

0974

PERMANENT TRIBUNAL OF PEOPLES

SESSION ON TIBET

VERDICT

Strasbourg, France
Friday 20 November 1992

PERMANENT TRIBUNAL OF PEOPLES

SESSION ON TIBET

VERDICT

Strasbourg, France
Friday 20 November 1992

BACKGROUND TO THE PROCEEDINGS

The Rights of Peoples

2.1 Until very recently the notion of the rights of peoples in international law was extremely controversial. States, as successors to personal Sovereigns, sometimes disputed that peoples, as such, were the proper subjects of international law: having rights which that law recognised. Whatever may have been the position in earlier times, it cannot now be doubted that peoples and individuals, are the subject of international law which it is the duty of States to respect. So much is clearly acknowledged in the Charter of the United Nations. That Charter is expressed in terms of the resolve of "the peoples of the United Nations". In its opening substantive provisions, it recognises and upholds, the peoples' right to self-determination. Elsewhere, the Charter clearly establishes the new international order upon the basis of respect for that right and for individual human rights. In nearly fifty years, since the Charter was adopted, the world has seen remarkable changes. Great colonial empires have been dissolved out of respect for the principles of the Charter. A great framework of international treaties and global institutions has been established to declare and uphold these principles. It is essential to understand this decision of the Tribunal against the background of these developments of the international community. The present accusation on behalf of the people of Tibet against the People's Republic of China (PRC) must be considered, keeping these developments in human history, and international law, steadily in mind.

2.2 The Permanent Tribunal of Peoples (the Tribunal) was

established at Bologna, Italy, on 26 June 1979. It followed the adoption of the *Universal Declaration of the Right of Peoples* (the *Algiers Declaration*) at Algiers on 4 July 1976. The inspiration for the Tribunal was that of Lelio Basso, a senator of the Italian Republic. He had been a leader of the resistance to Fascism during the period of the dictatorship. He served as a member and rapporteur of the Russell Tribunal on Vietnam and the Second Russell Tribunal on Latin America. Lelio Basso conceived the necessity of a permanent international tribunal of integrity to fill the institutional gap within the international legal order. There is still no international body of competent jurisdiction to investigate and try accusations of the violation by States of the norms of international law. The International Court of Justice exercises its compulsory jurisdiction exclusively in respect of States which accept its jurisdiction. Only States, or international organisations controlled by States, may invoke its assistance. The jurisdiction of most of the agencies of the United Nations may only be invoked by States and none may be invoked by a people, or other collective entity, as such. This is the functions which the Tribunal now serves. It looks beyond the States to the peoples of the world and responds to appeals by them to its jurisdiction. The Tribunal examines and declares its findings as to peoples' rights. Its decisions, such as the present Verdict, rest upon the integrity of the members appointed to the Tribunal from time to time. But they also depend upon the careful attention paid by the Tribunal's procedures to the observance of the rules of procedural fairness in reaching the conclusion of the Tribunal. And they derive strength from the indisputable fact that international law recognises and guarantees the rights of peoples, even if it does not always provide effective and enforceable machinery for their definition and determination in cases of dispute, such as the present one.

2.3 If the need for the Tribunal was clear in 1976, it has become blindingly so in the past few years. The break-up of the Soviet Union and the dissolution of the Yugoslav Federation are simply the most visible illustrations of the enduring nature of the feelings of collective identity and assertions by distinct peoples of the right to self-determination and the duty of States to respect that right and to observe, as well, the fundamental human rights of individuals. In every corner of the world this phenomenon is now visible. It brings in its train many acute problems and difficulties. It affects States, large and small. It extends to indigenous peoples living within territories now settled by other peoples. It is a source of potential conflict and instability which must be resolved within the framework of international law. But the lesson of recent history is that the assertion of peoples' rights (eg to self-determination) and of individual rights (eg the respect for fundamental civil and political rights) will not conveniently disappear. The record of the recent hearing of the Tribunal in many lands illustrates the growing number of calls upon it to investigate, and pronounce upon, accusations of derogation from these basic rights. In this context, the need for the Tribunal has become even more clear. The opportunity provided for it to perform a useful international mission is even more challenging. These features of the contemporary world impose upon the Tribunal and its Members a heavy responsibility. The present accusation illustrates these facts vividly.

2.4 Tibet is a remote part of this world's surface - a Land of Snows. It comprises more than 2.5 million square kilometres of

mountainous territory on the roof of the world: bordered by the Himalayan Mountains and by the States of India, Nepal, Burma and Bhutan to the South. The territory of Tibet is elsewhere substantially surrounded by territory of the People's Republic of China (PRC). The people who inhabit Tibet were, until the events the subject of this accusation, overwhelmingly indigenous peoples speaking the Tibetan language. They now number about 6 million. Shaped by their environment, they are a hardy people with a culture profoundly affected by their almost universal adherence to Buddhism and their reverence for a spiritual and temporal leader, the Dalai Lama, who was widely believed by many of them to be a living re-incarnation of a Divine Being.

