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China's Dumping Ground: Genocide through Nuclear Ecocide in Tibet

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Comments

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I. INTRODUCTION

Grave concerns have arisen about China's nuclear buildup and environmental degradation in Tibet, both of which have come to the forefront of international attention. Through uranium mining, nuclear research and design, and subsequent nuclear dumping, the Tibetan plateau has transformed from ecologically balanced and independent to an area so environmentally degraded that the water that flows through Tibet has affected surrounding countries.

China's use of Tibet for its nuclear production and dumping effectively constitutes genocide of the Tibetan people.[1] The United Nation's Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as:

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1. *Black's Law Dictionary* deems "genocide" an "international crime involving acts causing serious physical . . . harm with the intent to destroy. . . a national, ethnic, racial, or religious group." BLACK'S LAW DICTIONARY 707 (8th ed. 2004).

> [A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethical, racial or religion group, as such: (a) killing of members in the group; (b) causing serious bodily injury or mental harm to members of the group; (c) deliberately inflicting upon 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."[2]

By intentionally exposing Tibetans to an environment degraded by nuclear waste, the ecocide[3] of Tibet results in the eradication of ethnic Tibetans.

This Comment will discuss the genocide of the Tibetan population through nuclear environmental degradation. The history of China's ethnic cleansing of Tibetans through ecocide is presented *infra* Part II. Part II.A discusses the history of Tibet since China's occupation. Part II.B illuminates the process of uranium mining through nuclear production and the environmental issues that arise along the way.

Part III of this Comment will outline human rights through international law declarations and agreements. Part III.A analyzes human rights violations committed against Tibetans by the Chinese government. Part III.B introduces the international law agreements that pertain to human rights and the environment. It also applies international law to specific human rights violations applicable to the ecocide in Tibet. Next, Part III.C will demonstrate how the United Nations should use Chernobyl as a model by which to respond to the nuclear dumping in Tibet. Part III.C.1 examines the long-lasting consequences of nuclear exposure to the people and the environment in Chernobyl. Part III.C.2 expresses the need for the United Nations to directly tackle the issue of nuclear dumping in Tibet through a specific adopted resolution and cooperation from China. Finally, Part IV concludes that China should recognize the long-term impact on the Tibetan people and their environment and cooperate with the United Nations to actively cease and reverse the environmental degradation.

II. BACKGROUND

According to a 1993 report by the International Campaign for Tibet, interviews and research showed that China's nuclear ambitions within

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2. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260(III), U.N. GAOR, U.N. Doc. A/810 (Dec. 9, 1948), *available at* http://www.unhchr.ch/html/menu3/b/p_genoci.htm.

3. Webster's Dictionary defines "ecocide" as "the destruction of large areas of the natural environment especially as a result of deliberate human action." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 394 (11th ed. 2003).

Tibet have: "(1) further dispossessed Tibetans of their land, bringing even greater Chinese domination; (2) provided no economic benefit or security to Tibetans; (3) violated the cultural and religious values of Tibetans and their ability to be stewards of the land; and (4) fueled regional nuclear and conventional arms races."[4]

For over half a century, China has effectively absorbed Tibet within its borders. In doing so, the Chinese government and military have encroached upon the Tibetan people's land, stripping the Tibetan plateau of its uranium as well as its topography to obtain that uranium.[5] Additionally, China built nuclear production plants in Tibet that resulted in the intentional, irresponsible dumping of radioactive wastes, as well as accidental spills, that have sickened and killed the Tibetan people.[6] China's nuclear program is only a fraction of the size of nuclear programs in the United States and the former Soviet Union with respect to its "nuclear arsenal, test explosions, and volume of radioactive waste generated."[7] Yet China's record of worker safety and waste disposal is as poor, or in some cases, worse, than those of larger nuclear powers.[8]

In addition to the Convention of the Prevention and Punishment of the Crime of Genocide,[9] the Universal Declaration of Human Rights[10] was one of the first agreements touting universal human rights. Human rights with respect to the environment have become more important with the increased development of nuclear production in China. However, this development also has accelerated the environmental degradation of Tibet.

Despite numerous agreements and international pressure, China continues to deny Tibetans their rights set forth in international human rights resolutions by mining uranium and producing nuclear material. The Tibetan people cannot continue to survive in these conditions. China must cease these actions immediately and cooperate with the United Nations to reverse the damage.

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4. *See* INT'L CAMPAIGN FOR TIBET, NUCLEAR TIBET: NUCLEAR WEAPONS AND NUCLEAR WASTE ON THE TIBETAN PLATEAU (1993) 2 [hereinafter NUCLEAR TIBET].

5. *See* Tsultrim Palden Dekhang, Nuclear Weapons on the Tibetan Plateau, http://www.tibet.com/eco/green98/chap6.html (last visited Feb. 4, 2008).

6. *See id.*

7. NUCLEAR TIBET, *supra* note 4, at 3.

8. *See id.* at 4.

9. *See* Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 2.

10. *See* Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, U.N. Doc. A/810 (Dec. 10, 1948), *available at* http://www.unhchr.ch/udhr/lang/eng.pdf.

A. Chinese Control of Tibet

Chinese control over Tibet officially began when the Chinese Army entered and occupied Tibet in 1949.[11] By 1959, the Chinese military had effectively crushed the last resistance that native Tibetans put forth.[12] In 1971, the first known nuclear weapon was transferred to the Tibetan plateau and installed in the Northern Amdo region.[13] Twenty years later, in 1991, China admitted to having approximately 300 to 400 nuclear warheads, of which a sizable amount was believed to be in Tibet.[14]

Prior to Chinese encroachment into Tibet, traditional Tibetan culture followed Buddhist thought which discourages "over-consumption and over-exploitation of natural resources."[15] Before 1959, the Dalai Lama served as both Buddhist spiritual leader and head of state in an independent Tibet.[16] However, the Chinese military forced the Dalai Lama to flee Tibet and seek refuge in India where he was granted asylum.[17]

In 1987, while in exile, the Dalai Lama proposed the Five Point Peace Plan to the United States Congress, which included "restoration and protection of Tibet's natural environment and the abandonment of China's use of Tibet for the production of nuclear weapons and dumping of the nuclear waste."[18] However, the achievement of these goals outlined in the Five Point Peace Plan remains unlikely at this point since the head of the Tibetan Government is currently exiled in India.

