, monks were in essence told to “distance yourself from the Dalai Lama, and we can offer you the freedom to pursue your religious studies.” State authorities thereby conveyed to monks who revered the Dalai Lama that official hostility toward his persona was not to be taken as hostility to Buddhism per se. The TAR CCP has nevertheless intertemporarily labeled the Dalai Lama a “hooligan politician” [liumang zhengke], implying that he is guilty of moral turpitude. PRC media have quoted “eminent monks” who question the Dalai Lama’s bona fides as a religious leader, based on his separatist political activity, but have also at times admitted that most Tibetans continue to respect the Dalai Lama and hope for his return.

The level of the campaign to alienate people from the Dalai Lama depends on the authorities’ perception of the degree of local separatist sentiment. There has been a more liberal attitude in eastern Tibetan areas than in the TAR, and in the TAR itself, attacks on
the Dalai Lama have eased up after extended periods of political quiescence. At monasteries where monks are not involved in politics, “they face minimal interference from local authorities in their religious life” and the authorities overlook displays of respect for the Dalai Lama. In any case, attacks on the Dalai Lama are not tantamount to an attempt to destroy Tibetan Buddhism, let alone Buddhists as such, even in the eyes of the Dalai Lama. He has made clear that he does not regard his position as essential to Buddhism or to Tibetan culture, even stating, “I do not want to preserve the institution of the Dalai Lama. But only the Tibetan people can abolish it.” The Dalai Lama regards as “nonsense” that people revere him as a “god-king” and terms it “ignorance” that his position is seen as central to Tibetan culture. He has stated that “Tibet’s formal civilisation has lasted for 4,000 years, 6,000 to 8,000 by some historical findings. The Dalai Lama institution has only been around for 300 years. It is just a part of Tibet’s history.” The Dalai Lama, if not his “supporters,” recognizes that attacks on him are part of the politics of the Tibet Question, not an attempt to eradicate Buddhism.

3. Regulation of Monasteries

Official regulation of religious institutions in the PRC was significantly liberalized in the 1980s but became tougher in the 1990s, in part because religious organizations were perceived as playing a key role in the downfall of Communist-ruled states in Eastern Europe. In Tibet, the tightening of regulation came after demonstrations in Lhasa from 1987 to 1989 and eventually affected the regulation of monasteries. Tolerance of monastic expansion from the end of the 1970s to the mid-1990s led the authorities in 1997 to complain that because they had no standard for their restoration, there was “uncontrolled development of lamaseries and temples.” The late 1990s thus saw an imposition of greater control over the expansion of monasteries. Initially-elected Democratic

---

357. Miller, supra note 340, at 84. The author observed two large portraits of the Dalai Lama inside the Kumbum Monastery in Qinghai in August 2002.

358. The attacks by Chen Kui-yuan and other TAR officials on Buddhist doctrine Ironically coincided with the publication of Pope John Paul II’s book, CROSSING THE THRESHOLD OF HOPE (1994), in which it was stated that “[t]he Buddhist doctrine of salvation constitutes the central point, or rather the only point, of this system. Nevertheless, both the Buddhist tradition and the methods deriving from it have an almost exclusively negative soteriology [doctrine of salvation].” Id. at 85. The Federation of Buddhist Organizations in Sri Lanka characterized this statement as “an unqualified condemnation of Buddhism” and threatened to boycott a planned inter-religious meeting in Sri Lanka that the Pope was to attend. John-Thor Dahlburg, Gospel According to German Author Links Jesus to Buddha, L.A. TIMES, Dec. 24, 1994, at A2, 1994 WL 2381512; Anna Tomforde & John Hooper, Papal Thoughts Get Lost in Translation, GUARDIAN (London), Dec. 14, 1994, at 13, 1994 WL 9726914.


360. James A. Beverley, Buddhism’s Guru, CHRISTIANITY TODAY, June 11, 2001, at 64–72, 2001 WL 10317723 (describing the Dalai Lama’s reaction to claims that he is a “god-king” and “sinless”).

361. Yoon, supra note 327.


Management Committees (DMC) have run the monasteries since the late 1970s and are supposed to be politically vetted. However, scrutiny was superficial through the mid-1990s, when authorities concluded that many DMCs had “assum[ed] an ambiguous political attitude,” “persecuted lamas who love their country and religion,” and “showed no concern for the monks and nuns,” (i.e., they engaged in favoritism and financial malfeasance). Since the mid-1990s, work teams have been posted at monasteries to carry out political indoctrination and administrative tasks.

The main factor affecting the degree of regulation of the monasteries is the state leaders’ perception of the extent to which religion is being used to foster separatism. Monasteries relatively far from Lhasa are for that reason subject to less scrutiny than those in or nearer to the city. Heightened separatist activity by monks that is linked to the émigrés or to the successes of their internationalization campaign generates political campaigns in monasteries and expulsions or arrests of recalcitrant monks and nuns. Regulation of monasteries is thus in part attributable to actions of the very émigré leaders who complain that regulation is part of “cultural genocide.” The waxing and waning of regulation of monasteries throughout Tibet in turn indicates that there is no concerted campaign to eradicate Buddhism per se.

Most recently, there are indications of a general easing of regulation of religion in Tibet and in China. At the Fourth Tibet Work Forum in August 2001, which was attended by all CCP Politburo Standing Committee members, Jiang Zemin stated: “We must . . . lawfully protect people’s freedoms to hold religious beliefs and conduct regular religious activities.” Guo Jinlong, TAR Party Secretary since November 2000, has initiated “a somewhat softer line on some religious conflicts than his predecessor,” including the relaxation of pressure on government employees and their families to stop practicing Buddhism. At a late 2001 conference on religion, also attended by the whole Politburo Standing Committee, China’s supreme ruling council, Jiang Zemin recognized


369. For a discussion on expulsions and arrests, see Question, supra note 367.


the contribution of religion to upholding moral behavior and helping cope with crises.\(^{372}\) Other leaders and official commentators have spoken of mutual adoption of religion and socialism and have recounted contributions made by religion.\(^{373}\) Underground groups and foreign missionaries are now operating more openly.\(^{374}\) Ye Xiaowen, director of the State Religious Affairs Bureau, has indicated that “simple methods,” such as repression, do not work with “complicated religious problems” and are generally counterproductive.\(^{375}\)

When he was in Tibet, the Dalai Lama imposed limitations on the numbers of monks,\(^ {376}\) and today “the Dalai Lama is against an overproliferation of monasteries” in Tibetan settlements in India.\(^ {377}\) For over a dozen centuries, Chinese authorities restricted the number of monks everywhere in their domain.\(^ {378}\) That practice and almost every aspect of present-day regulation of Buddhism in China strikingly resemble the regulatory practices of emperors from the Tang to Song dynasties, who were acting under similar concerns about anti-state activities and economic harm that would arise from an unbridled expansion of monasteries and the sangha’s complete freedom to preach.\(^ {379}\) However, tight imperial regulation of monasteries coincided with official patronage of Buddhism, indicating that regulation per se does not evince a destructive design.

TAR officials have said that the number of monks and nuns “satisfies Tibet’s religious needs” and have kept it in a steady state since the mid-1990s.\(^ {380}\) The 46,000 monks in the TAR\(^ {381}\) are much less than the approximately 114,000 there in 1959.\(^ {382}\) As a
percentage of adult males, however, they are more numerous than monks in all other Buddhist lands, and they far exceed the density of priests in Catholic Poland and Ireland. Among 61 million Catholics in the United States in 2000, there were 45,000 priests, a ratio of about one priest per 2500 Catholics. In the TAR, there was one monk for every 52 Tibetans. The Tibetan autonomous areas outside the TAR, which have slightly more than half of the PRC’s ethnic Tibetans, have over 100,000 monks—twice the “clerical density” of the TAR—or about one monk for every 25 Tibetans. In any event, Tibetan Buddhism’s hierarchy in various lands stresses that they are “more interested in the intellectual quality than the numerical quantity of its priests.”

With such a large number of monks and monasteries in Tibetan areas, no credence can be given to émigré claims that “the Chinese” only allow monasteries to “serve as museums to attract tourists rather than living cultural and religious institutions” or that “the limited number of monks allowed to join these monasteries serve more as showpieces for tourists and, in most cases, caretakers rather than true religious students and practitioners.” There are scarcely a dozen monasteries in the Tibetan areas that attract any number of tourists and these house a very small percentage of the total number of monks. The PRC government states that monks and nuns in Tibet study and debate the scriptures, attend lectures given by eminent monks, perform Abhiseka (consecration by pouring water on the head) and ordainment, disseminate Esoteric doctrines, perform Buddhist ceremonies, chant scriptures in the presence of believers, release the souls of the dead and pray for blessings by touching the heads.

Because there are few ethnographies of monastic life in contemporary Tibet, it is difficult to gauge the depth of Buddhist study in these settings, but anyone who visits the region’s monasteries sees monks studying sutras and debating. In contrast to old Tibet,
where many monks did nothing to advance their learning.\textsuperscript{390} Today monks at monasteries such as Drepung must be either full-time scholars of a fixed Buddhist curriculum or do productive work on behalf of the monastery. If they choose to be scholars, their monastery subsidizes them. A U.S. anthropologist who did fieldwork at Drepung from 1989–1995 found hundreds of Drepung monks engaged in full-time study,\textsuperscript{391} belying claims that monasteries in Tibet are not mainly places for transmission of Buddhist thought and philosophical debate.\textsuperscript{392}

Conditions for the functioning of religious institutions in Tibet are much better than they are in Beijing, which was once the religious capital of the world’s most extensive empire. Most monasteries and temples in Beijing were closed in the 1950s and 1960s. Although significant numbers of Beijing people have become interested in Buddhism, Daoism, or Christianity, because of “a longstanding policy designed to prevent Beijing [from] recovering its identity as a centre of religion remains,” the government has refused to give religious bodies permission to reclaim any of the buildings that formerly housed monasteries and temples.\textsuperscript{393} In Zhejiang provinces in one year in 1999–2000, the government closed 1200 temples or churches for carrying out “superstitious” activities or failing to obtain permission to operate.\textsuperscript{394}

In old Tibet, most monks were sent to monasteries by their parents at between seven and ten years of age without regard to their wishes.\textsuperscript{395} There were then only a handful of schools in the region. When monasteries were revived from the 1980s to the early 1990s, many parents enrolled their children.\textsuperscript{396} Religious motives played a role, but so too did a desire to secure the livelihood of children from impoverished areas and the lack of secular schools.\textsuperscript{397} During a 1994 visit to Tibet, the UN Special Rapporteur on Religious Intolerance was told that child monks could be admitted if their act was voluntary and they had the permission of their parents.\textsuperscript{398} There is a regulation stating that one has to be at

\textsuperscript{390} According to one scholar, before 1959 “only ten percent of monks were really studying Buddhist texts, the others were meeting their own needs.” Fabienne Jagou, \textit{La politique religieuse de la Chine au Tibet [China’s Religious Policy in Tibet]}, REVUE D’ETUDES COMPARATIVES EST-OUEST, vol. 32, no. 1, at 29, 41 n.6. (2001).