2.5 Today, Tibet is governed, in fact, as an "Autonomous Region" of the People's Republic of China. This situation came about after 1949 and 1950 when the People's Liberation Army (PLA) entered Tibet, having newly established its authority throughout China and provided the conditions for the creation of the People's Republic of China. The People's Republic of China contends that this establishment of its authority in Tibet was both lawful and popular. It was lawful, being nothing more than the re-establishment of Tibet as a part of China, as it had long been regarded throughout earlier centuries. The Tibetans, according to this view, were one of the five principal ethnic groups making up the State of China. The events of 1949 and 1950, after a period of political weakness on the part of China, merely restored the long-standing relationship of Tibet with China. In addition, this position was soon thereafter accepted by a treaty signed by the representatives of the Dalai Lama and of Tibet (*The Agreement of the Central People's Government and the Local Government of Tibet on measures for peaceful liberation of Tibet*, 23 May 1951). Moreover, according to the People's Republic of China, its action was popular and is still so. The PLA was welcomed as a liberator. A cruel regime of serfdom and religious autocracy was replaced by a modern secular government. Roads, hospitals and other facilities were provided and the material conditions of the people of Tibet - although still the poorest in China - were significantly improved. So went the position of the PRC.

2.6 For about eight years (1951-1959) the authorities from the PRC and the Dalai Lama's administration maintained an apparently uneasy relationship. However, on 10 March 1959 a national uprising occurred in Tibet against the forces of the People's Republic of China. This uprising was crushed by the PLA. The Dalai Lama fled to India. He was followed there by thousands of Tibetans. They still continue to leave Tibet and many of them make their way to Dharamsala in India where the Dalai Lama established the Tibetan Government in Exile. Tibetans are now scattered to the four corners of the world. The Tribunal heard evidence from a number of them who have been granted refugee status in countries as far apart as Switzerland and the United States of America. Throughout the world there are numerous Tibetan communities. Their plight as exiles from their remote, mysterious and highly spiritual land has, naturally enough, attracted strong bands of local admirers and supporters who are extremely vocal in their criticism of the People's Republic of China's "occupation of Tibet" and energetic in pressing local leaders to apply all possible pressure to the People's Republic of China to secure respect for fundamental human rights within Tibet and for the Tibetan people's right to self-determination and the end of Chinese rule.

2.7 The response of the international community to the events of

1959, and other events since has been muted for various reasons which it is not necessary to recount. The General Assembly of the United Nations in 1959, 1961 and 1965 passed resolutions condemning what were described as China's "violations of fundamental human rights of the Tibetan people" and calling on China to respect the Tibetan people's right to self-determination. In 1991, and since, democratic legislatures throughout the world (including the European Parliament, the United States Congress and the Australian Parliament) have passed resolutions in support of Tibetan self-determination and human rights. In August 1991, the United Nations Sub Commission on the Prevention of Discrimination and the Protection of Minorities adopted a resolution expressing its "concern at reports of continuing violation of fundamental human rights and freedoms which threaten the distinct cultural religious and national identity of the Tibetan people". In January 1992, the Commission on Human Rights recorded the detailed response of the Minister of Foreign Affairs of the People's Republic of China to these complaints. But it also recorded new complaints about the situation in Tibet provided by the representatives of the Government in Exile and by human rights organisations. From the start, non governmental organisations have been closely involved in exposing the situation in Tibet. Reports of the International Commission of Jurists in 1959 and 1960 drew attention to what were found to be systematic violations of many articles of the Universal Declaration of Human Rights. That Commission also reported an opinion that the authorities of the People's Republic of China were engaged, in Tibet, in a form of genocide. The People's Republic of China has at all times denied these claims. However, at least until recently, it was difficult to secure independent and neutral reports on the competing contentions about the situation in Tibet both because of its physical remoteness and because of the nature of restrictions imposed by the Chinese authorities upon visitors to Tibet.

The accusation in the present proceedings

2.8 The foregoing is the briefest possible outline of the recent historical background to the present accusation. That accusation was lodged with the Tribunal by the representatives of the Government of Tibet in Exile. It is unnecessary for the Tribunal to explore sterile arguments about the authority of that government or its support within Tibet. In the nature of things, that support is impossible to measure with precision. The accusation was deemed admissible in so far as it was brought by a responsible and bona fide body of the people of Tibet. It is their rights which are in contention and which legitimately attract the jurisdiction of the Tribunal to hear and determine the accusation brought in their name.