The Chinese government, however, does not concede that it took control over of an autonomous Tibet in 1959. Rather, China maintains that Tibet has been a part of the People's Republic of China for the past 700 years.[19] China also asserts that under its control, Tibet continues to "shift from Medieval extreme backwardness to modernization."[20]

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11. *See* Laura S. Ziemer, *Application in Tibet of the Principles on Human Rights and the Environment*, 14 HARV. HUM. RTS. J. 233, 235 (2001).

12. *See id.*

13. *See* Dekhang, *supra* note 5.

14. *Id.*

15. John S. Hall, *Chinese Population Transfer in Tibet*, 9 CARDOZO J. INT'L & COMP. L. 173, 190 (2001).

16. *See* The Dalai Lama—Biography, http://www.tibet.com/DL/biography.html (last visited Feb. 3, 2009).

17. *See* Ziemer, *supra* note 11, at 236.

18. H.H. Dalai Lama, Address to Congress: Five Point Peace Plan for Tibet (September 21, 1987), *available at* http://www.tibet.com/proposal/5point.html.

19. *See* Tibet: Its Ownership and Human Rights Situation, http://english.peopledaily.com.cn/whitepaper/6.html (last visited May 5, 2010) [hereinafter Tibet: Its Ownership]. This paper, also known as the "China White Paper" was issued by the Information Office of the State Council of the People's Republic of China in September 1992 and states the Chinese position on Tibet.

20. *Id.*

Despite contrary reports, the Chinese government claims continuous economic advancement in Tibet, even during periods when Tibet experienced its only famines in history.[21] The ecocide due to production and testing of nuclear materials presents an environmental concern that has resulted in human rights violations against the Tibetan people.

B. Ecocide from Nuclear Production

1. Tibetan Uranium and Its Harvesting

Tibet is the location of the world's largest number of uranium deposits with more than 200 deposits found by 2000.[22] However, the actual size of the uranium deposits is unknown because such information is kept secret by the Chinese government.[23] There are nine known uranium deposits located immediately around Lake Kokonor, a site for nuclear weapons development.[24] Once mined, the uranium is transferred to the nuclear buildup facilities throughout Tibet.

The mining of uranium has rapidly accelerated the environmental degradation in Tibet. Uranium mining causes deforestation and facilitates uranium to seep into the groundwater which is then used by locals for drinking, cooking and bathing.[25] Soil erosion is also a direct result of the extensive mining of uranium.[26] This creates silt deposits in rivers originating from the Tibetan Plateau, such as the Indus, Sutlej, Brahmaputra, Salween, Mekong, Yellow and Yangtze rivers.[27] This process, called "siltation," is a common cause of major floods downstream.[28] Soil erosion from mining also facilitates the seepage of nuclear waste into the river systems. Because most of the nuclear waste disposal sites on the Tibetan plateau have little to no safety standards, leaked radioactive pollutants are quickly carried through Tibet's ten major river systems and spread across Asia.[29]

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21. *See* The Tibetan Administration in Dharamsala, India for the Fourth World Conference on Women, Tibetan Women—Oppression and D[e]scription in Occupied Tibet, Sept. 14-15, 2009, http://www.tibet.com/women/twdiirrpt.html [hereinafter Tibetan Women].

22. Tibet: Environment and Development Issues, Minerals and Mining, http://www.tew.org/tibet2000/t2.ch6.minerals.html (last visited Feb. 4, 2009) [hereinafter Minerals and Mining].

23. *See id.*

24. *See id.*

25. *See* Ziemer, *supra* note 11, at 250.

26. *See* Tibet's Environment: After Chinese Occupation, http://www.friendsoftibet.org/main/eco.html (last visited November 14, 2008).

27. *See id.*

28. *Id.*

29. *See* Dekhang, *supra* note 5.

2. Nuclear Production and Dumping in Tibet

Most of the mined nuclear material makes its way to the facility known as the "Ninth Academy," located in northeast Amdo, near Lake Kokonor.[30] The Ninth Academy served as China's primary nuclear weapons research and design facility in Tibet.[31] Processing of nuclear material at the Ninth Academy allowed 100 tons of liquid mercury, the principal waste product in nuclear production, to be dumped into the Yellow River.[32] Experts believe that radioactive waste also was directly dumped into Lake Kokonor in the form of liquid slurry, solid, and gaseous wastes.[33] Furthermore, the Ninth Academy was built on marshland so even accidental nuclear pollution quickly seeps into the groundwater flowing into Lake Kokonor.[34]

Nuclear waste that was not directly dumped in Lake Kokonor or surrounding rivers was disposed of in shallow, unlined landfills.[35] Although no study has ever been performed, radioactive contamination of the local groundwater is a real and viable threat[36] due to the presence of a series of natural aquifers near the Amdo region.[37] These aquifers are replenished by groundwater that would allow nuclear material to degrade into the water system which makes the polluted aquifers a grave concern.[38] The shallow, unlined landfills created in the 1960s and 1970s are likely to remain as they currently are and may possibly be leaking into the groundwater at an increasingly faster rate.[39] The rate of leakage

30. *See* Ziemer, *supra* note 11, at 247.

