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Michele L. Radin

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THE RIGHT TO DEVELOPMENT AS A MECHANISM FOR GROUP AUTONOMY: PROTECTION OF TIBETAN CULTURAL RIGHTS

Michele L. Radin

Abstract: Traditional legal mechanisms have failed to protect minority cultural integrity rights for the Tibetan people. Modern human rights law, however, offers a mechanism to protect cultural integrity through group autonomy. This Comment argues that the right to development can protect Tibetan cultural rights through such a claim for group autonomy over development.

The Tibetan government in exile describes China's plans for accelerated economic growth in Tibet as "a part of China's 'final solution' for Tibet."1 Traditional human rights law assumed economic growth would encourage states to protect civil and political rights and eventually benefit individuals and groups. Economic development, however, threatens the cultural identity of minorities like the Tibetans by supplying an excuse for the degradation of their human rights guarantees.

As a minority group, the Tibetans hold a right to protect and develop a group cultural identity, known as the right to cultural integrity.2 The Tibetan government in exile has sought protection of


2. S. James Anaya uses the term cultural integrity to describe the value of preserving and developing a group's cultural identity and requiring the protection and growth of the economic, social, political, and cultural institutions necessary to ensure the survival of the group as a distinct people. S. James Anaya, Indigenous Rights Norms in Contemporary International Law, 8 ARIZ. J. INT' L & COMP. L. 1, 17 (1991); see also Adeno Addis, Individualism, Communitarianism, and the Rights of Ethnic Minorities, 67 NOTRE DAME L. REV. 615, 658 (1992) (discussing the group right to culture and designating a people as not only a political but also a cultural group); Ryszard Cholewinski, State Duty Towards Ethnic Minorities: Positive or Negative?, 10 HUM. RTS. Q. 344, 351, 353 (1988) (examining state practice in the United Nations Human Rights Committee to show a positive international law duty to protect group cultural rights); Lyndel V. Frott, Cultural Rights as Peoples' Rights in International Law, in THE RIGHTS OF PEOPLES 93, 102-03 (James Crawford ed., 1988) (asserting that development must include socio-cultural values to protect cultural rights); Henry J. Steiner, Ideals and Counter-Ideals in the Struggle over Autonomy Regimes for Minorities, 66 NOTRE DAME L. REV. 1539, 1546-47 (1991) (identifying the right of cultural survival as both an individual and group right).
Tibetan cultural integrity by calling for self-determination and independence for Tibet. China has failed to respond domestically to protect Tibetan human rights and continues to reject Tibetan claims for self-determination. Under modern international law, the right of peoples to self-determination does not presume a right to secession, but rather aims at the establishment of internal conditions for the enjoyment of all human rights. Nevertheless, the international community, while supporting Tibetan human rights, perceives an unacceptable risk of secession in a minority claim for self-determination and a particular fear of retaliation by China in the case of Tibet.

Because of the obstacles to a claim for the right to self-determination, the Tibetan people may find an alternative legal claim to protect their cultural integrity in the right to development. Generally, the right to development entitles peoples to pursue economic, social, cultural, and political development. While the state is the administrator of the right, the state's right to pursue development is contingent upon its observance of its duties to the people. Unlike the right to self-determination, a claim under the right to development would not invoke external autonomy and the risk of secession, but could allow minority groups like the Tibetans autonomy over economic, social, political, and cultural development necessary to the survival of their distinct cultures.

This Comment demonstrates that the right to development can fulfill the cultural integrity rights of minority groups like the Tibetans through development autonomy. The first two parts of this Comment set the background, reviewing the failure of traditional international law mechanisms to fulfill Tibetan rights and the elaboration of the right to development in international law. Part three creates a framework for analyzing the right in the context of the structuralist reform of human rights law and argues that, in effect, the right to development fills a gap in international law by providing internal self-determination without risking secession. Part four then qualifies the Tibetans as right-holders and suggests claims they might assert against China under the right to development.

