

INTERNATIONAL COMMISSION OF JURIST REPORT
"The Question of Tibet and the Rule of Law"
Geneva
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(Excerpt)

INTRODUCTION TO THE EVIDENCE ON CHINESE ACTIVITIES IN TIBET

The allegation against the People's Republic of China can be fitted into three broad legal categories:

- 1) Systematic disregard for the obligations under the Seventeen-Point Agreement of 1951;
- 2) Systematic violation of the fundamental rights and freedoms of the people of Tibet;
- 3) Wanton killing of Tibetans and other acts capable of leading to the extinction of the Tibetans as a national and religious group, to the extent that it becomes necessary to consider the question of Genocide.

There is some inevitable overlap between these categories, for example, in the case of respect for religious belief, where there is this obligation under the Seventeen-Point Agreement [Article 7] and in the Universal Declaration of Human Rights [Article 18].

The significance of these three legal categories may be briefly explained. Violation of the 1951 Agreement by China can be regarded as a release of the Tibetan Government from its obligation, with the result that Tibet regained the sovereignty which she surrendered under the Agreement. This question is discussed in the part of this report entitled "The Position of Tibet in International Law." For this reason the violations of the Agreement by China amount to more than a matter of domestic concern between Tibet and China. What is at stake is the very existence of Tibet as a member of the family of nations, and this matter concerns the whole family of nations. Evidence showing the systematic violation by China of the obligations under the Agreement is therefore printed in extenso.

Any systematic violation of human rights in any part of the world should, it is submitted, be a matter for discussion by the United Nations. For this reason the evidence which indicates violation on a systematic scale of the rights of the Tibetan people as human beings is printed in extenso. Most people will agree that in the sphere of human rights, some rights are fundamental. The rights of the Tibetans which appear to have been ruthlessly violated are of the most fundamental _ even that of life itself. With violations of this gravity it is not a question of human rights being modified to meet the requirements of local conditions. It is a question of conduct which shocks the civilized world and does not even need to be fitted into a legal category. The evidence points to a systematic design to eradicate the separate national, cultural, and religious life of Tibet.

Genocide is the gravest crime known to the law of nations. No allegation of Genocide should be made without the most careful consideration of evidence that killing, or other acts prohibited by the Genocide Convention, however extensive, are directed towards the destruction in whole or in part of a particular group which constitutes a race, a nation or a religion. The facts, as far as they are known are set out in extenso. It is submitted, with a full appreciation of the gravity of this accusation, that the evidence points at least to a prima facie case of Genocide against the People's Republic of China. This case merits full investigation by the United Nations.

The evidence submitted against China is printed verbatim in this report. Statements made by the official press and radio of the Chinese People's Republic are reproduced at perhaps inordinate length, and even so amount to no more than specimens of the Chinese account of the recent history of Tibet. Space does not permit a fuller inclusion, but it is considered that the selection is at least typical of the official account. The account given by Tibetan leaders in exile and refugees on the one hand, and Chinese spokesmen and Tibetan collaborators on the other are reproduced with a minimum of editing and running commentary. By and large the account given by Tibetans are self-evidently linked to the specific legal category under which they are cited; accounts from Chinese sources are by and large self-evidently inconsistent, though in this case there is a certain amount of running commentary.

At the beginning of each section of evidence presented is a summary of contents, an assessment of the effect of the evidence and, in some cases, a critical discussion of the Chinese accounts. Finally, a summary of conclusions is offered. A note on the leading personalities involved precedes the general body of evidence, together with a list of abbreviations used in the commentary.

From the whole tangled mass of propaganda, allegation and counter-allegations made by the principal protagonists in the Tibetan situation, one statement stands out. The Dalai Lama in his statement at Mussoorie, India, on June 20th 1959 said:

"I wish to make it clear that I have made assertions against Chinese officials in Tibet in full knowledge of their gravity because I know them to be true. Perhaps the Beijing Government are not fully aware of the facts of the situation but if they are not prepared to accept these statements let them agree to an investigation on the point by an international commission. On our part I and my Government will readily agree to abide by the verdict of such an impartial body."