31. *See id.* It is not clear whether nuclear production and dumping at the Ninth Academy has completely ceased. Although the Chinese government maintains that the Ninth Academy is no longer in operation, there are reports to the contrary. *See* NUCLEAR TIBET, *supra* note 4, at 6-7.

32. *See* Ziemer, *supra* note 11, at 247-248.

33. *See* Dekhang, *supra* note 5. "Slurry" is a "watery mixture of insoluble matter (as mud, lime, or plaster of paris)." *See* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *supra* note 3, at 1176.

34. *See* Dekhang, *supra* note 5.

35. *See* Peter Haertling, *Trains Above the Clouds: The Primacy of Political and Civil Human Rights in Tibet and the People's Republic of China*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 459, 469 (2007).

36. *See* NUCLEAR TIBET, *supra* note 4, at 20.

37. *See* M.G. CHITKARA, TOXIC TIBET UNDER NUCLEAR CHINA 141(APH Publishing 1996). These aquifers are a major source of drinking water for the Tibetan people and their livestock. Once contaminated, these aquifers are almost impossible to clean. *See id.; see also* Criteria Relating to the Operation of Uranium, 10 C.F.R. pt. 40, App. A (2009). The United States regulations define "aquifer" as a "geologic formation . yielding a significant amount of ground water to wells or springs." *Id.* Even when uranium mining produces a saturated area, it is not deemed to be an aquifer unless it is "hydraulically interconnected to a natural aquifer" or "capable of discharge to surface water." *Id.*

38. *See* NUCLEAR TIBET, *supra* note 4, at 20.

39. *See id.*

from the shallow landfills depends on how the site was lined, if it was lined at all, and to what extent it is resistant to rain, snow, and wind.[40]

According to a July 1995 report by the official Chinese news agency, Xinhua, the Chinese government decommissioned the Ninth Academy in 1987 and the nuclear base was moved to various sites in the Sichuan Province in Eastern Tibet.[41] However, Tibetan villagers near the Ninth Academy informed the Tibetan Government-in-Exile in 1996 that Chinese security personnel secretly guard the Ninth Academy at all times.[42] This raises questions as to whether the Ninth Academy's nuclear production facility is indeed non-operational.

Another site for dumping is in the northern plateau of Chang Thang. This site is completely closed off by the Chinese Army because of a nuclear testing facility.[43] Surface storage is suspected at Chang Thang because China does not have any known proper underground storage facility at that location.[44]

Although there have been outside reports to the contrary,[45] an official Xinhua news article reported that the Chinese government, while admitting that a "20 sq[uare] m[ile] dump for radioactive pollutants" existed near Lake Kokonor, claimed that the nuclear facility had an "excellent safety record" and there was no "harm to the environment and no one at the [Ninth Academy] had died of radiation."[46] The report continued to assert that nuclear waste pollution in the Amdo region was very low and, as a result, the population and industries in the area have increased.[47]

However, there is an irrefutable connection between exposure to uranium and the high death rate in Tibet. For example, in the summer of 1990, twelve Tibetan women gave birth in the Amdo region.[48] Not a single child survived past birth.[49] Despite this, there is no indication that the uranium mining and consequent uranium exposure will cease in the near future. The construction of a rail line through the Tibetan plateau is

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40. *See id.*
41. *See* Dekhang, *supra* note 5.
42. *See id.*
43. *See* Tibetan Women, *supra* note 21.
44. *See id.*
45. *See* China Admits to Nuclear Waste on the Tibetan Plateau, http://www.tibet.com/Eco/eco3.html (last visited Jan. 20, 2009) [hereinafter China Admits to Nuclear Waste].
46. *Id.*
47. *See id.*
48. Dekhang, *supra* note 5.
49. *Id.* China's overall infant mortality rate is 20.25 for every 1,000 live births. *See* UNITED STATES CENTRAL INTELLIGENCE AGENCY, CIA WORLD FACTBOOK, *available at* http://www.cia.gov/library/publications/the-world-factbook/geos/ch.html (last visited May 3, 2010).

the most recent act in furtherance of ecocide. This "modernization" will actually increase the uranium mining in the area, and thereby increase the nuclear waste.[50]

3. Facilitating Movement of Nuclear Material by Train

In 2001, the Chinese government launched a project to construct a railroad between Qinghai Province and Lhasa, the capital city of Tibet.[51] This rail line was put into service on July 1, 2006.[52] The rail line runs over the "roof of the world" with the world's highest train stop, Tangula Shankou on the Tibetan plateau, located at 16,640 feet above sea level.[53] The linking of the Qinghai Province by this rail line brings materials, timber, and other natural resources out of Tibet and transports the military and People's Armed Police troops into the area.[54]

Other rail lines in Tibet have created significant health risks and catastrophic consequences to the environment. The steep grade of the rail line from Xining to the Ninth Academy transports nuclear material and missiles to and from the Tibetan Plateau.[55] When the International Campaign for Tibet visited the area while compiling its report, *Nuclear Tibet: Nuclear Weapons & Nuclear Waste on the Tibetan Plateau,* members of the organization witnessed a train derailment on a part of the rail line descending the Plateau.[56] The train was filled with oil at the time and derailed while passing through a tunnel, exploding into flames and closing the rail line for five days.[57] If the train had been carrying nuclear material instead of oil, the consequence would have been even more catastrophic.[58]

Both the Chinese government and Tibetan rights activists view the railroad as a means to further integrate Tibet with the rest of China. However, Tibetan rights activists regard this integration with alarm and believe that the construction of the railroad is a means of fulfilling "China's colonizing ambitions" in Tibet.[59] While Tibet's borders have already been integrated into the rest of China, the rail line further

50. *See* Haertling, *supra* note 35, at 473.

51. *See* Susan K. McCarthy, *A New Era of Development?: The State, Minorities, and Dilemmas of Development in Contemporary China,* 26 FLETCHER F. WORLD AFF. 107, 108 (2001).