Right to Development and Group Autonomy

I. THE FAILURE OF TRADITIONAL INTERNATIONAL LAW MECHANISMS TO PROTECT TIBETAN HUMAN RIGHTS

The international law norm of cultural integrity mandates that states protect and develop the distinct cultural identities of internal minority groups. China identifies the Tibetans as a “national minority,” thereby requiring minority protections. China claims, however, that Tibetan rights constitute a domestic issue, not an international law concern, because China adequately protects minority rights and Tibet has consented to Chinese rule. According to China, its legislation of non-discrimination and equal protection of minorities fulfills its customary international law duty to “take steps” to ensure the individual rights of group members. China asserts that its regional national autonomy policy upholds civil and political rights by assuring Tibetan language education, the use of Tibetan language in official communications, and a slight majority of Tibetan regional cadres.

Chinese mechanisms of non-discrimination and equal protection, however, have failed to fulfill Tibetan cultural rights. China’s facial protections have not eradicated discrimination and instead serve to perpetuate Tibetan political powerlessness. Tibet’s regional national autonomy system, for example, offers at most illusory autonomy because most powers are merely aspirational and expressly limited by the requirement of central government permission. Similarly, a cultural protection such as Tibetan language schools is confounded by the requirement of Chinese language for most government positions. Not only have China’s facial protections failed, but China also flagrantly

3. See Anaya, supra note 2, at 15–24.
8. Rosett, supra note 4, at 1517–19.
attacks Tibetan cultural identity. The persecution of Buddhist monks and nuns, for example, suppresses the heart of Tibetan political and cultural voice. More subtle threats include the Chinese economic development policy that uses state economic incentives to encourage Han resettlement in Tibet, known as population transfer. Tibetans and observers criticize population transfer as an attack on Tibetan cultural identity because it effectively dilutes the Tibetan population. Likewise, China’s expansion of tourism in Tibet disguises a cultural threat as a benefit; while tourism has led China to restore Buddhist temples destroyed in the Cultural Revolution, Tibetans fear cultural stagnation or “disneyfication” as their cultural heritage becomes a tourist attraction instead of an evolving identity.

China also denies that Tibetans have an international law claim under the right to self-determination. China invaded Tibet in 1951, ostensibly to “liberate” Tibet from foreign imperialists and reunify Tibet with its historic sovereign. China claims that the Dalai Lama’s government supported the “liberation” and the “reincorporation” of the territory in the 1951 Agreement of the Central People’s Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet. China insists, therefore, that Tibet never


14. Prott, supra note 2, at 103; Smith, supra note 10, at 83 n.14.

15. See, e.g., Premier Li Peng on Changes in Tibet, supra note 6 (rejecting the notion of an independent Tibet). China expressly recognizes the right of peoples to self-determination.


17. 17-Point Agreement, supra note 16, pmbl.; White Paper, supra note 5, pt. 1(I). The Dalai Lama’s government denies the force of the unilaterally drafted 17-Point Agreement because China coerced signatures from unauthorized Tibetan representatives. Van Praag,
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existed as an independent state, and even if it had, Tibetans exercised their self-determination and chose integration with China.\textsuperscript{18} In 1955, China incorporated Tibet as the Tibetan Autonomous Region and in 1959 dissolved the representative government of the Dalai Lama.\textsuperscript{19} In 1959, the Dalai Lama established the Tibetan government in exile in India to represent the Tibetan people.\textsuperscript{20}