2.9 Reduced to its fundamentals, the accusation, as ultimately addressed by the Tribunal, posed three complaints in the name of the Tibetan people against the People's Republic of China. These were: -

- (a) That prior to the entry of the Chinese military forces into Tibet in 1949-1950, Tibet was an independent State for the purposes of international law, so that the Chinese forces, having entered without the invitation or permission of the lawful government of Tibet, did so in violation of international law and continue to violate international law by remaining in Tibet to this day, effectively as an occupying

army;

- (b) That in breach of international law and basic rights, the Chinese authorities have imposed upon the people of Tibet a system of government of its peoples which is contrary to their wishes and have deprived them of their fundamental right, guaranteed by the Charter, to self-determination. Moreover, by the deprivation of part of their territory, purportedly incorporated into other regions of the People's Republic of China, and by population transfers into Tibet of non-Tibetan peoples from other regions of China, the People's Republic of China has violated international law and attempted to alter the conditions for the legitimate exercise of the rights of the Tibetan peoples to self-determination in respect of the territory of Tibet, in which they had lived peacefully before the Chinese "occupation"; and
- (c) That serious, repeated and fundamental breaches of basic norms of human rights have occurred and continue to occur in Tibet, directed at the Tibetan people collectively and at individual Tibetans as such. These breaches have allegedly included denials of basic civil and political freedoms, the imposition of cruel and unusual punishments, torture and conduct which betrays a lack of basic respect for the human dignity of the Tibetans affected.

2.10 Before dealing with the evidence and the submissions, it is appropriate to record the procedures which the Tribunal adopted in determining these proceedings.

III OBSERVANCE OF PROCEDURAL FAIRNESS

In accordance with its Statute and the requirements of customary international law, the Tribunal observed strictly the basic rules of procedural fairness ("natural justice") in evaluating and determining the matters of the subject of the accusation. Amongst the procedures adopted were the following:

3.1 Upon acceptance of the complaint made on behalf of the people of Tibet, the People's Republic of China (PRC) was informed as soon as possible of the decision to declare the complaint admissible and of the opportunity that would be afforded to it to participate in every stage of the Tribunal's proceedings. This was done by formal notification to the PRC Embassies in Rome and Paris.

3.2 The communication to the Tribunal by the Consulate General of the PRC in Milan, Italy was fully reported to the Tribunal at the outset of the proceedings by the Secretary General. During the course of the proceedings, there was placed before the Tribunal all of the documents which were provided to the Secretary General by the Consulate General of the PRC. These have been considered by the Tribunal in reaching its Verdict.

3.3. The PRC having declined, otherwise than as in para 2, to attend and participate in the Tribunal proceedings. The Tribunal, in good time before the hearing, appointed a competent representative with particular knowledge of the position adopted by the PRC on the subject matters of the accusation, to represent the interests of the

PRC before the Tribunal, at no cost to the PRC. This representative was Mr Andreas O'Shea, Barrister at Law of London (England). The Tribunal records its appreciation for the diligent and faithful way in which he carried out his duties, necessarily under certain limitations, which were recognised by the Tribunal and which arose out of the absence of detailed instructions upon all of the matters raised in the evidence.

3.4 The procedure adopted required that the accusation be fully stated and proved in a public forum at Strasbourg by evidence considered relevant and admissible by the Tribunal and before the PRC was afforded the opportunity to respond, if it so chose.

3.5 Copy of the preliminary documentation provided to Members of the Tribunal was provided to the representatives of the parties so that they would be, at all times, fully aware of all of the material in the possession of the Tribunal.

3.6 All written evidence tendered during the hearing was marked as an exhibit in the presence of the representatives of the parties. The Tribunal has confined its deliberations to the material placed before it in open session, either orally or in writing. Members of the Tribunal accepted that all other information, earlier or otherwise gained by them, must be disregarded in determining the accusation.

3.7 An opportunity was given to the representative of the PRC, who was present throughout the hearing, to ask questions of the witnesses who gave evidence in support of the accusation. This facility was availed of and most witnesses were interrogated for the Defence. Adequate time was afforded for this interrogation.

3.8 The Tribunal accepted that the burden of proving matters asserted in the accusation rested exclusively upon the representatives of the people of Tibet. It was not for the PRC to disprove such accusation, except in so far as the matter asserted had first been established on a *prima facie* basis by the Accuser at the end of its case and the PRC had been so informed.

3.9 The Tribunal also accepted that the subject of the accusation had to be established to a very high standard of proof, appropriate to the grave matter asserted. Unless so established the matters asserted were disregarded by the Tribunal. Necessarily, the Tribunal was obliged to reach its conclusion upon material placed before it in the absence of the PRC itself and without the benefit of material which would be available to the PRC, relevant to the evidence given both orally and in writing during the hearing.

3.10 The Tribunal ensured that before any conclusion was drawn from the evidence, a fair opportunity was afforded to both parties, either by each other or by Members of the Tribunal itself, to be aware of the matter in issue and to have the opportunity to respond to them.

3.11 The representatives of both the people of Tibet and the PRC were afforded a full opportunity to address the Tribunal before it commenced its deliberations. Adequate time was provided for addresses in reply and rejoinders. The representative appointed for the PRC was afforded, as representing the party accused, the opportunity of the last word to the Tribunal.