52. *See* The Qinghai-Tibet Railway, http://english.peopledaily.com.cn/zhuanti/Zhuanti_484.html (last visited Feb. 2, 2009).

53. Haertling, *supra* note 35, at 470.

54. *See* McCarthy, *supra* note 51, at 108.

55. *See* NUCLEAR TIBET, *supra* note 4, at 22.

56. *See id.*

57. *See id.*

58. *See id.*

59. McCarthy, *supra* note 51, at 108.

facilitates travel to remote regions of Tibet. This expansion could benefit the people living in these remote regions, but it also makes the expansion of nuclear dumping practices even more likely.

III. ANALYSIS

A. Intentional Human Rights Violation through Ecocide

Despite a large population transfer of Chinese people to Tibet, the Chinese government continues to use Tibetan prison labor to build and maintain the nuclear facilities in the area, such as the Ninth Academy.[60] Tibetan prisoners are forced to excavate radioactive uranium ore and then enter the nuclear testing areas in order to perform the dangerous work.[61] Even the prison camps housing the Tibetan prisoners are located next to the nuclear production facilities.[62] This forced labor and constant proximity to nuclear materials violate the Tibetan prisoners' rights to life and health.

The Chinese government admitted to nuclear waste in Tibet in 1995 but claimed that nuclear production did not adversely impact the environment or the people themselves.[63] International Campaign for Tibet, on the other hand, documented a large spike in illnesses and death in the region surrounding the Ninth Academy that seemed to correspond with the time that production began at the nuclear facility.[64] The effects of dumping nuclear waste in Tibet ranged from "mild sickness to death and deformity at birth."[65]

An egregious example of the effects of nuclear production on the Tibetan people is in the region of Thewo. According to Tibetan refugees that escaped to India, the Jampakok River has been so polluted by the radioactive waste dumped into the river that "the water is black and stinks."[66] Residents of Thewo who died from an unidentifiable illness all had a blue tinge to their skin after their death.[67] Many animals, a primary food source of Tibetans, also mysteriously died, turning black or blue, and their internal organs had the appearance of being burnt.[68]

In other regions near Tibet, the people living near uranium mines and nuclear facilities experience similar mysterious illnesses and deaths.

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60. *See* NUCLEAR TIBET, *supra* note 4, at 2.
61. *See id.*
62. *See id.*
63. *See* China Admits to Nuclear Waste, *supra* note 45.
64. *See* NUCLEAR TIBET, *supra* note 4, at 43.
65. Tibetan Women, *supra* note 21.
66. Dekhang, *supra* note 5.
67. *See id.*
68. *See id.*

A local Tibetan doctor treated young children from a village just south of the Amdo region, the location of the Ninth Academy.[69] The doctor reported to International Campaign for Tibet that there were abnormally high rates of diseases in the nearby towns of Reshui and Gazihe.[70] She noted that children of nomads, whose animals grazed near the Ninth Academy, developed cancer that "caused their white blood cell count to rise uncontrollably."[71] The children's symptoms were similar to cancers that developed from radiation after the atomic bombs were dropped on Hiroshima and Nagasaki.[72]

In the Ngaba Prefecture, many villagers have died as a result of drinking water polluted by uranium mine waste.[73] Within three years, thirty-five of the 500 villagers in the area died within hours of developing a high fever with similar symptoms.[74] A villager testified that there were not as many reported deaths in villages farther away from the uranium mines.[75]

The government of China, however, denies that these acts constitute human rights violations.[76] Therefore, these acts will most likely continue under China's control. The Chinese government rejects the possibility of Tibet once again becoming completely autonomous from China: "No plot to split China will ever succeed. The close relations between the Tibetan people and other ethnic groups in China have lasted for several thousand years . . . the Han people and other ethnic groups absolutely will not accept separation of Tibet from China, nor will the Tibetan people themselves."[77] If China will not recognize an autonomous Tibet, then it must be willing to take responsibility for violations against its own people.

B. International Law and Agreements Protecting Human Rights

There have been numerous key international agreements, such as the Universal Declaration of Human Rights,[78] that have indirectly recognized a legitimate interest in protecting one's environment. International resolutions since the Universal Declaration of Human Rights have gone even further and explicitly recognized human rights

69. *See* NUCLEAR TIBET, *supra* note 4, at 21.
70. *See id.*
71. *Id.*
72. *See id.*
73. Tibetan Women, *supra* note 21.
74. *See id.*
75. *See id.*
76. *See* Tibet: Its Ownership, *supra* note 19.
77. *Id.*
78. *See generally* Universal Declaration of Human Rights, *supra* note 10.

violations with respect to the environment, violations which can easily be identified in Tibet.

1. Universal Declaration of Human Rights

One of the primary and most basic advances in the human rights area occurred with the adoption of the Universal Declaration of Human Rights by the United Nations in 1948.[79] Article 23 of the Declaration mandates a right to "just and favourable conditions of work."[80] Article 25 outlines the right to a standard of living that facilitates general health and well-being as an aspect of human rights.[81] Although the Declaration does not specifically cite the environment as a fundamental human right, it is implied in the articles declaring rights to healthy work and living standards.[82]

China's violation of the Universal Declaration of Human Rights is evident, particularly in the environmental degradation through nuclear production and dumping. Although the Declaration does not specifically reference nuclear production or ecocide itself, the effects of these on human rights in Tibet are addressed albeit indirectly. Many Tibetans depend on an agricultural vocation to subsist and support their families and uranium mining has encroached upon lands used for farming and grazing of livestock.[83] Farmers and herders were not able to work and provide for their families when the source of their livelihood was destroyed by uranium leaching into water sources. Furthermore, the death of livestock that grazed in the area of the Ninth Academy and the other nuclear production sites not only impinged upon Tibetans' right to work, but also upon their well-being.[84] The livestock served as, not only a source of income but, a source of food as well.[85] The eradication of the Tibetans' food source diminished their right to a standard of living "adequate for the health and well-being of himself and his family."[86]

79. *See id.*

80. *Id.* at 6 ("Everyone has a right to work, to free choice of employment, to just and favourable conditions of work and to protect against unemployment everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. . . .").