Although the government in exile charges that China has defaulted its legal duties to protect Tibetan minority rights, Chinese pressure has restrained the international community from actively asserting a Tibetan right to self-determination.\textsuperscript{21} The world community treated China's 1951 invasion as an illegal aggression and occupation; nevertheless, weighing the existing pressure of the Korean War, the United Nations chose to conciliate China by defeating a broadly supported resolution condemning China's actions and recognizing Tibet's status as an independent state.\textsuperscript{22} In reaction to the dissolution of the Dalai Lama's government, his flight into exile, and evidence from refugees of human rights abuses, the General Assembly did pass resolutions in 1959, 1961, and 1965 denouncing China's actions.\textsuperscript{23} Most recently, the U.N. Commission on Human Rights supported a 1992 resolution condemning Chinese human rights violations in Tibet.\textsuperscript{24}

\textsuperscript{18} See Smith, supra note 10, at 79 (explaining China's theory of a unitary multinational state as based on the self-determination of all groups by voluntarily incorporating into China).

\textsuperscript{19} \textbf{VAN PRAAG}, supra note 15, at 160–63. The dissolution of the Dalai Lama's government violated the guarantee of political autonomy in the 17-Point Agreement. 17-Point Agreement, supra note 16, art. 4.

\textsuperscript{20} \textbf{VAN PRAAG}, supra note 15, at 163. The Dalai Lama has served as the supreme spiritual and temporal ruler of Tibet since the 1600s. See id. at 11. Scholars trace the status of Tibet as an independent nation from the seventh century Tibetan Empire. Id. at 2. Likewise, individual states supported the recognition of Tibet as an independent state at the time of the Chinese invasion. Id. at 146.

\textsuperscript{21} See Smith, supra note 10, at 84.

\textsuperscript{22} \textbf{VAN PRAAG}, supra note 15, at 145–46 (discussing a draft resolution submitted by El Salvador).


\textsuperscript{24} Eric Kolodner, \textit{Tibet's Shattered Hopes}, CHRISTIAN SCI. MONITOR, Mar. 25, 1992, at 19 (blaming the failure of the European Community-sponsored resolution on a U.S. draft submitted

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mental organizations also routinely challenge China's right to govern Tibet and human rights abuses.\textsuperscript{25}

On the state level, the U.S. Congress has persistently called on the executive branch to support Tibetan self-determination and to link aid to China with human rights improvements in Tibet.\textsuperscript{26} States receive the Dalai Lama as a dignitary, but without according him political status.\textsuperscript{27} The international community's unwillingness to demand independence or self-determination for Tibet has, therefore, foreclosed that international law remedy for violations of Tibetan cultural integrity rights.\textsuperscript{28}

II. THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW

The right to development synthesizes pre-existing human rights that already have consensus as international law.\textsuperscript{29} The core sources of the right are binding on all states as customary law: the U.N. Charter, the Universal Declaration on Human Rights, and the International Covenants.\textsuperscript{30} Moreover, the right expressly implements the U.N. goal to
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remove structural obstacles to human rights enjoyment by incorporating the international law duties of solidarity, reparations for colonialism and neo-colonialism, and moral and economic global interdependence. The Declaration on the Right to Development (the "Declaration") explicitly asserts the peremptory right of self-determination as the basis for the right of peoples to "pursue their economic, social and cultural development."

The elaboration of the right to development by the United Nations further demonstrates state consensus for the right. The U.N. Commission on Human Rights conducted the first formal discussion of development as a right in 1977, and the international community quickly supported its recognition. Two years later, the Secretary-General released a study on the right to development, followed by further resolutions and studies in the General Assembly. Meanwhile, developing states demonstrated consensus by incorporating the right.

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33. Based on China's consistent, express promotion of the right to development, this Comment treats China as bound by the obligations of the right to development. See, e.g., National Seminar Condemns "Human Rights Diplomacy", Renmin Ribao, Oct. 18, 1992, rebroadcast by BBC, Nov. 5, 1992 (calling on the international community to "first attach utmost importance" to the right to development); U.N. Should Give Priority to Right to Development: Chinese Ambassador, Xinhua News Agency, July 15, 1992, available in LEXIS, Nexis Library, Omni File (calling for the United Nations to give priority to the right to development); White Paper (10): Active Participation in International Human Rights Activities (a), Xinhua News Agency, Nov. 1, 1991, available in LEXIS, Nexis Library, Omni File (policy position paper stating that "priority should be given to the safeguarding of the right of the people of the developing countries to subsistence and development"). But see Donnelly, supra note 30, at 473 (denying the existence of a right to development); Roland Rich, The Right to Development: A Right of Peoples?, in The Rights of Peoples, supra note 2, at 39, 51–52 (suggesting the right to development still lacks consensus).