3.12 The Tribunal, before reaching its Verdict, deliberated in private. All deliberations during the course of the hearing and before the consideration of the Verdict, were held in private: only members of the Tribunal and, at its invitation, the Secretary General, being present at such times. The Verdict was pronounced in open session to the public. It will be conveyed to the PRC through the Embassy of the PRC in Rome. Provided to the PRC at the time of this communication will be a copy of all documents tendered before the Tribunal during the course of the proceedings and a summary of the proceedings upon which the Verdict is based. An accurate record of the proceedings of the Tribunal, together with this Verdict, will in due course be published. Its justice and acceptability will then be in the public domain for the international community, and its peoples, to evaluate and to judge for themselves.

IV RIGHT OF SELF-DETERMINATION

4.1 The Permanent People's Tribunal, as a body created to protect and affirm the rights of peoples, has a distinctive responsibility to address the charge placed before it by the Accusation that the Tibetan people are being denied their right to self-determination. On the basis of the evidence presented to it at the Strasbourg Session, the Tribunal finds unequivocally and without qualification that this most fundamental of peoples' rights is being denied the people of Tibet and urges the international community to take whatever actions are necessary, in accordance with the principles of the United Nations Charter, to restore the exercise of this right of the Tibetan people.

Self-Determination as a Fundamental Right

4.2 The right to self-determination is firmly grounded in international law. Thus, the Charter of the United Nations, in Articles 1 and 55, asserts "the principles of self-determination of peoples" as one of the major purposes of the United Nations. The *International Covenant on Economic, Social and Cultural Rights*, in its very first article, states that "all people share the right of self-determination". So declares the *International Covenant on Civil and Political Rights* in its first article.

4.3 The right to self-determination has been reaffirmed in various resolutions of the General Assembly of the United Nations, including those related to peoples' quests for self-determination in the Western Sahara, Namibia, Palestine, Bangladesh, East Timor, and Eritrea. The General Assembly has also recognised the right of the Tibetan people to self-determination in Resolution 1723 (XVI), a right reaffirmed in Resolution 2079 (XX).

4.4 Article 5 of the *Universal Declaration of the Rights of Peoples* adopted at Algiers on 4 July 1976 states that:

"Every people has an inprescribable and inalienable right to self-determination. It shall determine its political status freely and without interference."

After the right of every people to existence (Article 1), there is no right of peoples more fundamental than the right to self-determination. Indeed, it is through the exercise of this right that most of the other rights of peoples are secured, including, but not limited to, the rights to national and cultural identity (Article 2), peaceful possession of its territory (Article 3), breaking free from colonial or foreign domination (Article 7), exclusive control of its national wealth and resources (Article 8), and choice of its own economic and social system (Article 11).

4.5 These and other rights of peoples as set forth in the Algiers Declaration are being systematically denied to the Tibetan people because their right to self-determination is being denied. Hence the fundamental importance of the exercise of this right.

Definition of a People Entitled to Self-Determination

4.6 There is widespread agreement that the Tibetan people are a distinctive people. Even the People's Republic of China recognises Tibetans as a "minority nationality". The critical question is whether they are a people entitled to exercise the right of self-determination.

4.7 There is not yet a universally agreed definition of what constitutes a "people" for this purpose. However among the efforts made to describe the necessary features is that of a UNESCO Expert Group whose approach the Tribunal accepts.¹ This group has identified four criteria:

1. Commonalities in history, language, culture, ethnicity and other manifestations of shared identity and experience;
2. Numerousness ie. enough persons sharing common identity and experience to warrant recognition by the international community;
3. Institutions to give expression and effect to these commonalities; and
4. The will of a people to assert this right to self-determination.

The Tribunal finds that the Tibetan people meet these criteria and are therefore entitled to exercise the right of self-determination.

Implementation of the Right to Self-Determination

4.9 The right to self-determination belongs to the Tibetan people, not to any government. The exercise of this right must be completely free. In the exercise of this right, the Tibetan people may choose independence or some form of association with China or some other nation State. They may choose patterns of governance and economic organisation quite different from what existed before 1950 or since then. The outcome of the exercise of this fundamental right of

peoples must be respected by the international community as the will of the Tibetan people.

4.10 The right of self-determination must be exercised not only by the Tibetan people now residing in what the People's Republic of China calls the "Tibet Autonomous Region" but also the Tibetans residing in parts of historic Tibet which have been added to neighbouring provinces. Recent events in Yugoslavia and the former Soviet Union underscore how complex and difficult a task this will be and how much care must be taken to prevent violence from erupting.

4.11 Indeed, the Tribunal was asked by the Defence to consider whether the purposes of the United Nations, as set forth in Article 1 of the Charter, to "maintain international peace" and to "develop friendly relations among nations" should not outweigh the principle of "self-determination of peoples" as also set-forth in this Article, if application of the latter principle could only be accomplished through a breach of international peace and destruction of friendly relations among nations. Whilst the Tribunal fully recognises the hazards involved, it does not believe that violent conflict is, it should be, regarded as inevitable. Instead, it urges that the exercise of the right of self-determination should be seen as the central core of an ongoing process of reconciliation and that the creative energies of the world community should be harnessed to the test of establishing Tibet as a "Zone of Peace".