81. *See id.* at 7 ("Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care. . . .").

82. *See id.*

83. *See* Australia Rights Watch, Human Rights Watch—Tibetan Herders' Livelihood in Jeopardy, http://www.atc.org.au/content/view/353/173/ (last visited Jan. 29, 2009) [hereinafter Tibetan Herders' Livelihood in Jeopardy].

84. *See* Dekhang, *supra* note 5.

85. *See id.*

86. Universal Declaration of Human Rights, *supra* note 10, at 7.

Since this Declaration, recognition of human rights has evolved to explicitly include violations regarding harms to the environment, and hazardous wastes specifically.

2. Stockholm Declaration on the Human Environment

A landmark declaration in the evolution of human rights with respect to the environment came in the form of the Stockholm Declaration on the Human Environment in 1972.[87] The Declaration recognizes basic human rights in international law: "adequate conditions of life, in an environment of quality that permits a life of dignity and well-being."[88]

While acknowledging the tenets set forth in the Universal Declaration of Human Rights, the Stockholm Declaration recognizes and focuses on the importance of the environment to cultural survival. The Tibetan culture, in particular, relies primarily on the environment in order to survive.[89] Continuous environmental degradation in Tibet yields increasingly more egregious human rights violations with the ecocide of their living environment, work environment, and the environment in which they obtain their food sources.[90] With nuclear waste seeping into the drinking water, not only are Tibetans being directly poisoned by the groundwater, but they are also unable to eke out a living when their animals and crops are dying from exposure to nuclear waste.[91]

3. Vienna Declaration

The Vienna Declaration of the World Conference on Human Rights of 1993 states that "illicit dumping of toxic and dangerous substances potentially constitutes a serious threat to human rights, life and health of everyone."[92] The Vienna Declaration stresses that the right of development must also be met by the "developmental and environmental needs of present and future generations."[93] Additionally, the Declaration

87. *See Report of the U.N. Conference on the Human Environment*, U.N. GAOR, 27th Sess, 21st plen. mtg., U.N. Doc. A/Conf.48/14/Rev. 1 (Jun. 16, 1972), *available at* http://www.unep.org/Law/PDF/Stockholm_Declaration.pdf [hereinafter Stockholm Declaration].

88. *Id.* at 2.

89. *See* Tibetan Herders' Livelihood in Jeopardy, *supra* note 83.

90. *See id.*

91. *See* NUCLEAR TIBET, *supra* note 4, at 20.

92. World Conference on Human Rights, June 25, 1993, *Vienna Declaration and Programme of Action*, Pt. 1, U.N. Doc. A/CONF.157/24 at 20 (1993), *available at* http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En [hereinafter *Vienna Declaration*] (recognizing illicit dumping of toxic materials as a serious threat to the rights of life and health).

93. *Id.*

encourages the adoption and implementation of already existing conventions that relate to toxic dumping of waste.[94] It also calls for the cooperation of countries in the prevention of dumping.[95]

The Vienna Declaration specifically addresses the illegal dumping of toxic materials in Article 11.[96] The dumping of nuclear waste in shallow, unlined landfills by the Chinese government is an example of the problem that the Vienna Declaration set out to eradicate.[97] Dumping radioactive waste near Tibetan populations poses a "serious threat to human rights, life and [the] health of everyone."[98] The Chinese government reports that the nuclear facility has been moved to sites in the Sichuan Province of Tibet.[99] The Vienna Declaration set out to eradicate irresponsible nuclear dumping and to discourage merely moving waste to other sites, which also exacerbates the problem of environmental degradation.

4. The Basel Convention and Basel Ban

China was a signatory to the Basel Convention, which was signed by various countries in 1992.[100] This agreement recognizes the effects of human environmental damage caused by the movement of hazardous wastes.[101] The subsequent Basel Ban was adopted by the United Nations as an amendment to the Basel Convention in September 1995.[102] The Ban prohibits trade of hazardous wastes from industrialized to non-industrialized countries.[103]

In 2001, China ratified the Basel Ban amendment, forbidding the export of hazardous wastes from the Organisation for Economic Cooperation and Development (OECD), the European Union and

94. *See id.*
95. *See id.*
96. *See* Vienna Declaration, *supra* note 92.
97. *See* CHITKARA, *supra* note 37, at 19.
98. Vienna Declaration, *supra* note 92.
99. *See* Dekhang, *supra* note 5.
100. *See* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, *opened for signature* Mar. 22, 1989, U.N. Doc. UNEP/WG.190/4, UNEP/IG.80/3, *available at* http://www.basel.int/text/con-e.pdf [hereinafter Basel Convention] (entered into force May 1992). All developed countries that are members of the Organization for Economic Cooperation and Development (OECD), with the exception of the United States, have signed. *Id.*); *see also* Tibet: Environment and Development Issues, Nuclear Threats, *available at* http://www.tew.org/tibet2000/t2.ch7.nuclear.html (last visited Jan. 6, 2009).
101. *See* Basel Convention, *supra* note 100, at 1.
102. *See* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Second Conference of the Parties, Mar. 25, 1994, Decision II/12(1) [hereinafter Basel Ban].
103. *See id.*

Liechtenstein to all non-OECD countries, including China.[104] China was not legally bound to sign, as OECD countries are, which may signal a step in the right direction.[105]