34. Chair of the U.N. Commission on Human Rights Keba M'Baye first called for recognition of the right to development in 1972 article and initiated the first formal discussion of the right in 1977. Donnelly, supra note 30, at 474 (citing Keba M'Baye, Le Droit au développement comme un droit de l'homme, 5 REVUE DE DROIT DE L'HOMME 505 (1972)).

35. Id. at 475.
into the African Charter. In 1981, the Commission on Human Rights established the Working Group of Governmental Experts on the Right to Development to draft a declaration, seeking consensus by filling the Working Group with representatives of all ideologies. The General Assembly endorsed the language of the Working Group draft with few amendments, and in 1986 the United Nations adopted the Declaration on the Right to Development 146 to 1, 8 abstentions. Scholarly interpretation of the right-holder, duty-bearer, and duties of the right to development has supplemented U.N. and state consensus.

A. Right-Holders

The right to development has no legal force unless a right-holder can make a claim. The Declaration refers to individuals, peoples, and states as beneficiaries of development while never clearly defining the right-holder. Scholars have elaborated the definition of the right-holder by generally recognizing the right to development as a peoples'


38. Rich, supra note 33, at 51. The Commission would not sponsor a Working Group draft because of disagreements on the final text, so Yugoslavia proposed a draft to the General Assembly based on Working Group drafts. Id. The General Assembly's amendments clarified the right of peoples to sovereignty over natural resources. Id. The single "no" vote came from the United States, rejecting the Declaration because of vagueness, the linkage of development and disarmament and the implication of a duty of resource transfer to developing nations. 1986 U.N.Y.B. 719–20. The abstentions, including such large international donors and human rights proponents as Denmark, Sweden, Finland, Norway, Japan, the United Kingdom, and the Federal Republic of Germany, voiced similar objections as well as the traditional individual rights bias against peoples' rights. Id. at 720.

39. Article 1 identifies the right-holders as both peoples and individuals: "every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development . . . ." Declaration on the Right to Development, supra note 32, art. 1(1). Article 2, however, focuses on an individual right: "The human person is the central subject of development and should be the active participant and beneficiary of the right to development." Id. art. 2(1). Article 2 also declares that "[s]tates have the right and the duty to formulate appropriate national development policies . . . ." Id. art. 2(3).
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right. Analogous to the right of peoples to self-determination, the benefits and power to make a claim thus flow to a group.

The identification of groups as peoples in international law historically has been controversial. States, however, clearly do not qualify as peoples for human rights claims. Even in a "representative" government, the state merely administers rights for the peoples. Peoples exercise the right to development against states. Notably, the African Charter explicitly separates peoples as right holders and states as duty-bearers to ensure the exercise of that right by peoples.

B. Duty-Bearers

The Declaration identifies the duty-bearers of development as individuals, peoples, states, and the international community. The Declaration asserts aspirational duties for individuals and peoples towards each other. Internally, states hold "the right and the duty to formulate appropriate national development policies." States and the world community bear external duties to cooperate in the removal of development obstacles and to create an international development