\textsuperscript{391} Goldstein, supra note 350, at 33–34, 161 n.36.

\textsuperscript{392} Jagou, supra note 390, at 36.


\textsuperscript{394} \textit{Up to 1,200 Temples Destroyed or Closed in Chinese Crackdown}, AGENCE FRANCE-PRESSE, Dec. 13, 2000, LEXIS, News Library, News Group File. No one conceives of such measures as “auto-genocide,” however.

\textsuperscript{395} Melvyn Goldstein, \textit{Religious Conflict in the Traditional Tibetan State, in Reflections on Tibetan Culture 231–47} (Lawrence Epstein & Richard Sherburne eds., 1990). Traditionally each Tibetan family was obligated to send a boy to become a monk, but today in ethnic-Tibetan Bhutan many rural families do not want to force their sons to be celibate. This is the case even though Buddhism is officially promoted. In Nepal, Sherpa families reportedly no longer want to send their children to become novices. See Kunda Dixit, \textit{Nepal-Culture: Winds of Change Sweep SherpaLand}, INTER PRESS SERVICE, Sept. 21, 1995, 1995 WL 10134444 (describing the reluctance of Sherpa families to lose their sons to a life of monasticism).

\textsuperscript{396} See David Holley, \textit{Hope, Fear, Defiance Permeate Lhasa Monasteries: Tibet’s Monks Battle China’s Hold}, L.A. TIMES, Feb. 19, 1989, at 12, 1989 WL 2335374 (describing the recent influx of boy monks to Tashilunpo monastery); Reports from Hong Kong Journalists’ Tibet Trip, \textit{Zhongguo Tongxunshe}, July 10, 1991, \textit{reprinted in BBC SUMMARY OF WORLD BROADCASTS}, July 16, 1991, LEXIS-NEXIS Academic Universe (reporting 200 boy monks among 650 monks at Drepung monastery). The proportion of child novitiates at Drepung in Lhasa was higher than at the exiled Drepung in south India, which in the late 1990s had over 3500 monks, of whom 260 were between the ages of 8 and 14. Keya Acharya, \textit{Tibet: Dalai Lama Says Tibetan Culture Safer in India}, INTER PRESS SERV., Jan. 15, 1999, 1999 WL 5946626 (stating the proportion of child novitiates at Drepung monastery in Lhasa is higher than at exiled Drepung monastery in southern India).


least eighteen years old to take vows, but it is irregularly applied according to reports of abbots who state that they admit boys at age sixteen and according to those who say they became monks at that age. In Lhasa, the Religious Affairs Bureau “turned a blind eye” at underage monks at Drepung, which in the mid-1990s was “replete with young monks in the under-18 age bracket.” Although the minimum age was supposed to be enforced since 1996, the U.S. State Department observed in 2001 that “[m]onasteries continue to house and train young monks . . . [M]any younger boys in fact continue the tradition of entering monastic life.” It may not be unreasonable, now that there are more schools, to allow only adults to become monks. Indeed, in Tibetan areas where schools are lacking or support for separatism is thin, the authorities are more tolerant of the admission of underage monks. Some monasteries have established their own schools, or the authorities have hired monks as teachers.

A minimum age of admission to a religious vocation is not necessarily a violation of international law. A UN declaration calls for children to have access to religious training in some form, but access can be regulated in “the best interests of the child.” In any case, the prohibition on the admission of child monks and nuns has not held back the growth of the sangha, let alone amounted to cultural genocide.

B. The Tibetan Language and Cultural Genocide

Language is often intimately connected to an ethnic group’s culture, although there are ethnic groups composed of people who have more than one mother tongue, such as China’s Yi minority. It is uncertain, however, whether ethnic groups that have a language in common fully share the same culture. A Canadian political philosopher doubts the reality of this notion:

---


401. Goldstein, supra note 350, at 50 n.33, 161; see also Erick Eckholm, From a Chinese Cell, a Lama’s Influence Remains Unblemished, N.Y. TIMES, Feb. 23, 2003, at 6 (noting the dozens of young monks at the Tibetan Buddhist Monastery in Lithang); Qun Zeng, Laodongzhe sushui shi fahua Xizang Jingji de Zhuyao chuyue Yinshu [The chief constraining factor on Tibet’s economic development is the low quality of its workers], trans. in 30 CHINESE EDUCATION AND SOCIETY 29, 32 (1997) (observing that most monks and nuns in Chamo are school-age children).


403. See Baer, New Year Celebration in Xizhe, supra note 356.


If two groups share a language but differ broadly in their way of life and have relatively low rates of interaction, do they still belong to the same societal culture? [Take a] French-speaking Montrealer and compare him with another French speaker . . . one who lives in a rural village rather than amidst all the glittering sophistication of Montreal. The mother tongue will be the same between those two French-speaking Quebeois, but the differences in their ways of life are likely to be radical—urbanites and rural dwellers have different modes of recreation, different architecture, have divergent career paths, dissimilar tastes and so on. 407

In few places in the world are differences between rural and urban society more visible than in Tibet. Within Tibetan urban society, there are striking cultural differences between social strata, including language differences. 408 This fact is not to deny that an overarching Tibetan culture exists, but rather underscores the idea that language and culture do not necessarily have a determinative relationship: A and B’s speaking the same language does not mean that they fully share a culture. If A and B speak different languages, they may still share significant elements of a culture. For example, in 1990, only 200,000 of the 5.7 million members of the Tujia ethnic minority of southwest China could speak Tujia, with the vast majority speaking putonghua (Chinese). But in other respects, Tujia people share common cultural elements and an ethnic consciousness with one another. 409

European colonialism eliminated at least 15% of all languages spoken at the time and “language murder” is recognized as “one of the basic tools of ethnocide, of the deculturation of peoples, which has always been perpetrated by colonization and is still the semi-official aim of governments which do not recognize the rights of their native ethnic minorities.” 410 “The Dalai Lama claims that migration to Tibet threatens to cause the eradication of the Tibetan language” 411 and has stated, “Our own language no longer has any value in our own land.” 412 A U.S. Congressman has stated that “Tibetan Buddhists face virtual extinction. There is cultural genocide today taking place in Tibet. Their language is being stripped out.” 413 These assertions are not mere hyperbole but falsely represent that “linguicide” is part of a plan to destroy Tibetan culture.

China’s minority tongues are seen as preservative of ethnic cultures, while Mandarin is viewed as a bridge to the urban areas. 414 PRC law states that minorities enjoy freedom to use their own languages in autonomous areas, 415 where 98% of Tibetans live. In exercising their autonomy on language choice, ethnic minority areas have increasingly promoted bilingualism, especially in education. 416 Minority area regulations encourage local


408. See Sautman & Eng, supra note 52.


412. Devinder Sharma, supra note 314, at 1.


language use in primary instruction, with *putonghua* introduced in upper primary or lower middle school grades. Most minority areas, including Tibet, follow this practice. There is a measure of flexibility in the TAR, however. Some rural counties have reportedly abandoned bilingualism, in part due to a lack of *putonghua*-speaking teachers.

Claims that primary schools in Tibet teach in *putonghua* are in error. Tibetan was the main language of instruction in 98% of TAR primary schools in 1996; today, *putonghua* is introduced in early grades only in urban schools. In six years of Tibetan primary school, pupils are said to spend a total of 1598 hours studying in Tibetan and 748 hours studying in Chinese, a two-to-one ratio. Because less than four out of ten TAR Tibetans reach secondary school primary school matters most for their cultural formation. In other Tibetan areas, primary schooling may be in Tibetan, and in some places, parents can choose the language of primary education. More often than not, however, Tibetan students outside the TAR are taught in *putonghua* because of either parental choice or, in some places, because Tibetan language instruction is unavailable due to a shortage of Tibetan instructors or a high percentage of other ethnicities living among Tibetans.

Secondary education in Tibetan is more common outside the TAR than inside it. TAR authorities in 2000 asserted that “local junior middle schools are gradually turning to teaching subjects on natural sciences with Tibetan language” and that “Tibetan language is the only teaching language for 102 classes in some local middle schools in [the TAR],

---


425. Miller, supra note 340, at 85. TAR officials insist that “parents always have the possibility of choosing between a class of Tibetan and Chinese mixed or a class only in Tibetan.” Gilles Campion, Schools, AGENCE FRANCE-PRESSE, June 9, 1997, LEXIS, News Library, Group News File.


while the Tibetan language is partially used in some other local middle schools. In the famous Lhasa Middle School, the region’s best, there are six classes a week on the Tibetan language, five on putonghua, and four on the English language. Many parents want instruction to be in putonghua for the (mainly urban) children who go on to middle school; thus, the TAR regulation that requires middle schools to use Tibetan has not been enforced. There is evidence that Tibetan students in the best secondary schools in Lhasa prefer Chinese as the language of instruction, while those elsewhere would benefit from having Tibetan as the main language of schooling.