Although the ratification by China of the Basel Ban amendment may be a small step for China to cease its nuclear dumping, China has a long record of transporting toxic materials from Western countries to Tibet. In 1988, rumors circulated that Tibet was the location for dumping Western Europe's radioactive waste.[106] In 1991, Greenpeace reported that the City of Baltimore, Maryland had tentatively formed an agreement with China to ship about 20,000 tons of toxic sewage waste to Tibet,[107] to "use as 'fertilizer'"[108] in exchange for approximately $1.44 million.[109] The supposed fertilizer had unintended negative consequences when used and was linked to multiple outbreaks of disease within the United States.[110] After much international uproar, China did not follow through on the shipment of the sludge to Tibet.[111]

There was also evidence of intra-boundary movement[112] of hazardous wastes to Tibet within China as well.[113] In 1993, there was a report that a meeting between Taiwan and China occurred where they discussed the "possibility of co-developing in 'China' a huge dumpsite" where Taiwan would dispose of its radioactive waste.[114] The likely spot of this dumpsite was Tibet.[115]

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104. *See* Sarah Westervelt & Jim Puckett, *Toxic Trade: How the West's Obsession is Poisoning China*, HUMAN RIGHTS IN CHINA, Feb. 23, 2003, http://hrichina.org/public/contents/article?revision%5fid=2932&item%5fid=2931; OECD countries are countries that signed the Convention on the Organisation for Economic Co-operation and Development. *See* Organisation for Economic Co-operation and Development, http://www.oecd.org (last visited Jan. 28, 2009).

105. *See* Westervelt & Puckett, *supra* note 104.

106. *See* Dekhang, *supra* note 5.

107. *Id.*

108. State of Tibet's Environment, http://www.tibet.com/WhitePaper/white9.html (last visited Jan. 28, 2009).

109. Dekhang, *supra* note 5. Sludge from these urban sewage plants contains toxins. *See id.*

110. *See* State of Tibet's Environment, *supra* note 108.

111. *See* Dekhang, *supra* note 5.

112. China views Taiwan, like Tibet, as a part of the People's Republic of China. Although generally recognized as a part of China, there is increasing recognition of Taiwan (also called the Republic of China) as a separate entity. *See* Chiehyu Lin & Y.F. Low, *U.N. Secretary-General Stops Calling 'Taiwan Part of China,'* ROC CENTRAL NEWS AGENCY, Sept. 6, 2007, *available at* http://www.globalsecurity.org/wmd/library/news/taiwan/2007/taiwan-070906-cna07.htm; *but see* Embassy of the People's Republic of China in the United States of America, Taiwan—an Inalienable Part of China, http://us.china-embassy.org/eng/zt/twwt/t36717.htm (last visited Jan. 28, 2009).

113. *See* CHITKARA, *supra* note 37, at 51.

114. *Id.*

115. *See id.*

China's ratification of the Basel Ban was an important step in halting the movement of foreign nuclear waste. However, the fact remains that China intentionally allowed toxic waste shipped from other countries to be dumped in Tibet.

5. Declaration on the Rights of Indigenous People

With the passage of the Declaration on the Rights of Indigenous People, the international community explicitly recognized the right to autonomy for indigenous minority communities.[116] Many articles in the Declaration directly apply to the genocide of the Tibetan people by ecocide. Article 26 of the Declaration states that indigenous people have "the right to the lands, territories and resources which they have traditionally owned" and they should have control over the area's ownership, use, development and control.[117] For those lands and resources that have been taken or depleted, such as uranium, Article 28 provides that the indigenous people have a right of redress.[118] Most important, however, is the right to the protection of indigenous people's environment and to "productive capacity of their lands or territories."[119] The Declaration further condemns states from storing or disposing of hazardous materials on indigenous lands[120] and encourages states to develop programs for "maintaining and restoring the health of the indigenous peoples."[121] It also stipulates that military activities should

116. *See* United Nations Declaration on the Rights of Indigenous People, U.N. GAOR, 61st Sess., U.N. Doc. A/61/L.67 (Sept. 12, 2007), *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf [hereinafter Declaration on the Rights of Indigenous People].

117. *Id.* at 10 ("Indigenous people have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired . . . right to own, use, develop and control resources that they possess by reasonable traditional ownership. States shall give legal recognition and protection to these lands, territories and resources.").

118. *See id.* at 10-11 ("Indigenous people have the right to redress for lands, territories and resources which they have traditionally owned which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.").

119. *Id.* at 11 (Declaration on the Rights of Indigenous People, *supra* note 111 ("Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.")).

120. *See id.* ("States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.").

121. *Id.* ("States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.").

not take place in indigenous areas unless certain conditions are met.[122] Additionally, the Declaration encourages the autonomy of indigenous peoples in determining the use and development of their own lands and resources.[123]

Despite China's contributions to the adoption of the Declaration of the Rights of Indigenous People, it has not extended these rights to the people of Tibet.[124] This is, in part, because the Chinese government claims that China does not have any separate, indigenous people.[125] Because the Chinese government does not recognize Tibetans as an indigenous group, it does not believe Tibet should have the right to use and control their own land autonomous from China itself.[126] Instead, Tibet continues to be the target of China's nuclear production and irresponsible nuclear waste dumping under the guise of one united country.

Tibetans were never given the right to choose the manner in which their lands or resources would be exploited. Nor have they assented to the disposal of hazardous materials within their lands. Although the Chinese government claims control over Tibet, it has not implemented any program to restore the health of those directly affected by the development of nuclear weapons or indirectly affected by the environmental degradation. Since the Chinese government refuses to relinquish control over Tibet, it bears the responsibility of preserving the area. Mere recognition of the violations of these international agreements does not remedy the consequences of the Tibetans' exposure to large amounts of radiation. The United Nations should specifically condemn the actions performed in Tibet. With China's cooperation, the United Nations should adopt a resolution to study the radiological effects on the Tibetan people and implement a program to ensure actions are taken to restore Tibet to its pre-nuclear condition. The response by the

122. *See id.* ("Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.").