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40. See, e.g., Brietzke, supra note 31, at 593.
41. Even scholars who cling to the Western bias towards individual rights recognize that full enjoyment of individual rights requires some protection of group rights. See Rich, supra note 33, at 43. Even if the goal of the right were regarded as merely individual development, the group must still be the means. Brietzke, supra note 31, at 593.
43. David Makinson, Rights of Peoples: Point of View of a Logician, in THE RIGHTS OF PEOPLES, supra note 2, at 69, 73.
44. Id. at 77; see also Patrick Thornberry, Self-Determination, Minorities, Human Rights: A Review of International Instruments, 38 INT'L & COMP. L.Q. 867, 876 (1989) (arguing that the lack of a representative government gives a people the right to self-determination regardless of the principle of territorial integrity). Equating the state with peoples would presume that the state always represents the interests of groups within its borders. Makinson, supra note 43, at 77. If peoples were defined as the state, then a challenge to the state's development policy would be impossible and the goals of the right, peoples' participation in, contribution to and benefit from development, would be subject to the whims of the state. Brietzke, supra note 31, at 566–67.
45. "All peoples shall have the right to their economic, social and cultural development . . . . States shall have the duty, individually or collectively, to ensure the exercise of the right to development." African Charter, supra note 30, arts. 22(1), (2).
46. Declaration on the Right to Development, supra note 32, art. 2.
47. Id. art. 2(3). The Declaration's recognition of a state's "right" to make development policy does not make the state a right-holder but merely acknowledges state sovereignty. See supra note 43 and accompanying text.
structure. The Declaration also implies a duty of resource and technology transfer to developing countries.

C. Duties of States Under the Right to Development

The Declaration restricts the state's exercise of its duty and, therefore, its right to administer development policy in two ways: (1) by mandating the participation, consultation, and benefit of the people as right-holders and (2) by requiring development of a synthesis of economic, social, political, and cultural rights. To fulfill its duty, a state must "aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom." The Declaration further demands that "[s]tates should encourage popular participation in all spheres [of development]." The requirement of distribution of benefits is reemphasized by the duty to "ensure . . . equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income." States thus must not only implement the economic, social, cultural, and political development of the peoples, but must also do so in a certain manner—by involving the people in the decision making and assuring their receipt of the benefits.

States also have the duty to address political, social, cultural, and economic rights as a synthesis. Elaboration of the right in the United Nations prior to the Declaration specifically defined development not as a mere right to economic development but as a right to economic development in synthesis with other rights. The express basis of the

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48. Declaration on the Right to Development, supra note 32, art. 3(3).
49. See id. art. 4(2). While states may not expressly admit a duty to development assistance, developed state practice of treating such aid as a duty of development demonstrates consensus. Rich, supra note 33, at 46–47.
50. Declaration on the Right to Development, supra note 32, art. 2(3).
51. Id. art. 8(2).
52. Id. art. 8(1).
53. Donnelly, supra note 30, at 504 (quoting discussions in the United Nations); Shelton, supra note 37, at 525 (citing Report of the Working Group of Governmental Experts on the Right to Development, U.N. Comm'n on Human Rights, U.N. Doc. E/CN.4/1985/11 (1985)). While states quickly accepted the right to development, scholars debated whether the right to development could achieve the goal of synthesizing development rights. Some scholars were concerned that the right constituted primarily an economic right and established a hierarchy of rights that preconditioned fulfillment of civil and political rights on economic development, thus allowing developing nations a lower standard of human rights and an excuse to delay human rights protection; the end of the right to development would be economic change, not human rights. Donnelly, supra note 30, at 504, 506. For both sides of the scholarly debate preceding the Declaration, see generally id.; Philip Alston, The Shortcomings of a "Garfield the Cat" Approach
recognition of the right by the General Assembly was the interdependence and indivisibility of all human rights. Accordingly, the Declaration defines development as "a comprehensive economic, social, cultural and political process," and demands "equal attention" to all rights, not a preference for certain areas or economic development as a precondition for fulfillment of other rights.