In 1999, secondary school Tibetan language texts were introduced in the TAR, and Tibetans are now about 50% of TAR secondary school teachers. Two trends, however, seem to be clashing in terms of the language of instruction for Tibetans. On the one hand, instructional material in Tibetan is increasingly available; on the other hand, Tibetan parents generally want bilingual education for their children, even at the primary level, so that they can compete with native putonghua speakers if they do continue their educations at higher levels. This attitude is no different from what obtains in the émigré community.


431. Campion, supra note 424.


435. *Tibetan Parents Worried by Spread of Chinese Language*, REUTERS, Nov. 29, 2001, http://tibet.ca/wtnarchive/2001/11/30_1.html (last visited Oct. 23, 2002). Some Tibetan parents want their children to study at a middle school in China proper. David Hsieh, *Beijing Glorifies Tibet’s Progress*, STRAITS TIMES (Sing.), Nov. 13, 2001, at A3, LEXIS-NEXIS Academic Universe; *More Tibetan Students Wish to Study in Interior Cities*, XINHUA NEWS AGENCY, July 20, 1995, LEXIS, News Library, Group News File; see also Tibetan Teens Dream of Study in Beijing, XINHUA NEWS AGENCY, June 30, 2000, LEXIS-NEXIS Academic Universe; Tibetans Craving to Send Children to Inland Cities for Education, XINHUA NEWS AGENCY, July 18, 1996, LEXIS-NEXIS Academic Universe. Anyone visiting Lhasa in July, when entrance exams for inland schools are given to several thousand prospective students, can confirm that competition for places is fierce. The above-cited articles admit that the quality of nei di schools attended by Tibetans is better than those in Tibet. However, they also indicate that 70% of the Tibetan students studying at nei di schools are from peasant or herder families because a quota limits to 30% the proportion of cadres’ children who can enter the program. The schools provide for instruction in Tibetan and visits by monks. By 1999, after fourteen years of such programs, about 20,000 Tibetans had graduated from inland secondary schools. *Inland Areas Help Tibet Train Students*, XINHUA NEWS AGENCY, July 28, 1999, LEXIS-NEXIS Academic Universe. There were 13,000 Tibetan students enrolled in inland secondary schools in 2002, including Tibetan-only secondary schools in Beijing, Shanghai, Chengdu and Tianjin. *Inland Schools Help Educate Tibetan Students*, XINHUA NEWS AGENCY, Oct. 20, 2002, LEXIS News Library, News Group File.
in India, where “Tibetan students fear that a Tibetan medium primary education will reduce their chance of success in secondary schools as well as their career prospects.”

At the tertiary level, many Tibetans major in humanities, and, at two universities, they can study humanistic disciplines in Tibetan. At that level it is unlikely that putonghua instruction contributes to language erosion. At universities around the world where much instruction is not given in the national language, but in English (e.g., Hong Kong, Netherlands, Sweden), students still speak their mother tongue.

There are some recent indications that Chinese may become the main (although not sole) medium of instruction in more TAR primary schools, but this alarm has been raised before, and at the same time, there are counter-indications that the TAR government is reconsidering its bilingual education policies. Language of instruction issues are debated around the world, with no easy choice among mother tongue, bilingual, or national language instruction. Where the outcome is use of a national language, the choice may be wrong pedagogically. It may even impinge upon the language rights of an ethnic minority, without being part of a purposeful effort to stifle the minority language, let alone commit cultural genocide. A specialist of education in Tibet has noted that it was not until 1994 that the émigré administration endorsed Tibetan as the language of instruction in the primary schools of Tibetan settlements in India, and “the Tibetan government-in-exile may have been no more successful than the Chinese government in providing Tibetan-medium education for the children in the refugee community in India, even though the preservation of Tibetan culture is one of its primary goals.” It should also be noted that mother tongue instruction in Tibet compares favourably to the situation of ethnic Tibetan natives of India’s Ladakh. Schooling there is largely only for boys and occurs in monasteries. Instruction in the Ladakh state school system is in Urdu, a language unfamiliar to Ladakhi children, 90% of whom fail to finish school.

The émigrés have contended that “Chinese-built schools teach Chinese history and culture in the Chinese language and propagate communism while denigrating religion” and that the education system is aimed at “erasing cultural identity.” However, a study of a Tibetan secondary school in Sichuan by a U.S. anthropologist found that textbooks used in the school “do contain a fair amount of material drawn from Tibetan sources and relevant to Tibetan cultural life in the broad sense”; that the lessons based on the texts “play an important role in establishing a sense of unified Tibetan culture and identity among young Tibetans”; and that religious concepts were treated respectfully by the Tibetan teachers.

---

436. BASS, supra note 397, at 260.
439. China Denies Education Clampdown in Tibet, supra note 422.
Local Tibetans themselves, however, did not necessarily consider Tibetan to be their first choice as a language of instruction because it narrowed career choices compared to Chinese.\footnote{445}

The TAR issued regulations in the late 1980s on the use of Tibetan,\footnote{446} with the aim to “make Tibetan the dominant language in Tibet.”\footnote{447} A TAR law to protect the Tibetan language was finally passed in 2002.\footnote{448} While Tibetan is by no means dominant in urban Tibet, it is in most rural areas, where some 85% of Tibetans live. Regulations provide that public signs and documents issued by public institutions at or above the county level must be bilingual, while documents at the township and village levels can be in Tibetan only.\footnote{449} Since 1991, a regulation has allowed lower-level bodies to forgo implementing orders specified in any document that does not have a Tibetan version,\footnote{450} even though regional authorities admit that a sufficient pool of qualified translators is lacking.\footnote{451} There has in fact been an effort in the TAR to ensure that notices are bilingual. The Minister for Information & International Relations of the émigré administration has said that with 80% of television programming in Tibet being in Chinese, the Tibetan language is no longer the prominent language in the region.\footnote{452} However, some 76% of households in the TAR had television sets in 2000, and it has been reported that there are sixteen hours per day of Tibetan-language television broadcasting.\footnote{453} A “Tibet-Xinjiang Project” was launched in September of that year to set up more television and radio relay stations in rural areas in an effort to reach virtually all Tibetan villages. Tibetan-language newspapers, radio, films, and other media also exist in all Tibetan areas, although much of what they produce is translated from Chinese, due in part to limited funding.\footnote{454}
Except for some persons living at the edge of the Plateau, Tibetans continue to speak their mother tongue and moreover associate it with both social status and group solidarity. In the TAR, an ethnic Tibetan who cannot speak Tibetan is practically unheard of; while in the whole PRC, some 92.5–94% of Tibetans speak Tibetan; the remainder speak either another ethnic minority language or putonghua. Outside the TAR, 10–30% of Tibetans can also speak putonghua, but in the TAR, apart from Lhasa, only about 5% of Tibetans can do so. Even assuming that all TAR Tibetans in cities and towns are to an extent bilingual, only about 15% of Tibetans would be accorded that classification. In fact, “Tibetans with anything beyond a rudimentary grasp of putonghua comprise a very small portion of the total population.” Members of a Western “mission” dispatched to Tibet by the émigré administration claim that “Chinese is the dominant language which everyone is expected to speak.” This assertion is plainly wrong and was based only on a visit to a secondary school and a university in Lhasa. Tibetan peasants are not expected to speak Chinese, nor are urban Tibetan workers, unless they work with non-Tibetans.

None of the many recent studies of endangered languages deems Tibetan to be imperiled, and language maintenance among Tibetans contrasts with language loss in even the remote areas of Western states renowned for liberal policies. In the United States, for example, all indigenous languages are nearly extinct in California, though some groups are attempting to revitalize those communication forms. French is found increasingly less in Louisiana, and there is official and popular hostility toward other

---

455. Miller, supra note 340, at 86.
458. Id.; Zhou Minglang, supra note 409, at 4, 14.
“ethnic” languages and bilingualism in general. The United States is described as “a veritable cemetery of foreign languages”—only 16% of second-generation children of Asian and Latin American immigrants report fluency in their parents’ tongues. Among third-generation Americans of Asian ancestry, only 5–10% can speak their ancestral language and not necessarily fluently. Of all U.S. territories, only Puerto Rico’s native people have retained their language, while one-fourth of them have the very bilingualism decried by the Dalai Lama.

The experience of language loss has also affected Tibetans who emigrate outside of South Asia. In Canada, “young Tibetans lead Western lifestyles and speak little Tibetan.” A scholar writing in an émigré online newspaper has observed that young Tibetan-Americans generally do not speak Tibetan and that no one in the Tibetan community in Washington, D.C., could read Tibetan. Tibetans who emigrated from Nepal to New York City “tend to favor speaking Nepali rather than Tibetan and English.” The Dalai Lama has had to urge Tibetans in the United States to speak Tibetan in their homes.

Bilingualism in Tibet is promoted by policies that require that all laws, official notices, commercial signs, and the like be bilingual; that allow Tibetans to interact with government in their own language; and that have created mass media with substantial Tibetan components. Official policies in Tibet go beyond the respect for minority languages required by international law or practiced in European “rights-based” states. Most of these states have not ratified the European Charter for Regional or Minority Languages, even though its obligations are fairly minimal. In education, for example, it is satisfied by making available pre-school education in minority languages.

C. Arts, Vices, and Cultural Genocide

Because they conflict with the idea of cultural genocide in Tibet, state efforts to preserve Tibetan cultural accomplishments and popularize Tibetan culture by creating venues for its development are ignored in the émigré discourse even while they are touted


471. Language and Tibetan Indentity, supra note 445, at 58.


475. See generally Lauri Malksoo, Language Rights in International Law: Why the Phoenix is Still in the Ashes, 12 FLA. J. INT’L L. 431, 432–34, 448–54 (2000) (arguing that states should pay more attention to minority language rights and provide more protection than the unsatisfactory norms in international law).

in official PRC statements. Thus, the publication of many literary works—large-scale efforts such as the compilations of the many-volumed, encyclopaedic *Tripiṭakas* and the world’s longest epic, *King Gesar*—go unacknowledged by émigré leaders. This is so even though Western scholars have noted them, and an eminent émigré historian has spoken of a renaissance of Tibetan publications, including rare manuscripts and texts, as well as worthwhile novels and short stories by Tibetan writers, whose “work does not always merely follow the diktats [sic] of the Party, even when it is written in Chinese and published under the eyes of the censors . . . [and who] are able to bring burning issues into the foreground.”