V VIOLATION OF HUMAN RIGHTS

Introduction

5.1 As is usually the case, the refusal to recognise the right of self-determination of the Tibetan people has led the Chinese authorities to particularly grave violations of human rights in Tibet. In this context, the violations of human rights which have been brought before the Tribunal relate to both individual and collective rights.

5.2 The testimony presented to the Tribunal of these violations appeared to be genuine and sincere. Necessarily, the Tribunal could hear only a few witnesses. The Accusation, however contains the charge of "systematic violations". Submitted to the Tribunal were reports of a number of international human rights organisations, including Amnesty International, Law Asia and Asia Watch. These reports document extensive and systematic violations of internationally recognised human rights.²

5.3 The Tribunal was also presented with evidence from the People's Republic of China of significant violations of human rights prior to 1950. The exercise of the right of self-determination by the Tibetan people, whether or not in a return to the *status quo ante* prior to 1950, will not necessarily lead to elimination of all violations of human rights as presented to the Tribunal. No nation-State in the world has eliminated all violations of all widely recognised human rights for all its citizens.

5.4 Several particular accusations have been brought against the Chinese authorities. They tend to establish that these authorities follow a policy of ethnic and cultural genocide, and that they

torture, mistreat, imprison and kill Tibetans, thus violating human rights guaranteed by international law.

Concerning the accusation of ethnic and cultural genocide

5.5 The accusation's argument is that the large number of executions, the extent of the repression and the systematic use of measures tending to deprive Tibet of its population and material and cultural resources should be analysed in terms of ethnic and cultural genocide. The Accusation has particularly relied upon "cultural genocide" resulting from the destruction of monasteries and of objects and symbols of Tibetan culture and civilisation. The Chinese Government denies the facts alleged against it.

The Tribunal is convinced that the policy of the Chinese Government has substantially harmed the identity of the Tibetan people as a result of such acts of destruction and repression practised against various cultural and religious expressions and expression of national identity.

5.6 The Tribunal considers, however, that the condition required by international law and especially by the *Convention for the Prevention and Prohibition of Genocide* of 9 December 1948 to make out a charge of genocide have not been established beyond reasonable doubt, as concerns the extent and systematic nature of the crimes alleged, and intentional discrimination against the Tibetan people as its victim.

5.7 For example, the Tribunal cannot accept that the policies of family planning in Tibet have been proved to amount to deliberate genocide. On the material provided, it has not been established that the measure and methods of abortion and sterilisation used in Tibet are discriminatory or carried out with the intent to destroy part of the Tibetan population.

5.8 Nevertheless, the Tribunal considers that the violations of cultural and religious rights and rights of national identity established in Tibet are violations of the rules of law of the international community without it being possible to find "cultural genocide", a notion which has not yet been accepted by contemporary international law.

Concerning Torture and Mistreatment

5.9 Beyond the reports of international non-governmental organizations, and notably the testimony related in the report of Amnesty International in May 1992, the Tribunal heard the oral testimony of several persons. Witnesses described, in a poignant way, the torture and mistreatment to which they had been subjected after arrest.

5.10 The Tribunal heard argument and took note of reports supporting the positions of the Chinese Government. In a report to the United Nations, the Chinese Government admitted that some persons have been tortured in Chinese territory without specifying Tibet.

But the Chinese Government states that these are isolated cases and that those responsible are punished when discovered.

5.11 The Tribunal is convinced of the gravity and extent of torture and mistreatment practised by the PRC's public order forces and authorities against Tibetans, including women and children.

5.12 The Chinese Government adhered on October 4, 1988, to the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment*. Thus, the Chinese Government is in violation of international obligations which by failing effectively to stop torture and mistreatment and to prevent and sanction those found responsible.

Concerning infringement of human rights in general and notably extra-judicial executions, imprisonment and denial of due process

5.13 The Accusation relied upon reports of systematic violations of rights against Tibetans of all sorts, especially children.

5.14 The Chinese Government has clearly expressed its position, stating at the United Nations that false allegations are made by international and external enemies of the Chinese revolution. It has however, acknowledged the arrest of several hundred persons following demonstrations or actions led by those it calls Tibetan "separatist groups".

5.15 The Tribunal, after studying the respective positions submitted to it and the arguments made, considers that grave violations of human rights have been committed and continue to be committed by the Chinese authorities against the Tibetan population for political, religious and cultural reasons. All sources agree that Chinese policy in Tibet has led to the repression of various types including extra-judicial executions and imprisonment of persons because of political, cultural or religious activities, notably upon those activities which promote the political independence of Tibet.

5.16 The Chinese Government, has sought to argue that, in any event, it is not violating the rules of international law inasmuch as it has not ratified the international conventions, notably the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic and Social Rights*.