123. *See id.* ("Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.").

124. *See* Tibet Statement by 33 Indigenous Organisations addressed to Permanent Mission of the People's Republic of China, the UN Secretary-General and the UN High Commissioner for Human Rights, http://www.phayul.com (follow "Statement & Press Releases" hyperlink; then follow "08 May 2008 Tibet Statement by 33 Indigenous Organisations" hyperlink) (last visited Jan. 20, 2009).

125. *See* Michael C. Davis, *For Talks to Succeed, China Must Admit to a Tibet Problem*, YALE GLOBAL, May 16, 2008, http://yaleglobal.yale.edu/display.article?id=10811.

126. *See id.*

United Nations to the Chernobyl disaster serves as an ideal model by which to address Tibet's current situation.

C. The United Nations' Response To Chernobyl As A Model For Tibet

In April 1986, the Chernobyl nuclear power plant exploded in the worst man-made accident in history.[127] According to the World Health Organization, the explosion released over 200 times the nuclear material that the two atomic bombs released on Hiroshima and Nagasaki during World War II.[128] In a radioactive blast that burned for nine days, approximately five million people were exposed to the radioactive material.[129] Immediately after the blast, traces of the radiation from Chernobyl were found in "nearly every country in the northern hemisphere."[130] Unfortunately, the radiation around Chernobyl itself remains, as do the human rights issues concerning the devastated environment in the surrounding area.

1. Long-Lasting Consequences in Chernobyl

The number of people likely to develop a serious medical condition from a delayed reaction to the radioactive exposure is still unknown.[131] Many people were directly affected by the radiation produced by this nuclear blast. In a report published on the twentieth anniversary of the Chernobyl nuclear meltdown, approximately 270,000 people developed a number of cancers as a direct result of the nuclear fallout.[132] However,

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127. *See Chernobyl Clean in 55 Years Time?*, RUSS. TODAY, Jan. 29, 2009, *available at* http://www.russiatoday.com/news/news/36603. The nuclear power plant is located in Chernobyl, Ukraine, which was a part of the former Soviet Union at the time of the explosion. *See* ENVIRONMENTAL PROTECTION AGENCY, Chernobyl Power Plant, Ukraine, *available at* http://www.epa.gov/radiation/rert/chernobyl.html (last visited Feb. 1, 2009).

128. Joanne Dufay, *Ten Years After Chernobyl: A Witness to the Devastation,* GREENPEACE, http://archive.greenpeace.org/comms/nuke/chernob/joaccoun.html (last visited Feb. 1, 2009).

129. *See* Benjamin K. Sovacool & Christopher Cooper, *Nuclear Nonsense: Why Nuclear Power is no Answer to Climate Change and the World's Post-Kyoto Energy Challenges*, 33 WM. & MARY ENVT'L & POL'Y REV. 1, 68-69 (2008).

130. *Id.* at 70.

131. *See Worst Effects of Chernobyl to Come, supra* note 128 ("Not until 2016, at the earliest, will be known the full number of those likely to develop serious medical conditions").

132. Press Release, Greenpeace, Greenpeace Releases Health Study of 1986 Nuclear Accident (Apr. 18, 2006), *available at* http://www.greenpeace.org/canada/en/press/press-releases/nuclear-accident (contradicting a previous study by the United Nation's International Atomic Energy Agency); *Contra* Press Release, World Health Organization , Chernobyl: The True Scale of the Accident (Sept. 5, 2005), *available at* http://www.who.int/mediacentre/news/releases/2005/pr38/en/print.html ("About 4000 cases of thyroid cancer . . . however, the survival rate among such cancer victims, judging from the experience in Belarus, has been almost 99%.").

many more millions of people in the former Soviet Union have become ill as an indirect result of the nuclear material found in the food, water and milk that were contaminated by the accident.[133]

In Chernobyl, radioactive materials entered the food chain through livestock that fed on plants in the local area grown in contaminated soil.[134] The toxic materials then accumulated in the meat and milk themselves which were eventually consumed by the local population.[135] Reports from as far as the United Kingdom are still indicating livestock contaminated by the nuclear fallout in Chernobyl.[136] These consequences will continue unless actions are taken to remove radioactive waste from the area and prevent the material from continuously entering the food chain.

More than 6,500,000 people still live in contaminated areas surrounding Chernobyl.[137] The United Nations has outlined three fundamental human rights: "the right to live . . . the right to health and medical care . . . [and] the right to the environment."[138] Concerns about these rights for the people exposed to radiation stimulated the United Nations to respond with a series of resolutions.

2. The United Nations' Response to Chernobyl

The consequences of long-term exposure to nuclear material in both Chernobyl and Tibet are still developing; however, solutions exist to prevent perpetuation of the problem. Although the events leading to the radioactive poisoning in Tibet and Chernobyl are quite different, the response by the United Nations to Chernobyl may be a model for the United Nations itself, and China, to remedy Tibet's problem. The solution to further environmental degradation in Tibet is a simple one. China must immediately cease their nuclear production and dumping in Tibet. The Ninth Academy, as well any other nuclear weapons facilities, must be fully dismantled. Then the United Nations must take steps, as it

133. Jay M. Gould, *Chernobyl and the Collapse of Soviety Society*, Mar. 15, 1993, *available at* http://www.ratical.org/Chernobyl/ChernobylCoSS.html.

134. *See* Phytoremediation: Using Plants to Clean Soil, http://www.mhhe.com/biosci/pae/botany/botany_map/articles/article_10.html (last visited Feb. 1, 2009) [hereinafter Phytoremediation].