The same studious ignorance is generally feigned concerning cultural centers in Tibet and their performances, although the director of the ICT in Washington has acknowledged that he enjoys watching the annual Losar (Tibetan new year) programs on Lhasa TV featuring the Lhasa City Performing Arts Troupe or TAR Performing Arts Troupe.

Most often émigré leaders represent the performing arts in Tibet as polluted and have stated that “[i]n this calculated ‘cultural genocide’ the Chinese ma[ke] every effort to remove any vestige of Tibetan character in the performing arts.” Lobsang Samten, artistic director of the Dharmasala-based Tibet Institute of Performing Arts, avers that TAR troupes cannot “put on an authentic performance,” and instead stage Tibetan operas that are “like a Chinese drama with monkey kings or something.” He argues that there has been an “annihilation of Tibetan opera, folk dances, monastic music, Buddhist writings, and literature” in order to allow the PRC government to claim that Tibet never had a separate cultural identity. The Dalai Lama’s representative in Australia asserts that “[c]ulturally Tibet is being strangled to death. There is no room for the Tibetans to carry on any independent cultural activities without interference and influences from the Chinese.” There is a burgeoning sense of modern painters, both Tibetan and Han, in Lhasa, who produce impressive works and receive state support through the artists’ union or teaching positions. Western scholars have also described an “artistic renaissance” and “resurgence of Tibetan cultural production.” The émigré leaders, however, consider *thanka* (religious scroll) painting to be the only authentic Tibetan style and disapprove of paintings produced by ethnic Tibetans in the TAR as being corrupted by Chinese influences. Even artists educated in contemporary Tibet who emigrate to India, such as Gongkar Gyatso, are spurred as inauthentic in Dharmasala, where authorities are unhappy that the main trend in Tibetan art, in or out of Tibet, has been modernistics, i.e., from

---

484. *China’s Propaganda War*, supra note 482.
486. Rob Liarothe, *Creativity, Freedom, and Control in the Contemporary Renaissance of Reb gong Paintings, 26 Tibet J., 4, 5–90 (2001).*
religious or ritualistic to secular. At the same time, younger Tibetan exiles have become more detached from traditional culture, such as the secular theatre, as “the new generations have turned to Western cultural models, transmitted especially through music and cinemas, as well as through direct contact.”

The émigré discourse of the arts and cultural genocide is a classic nationalist opposition of the inauthentic in “occupied Tibet” to a “pure” preserved culture in emigration. Tibetan specialists and artists have a different view: They recognize that Tibetan arts retain their own Tibetan form in Tibet; that Tibetan culture has long been a hybrid; that traditional Tibetan art forms can profit from a further melding; and that, in the arts, the competing culture is not “Chinese” per se, but global. A Tibetan musicologist in the United States has written that the Tibetan singing style in Tibet continues to differ from the Chinese style. Tseten Dorjee, a folk singer who performs in Tibetan and Hindi with a Tibetan opera troupe in Lhasa, has commented that “all Tibet is a mishmash of influences from the eastern and western tips of Asia.” Asked about the popularity of discos with young Lhasa Tibetans, he ventured that “[j]ust about every point on the planet is becoming more global, and Tibetan musicians have to compete with that if they want to survive.” The singer Yungchen Lhamo, in emigration in Australia, has said that she likes to experiment and that her albums include songs with an electronic accompaniment. She comments:

I like to make connections with the modern world because this will keep Tibetan culture alive. If young people like Michael Jackson or the Spice Girls or something like that, then we lose our younger generations. And then we lose our culture. But if old and new are joined together, our culture will live.

Indeed, some Tibetan monks in India listen to Western pop music. Concomitantly, “in the fields of literature, art, film, and music alike, Chinese intellectuals and artists have been turning more and more frequently to Tibet as a source of inspiration.”

The authorities in Tibet’s cities have been responsible for the replacement of Tibetan-style structures with inegalant and dysfunctional “Chinese” (read: faux-Western) buildings. To label the result “the scars of cultural genocide,” however, is extreme. There is no evidence that Tibetans did not join with Han in this pseudo-modernizing affront to the eyes. As anyone who has been to Lhasa in the mid-1990s and more recently can

493. Id.
attest, there has also been some effort to correct past mistakes by putting up more attractive and well-adapted Tibetan-style buildings. The damage done to architecture in Lhasa, where the buildings central to the cultural heritage of the city have been either preserved or destroyed, stands in stark contrast to more overt attacks on buildings in other parts of the world that are part of a national heritage.\textsuperscript{499} Architecture in the Tibetan diaspora is also not unproblematic, with one Western authority noting that the way in which buildings are constructed often reduces the distinctive elements of traditional Tibetan architecture to “cosmetic clichés.”\textsuperscript{500} He also finds that not only is there a lack of traditional Tibetan buildings in Dharamsala, but many “resemble the box-like concrete structures which are now found over most of India.”\textsuperscript{501}

The émigrés try to attribute “vices” found in Tibet’s cities to cultural corrosion due to the Han presence. Lhasa, like many cities around the world, has abundant outlets for prostitution, gambling, and drugs.\textsuperscript{502} The ICT director has stated, “We are concerned that more and more young Tibetans are being tempted by the very worst aspects of Chinese culture.”\textsuperscript{503} However, none of the “vices” complained of are particularly “Chinese.” Billiards is a Western invention, karaoke was born in Japan, and prostitution and drugs are universals. When questioned about Lhasa’s discos and nightclubs, the Tibetan vice-chairman of the TAR referred to them as part of “the Western lifestyle” and said that they added diversity to the Tibetan and Han cultures found among local people,\textsuperscript{504} although TAR authorities do denounce gambling and prostitution and stage raids in an effort to rid the TAR of those vices.\textsuperscript{505} “Vices” in Tibet decryed by the émigrés are for the most part also present in such religious centers as Dharamsala\textsuperscript{506} and Kathmandu\textsuperscript{507} and are not uncommon among Buddhist monks in some countries.\textsuperscript{508}


\textsuperscript{500} William Semple, Tibetan Architecture: Exploring a Cultural Continuum, 98 CULTURES IN TRANSITION 96, 98 (1996).

\textsuperscript{501} Id.


\textsuperscript{503} Kevin Platt, Chinese Migrants Change Face of Tibet, CHRISTIAN SCI. MONITOR, Sept. 10, 1999, at 8, 1999 WL 5382258.

\textsuperscript{504} Yong, supra note 347.


“Cultural erosion,” including the adoption of words of foreign origin, is as prevalent in Dharamsala as in Lhasa. 509 It has been said of Tibetans in India that “[d]aily life is laden with markers of reified Tibetanness, and a nagging anxiety that the necessary accommodation to the Indian host society dilutes more and more the Tibetanness of each generation of exile.”510 Additionally, “[i]n daily life people speak English and Hindi more than Tibetan, and even if people speak Tibetan, they pepper their conversation with many English and Hindi words.”511 In contrast, Tibetans in India who attended school in Tibet “even if they didn’t finish middle school, are often better in both their spoken and literary Tibetan than exile students, even those who finish university.”512 This outcome is expected, as Tibetan settlements in India have “secondary schools struggling to integrate Tibetan curricula into a mandatory Indian syllabus.”513

While émigré and Western leaders object to Han cultural influence in Tibet, they are usually much less concerned about Western influence on traditional Tibetan culture.514 Young Tibetans, it has been observed, have become more attuned to “a Western dress sense and a greater awareness of life outside” than Han Chinese.515 In largely ethnic Tibetan Bhutan, a student in Thimphu, the capital, has commented, “Sometimes the young people here copy the Westerners so much that they are almost Westerners themselves.”516 Visiting the émigré version of Lhasa’s Sera monastery in south India, a journalist observes:

Reeboks are standard gear, and the strains of Pearl Jam not unknown in these regions. And the tuck [snack] shop outside the monastery is a slice of Middle America, well stocked with chips, chewing gum and soft drinks . . . .

Change can grow from the barrel of a Chinese assault rifle, but it can also grow from the mouth of a Coke can.517

Sonam Chophel, the Tibetan Welfare Officer in Dharamsala, notes that “western music, jeans and related western mores” are common among Tibetans in India, but “does not blame the Indian social fabric for these influences. ‘If we cannot safeguard our own culture, it is our own fault.’”518 In effect, he recognizes that the “Indian social fabric” and Western cultural elements are imbricated and that acculturation need not be a function of

that local Indians in Himchal Pradesh [state in which Dharamsala is located] state that Tibetan exile youth “drink homemade brew and engage in brawls”).


510. Lafitte, supra note 29, at 165.

511. Language and Tibetan Identity, supra note 445, at 60; See also DIELH, supra note 506, ch. 3, for a discussion on the deep influence of Indian speech, films, music, and culture on Tibetans in Dharamsala.

512. Id.

513. Lafitte, supra note 29, at 165.


state imposition, but may actually be welcomed by some elements of the community. A journalist interviewing young Tibetans in India described the teenage Dolma who “instead of speaking Tibetan . . . uses a smattering of Hindi, English, and the local Kanadda language. She prefers Indian movies, Western clothes, and rap music to Buddhist poetry.”519 Tempa Samkhar, an émigré political cabinet secretary, has noted that 60% of Tibetans in India were born there and that

[t]hese youngsters are more Indian than Tibetans. They are fond of Indian food. . . and Hindi is their second mother tongue. Tibetan girls often wear salwar kameez . . . . The young are more fond of Hindi films and film songs than Tibetan songs.”520

The Dalai Lama himself has said that “I have spent the better part of over 43 years of my life here in India. I’m practically Indian.521

The Dalai Lama recognizes that Tibetan culture has synthesized many different cultures. The Tibetans, he points out, have “adopted Chinese food, Indian philosophy and the Mongolian way of dressing.”522 As in the Tibetan diaspora, Tibetans in Tibet today are undergoing cultural hybridization in the context of the state in which they live. Even some observers who are severe critics of state policy in Tibet acknowledge that this hybridization is not compelled. For example, one Western reporter has noted, “It might offend Western romantic sensibilities, but young Tibetan men adore kung fu movies and karaoke.”523 As in the diaspora, their learning of the national language in order to partake of economic opportunities and communicate with non-Tibetans, as well as their cultural adoption from the state’s dominant ethnie—generally of elements of Western culture—hardly amounts to forced assimilation.