III. THE RIGHT TO DEVELOPMENT AS A MECHANISM FOR GROUP AUTONOMY

This section first suggests that the right to development guarantees the cultural integrity of peoples. Secondly, an analysis of the evolution of human rights law demonstrates that the international community accepts group autonomy as a legal mechanism to fulfill cultural integrity claims. Finally, this section argues that as a cultural integrity guarantee elaborated within modern, structuralist human rights law, the right to development can operate as a mechanism for group autonomy.

A. The Right to Development Protects Cultural Integrity

The norm of cultural integrity derives from two legal sources: the right to self-determination and minority guarantees. The right to self-determination expressly incorporates cultural integrity by guaranteeing the right of peoples to pursue economic, social, and cultural development. Similarly, minority guarantees recognize cultural integrity...
by requiring special protection of minority cultural rights. Indeed, state practice has established a customary law duty of affirmative state action to protect and develop minority culture.

Because it invokes cultural integrity guarantees, the right to development can offer a legal mechanism to fulfill those rights. An express purpose of the Declaration is the fulfillment of the right of self-determination through economic, social, political, and cultural development. Moreover, state duties in the Declaration correlate to state customary law duties to protect the cultural integrity of minority groups.

B. A Structuralist Approach to Cultural Integrity

Human rights law has evolved to find group autonomy an appropriate legal mechanism to ensure group cultural integrity rights. Historically, international law tried to answer group human rights claims through two mechanisms: (1) the protection of individual and group rights through external autonomy under the right to self-determination or (2) the protection of individual rights through non-discrimination. Neither approach, however, effectively fulfilled cultural integrity guarantees.

Self-determination incorporates both an internal right to human rights protection and an external right to freedom from domination; in the decolonization era, however, states treated self-determination as merely external and as presuming a right to secession. As a result, group claims for external autonomy were limited by the sovereignty doctrine and generally restricted to non-self-governing overseas colonies. Even when international law explicitly rejected the presump-
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tion of secession, states resisted any exercise of self-determination. As the focus of the United Nations has shifted away from decolonization to human rights protection, the right has evolved to emphasize internal self-determination, including cultural integrity; nevertheless, states still perceive a conflict between state sovereignty and a claim under the rubric of self-determination.

Traditionally, groups not qualified for self-determination had to rely on state administration of international standards for the non-discrimination and equal protection of individuals. Minorities and indigenous groups were denied status as peoples because states feared self-determination claims would disrupt their territorial integrity. Because it relied on the state and addressed only individual rights, however, non-discrimination failed to fulfill minority guarantees for cultural integrity.

Because of the failure of both mechanisms, the United Nations sought more effective methods to implement pre-existing human rights guarantees. The methodology of human rights evolved from reliance on states to uphold international human rights standards to the identification and removal of the “structural obstacles” in the international law system that bar full enjoyment of human rights. The primary


67. Makinson, supra note 43, at 75–76.


69. Anaya, supra note 63, at 837. Sources for the non-discrimination mechanism include: U.N. CHARTER, art. I, para. 3; Universal Declaration of Human Rights, supra note 30, art. 2; International Covenant on Civil and Political Rights, supra note 2, art. 2(1); International Covenant on Economic, Cultural and Social Rights, supra note 30, art. 2(2); and International Convention on the Elimination of all Forms of Racial Discrimination, Jan. 4, 1969, 660 U.N.T.S. 195. Id.

70. See supra note 64 and accompanying text; see also Russel L. Barsh, Indigenous North America and Contemporary International Law, 62 OR. L. REV. 73, 84–94 (1983) (tracing the evolution of the U.N. definition of peoples to include indigenous groups).