5.17 The Permanent Tribunal of Peoples appreciates that international treaties bind, as such, only the States that have ratified them. However, the international treaties in human rights include, among others, principles and rules tending to assure the physical and moral integrity, and the dignity and freedom of opinion of human beings, which are principles accepted by all humanity following historic struggles of the peoples of the world.

5.18 The *Universal Declaration of Human Rights* has received, through international practice, the support of the whole international community, including States which were not members of the United Nations when the *Universal Declaration* was adopted in 1948.

5.19 Regarding the Universal Declaration of Human Rights the Foreign Minister of the People's Republic of China, Qian Qichen, stated in April 1990:

"The United Nations human rights declaration is an important international instrument. China has always attached importance to the United Nations conventions and covenants regarding human rights."³

5.20 The fundamental human rights principles must today be deemed rules of customary international law whose application is required by all humanity. That is why the Tribunal contends that the Chinese Government, in violating the fundamental rights of the Tibetans, violates its obligations under international law.

Degradation of the Environment

5.21 The evidence given by the witnesses to the Tribunal; as well as the documents which they tendered, disclosed problems of the environment of Tibet which threaten the right of the Tibetan people to subsist and to survive in their own land. It appears from the evidence presented that important parts of Tibet have been the subject of rapid deforestation. Inevitably, this has resulted in soil erosion with consequential reduction of evaporation. Unless immediately discontinued and remedied, this practice of deforestation will lead to climatic changes having potential impact on the environment which is considerable and will affect not only the people of Tibet, but also people in places far away. The methods used in the management of the natural resources of Tibet appear to have been affected, at least in certain parts of Tibet, by the use made by the Chinese authorities of toxic fertilisers and pesticides particularly in the harvesting of commercial agriculture. Unless immediately terminated this widespread practice is likely to result in grave environmental consequences for pasture lands, seriously derogating from the environmental rights of the Tibetan people and causing damage to their fragile high-altitude ecosystem. The Tribunal has not overlooked the assertions of the People's Republic of China concerning measures of reforestation adopted by it and other steps for the systematic protection of the ecology of Tibet. Self-evidently, this matter is one of the greatest importance and urgency; it should, without delay, be the subject of an inquiry on behalf of the people of Tibet, the peoples of China and the international community.

5.22 The transfer into Tibet of non-Tibetan peoples, which has resulted in the rapid doubling of the population of Tibet, appears already to have reduced the capacity of a relatively fragile environment to meet the needs of human and other life forms. It appears that wildlife, previously abundant, has been considerably reduced in number and variety, at least in certain parts of Tibet. (see "The Relationship between Environmental Management and Human Rights in Tibet", International Committee of Lawyers for Tibet, 14 July 1992).

5.23 Many grave allegations were received by the Tribunal concerning radio-active pollution in Tibet resulting from the extraction of uranium in the Eastern part of the Tibetan plateau of Amdo, presently administered by China as part of its territory outside Tibet. It was also asserted that nuclear facilities in Central Tibet, as well as the deposit of nuclear and toxic wastes in Tibet, together with large scale mining activities, had caused grave and lasting damage to the environment. If these allegations are correct they involve serious derogations from the fundamental rights of the Tibetan people perpetrated by the authorities of, or under the control of, the People's Republic of China. The Tribunal is not in a position to reach concluded opinions on these allegations. However, having regard to their extreme gravity and the dangers which they present for the people of Tibet, the peoples of China and the international community, they too should be the subject of an expert inquiry, convened without delay.

VI THE INTERNATIONAL STATUS OF TIBET

6.1 An essential aspect of the Accusation was that during the period 1911-1949, Tibet was an independent State, enjoying the attributes of sovereignty under international law. A result of this analysis would be that the military action undertaken by the People's Republic of China, beginning in 1949, was aggression by a foreign state, and that the occupation of the territory of Tibet by the Chinese armed forces called for the application of the rules of international law on the occupation of one State by another State.

6.2 Because of the importance of this question, it was the subject of considerable controversy between the Accusation and the Defence. The Tribunal must first set out the most important international facts, and the analysis presented to it, according to a strict application of international law.

A Strict Interpretation of Classical International Law

6.3 For many centuries the links between China and Tibet were very close. Particularly from the beginning of the Ching dynasty, China's control increased. A "suzerainty" developed, evidenced especially in a payment of tribute and a recognition of personal allegiance of the Dalai Lama to the Chinese Emperor. It is not possible to characterise this "vassal" relationship precisely in terms of generally accepted categories of international law. Only history can explain the complex dependency that was then established between Tibet and China.