There is, however, a Tibetan-ruled Himalayan land, Bhutan, where minorities are required by law to speak the national language and, despite widespread illiteracy, to write it as well. They are also required to wear the dominant people’s traditional dress in public. Minority people who entered the country after the late 1950s are not admitted to citizenship. Forced assimilation is a factor in tens of thousands of minority people fleeing the kingdom.524 The Tibetan émigrés have not, however, criticized this “cultural genocide” and have friendly relations with Bhutan.

519. Meenakshi Ganguly, Generation Exile: Big Trouble in Little Tibet, 10 No. 3 TRANSITIONS (Kampala) 4 (2001).
523. Poole, supra note 505.
V. WORDS MATTER: “CULTURAL GENOCIDE” AND THE QINGHAI RESETTLEMENT PROJECT

Language inflation is targeted to affect policymaking by altering perceptions and limiting the options of political actors. Confronted by accusations from a world spiritual leader that China is committing cultural genocide in Tibet, many Westerners unquestioningly accept this characterization. Meanwhile those who doubt its accuracy nevertheless become reticent and find that they must, per Secretary Powell, show “solidarity with the Dalai Lama and the people of Tibet.” In doing so, they perform diminish their capacity to aid in a compromise of the Tibet Question by signaling to the PRC that they are in the thrall of separatists and by strengthening those Tibetan émigré forces that oppose compromise.

The long-term, diffuse effects on the Tibet Question of the discourse of cultural genocide have been accompanied by more immediate and direct consequences for a group of poor and mainly ethnic minority Chinese. In March 1999, China announced that it would match U.S.$40 million of a World Bank loan—the total loan amount from the World Bank was U.S.$160 million—over the next five years to relocate 57,750 peasants from one county belonging to Xining City (population density 337 persons per square kilometer) and five ethnic minority autonomous counties (ACs) in Haidong prefecture, eastern Qinghai (114.3 persons per square kilometer; arable land per capita 0.157 ha). They were to move more than 550 kilometers to the “oasis” of Xiangride, the second largest town in Dulan County, Haixi Mongolian and Tibetan Autonomous Prefecture (one person per square kilometer), in western Qinghai.

Sixty-five percent of Qinghai’s population is packed into the 2% of provincial territory designated as Xining City and Haidong Prefecture. Haixi Prefecture’s area, in contrast, is 45% of Qinghai and contains 7% of the province’s population, of whom 76% are Han, 11% Tibetan, 7% Mongol, and 5% Hui. Average annual per capita income in the fourteen national poverty counties of Qinghai, which include the six move-out counties, was ¥755, which is about half that of the rural TAR. Some 170,000 persons applied for resettlement, and 34% were selected, with a selection rate of 40% among Tibetans. Peasants had made repeated resettlement applications in the 1990s, and those not selected

---

525. Senate Foreign Relations Committee Questions Secretary of State Designee, Colin Powell (CNN television broadcast, Jan. 17, 2001).
526. See, e.g., the essay by the well-known Chinese intellectual, Wang Xiaodong, who is a self-proclaimed nationalist and democrat, The West in the Eyes of a Chinese Nationalist, HEARTLAND: EURASIAN REV. OF GEOPOLITICS, 2000, no. 1, at 17, 19, in which Wang states that with regard to the Tibet Question that “[i]t appears that Westerners are full of a sense of justice, but they are completely under the influence of an ill-natured propaganda by the hegemonic media.”
527. WB Loan to Benefit the Poor, CHINA DAILY, July 2, 1999, at 4, 1999 WL 17780623.
told Western journalists that they were disappointed. Ninety percent of those selected had a per capita income of less than Y580 (U.S.$70) per annum, with many earning Y200–300 (U.S.$24–36). They suffered from malnutrition; had to rely on the government or others for food six months of the year; complained that they lacked water, schools, medical facilities, transport, and electricity; and said that local roads were little more than dirt tracks.532 Western journalists who visited the move-out area found that “[e]thnic Tibetans in Ka Village have no school, no doctor and little more than bare rooms papered in newspaper.”533 They also found that the Tibetan village of Shangchia

has no school, no electricity and no medical facilities. There is no transport, and an illness would mean a 20 km hike to the nearest hospital. Everyone interviewed in the village, home to these dirt poor people for generations, expressed eagerness to leave, a sentiment echoed in other villages.534

The move-out counties’ population was 1,333,484, of which 124,842, or 9.4%, were Tibetan.535 Only 6% (3466) of selected settlers were Tibetans, so the Tibetan share of the move-out counties’ population would increase to 9.5%. Han were 48.7% of the move-out counties’ population but only 42.3% of total people to be moved. Thus, 57.7% of the settler group were members of various ethnic minorities, yet some opponents of the project claimed that it involved “moving nearly 60,000 Han Chinese farmers.”536

Before the proposed “move-in,” Dulan County had 52,669 people. The move would have doubled the county population, while Tibetans in the county would have increased from 11,952 to 15,418.537 After move-in, the percentages of three ethnic groups in Dulan were to drop: Han (from 53.1% to 47.5%), Tibetans (from 22.7% to 14%), and Mongols (from 14.1% to 6.7%), while those of three other groups were to increase: Hui (from 7.2% to 22.1%), Salar (from 1.5% to 4.2%), and Tu (from 1% to 5.4%).538

The percentages of ethnic change from resettlement would have been different if an area larger or smaller than the county were the unit of measurement—for example, if the entire move-in prefecture or the project specific area, a 200-square kilometer part of Dulan County where settlement was to take place, had been used. Haixi Prefecture Tibetans were 11.1% of the population and would fall to 10.3% as a result of the move.539 Haixi Han would rise from 236,918 to 261,375,540 but since the prefecture was 76% Han before the move-in and only 42% of those resettled were to be Han, Han in Haixi would fall to 70.7%.

The project specific area had a population of about 4000 of whom 26.3% were Han, 69.1% Mongols (352 of them herders), and 4.6% Hui. There were no Tibetans. In project townships, the rural area that included the project specific area plus adjacent lands (2000

534. W. Kazer, Controversy, supra note 531.
537. World Bank, Poverty Reduction Project Report, supra note 530.
540. Id.
square kilometers total), there were 5736 people. This number included 276 Tibetan
herders who lived 120 kilometers from the project specific area in the summer and autumn
and 60 kilometers from it the rest of the year. After settlement, Tibetans in the project
specific area would rise from 0% to 5.6% and Han would rise from 26.3% to 41.3%. The
number of Mongols would remain the same, but their percentage would drop from 69.1%
to 4.5%. If the project townships were considered instead, Han would rise to 41.8% and
Tibetans to 5.9%, with Mongols falling to 4.9%. No Tibetan or Mongolian farmers already
in the project specific area were to be relocated or displaced.\(^\text{541}\)

In opposing the project, the International Campaign for Tibet (ICT) adopted two
disparate figures. It highlighted the decrease in the proportion of Tibetans in Dulan County
from 22.7% to 14% and the increase in Han in the project specific area from 26.3% to
41.3%.\(^\text{542}\) It never disclosed the obverse effect—that Tibetans in the project specific area
would rise from 0 to 5.6% and that Han in Dulan County would fall from 53.1% to
47.5%—even though this effect would probably be more meaningful, since Tibetans would
for the first time have a presence in a part of the county where they were absent, while the
proportion of ethnic minorities in the county would increase. Almost all Western news
sources relied on ICT and other “Tibet support group” press releases, rather than detailed
World Bank statistics. An unproblematic impression was created that Han were to increase
in the relevant political jurisdictions and thereby threaten whatever influence Tibetans may
have over local decisionmaking.

The ICT also sought to create an impression that it was mainly Tibetans living in an
indisputably Tibetan area who would be affected by the project. The ICT president stated,
“This is an area where Tibetans have lived for generations . . . . It’s like moving people
from Denver to a [N]ative American reservation in Colorado.”\(^\text{543}\) While Tibetans have long
lived in Dulan, they were scarcely present in project townships. Mongols and other peoples
have also been present for generations, including Hui and Han who have been settled there
since the 1920s, although an influx of Han also arrived in the 1950s.\(^\text{544}\) The analogy with a
Native American reservation was inaccurate because reservations are generally populated
by one Native American ethnie, not a variety of “tribes.” Moreover, reservation authorities
generally have the power to exclude non-Native Americans and Native Americans from
tribes other than the eponymous tribe, not only from settlement, but even from entry for
most purposes.\(^\text{545}\) In contrast, at every level from project specific area to prefecture, the
Qinghai project move-in area was already ethnically diverse. In addition, compared to the
sovereign-nation status that Native Americans enjoy under U.S. and international law, in
practice, PRC minority groups cannot exclude other ethnic groups from settling in
ethnically autonomous areas unless the central government agrees.

The move-in area is one of the last, largely unsettled areas of Qinghai suitable for
irrigated agriculture. The economic benefits touted by the World Bank for the project were
largely undisputed. Crop yields near the move-in area were already three to four times
higher than those in the move-out area, and the World Bank estimated that, in a few years,
the settlers would be able to triple or quadruple their incomes, as well as have better health

\(^{541}\) World Bank, Poverty Reduction Project Report, supra note 530; Bottelier, supra note 528; Charles
Hutzler, World Bank Draws Fire Over Plan To Put Poor Chinese in Tibetan Lands, ASSOCIATED PRESS, June 18,

\(^{542}\) World Bank Under Renewed Pressure over Divisive Project, AGENCE FRANCE-PRESSE, June 17, 1999,
LEXIS, News Library, News Group File.