135. *See id.*

136. *See* Steve Connor, *Chernobyl's Risk to Sheep May Persist for 15 Years*, THE INDEPENDENT, May 11, 2000, *available at* http://www.ratical.org/radiation/Chernobyl/051100.html ("Tests on three of these farms show that some sheep have levels of radiocaesium that are nearly twice the limit deemed to be safe for human consumption.").

137. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Promotion & Protection of Human Rights: Science & Environment*, ¶17, U.N. Doc. E/CN.4/2001/NGO/179 (Mar. 19, 2001).

138. *Id.*

did in Chernobyl, to respond to the environmental impact to the land and people of Tibet.

Unlike China, the countries affected by the Chernobyl nuclear exposure cooperated with the United Nations. After a plea in the form of a letter sent by permanent representatives of the Union of the Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Social Republic, the United Nations responded.[139] The United Nations Economic and Social Council (ECOSOC) Resolution of July 13, 1990 called for international cooperation to address and mitigate the consequences of the accident at the Chernobyl plant.[140] In this resolution, continued support was requested in the international assessment of the radiological aftereffects through a study organized by the International Atomic Energy Agency with participation from the Food and Agriculture Organization of the United Nations, the United Nations Scientific Committee on the Effects of Atomic Radiation, the World Health Organization, and the Commission of the European Communities.[141] Based on findings from these studies, Russia, Belarus and Ukraine have developed National Programs to mitigate the consequences from the explosion.[142] The current program's projection, with each nation's budget as its primary funding source, lasts until 2010. Although each study notes that the consequences are long-lasting, there have been continued efforts spearheaded by the United Nations to reduce health damage and focus on radiation and ecological rehabilitation of the area.[143]

Since the ECOSOC Resolution, the United Nations General Assembly has adopted ten resolutions in response to helping the people of Chernobyl, the latest in 2004.[144] Beginning in 1990, the General Assembly has maintained its support for international cooperation to address the radiological impacts at the Chernobyl nuclear plant.[145] The 1990 resolution calls for a program that coordinates the activities carried out by the various United Nations organs and organizations in addressing

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139. *See* UN Economic and Social Council Resolution, 1990/50, 13 July 1990, International cooperation to address and mitigate the consequences of the accident at the Chernobyl power plant, *available at* http://www.un.org/ha/chernobyl/docs/r199050.pdf [hereinafter UN ECOSOC 1990].

140. *See id.*

141. *See id.*

142. *See* The United Nations and Chernobyl: Countries, http://www.un.org/ha/chernobyl/countries.html (last visited April 16, 2010).

143. *See* Belarus National Report for 2002, *available at* http://www.un.org/ha/chernobyl/docs/nr2002.pdf.

144. *See* The United Nations and Chernobyl: Documents of the General Assembly and its Organs, http://www.un.org/ha/chernobyl/undocsresga.html (last visited April 16, 2010).

145. *See* UN ECOSOC 1990, *supra* note 139.

and mitigating the consequences of the disaster, a task force responsible for monitoring the activities and a report submitted to the General Assembly on how the resolution was implemented.[146] The 2004 Resolution acknowledges the steps taken, including the United Nations report entitled "The Human Consequences of the Chernobyl Nuclear Accident: A Strategy for Recovery" and the International Chernobyl Research and Information Network. The resolution also reaffirms the United Nation's role in recovery efforts.[147]

The United Nations should implement a program like that used to rehabilitate Chernobyl in Tibet to address the nuclear dumping and radiological consequences. Unlike Chernobyl, the nuclear dumping in Tibet is no accident. China must admit its actions and cease dumping immediately. It must then fully cooperate with the United Nations in order to implement a program that studies the radiological consequences and implements solutions to mitigate the radiological consequences.

The United Nations need not venture far from the Chernobyl model in the steps it needs to take. With China's cooperation, the United Nations must organize a program with various UN organs and international organizations address the current problems and formulate a solution for mitigating the consequences of years of irresponsible dumping. A separate task force must be created to monitor the study and make sure that the solutions implemented are based upon the studies. Finally, the task force must continue to report to the General Assembly the current status and any improvements made as a result of these implementations. Without such a clear directive by the United Nations such as this, Tibet's environment will continue to denigrate due to little or no effort by the Chinese government. Broad resolutions and international agreements touting human rights and outlining violations will not suffice. The United Nations must directly address the nuclear dumping in Tibet in a specific resolution.

IV. CONCLUSION

China's choice of ceaseless uranium mining and careless dumping has impacted Tibet's environment so severely that Tibetans are being eradicated in the process. The Chinese government's indifference to Tibet's environment and intentional human rights violations against Tibetans as an ethnic group constitutes genocide. With China closing

146. *See id.*

147. *See* UN Economic and Social Council Resolution, 58/119, 10 Feb. 2004, Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster, *available at* http://www.un.org/doc/undoc/gen/n03/501/72/pdf/N0350172.pdf.

Tibet's borders to the rest of the world, it is difficult to monitor and foresee what further impact the ecocide in Tibet will have on its people until it is too late.

Furthermore, China must recognize the long-term impact of uranium mining and nuclear production within Tibet. Without action, Tibet's environment, as well as its culture, will disappear. China's ratification of international agreements touting human rights with respect to the environment is an encouraging step. However, the actions of the Chinese government, such as the railway facilitating more movement into the area, suggest that Tibet's nuclear problem will not cease in the near future.

In order to preserve Tibet, the Chinese government must immediately dismantle their nuclear weapons facilities in Tibet. China must cease its intentional violations in Tibet and cooperate with the United Nations to return Tibet to its pre-nuclear condition. Without China taking positive action to reverse the environmental degradation, the destruction of Tibet and its people may have long-lasting ramifications, not only in Tibet itself, but also in regions well beyond the borders of the Tibetan Plateau.