6.4 Only at the end of the 19th Century did Tibet begin to participate directly in international relations, as a result of the efforts of Great Britain to consolidate its Indian Empire. Several treaties are relevant in this regard:

- In 1890, a treaty was concluded between China and Great Britain recognising the British protectorate over Sikkim, and providing for direct relations between British authorities and the Tibetan government (Article 6);

Following a British expedition to Lhasa in 1904, an agreement was concluded between Great Britain and Tibet. Under Article 9, the Government of Tibet agreed not to cede any portion of its territory to any foreign power, or to allow into Tibet representatives of foreign governments, or to pay tribute to foreign governments, without the consent of Great Britain;

In 1906, an agreement between China and Great Britain confirmed the 1904 agreement, and stated that China was not a "foreign power" within the terms of Article 9 of the 1904 agreement;

In 1914 the Simla conference brought together Tibet, China and Great Britain. The conference divided the territory of Tibet into two parts, while considerably reducing the power of China. This agreement was not, however, ratified by China.

6.5 It is difficult to draw from these agreements, and others, any firm conclusions about the international status of Tibet, particularly because the international community was largely, then, in European hands. A generally held view was that Tibet was a vassal State of China, whose "suzerainty" was expressly recognised in 1907 in an agreement between Great Britain and Russia. It is difficult, however, to find agreement on the precise implications of this notion of "suzerainty". Scholarly views differed particularly over whether Tibet was a vassal state or enjoyed international legal personality.

6.6 That being said, it is *a priori* difficult to understand how an agreement could have been concluded as a treaty between the Tibetan authorities and Great Britain if Tibet were not an autonomous State, whatever its links to China might have been. It is a fact that in the early years of the 20th century, Tibet's dependence on China became considerably attenuated particularly in the wake of the revolution of 1911 which inaugurated a long period of weakness on the part of the Chinese central authorities.

6.7 Some observers have, consequently, concluded that the vassal relationship was broken. That is not impossible. It is a fact, nonetheless, that the manifestations of Tibetan statehood remained after this date relatively slight. The Tribunal might mention in this respect a treaty concluded in 1913 with Outer Mongolia in which the two parties recognised each others independence; a certain recognition of Tibetan statehood by Nepal; the presence in Lhasa of foreign representatives; and the neutrality followed by the Tibetan authorities during the Second World War.

6.8 All of the foregoing is not without importance. But its importance is reduced in the absence of any participation, or even a request for participation by Tibet, in the League of Nations or the United Nations.

6.9 When the "invasion" by China occurred in 1950, it was difficult therefore, on the materials before the Tribunal, to affirm with certainty that Tibet was a State. While condemning China's intervention, the international community refrained from clearly denouncing the action as international aggression against a State. As well, the international community did not follow the non-recognition policy that it had previously followed in the wake of the creation of Manchukuo, or the annexation of the Baltic States.

Tibet from the Viewpoint of the Rights of Peoples to Self-Determination

6.10 In the light of its interpretation of the facts according to classical international law, the Tribunal makes the following further observations.

6.11 The relations between Tibet and China up to the mid-19th Century cannot be categorised only in terms of the concepts of international law devised by the hegemonic European powers and accepted in the Americas. The subjects of international law were then limited to a restricted circle of so-called "Christian" or "civilised" nations. China, Persia and Siam were excluded. Japan was admitted at the end of the 19th Century. To have access to this narrow circle and to be recognised as a State, a political entity had to carry on relations with other States and be accepted by them on a footing of equality.

6.12 Tibet's first relations with a non-neighbouring State came as a result of British imperialism and through the rivalry between Great Britain and the Tsarist Empire.

6.13 As for Tibet's relations with China, the Western concepts of "suzerainty" and "vassalhood" are inadequate. It makes more sense to seek analogies for Tibet with other political entities such as the kingdoms of ancient Africa or pre-Columbian America, or of Asia or even China itself.

6.14 Thus, the question of the international status of Tibet cannot be resolved only by applying the criterion devised by the European states in their relations with each other and to extend their control to other parts of the world. A political entity such as Tibet must be characterised in the light of its geographical and cultural context. It was not conclusive that Tibet did not ask to join the League of Nations. Tibet's geographical isolation gave it little incentive to make connections with States other than its immediate neighbours. Thus, even Tibet's links between 1911 and 1949 with its neighbours show a will to participate at a reduced level in international life. To subject the Tibet of that period to the current notions of international law would distort the essence of Tibet and its aspiration to be different from other States and to achieve self-determination. Such an application of strict international law criteria to Tibet, in its situation from 1911 to 1949, would be a kind of cultural imperialism similar to the objective of the Chinese leadership to change, by force, the Tibetan people's traditional institutions and to deprive the Tibetan people of the right to evolve under the inspiration they might find in Buddhism. This would also deprive the Tibetan people of the protection of the rights that they have asserted before the Tribunal.

6.15 As a result, the Tribunal has concluded that the internal autonomy enjoyed by Tibet, with rare and brief interruptions during most of its history, allows Tibet to be considered as having the attributes of internal sovereignty. What personal links there may have been between the Dalai Lama and the Mongol and China Emperors, the Tibetan people have always been a distinct entity, even when associated with China. With the coming of the Republic of China in 1922, the former links were dissolved. China changed into a secular

and national state as a result of a revolution in which the Tibetan people did not participate. The Peoples Republic of China could not maintain that the former personal links could be transformed into a situation whereby the Tibetan people belonged to the people of the new State. After 1911, whatever may have been the view of the Republic of China, or later of the People's Republic of China, the Tibetan people have never given up resistance to incorporation into the peoples of the new State.