\(^{543}\) Joseph Kahn, World Bank Rejects China’s Proposal To Resettle Farmers, N.Y. TIMES, July 8, 2000, at
A3, LEXIS-NEXIS Academic Universe.

\(^{544}\) Susette Cooke, supra note 529.

\(^{545}\) FELIX COHEN, HANDBOOK OF FEDERAL INDIAN LAW 247–52 (1982).
care and educational facilities than they had in eastern Qinghai.\footnote{546} While there were no schools for many of the settler group children in eastern Qinghai,\footnote{547} ten schools that would reflect the ethnic and language background of the students were to be constructed for ethnic minority transmigrants.\footnote{548} Because the settlers were to live in twenty-four compact villages in a small part of the county, they would have largely left the rest of it undisturbed.\footnote{549} Tibetans were to live in a separate area, near villages inhabited by fellow Buddhist ethnic Tu people.\footnote{550} The projected increase in economic activity in the county would likely provide some opportunities for those already living there. As pointed out by the Dalai Lama’s nephew, who lives in his uncle’s hometown in Ping’an County (part of the move-out area), those remaining in the move-out area would also benefit from an increase in available land there and from less strain on resources.\footnote{551}

The Tibetan Centre for Human Rights & Democracy (TCHR&D) in Dharamsala claimed that no Tibetans were included among the settlers, although there were to be some 3500 Tibetans, and that Tibetans farming in the region would be displaced by the migration,\footnote{552} although no forced displacement was to take place. They contended that the project “directly contributes to the assimilation and dilution of the Tibetan culture and destruction of the Tibetan way of life.”\footnote{553} Other opponents among Tibet support groups argued that the project was “part of a Chinese effort to dilute and eventually destroy Tibetan heritage”\footnote{554} and would “desecrate unique local Tibetan culture.”\footnote{555} Knowing that most settlers were not to be Han and that many were to be Hui, the TCHR&D nonetheless claimed that “the Hui Chinese are not different from the Han Chinese except for the fact that they are Muslims,”\footnote{556} contradicting the findings of Western social scientists who have done fieldwork among the Hui.\footnote{557} Traditional Hui culture not only differs from Han culture with regard to religion, some aspects of language, folklore, and customs, but Hui ethnogenesis has accelerated under the PRC.\footnote{558} The Hui regard themselves as descended from Arabs, Persians, and Central Asians who came to China over the course of hundreds

546. Bottelier, supra note 528.
548. WB Loan to Benefit the Poor, supra note 527.
553. Id.
of years and intermarried with locals.\textsuperscript{559} In addition, a study has found a firm genetic basis for the separate historical origins of Hui and Han paternal ancestries.\textsuperscript{560} Ironically, the TCHRD assertion also conflicts with the outlook of eastern Tibetans, who distinguish between Han and Hui and have a greater animus toward the latter;\textsuperscript{561} as a major clash in Qinghai between Hui and Tibetans in 2003 demonstrates.\textsuperscript{562}

The TCHRD reported that “Tibetans in Dulan” had written to express a fear that “tens of thousands of Muslim Chinese” would come to Dulan and complained that “the Chinese” already in the county were “eroding the Tibetan religion, national identity, traditional dress and customs . . . [and] . . . [b]y doing so they [were] trying to sinicize [Tibetan] people.”\textsuperscript{563} The report, however, distorted the contents of the purported letter, which did not speak of an influx of “Chinese,” or even Muslim Chinese, but of “tens of thousands” of Salar, although only 3853 Salar were to move in. A reference in the letter to the possibility of Tibetan casualties if resettlement went forward was an allusion to disputes between Dulan Tibetan and Salar herders over pastureland.\textsuperscript{564} Herder disputes in Amdo can indeed be violent: In skirmishes from 1997 to 1999 between Tibetan herders (the “Ngulra tribe”) of Maqu County, Gannan Tibetan Autonomous Prefecture (TAP),\textsuperscript{565} Gansu, and Mongolian herders (the “Arig tribe”) of neighboring Henan Mongolian AC, Huangnan TAP, Qinghai, twenty-nine people were shot dead.\textsuperscript{566} However, the worries expressed about the Salar were highly speculative. There were no Tibetan herders in the project specific area, but only Mongols who were to receive better pastureland as a result of the project. Few people in eastern Qinghai work primarily as herdsmen, and there is no reason to suppose that any settlers would do so. Thus, there was no reason to suppose that the project would deepen resentment between Tibetans and other ethnic groups, as opponents claimed.\textsuperscript{567}

Having assimilated the Hui with the Han as “the Chinese,” the TCHRD designated the Salar as part of “the Chinese” as well.\textsuperscript{568} Salar number some 100,000, and most live in the Xunhua Salar AC, Haidong Prefecture, Qinghai, where the tenth Panchen Lama was born. They are a Turkic people who migrated to the northeast edge of the Tibet Plateau in the thirteenth century from Samarkhand in present-day Uzbekistan.\textsuperscript{569} Pre-modern Salar social structures incorporated both Tibetan and Hui elements.\textsuperscript{570} Today, in addition to their Salar mother tongue, which is Turkic but has a vocabulary that is 30–40% Chinese and Tibetan,
about 50% of Salar comprehend Amdo Tibetan. Some Salar cultural forms, such as singing, are influenced by Tibetan culture. Like the Arig, the Salars are partially Tibetanized. Thus, the ethnic group characterized as the most threatening of “the Chinese” coming to Dulan to commit “cultural genocide” against Tibetans were a people who derive much of their own culture from Tibetans.

Another ethnic minority among the migrants that the émigrés designated as part of “the Chinese” also share their religion with Tibetans. The settler group was to include 5431 Tu, also known as Monguor. The Tu descend from Mongol soldiers who first came to what is now northeast Qinghai in the thirteenth century and intermarried with locals. Like the Dalai Lama and Panchen Lama, they traditionally adhere to the Gelugpa school of Tibetan Buddhism. Numbering over 200,000, they live mainly in Qinghai’s Huzhu Tu AC, in the move-out area, as well as Minhe Hui, and Tu AC.

Opponents, including U.S. Congress members, argued that the Qinghai project would result in “cultural genocide” against Dulan’s Tibetans. The ICT called the project “part of a larger Chinese policy which is now the greatest threat to the continued existence of the Tibetans as a distinct people and culture.” It is also said that the project was “evidence of the Chinese policy of ethnic cleansing,” even though ethnic cleansing typically involves mass ethnic murder and forced transfer of minority peoples from their traditional area of settlement. The Qinghai case, however, involved no forced transfers, let alone killings, and the ethnic groups who transferred in were mostly from the diverse array of ethnicities already present in the settlement area.

It was also erroneously claimed that “Dulan is officially designated an area of Tibetan autonomy within Qinghai.” It is the prefecture—not the county—that is the relevant unit of autonomy, since a county within an autonomous prefecture may have its own separate autonomy only if the county’s ethnic minority or minorities are substantially different from the eponymous minority or minorities of the prefecture. This situation is not the case with Dulan County and Haixi Prefecture. Opponents stated that they feared that if resettlement


575. Sathnam Sanghera, Tibet Report Dispute Throws World Bank into Disarray: Directors’ Ruling on Publication Has Fuelled Anger over Loan, FIN. TIMES (London), June 26, 2000, at 10, LEXIS, News Library, News Group File; Paul E., World Bank OKs Loan to China Despite U.S. Objection, JAPAN ECON. NEWSWIRE, June 24, 1999, LEXIS-NEXIS Academic Universe (reporting a comment by Benjamin Gilman, chair of the House International Relations Committee: “For Tibetans, it is not development or poverty alleviation, it is cultural genocide”). It was reported that “the Dalai Lama sees the proposed resettlement—which would affect the area where he was born—as ‘cultural genocide.’” Bank Should Retract China Loan, supra note 567, at B8. The Dalai Lama was also quoted as stating in response to a question about the project, “Under the present circumstances this would be a source of more problems. Therefore it is not the right time.” Harry Dunphy, World Bank Internal Review Criticizes Loan to Relocate Chinese Farmers, ASSOCIATED PRESS, June 23, 2000, LEXIS-NEXIS Academic Universe.

576. Lewis, supra note 539, at A4.


went forward, attendant demographic changes would result in “tipping the ethnic balance so heavily against Tibetans and Mongolians that the region’s autonomous status ultimately could be stripped” and withdrawn from an area that is one tenth of the Tibet Plateau.

These opponents spoke of how losing autonomous status would result in “fewer government posts for minorities and less support for bilingual education and cultural preservation.” They did so without a hint of the irony involved: Émigré leaders have always argued that autonomous status brings no benefits whatsoever to ethnic minorities and that, in the autonomous areas, “Tibetans have little or no say in running their own affairs” and “are completely deprived of their political identity.”

Tibetan supporters outdo each other in being dismissive of autonomy in Tibetan and other PRC minority areas.

The PRC government pointed out that “[o]nce [an area is] granted autonomous administrative status, there is no constitutionally explicit mechanism for ‘decertifying’ such status, and there is no triggering method for such a process even when the percentage of ethnic people in an autonomous area falls low.” Officials have stated that no autonomous area of China has ever lost that status because of changes in the ethnic population balance. There are large APs where the eponymous ethnic group is a small percentage of the prefecture’s population, an example being the Bayingol Mongolian AP in Xinjiang, where in 1990 Mongols were 13.6% of the total population. The Party Secretary of Haixi pointed out that, as it stands, “[t]here are only a little over 20,000 Mongolians and 30,000 Tibetans among the 320,000 population of Haixi, but it is a Mongolian and Tibetan autonomous prefecture.”