The issue on the evidence submitted in this report is to a large extent who is telling the truth. On this issue this proposal by the Dalai Lama is of the most importance. The International Commission of Jurists is setting up its Legal Inquiry Committee, but it is not known whether this Committee will be allowed to enter Tibet. Nor is it certain that a United Nations Commission, if one is informed, will be able to make on the spot inquiries in Tibet. But if entry is refused it will be by the Government of the People's Republic of

China. That Government has not so far accepted the Dalai Lama's proposal. On the question of credibility the obvious inference is there to be drawn.

THE QUESTION OF GENOCIDE

Genocide is defined in the Convention for the Prevention and Punishment of Genocide, 9th December 1948, which was agreed in pursuance of the resolution by the General Assembly of the United Nations that Genocide is a crime against the law of nations. The contracting parties undertook to prevent and punish Genocide. There is therefore an obligation upon each and every one of the States who were party to the Convention to take action if a case of Genocide comes to light.

The Convention defines both the mens rea and the actus reus of Genocide in specific terms. The actus reus is committed in one or more of several ways as defined in Article 2:

- a) Killing;
- b) Causing serious bodily or mental harm;
- c) subjection to living conditions leading to the total or partial destruction of the group;
- d) measures intended to prevent the birth of children within the group;
- e) forcible transfer of children of the group to another.

Conspiracy to commit Genocide, incitement to commit Genocide, attempted Genocide and aiding and abetting Genocide are all declared punishable by Article 3. The mens rea of Genocide is defined as the intention to destroy in whole or in part a national, ethnic, racial or religious group as such.

It cannot be overemphasized that one must deliberate carefully before making an allegation of Genocide. It is probably the gravest crime known to the law of nations. For this reason, the evidence must be carefully considered, and all inferences from the evidence must be logically supportable.

EVIDENCE OF THE ACTUS REUS OF GENOCIDE:

i) Religious group: The evidence that there has been widespread killing of Buddhist monks and lamas in Tibet is clear and explicit. One need only refer to the evidence in this category under Section A(II). If this evidence is to be believed, there has been a destruction by killing of a part of a religious group. The International Commission of Jurists believes that this evidence raises at the very least a case which requires thorough and careful investigation.

ii) National group: The account of wanton killing in Tibet points to killing on a wider scale than that of religious groups. Particular attention should be paid to the evidence of indiscriminate air attacks, and of deliberate shooting of Tibetans who were in no way engaged in hostilities. Evidence of such killings is given in Section B. It should also be stressed that the alleged deportation of 20,000 Tibetans children is directly contrary to Article 2(e). It is of utmost importance that this report be fully investigated.

The memorandum contains important evidence on the forcible removal of children to China:

"Above all they have made thousands of homes unhappy by forcing young boys and girls to go to China for denationalization, thus getting them indoctrinated to revolt against our own culture, traditions and religion. To this end they have sent more than five thousand boys and girls up to now to China proper."

Here is clear prima facie evidence of a violation of Article 2(e) of the Genocide Convention.

EVIDENCE OF THE MENS REA OF GENOCIDE:

It is very rarely in criminal trials that direct evidence of mens rea is available. The fact that there is no official Chinese policy statement directed towards the destruction of the Tibetans is no ground for withholding an accusation of Genocide if an inference of the requisite intention can properly be drawn. For this purpose it is permissible to take into account acts which point to the extinction of a national or religious group whether or not such acts are in themselves acts of Genocide. For if a systematic intention to destroy a nation or religion can be shown by acts which are not declared criminal by the Genocide Convention, the acts on which these inferences are based can properly be adduced as evidence of general intention. If in addition there are acts which are capable in law of amounting to Genocide, and such acts are part of a consistent pattern of destroying a nation or religion, the inference of intent in non-genocidal acts is equally valid in respect of acts which are within those prohibited by the Genocide Convention.

For this reason, the overall assessment of the evidence in Section A and B is relevant and important. If such evidence points to an intention to destroy religion in Tibet, as to assimilate the Tibetan way of life to the Chinese, there is evidence of the required intent to destroy, in whole or in part, a national or regional group. It has been argued that the activities of the Chinese in Tibet point to the conclusion that this was the intention behind the Chinese acts in the fields described in Section A and B. The ruthless efficiency is otherwise difficult to explain. The evidence in these two sections should be carefully studied.