71. See supra note 59 and accompanying text.

72. Rich, supra note 33, at 41. Roland Rich identifies four phases of U.N. human rights action: the 1945–55 post-war “normative” period concentrating on standard-setting; 1955–65, emphasizing the promotion of human rights by requiring state reporting and advisory recommendations; 1965–75, seeking protection of human rights by more direct activities such as appointment of special rapporteurs, investigations, and the adoption of procedures for handling complaints; and the current period, exemplified by the right to development, building a structural approach. Id. at 42.
structural obstacle to effective human rights protection was the tendency of states to create a hierarchy of rights that preferred civil and political rights of individuals while the international community assumed that state economic growth would ensure domestic human rights protection. Not only does a hierarchy allow states to excuse the degradation of subordinated rights, the traditional individual rights bias ignored the larger social and economic conditions perpetuating denial of all human rights. To overcome these obstacles, structuralism views economic, social, cultural, and political rights as interdependent and indivisible. Effective legal mechanisms must treat rights as a synthesis, not in isolation or in a hierarchy. Likewise, structuralism relates individual rights to social conditions by recognizing group or "peoples" rights. Group power through social and economic change better ensures individual civil and political rights than the state.


As the ultimate purpose of development is to provide increasing opportunities to all people for a better life, it is essential to bring about a more equitable distribution of income and wealth for promoting both social justice and efficiency of production, to raise substantially the level of employment, to achieve a greater degree of income security, to expand and improve facilities for education, health, nutrition, housing and social welfare, and to safeguard the environment. Thus, qualitative and structural changes in the society must go hand in hand with rapid economic growth, and existing disparities—regional, sectoral and social—should be reduced. These objectives are both determining factors and end-results of development; they should therefore be viewed as integrated parts of the same dynamic process and would require a unified approach.


74. See Alston, supra note 53, at 516-17.


76. See Alston, supra note 53, at 516-17.
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In regard to minority groups, structuralism can address cultural integrity claims through the mechanism of group autonomy.\(^7\) Bearing no history of a right to secession, group autonomy is politically more palatable to states than the right of self-determination.\(^7\) Moreover, group autonomy for cultural integrity extends to the structuralist synthesis of economic, social, and political rights.\(^7\)

C. The Right to Development in the Structuralist Framework

As a guarantee of cultural integrity, the right to development can provide a mechanism for group autonomy under the structuralist model. The right to development, first considered in the early years of structuralist reform, fits neatly into the structuralist goal of achieving pre-existing human rights through new legal mechanisms.\(^8\) Accordingly, the Declaration protects human rights as a synthesis and specifically employs the language of structuralist reform.\(^9\) The emphasis on international cooperation likewise exemplifies the purpose of removal of structural obstacles.\(^8\) Moreover, the mandate for peoples' involve-


\(^8\) See Addis, supra note 2, at 660 n. 109 (distinguishing group autonomy as “cultural self-determination” from traditional political and economic decolonization involving a right to secession).

\(^9\) The United Nations Commission on Human Rights, for example, has extended the cultural rights of minorities guaranteed in article 27 of the International Covenant on Civil and Political Rights to “include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.” Lubicon Lake Band v. Canada, Comm. No. 167/1984, U.N. Human Rights Committee, reprinted in 11 Hum. Rts. L.J. 305, 311 (finding Canada violated article 27 by allowing the Alberta provincial government to grant private energy exploration leases on the territory of the Lubicon Indians); see International Covenant on Civil and Political Rights, supra note 2, art. 27; see also Anaya, supra note 2, at 18–19. Likewise, the Inter-American Commission on Human Rights has explicitly interpreted the right to the protection of health and well-being guaranteed in the American Declaration of the Rights and Duties of Man to include the group right of cultural integrity. Case 7615, Inter-Am. C.H.R. Res. 12/85, 1985 Inter-Am. Y.B. on H.R. 264, 276,278 (finding that the construction of a highway and the subsequent influx of miners into Yanomami territory injured the group's cultural integrity); see American Declaration of the Rights and Duties of Man, supra note 30, art. XI.

\(^8\) See supra notes 29–30, 72 and accompanying text.

\(^9\) See supra notes 54–55, 75 and accompanying text.