Sixty members of the U.S. Congress voiced opposition to the Qinghai resettlement project. The issue arose just after Lawrence Summers was nominated to be U.S. Secretary of the Treasury and was to go before a Senate panel for a confirmation hearing in which the ICT had already organized senators to ask questions about the Qinghai project. While it was reported that U.S. officials clearly had their doubts about the émigré argument

580. Aslam, supra note 564.
581. Schoof, supra note 533.
585. WB Loan to Benefit Poor, supra note 528.
586. Interviews with State Ethnic Affairs Commission Officials (Guojia minwei), in Beijing (June 2001).
that the project would dilute Tibetan culture, “they were unwilling to defend the loan and [thereby] appear to be siding with Beijing.” The U.K. Minister for Development, Clare Short, stated that

[t]he Tibetan lobby in the United States is very strong, in Hollywood and so on . . . . I do not accept the allegations that were made and I think it is wrong that a sort of fashionable cause can be traduced to make people, for political reasons, . . . force you to vote wrongly.

In July 2000, the United States and Germany voted against the World Bank Qinghai project, while France and Italy abstained. After an Inspection Panel issued a negative report, indicating that the World Bank had failed to follow its own procedures, especially in terms of assessing the environmental impact of the project, China withdrew its loan application rather than wait for additional studies to take place. A consultant for the Inspection Panel, a professor of political economy and development at the London School of Economics, observed:

[A]ll the heat and fury of the current debate has obscured the fact that the Qinghai project represents a historic breakthrough. By agreeing to the proposals of the bank’s response, the Chinese government has agreed to have the environmental and social assessments carried out by “internationally recognized experts” whose work will be disclosed locally and in Washington. More important, a panel of experts will be assembled to provide independent technical advice to the bank and the Chinese government. Their regular reports to the bank and the government will be made public without being censored by either side.

In January 2002, it was announced that hundreds of households had already left for Dulan on a “trial basis”; that 17,000 to 20,000 settlers would be moved there in small groups beginning in March 2002; and that U.S.$80 million had been allocated for construction that was underway on irrigation works and improvements to farmland. The ethnic composition of the settlers was to remain close to the World Bank plan. In late 2001, almost all buildings in Xiangride, Dulan County, were marked for demolition and a new townscape was to be created to receive the migrants.

The outcry over “cultural genocide” in 1999–2000 in opposition to the Qinghai project had succeeded in reducing the number of the eastern Qinghai poor to be moved to western Qinghai, a result that may be best for the environment of the project area. The overall effect, however, on the impoverished of Qinghai was not as sanguine. Whatever

---

591. Hilton, supra note 536.
the deficiencies of the plan, the leveling of the untenable charge of cultural genocide foreclosed the possibility for an open-minded evaluation of the plan’s utility and thus denied tens of thousands of mainly minority people, including thousands of Tibetans, an opportunity to better their lives through the planned move. “Tibet support groups” offered no convincing evidence that the plan would have had an adverse effect on the culture of local Tibetans, but merely represented that this was inevitable once “the Chinese” had arrived. The opposite, however, could well be argued. With the planned increase in the number of Tibetans in Dulan and the addition of partially Tibetanized Salars and Tu as well, Dulan Tibetan culture might have been strengthened. That was the view implicit in the comment to a Western reporter by Gongbu Danzhou, a Dulan Tibetan, who stated, with Tibetans from eastern Qinghai slated to arrive, “Perhaps we will be able to build a temple.”596

VI. CONCLUSION

Tibetologist Elliot Sperling observes that “within certain limits the PRC does make efforts to accommodate Tibetan cultural expression” and “the cultural activity taking place all over the Tibetan plateau cannot be ignored.”597 Other supporters of the émigré cause, including Tibet scholar Robert Barnett and German Green Party leader Antje Vollmer, also recognize the inaccuracy of the cultural genocide claim.598 By all accounts, Tibetanness remains robust. As a U.S. reporter recently observed: “[F]or all the change in styles and attitudes—mostly among the small minority of Tibetans living in cities—Tibetan identity remains strong.”599

If the concept of cultural genocide in Tibet is inapposite legally and empirically, the charge also has baleful political effects. In universal terms, the application of the concept exemplifies a language inflation that disserves the urgent struggle against destruction of peoples and their cultures. It has been said that “the notion of genocide is marked by conceptual confusion, often compounded by its rhetorical use on the part of those seeking to inflame and stigmatise social and political discourse.”600 Scholars have catalogued many misuses of the term,601 with one concluding that “when one needs a catch-all term to

596. China’s Poor See Hope in Resettlement, supra note 532. The same might be said of the likely effect of increased income levels of Tibetans. As one Tibetan in Lhasa observed when asked about the effect of the controversial Qinghai-Tibet railway, “When transportation is developed, local people’s lives will become better, and there will be more alms giving to temples.” Tibetan NPC Deputies Hail Construction of Qinghai-Tibet Railway, XINHUA NEWS AGENCY, Mar. 7, 2001, LEXIS-NEXIS Academic Universe.


599. Eckholm, China Wins, supra note 323.

600. ALVAREZ, supra note 65, at 33.

describe ‘oppression’ of one form or another, one often resorts to labelling it ‘genocide.’ The result is the debasement of the concept.” 602

It is equally common for nationalists to deploy a charge of cultural genocide against changes they oppose in traditional lifestyles. A Canadian First Nations leader has stated that the goal of animal rights activists who seek restrictions on trapping fur-bearing animals is the cultural genocide of the Inuit by taking away their means of subsistence. 603 Non-Christian Australian Aborigines have criticized Christian Aborigines who evangelise as committing cultural genocide by diminishing traditional tribal spirituality. 604 The Turkish media has attacked as cultural genocide a Saudi plan to demolish al-Ajayd Castle, an old fort in Mecca, because it evinces an intention to rid the kingdom of reminders of former Ottoman domination. 605 Coca leaf farmers term Bolivian anti-drug eradication of their crops “cultural genocide” because the Andean people have long used the plant for ritual and health purposes. This is not to say that the complainants do not raise legitimate issues, but they have chosen inflated terms to describe these grievances, in order to create the impression that their cultures, or even their ethnic groups, are threatened with destruction from actions that are not based on that intent and cannot have that effect.

If those who have legitimate grievances can play that game, so too can those who represent historically oppressive forces and now perceive their culture to be threatened by resistance to that oppression. Since the 1980s, neo-fascists such as Jean-Marie Le Pen in France and Gianfranco Fini in Italy have grabbed hold of “cultural genocide” in their attacks against immigrants and foreigners who allegedly threaten “European” culture. 606 The Grand Orange Lodge, a cornerstone of the Northern Ireland Protestant ascendency, has denounced as cultural genocide the police’s rerouting of a march through a Catholic community, on the ground that such marches are integral to the “loyalist community.” 607 A South Carolina state senator has argued that efforts to remove the Confederate flag that flew above the state legislature’s building would result in cultural genocide because the flag is an integral part of South Carolina’s heritage. 608 New Mexico stockmen accuse environmentalists of cultural genocide because the latter seeks to protect endangered species through measures that may adversely impact the cattle raising that the stockmen argue is basic to Southwestern U.S. culture. 609

With many causes competing for the attention of those from whom the Tibetan émigrés seek support, it may appear to them that the most extreme, rather than the most

accurate, language best serves their cause. Martti Koskenniemi has described the deleterious effects of such a course with regard to the concept of genocide:

To accuse one’s adversary of having committed genocide may have powerful ideological effects, whatever the substance for such claim. The doubt is inserted in the minds of outsiders (“but what if that is true . . .?”) and half the ideological battle may already have been won. An indiscriminate and proliferating use of the tag will lose its normative or evocative strength. The more accusations of genocide are routinely thrown by political and military adversaries against each other, or the more the notion is defensively used in order to direct attention away from one’s own acts, the less power the notion is going to have . . . . The concept of genocide will be associated in the popular mind with the kind of politics as usual that it so delights in cynically dismissing; as just another meaningless phrase concocted by politicians or ideologists to support whatever agendas they may have.610

Another commentator has noted a “sobering contrast” between the “rhetorical overuse of the concept of genocide” and “its [limited] practical impact in halting state-sponsored mass killing.”611 The contrast may well rest on a causal link. With so many claims of physical or cultural genocide being made without connections to the Convention conception of genocide, it may be hard to recognize a serious instance when it is in progress: Rwanda, for example. There are scholars, such as Adam Hochschild, who studied Belgian colonial depredations in the Congo that caused ten million unnatural deaths, who recognize that even extreme brutality may not amount to genocide where it does not involve the systematic extermination of a people.612 Then there are the Tibetan émigré leaders and their supporters who are seemingly oblivious to the consequence of making the most damning charges without any evidentiary foundation.