This inference has been drawn from these and other facts by Tibetans from the Dalai Lama downwards. The Tibetan opinions on the Chinese intentions are as follows:

STATEMENT OF THE DALAI LAMA IN MUSSOORIE, JUNE 20, 1959:

In the course of his press conference the Dalai Lama stated:

"The ultimate Chinese aim with regard to Tibet, as far as I can make out, seems to attempt the extermination of religion and culture and even the absorption of the Tibetan race. ... Besides the civilian and military personnel already in Tibet, five million Chinese settlers have arrived in eastern and north-eastern Tso (Tso-ngon), in addition to which four million

Chinese are planned to be sent to U and Sung (Tsang) provinces of Central Tibet. Many Tibetans have been deported, thereby resulting in the complete absorption of these Tibetans as a race, which is being undertaken by the Chinese."

MEMORANDUM:

The statement already quoted from the Memorandum on the actus reus of Genocide also contains the inference by the authors of the document that the aim was to get the children to "revolt against their own culture, tradition and religion."

Statement of Chaghoe Namgyal Dorje:

"...My experience of four years' work with the Chinese convinced me that their propaganda was false and that their real intention was to exterminate us as a race and destroy our religion and culture.

"Communists are enemies not only to Buddhism but to all religions. It has been told to me that more than 2,000 Lamas had been killed by the Chinese. I have personal knowledge of such attacks on 17 Lamas.

"Even if no help is coming we shall fight to death. We fight not because we hope to win but that we cannot live under Communism. We prefer death.

"We are fighting not for a class or sect. We are fighting for our religion, our country, our race. If these cannot be preserved we will die a thousand deaths rather than surrender these to the Chinese."

These inferences were drawn by people who know as no one outside Tibet can know the full extent of Chinese brutality in Tibet. They are in a better position than any outsider to assess the motives behind the Chinese oppression, including the slaughter, the deportations and the less crude methods, of all of which there is abundant evidence.

It is therefore the considered view of the International Commission of Jurists that the evidence points to:

a) a prima facie case of acts contrary to article 2(a) and (e) of the Genocide Convention of 1948.

b) a prima facie case of a systematic intention by such acts and other acts to destroy in whole or in part the Tibetans as a separate nation and the Buddhist religion in Tibet.

Accordingly, the Commission will recommend to its Legal Inquiry Committee that existing evidence of Genocide be fully checked, that further evidence, if available, be investigated, that unconfirmed be investigated and checked.

But the final responsibility for this task rests with the formal organ of world authority and opinion. The Commission therefore earnestly hopes that this matter will be taken up by the United Nations. For what at the moment appears to be attempted Genocide may become the full act of Genocide unless prompt and adequate action is taken. The life of Tibet and the lives of Tibetans may be at stake, and somewhere there must be sufficient moral

strength left in the world to seek the truth through the world's highest international organ.

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(Excerpt)

Report to the Secretary General

The Legal Inquiry Committee on Tibet has the pleasure to submit to the International Commission of Jurists its Report on those aspects of events in Tibet, which the Committee was called upon by its terms of reference to consider. The Committee came to the following conclusions:

Genocide

According to the Convention for the Prevention and Punishment of Genocide, which was adopted by the General Assembly of the United Nations in December, 1948, human groups against which genocide is recognized as a crime in international law are national, racial, ethnical and religious. The COMMITTEE found that acts of genocide had been committed in Tibetan in an attempt to destroy the Tibetans as a religious group, and that such acts are acts of genocide independently of any conventional obligation. The COMMITTEE did not find that there was sufficient proof of the destruction of Tibetans as a race, nation or ethnic group as such by methods that can be regarded as genocide in international law. The evidence established four principal facts in relation to genocide:

- a) that the Chinese will not permit adherence to any practice of Buddhism in Tibet;
- b) that they have systematically set out to eradicate this religious belief in Tibet;
- c) that in pursuit of this design they have killed religious figures because their religious belief and practice was an encouragement and example to others;
- d) that they have forcibly transferred large numbers of Tibetan children to a Chinese materialist environment in order to prevent them from having a religious upbringing.

The COMMITTEE therefore found that genocide had been committed against this religious group by such methods.

Human Rights

The COMMITTEE examined evidence in relation to human rights within the framework of the Universal Declaration of Human Rights as proclaimed by the General Assembly of the United Nations.

The COMMITTEE in considering the question of human rights took into account that economic and social rights are as much a part of human rights as are civil liberties. They found that the Chinese communist authorities in Tibet had violated human rights of both kinds.