6.16 As for the recognition of the international personality of Tibet by other States, it was manifested up to 1949 by sporadic acts and in a somewhat limited geographical context. These acts could not have been unknown to the PRC, which was a party to certain international agreements concluded by Tibet. The PRC's Government could not have been unaware of the will of the Tibetan people, even if expressed unilaterally, to affirm its independence and its refusal to be integrated into the Chinese State. The foregoing considerations lead the Tribunal to conclude that the presence of the Chinese administration on Tibetan territory must be considered as foreign domination of the Tibetan people.

VII DECISION

For these reasons, the Tribunal decides:

7.1 That the Tibetan people have, from 1950, been continuously deprived of their right to self-determination.

7.2 That this breach of a basic right of the Tibetan people has been achieved through the violation of other basic rights of the Tibetan people, amongst others by depriving them of the right of the exercise of freedom of religion and expression, by arbitrary arrests and punishments without trial, the destruction of religious and cultural monuments and by resorting to torture;

7.3 That the population transfers from the People's Republic of China into the territory of Tibet of non-Tibetan peoples is directed toward undermining the ethnic and cultural unity of Tibet;

7.4 That the division of the territory of Tibet into two parts, one called the "Autonomous Region of Tibet" and the other made up administratively of parts of various Chinese provinces, is also directed towards destroying the unity and the identity of the Tibetan people; and

7.5 That the Tibetan people were autonomously governed for many centuries; achieved a specific state structure after 1911; and the basic Tibetan institutions are now represented by the Tibetan Government in Exile.

VIII RECOMMENDATIONS

8.1 Copy of this Verdict shall, as soon as possible, be provided by the Secretary General of the Tribunal to the Government of the People's Republic of China, the Government of Tibet in Exile and the

Secretary General of the United Nations. It shall also be provided to other interested States and international, national and regional bodies. The Government of the People's Republic of China is called upon without delay to conform to the findings of the Tribunal, to cease human rights abuses, to punish those found responsible and to afford the Tibetan people the exercise of their right to self-determination.

8.2 To break the impasse of derogations from international law and further grave violations of human rights found by it, the Tribunal appeals to the Secretary General of the United Nations to establish appropriate machinery to permit the conduct within Tibet of an act of self-determination to determine the future political arrangements of Tibet and its association, if any, with the People's Republic of China. As a preliminary step to this end, a Special Rapporteur for Tibet should be appointed to investigate and report to the organs of the United Nations and the world community on allegations of human rights abuses in Tibet and the desire for, and exercise of, the Tibetan people's right to self-determination, guaranteed by the Charter.

8.3 The Secretary General of the Tribunal shall call to the particular notice of the Secretary General of the United Nations, and other relevant international agencies, the complaints received by the Tribunal of forced involuntary sterilisation of women of child-bearing age as a deliberate programme of ethnic genocide, with a recommendation that this complaint be the subject of immediate special investigation. Similarly, an international expert group should be established to investigate the charges made during the hearings before the Tribunal of radio-active pollution allegedly resulting from uranium mining, nuclear instillations, and toxic and radio-active waste disposal in Tibet.

8.4 Respected non-governmental organizations (such as the International Commission of Jurists, Amnesty International, Law Asia and the Minority Rights Group) shall be provided with a copy of the Tribunal's Verdict. They will be asked to explore ways of reaching beyond the formal structures of State machinery to the peoples of China and Tibet so that a just, peaceful and lasting relationship could be established between those peoples on the basis of mutual respect, recognition of the rights of peoples and faithful compliance with international law.

8.5 To further the process of reconciliation proposed in the preceding paragraph, the Tribunal urges relevant non-governmental organizations to convene, in 1993 or 1994, an international conference on the future of Tibet. Such a conference should consider this Verdict and the record of the proceedings of the Tribunal. It should explore concrete ways of working towards reconciliation between the Tibetan and the Chinese peoples. These ways could include the appointment of human rights monitors and the posting of United Nations volunteers in a Tibetan Zone of Peace. Representatives of the Tibetan Government in Exile and of the People's Republic of China should be invited to take part in such a conference and in such measures towards reconciliation.

FOOTNOTES

1. UNESCO, International Meeting of Experts on Further Study of the Concept of the Right of People, *Final Report and Recommendations*, 22 February 1990 (SNS-89/CONF. 602/7)
2. For example: Amnesty International, *People's Republic of China: Repression in Tibet, 1987-1992*, May 1992; Asia Watch, *Merciless Repression: Human Rights in Tibet*, May 1990; Asia Watch and Tibet Information Network, *Political Prisoners in Tibet*, February 1992 and Law Asia and Tibet Information Network, *Defying the Dragon: China and Human Rights in Tibet*, March 1991.
3. *Beijing Review*, 9-14 April 1990.