In specific terms, use of the concept of cultural genocide as a tactical weapon in the Tibet case disserves the effort to resolve the Tibet Question. Genocide has been called the “crime of crimes” and the “crime of the century.”613 A UN body has deemed it “the ultimate crime and the gravest violation of human rights it is possible to commit.”614 As Koskenniemi observes:

To be branded as a genocidal State is to be classified as the worst kind of criminal, a pariah, an outlaw among States, to have been put beyond the pale of civilised humanity. The evocative strength or the symbolic value of genocide is formidable . . . . Even to be accused of genocide affects a State’s international standing, its political, diplomatic and commercial contacts with other States.615

614. Whitaker, Revised Report, supra note 87, Provisional Agenda Item 4.
The attempt to associate China’s leaders with the level of criminality implied in a charge of genocide, even if “only” cultural,\(^{616}\) surely hardens their distrust of the émigrés with whom they must deal if a compromise on Tibet is to be reached. PRC and local leaders, both Tibetan and non-Tibetan, are convinced that they have done the opposite of committing “genocide” by pouring great treasure and effort into the development of Tibet, while preserving key elements of traditional culture.\(^{617}\) They deem it an affront that accusations of “cultural genocide” emanate from émigré leaders.\(^{518}\) The latter, according to PRC leaders, have “done nothing to contribute to Tibet’s economic and social development,”\(^{619}\) “[know] nothing of the real situation there,”\(^{620}\) and seek to “set aside [Tibet] as a museum of ancient culture.”\(^{621}\)

Moreover, the PRC government can respond to accusations of “cultural genocide” by recalling the misdeeds of the countries that émigré leaders rely upon for support in their “free Tibet” campaign. Examples include the cultural genocide of Indians during the westward expansion of America, the West’s colonial rule in Asia and Africa, and the West’s gunboat policies.\(^{622}\) China’s leaders point to the increased Tibetan population, rising living standards (however lagging behind other parts of the PRC),\(^{623}\) and the existence of the Tibetan language and culture, as counterpoints to the fate of indigenous peoples and many ethnic minorities elsewhere. After the U.S. Congress invoked “cultural genocide” in Tibet, a PRC organ responded:

Remember, American troops slaughtered native Americans and drove them into small reservations. In the United States in the 18th century there were one million Indians on the new continent. But by the end of the 19th century, the number of Indians had slumped to 240,000. And what the remaining Indians faced was not the increasing economic prosperity other Americans enjoyed, but barren land, rising unemployment and disappearing languages. In the reservation areas, the Indians were left isolated from the outside world, living in poverty. This was how the Americans “preserved the Indians’ cultural, religious, linguistic, and ethnic identity.”\(^{624}\)

\(^{616}\) See Prepared Testimony of Lodi G. Gyari, Special Envoy of His Holiness the Dalai Lama and President, International Campaign for Tibet Before the Senate Foreign Relations Committee, FED. NEWS SERV., May 13, 1997, LEXIS-NEXIS Academic Universe, for the assertion that “the history of Chinese rule of Tibet” since 1949–1950 has been “a crime of cultural genocide.”

\(^{617}\) Qian Stresses Tibet’s Role in Anti-Separatism, XINHUA NEWS AGENCY, Mar. 5, 1997, LEXIS-NEXIS Academic Universe.


\(^{623}\) See Sautman & Eng, supra note 52. The per-capita income of TAR peasants and herdsmen in 2001 was ¥1410, while it was ¥7090 for TAR city residents, a 1-to-5 ratio, far above that in China as a whole and much greater than in most developing countries. Computer Popular on “World Roof,” XINHUA NEWS AGENCY, Jan. 29, 2002, LEXIS-NEXIS Academic Universe.

\(^{624}\) Zhiming, supra note 621.
The Dalai Lama often states that he is concerned most of all about the preservation of culture. His main international alliance, however, is with politicians in the United States, a country whose cultural hegemony plays a major role in eroding traditional cultures, including in China proper and Tibet. An Australian journalist visiting China for the first time in the late 1990s commented that “Westerners traveling in Asia expect culture shock, but the shock of China to me was not how Eastern it appears, but how Western. How capitalist.”

It is plain to anyone who has been in Tibet since the 1990s that most non-traditional elements of contemporary Tibetan culture, although mediated through Han Chinese, are Western (clothing styles, architecture, high technology, etc.) or non-Chinese Asian (karaoke, Bollywood films) in origin. A political philosopher who studies the politics of cultural difference argues that general structural transformations in state, markets, firms, and bureaucracies may determine what is sometimes experienced in local communities as ethnic oppression:

What if groups systematically misread the effects of these social and economic transformations and ascribed to their minority position developments which in fact affected minority and majority cultures alike? What if late modernity posed a generalized cultural threat which all collectivities had to deal with as they tried to reformulate their traditional lifeways in a context of constant radical change?

Such questions are relevant to the charge of cultural genocide in Tibet, which ignores the fact that many cultural changes deemed objectionable are actually incidents of an asymmetrical, America-centered, global structural transformation that affects Han areas of China in many of the same ways as Tibet is affected by Chinese-mediated late modernity. While some Chinese argue that this process amounts to “cultural colonialism,” when it is understood against the cultural repression carried out under classic colonialism, the ultranationalist hyperbole in appropriating the term “colonialism” to frame the critique is apparent.

A leading proponent of globalization observes, “Culturally speaking, globalization is largely the spread (for better or worse) of Americanization—from Big Macs and iMacs to Mickey Mouse.” Opponents of globalization assert that the movement brings “cultural genocide” even to developed countries. The Dalai Lama notes that as globalization has proceeded, “some communities have gained power over other communities.” He has added, however, that “the interference of Western culture is not a bad phenomenon when taking this process separately, but it always depends on the strength of the affected culture and the cultural heritage.”

627. Walker, supra note 407, at 222.
628. See generally The Contention in China Over ‘Cultural Colonialism,’ CHINESE SOC. AND ANTHROPOLOGY, SUMMER 1999 (Stanley Rosen ed.).
632. Id.
Tibet,” to learn about Western cultures and relies upon Westerners to “help save Tibetan culture from annihilation” and preserve it in their museums.

The Dalai Lama thus does not seem particularly concerned that “cultural genocide” might be carried out under the aegis of Westerners or Westernizing influences. The situation with Tibetan cultural artifacts is exemplary in this regard. Emigré leaders claim that “China” has “plundered and sold priceless statues and religious objet’s art [sic].” In 2001, they accused Chinese authorities of “looting” the Potala Palace and “emptying Tibet of its religious treasures” because some artifacts were to be shipped to Shanghai, although there was no indication that the artifacts were to remain permanently out of Tibet. They have also asserted that China earned over U.S.$80 billion from selling artistic and religious objects in Hong Kong, Shanghai, and Tokyo during the Cultural Revolution, although they have offered no basis for this fantastical amount. While many Tibetan artifacts were shipped to Beijing during the Cultural Revolution and some were sold as scrap metal, an essay on the emigré administration’s own website states that PRC leaders stopped this practice in the early 1970s when they learned of it and that thousands of artifacts were returned to Tibet in the 1980s.

In contrast, emigré leaders have not opposed the continuous flood of Tibetan artifacts to the West in the 1990s, and in the present decade, they have in effect sanctioned this activity. The number of Tibetan objects on offer in the West is said to be equal in number to all of India’s offerings, with annual revenue from Tibetan art running in the tens of millions of U.S. dollars for Western auction houses and galleries that sell works that they cannot prove left Tibet legally. Western dealers apparently claim that if these artworks are returned to Tibet they might be destroyed and, therefore, that applicable UN treaties on the repatriation of pillaged national treasures do not apply. They make this claim even though the greatest collections of Tibetan art in the world are in Tibet at the Potala Palace (which has 600,000 registered objects), the Jokhang Temple (10,000 tanksas), and Drepung. Artifacts sold to Western collectors include some pieces taken from monasteries during the Cultural Revolution, but most have been removed in recent years.

often it seems by Tibetans. Tibetan dealers market stolen artifacts in London, Paris, New York, and Hong Kong. The Dalai Lama, however, has raised no objection to the vast numbers of precious Tibetan artworks in the collections of Western museums and wealthy owners. In his introduction to the 1990 Royal Academy catalog of “The Sacred Art of Tibet” exhibition in London, he “gave the trade his blessing,” stating, “We have treasured these works of art for centuries in Tibet and are deeply moved that they are . . . treasured by the open-minded people of the whole world.”

The accelerated flow of stolen Tibetan artifacts follows the journey to the West taken by looted Chinese art. It is estimated that as many as one million Chinese objets d’art that were not acquired legally are in foreign hands, including some of the greatest relics of Chinese antiquity that are now lodged in Western museums or in the hands of rich denizens of New York, London, Tokyo, and other cities. Commenting on the treasure trove of artifacts pillaged from China, the curator emeritus of the Shanghai Museum has stated, “It is a real pity that right now, if Chinese people want to study their own history they must go abroad to do so.” It is sometimes argued that such art is better off being in foreign collections and museums, where it will be preserved, but the Western editor of a leading journal of archaeology and art in China points out that art taken to Europe before World War II is now in ashes from bombings and that the Dalai Lama admits that Tibetan art is being stolen for money, not to preserve it. Even pro-Tibet independence Western scholars and journalists acknowledge that the high prices paid by Western collectors stimulate thefts of Tibetan artifacts and that “[the Tibetan art] heritage remains seriously threatened—not by Beijing but by the art markets of the West.” There have been repatriations of Tibetan artifacts by émigrés, but only one case involving a Westerner.

The émigré leaders do not hesitate to imply that Chinese culture is a polluting influence in Tibet. They almost always speak of Chinese culture in the negative, despite its many aspects found compellingly attractive to people around the world. A range of themes invoked by émigré leaders against “the Chinese” call to mind diatribes that took place a continent away and a half-dozen decades ago when it was falsely charged that one ethnic group sought to corrupt and destroy another through its promotion of irreligion, prostitution, pornography, drugs, intermarriage, non-traditional art forms, and demographic catastrophe. Those who advance the theme of a particular ethnic group or nation as “corrupters of peoples,” fervently hold this conviction, and claim to have “proof” of its validity in fact make their claim all the more pernicious. Those subject to such accusations moreover will feel fully entitled to resent it and treat with the utmost suspicion those who make it.

643. Id.
645. Id. See also Souren Melikian, Dealers and Scholars in Uneasy Dilemma; Should Looted Works Be Published?, INT’L HERALD TRIB., Apr. 24, 1999, at 9, LEXIS-NEXIS Academic Universe (discussing the benefits of publicizing and auctioning looted works).
The existence of émigré leaders’ ties to U.S. politicians, alongside the émigré administration’s unsupported charges of cultural genocide in Tibet, fuels suspicions of PRC and TAR officials that the Dalai Lama is hypocritical in his pronouncements about Tibetan culture. Furthermore, by extension, his claims raise suspicions about other matters, including his desire to arrive at a solution to the Tibet Question that respects the territorial integrity of China. If such a solution is indeed contemplated by the émigré leaders, a retreat from the discourse of “cultural genocide in Tibet” is warranted as one of the many steps needed to smooth the way to negotiations. In this way, the émigré leaders and “Tibet supporters” would better position themselves to engage in a credible and productive critique of the deficiencies of cultural policy and of human rights in Tibet.