The COMMITTEE came to the conclusion that the Chinese authorities in Tibet had violated the following human rights, which the COMMITTEE considered to be the standards of behavior in the common opinion of civilized nations:

Article 3

The right to life, liberty and security of person was violated by acts of murder, rape and arbitrary imprisonment.

Article 5

Torture and cruel, inhuman and degrading treatment were inflicted on the Tibetans on a large scale.

Article 9

Arbitrary arrests and detention were carried out.

Article 12

Rights of privacy, of home and family life, were persistently violated by the forcible transfer of members of the family and by indoctrination turning children against their parents. Children from infancy upwards were removed contrary to the wishes of the parents.

Article 13

Freedom of movement within, to and from Tibet was denied by large scale deportations.

Article 16

The voluntary nature of marriage was denied by forcing monks and lamas to marry.

Article 17

The right not to be arbitrarily deprived of private property was violated by the confiscation and compulsory acquisition of private property otherwise than on payment of just compensation and in accordance with the freely expressed wish of the Tibetan People.

Article 18

Freedoms of thought, conscience and religion were denied by acts of genocide against Buddhists in Tibet and by other systematic acts designed to eradicate religious belief in Tibet.

Article 19

Freedom of expression and opinion was denied by the destruction of scriptures, the imprisonment of members of the Mimang group and the cruel punishments inflicted on critics of the regime.

Article 20

The right of free assembly and association was violated by the suppression of the Mimang movement and the prohibition of meetings other than those called by the Chinese.

Article 21

The right to democratic government was denied by the imposition from outside rule by and under the Chinese Communist Party.

Article 22

The economic, social and cultural rights indispensable for the dignity and free development of the personality of man were denied. The economic resources of Tibet were used to meet the needs of the Chinese. Social changes were adverse to the interests of the majority of the Tibetan people. The old culture of Tibet, including its religion, was attacked in an attempt to eradicate it.

Article 24

The right to reasonable working conditions was violated by the exaction of labour under harsh and ill-paid conditions.

Article 25

A reasonable standard of living was denied by the use of the Tibetan economy to meet the needs of the Chinese settling in Tibet.

Article 26

The right to liberal education primarily in accordance with the choice of parents was denied by compulsory indoctrination, sometimes after deportation, in communist philosophy.

Article 27

The Tibetans were not allowed to participate in the cultural life of their own community, a culture which the Chinese have set out to destroy.

Chinese allegations that the Tibetans enjoyed no human rights before the entry of the Chinese were found to be based on distorted and exaggerated accounts of life in Tibet. Accusations against Tibetan "rebels" of rape, plunder and torture were found in cases of plunder to have been deliberately fabricated and in other cases unworthy of belief for this and other reasons.

The Status of Tibet

The view of the COMMITTEE was that Tibet was at the very least a de facto independent State when the Agreement on Peaceful Measures in Tibet was signed in 1951, and the repudiation of this agreement by the Tibetan Government in 1959 was found to be fully justified. In examining the evidence, the COMMITTEE took into account events in Tibet as related in authoritative accounts by officials and scholars familiar at first hand with the recent history of Tibet and official documents which have been published.

These show that Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from outside authority. From 1913-50 foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent state. Tibet surrendered her independence by signing in 1951 the Agreement on Peaceful Measures for the Liberation of Tibet. Under that Agreement the Central People's Government of the Chinese People's Republic gave a number of undertakings, among them: promises to maintain the existing political system of Tibet, to maintain the status and functions of the Dalai Lama and the Panchen Lama, to protect freedom of religion and the monasteries and to refrain from compulsion in matters of reforms in Tibet. The COMMITTEE found that these and other undertakings had been violated by the Chinese People's Republic, and that the Government of Tibet was entitled to repudiate the Agreement as it did on March 11, 1959. On the status of Tibet the previous inquiry was limited to considering whether the question of Tibet was a matter essentially within the domestic jurisdiction of the Chinese People's Republic. The COMMITTEE considered that it should confine itself to this question and it was therefore not necessary to attempt a definitive analysis in terms of modern international law of the exact juridical status of Tibet. The COMMITTEE was not concerned with the question whether the status of Tibet in 1950 was one of de facto or de jure independence and was satisfied that Tibet's status was such as to make the Tibetan question one for the legitimate concern of the United Nations even on the restrictive interpretation of matters "essentially within the domestic jurisdiction" of a State.

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