\(^8\) See supra note 48 and accompanying text; see also Alston, supra note 29, at 110–11 (positioning the right to development as an extension of decolonization that redresses the remaining structural inequities).
ment derives from the goal of protecting human rights through social conditions and relations, instead of relying on individual rights and economic growth.\textsuperscript{83}

The structuralist approach to cultural integrity also can supply the right to development with a definition for peoples as right-holders. In the decolonization era, peoples were identified by the goal of independence; in the structuralist framework, however, peoples are defined by the goal of cultural integrity.\textsuperscript{84} For example, despite the rejection by the Inter-American Court of a group claim for self-determination under the decolonization definition of peoples, the norm of cultural integrity still qualified the Miskito Indians for group autonomy.\textsuperscript{85} The label "minority," therefore, no longer serves as a bar to peoples' rights.\textsuperscript{86} Instead, the identification of a group as a right-holder can be determined from that group's qualification for cultural integrity: a common cultural identification, a specific territory claim, and self-identification of the composite individuals as a people.\textsuperscript{87}

IV. A TIBETAN CLAIM UNDER THE RIGHT TO DEVELOPMENT

Because the mechanisms of self-determination and non-discrimination have failed, the right to development can afford the Tibetans protection of their cultural integrity through the legal mechanism of

\textsuperscript{83} See supra notes 50-52, 76 and accompanying text.

\textsuperscript{84} Ian Brownlie, The Rights of Peoples in Modern International Law, in THE RIGHTS OF PEOPLES, supra note 2, at 1, 5–6, 16 (James Crawford ed., 1988) (rejecting the labels of peoples, minorities, or indigenous groups as arbitrary and contrary to the purposes of internal self-determination and cultural integrity and instead proposing a case-by-case review of the level of autonomy appropriate for each group).


\textsuperscript{86} Makinson, supra note 43, at 73 (noting that the label minority is now merely a relational identification). Bangladeshis, the example of a non-colony group qualifying as peoples for the right to self-determination, were also a minority in Pakistan. See Lung-Chu Chen, Self-Determination and World Public Order, 66 NOTRE DAME L. REV. 1287, 1292–93 (1991). Exemplifying the arbitrariness of these labels, Tibetans also could qualify as indigenous peoples under ILO Convention 169, entitling them to a range of specific protections. See ILO Convention 169, supra note 77, pt. I, arts. 1(1)(b), 1(2) (applying protections to groups with a historical territorial attachment, separate social, economic, cultural, and political systems, and self-identification).

\textsuperscript{87} See, e.g., Chen, supra note 86, at 1290.
group autonomy. The Tibetans must first qualify as a people under the norm of cultural integrity. The Tibetans could then seek development autonomy by demonstrating that China is failing to uphold its duties as administrator of the right.

A. Tibetans Qualify as a People

By placing the right to development within the structuralist context of group autonomy claims for cultural integrity, a people is broadly defined as a group with a distinct culture, a territorial claim, and self-identification. The Tibetan people clearly satisfy these criteria. Tibetans also have held a specific territorial claim to the Tibetan plateau as a political unit since the Tibetan Empire in the seventh century and earlier as nomadic tribes. Finally, Tibetans identify themselves as a people and disidentify with the Chinese. They have resisted China's express policies of assimilation and cultural destruction, most notably by retaining a
strong Buddhist culture. By the norm of cultural integrity, Tibetans thus qualify as a people, granting them status as right-holders under the right to development.

B. The Tibetan Claim for Autonomy

The qualification of Tibetans as a people does not per se entitle them to group autonomy. Qualification of indigenous peoples as right-holders in analogous group autonomy claims has turned not only on the distinct character of the group, but also on a showing that the specific actions of the state degrade the group’s ability to maintain and develop that distinctiveness. The Declaration similarly recognizes the right of the governing state to administer development only where the state fulfills its duties toward the people. As a people, therefore, Tibetans can make a claim to development autonomy only by showing that China is not fulfilling those duties.

China’s duties are twofold: (1) equal attention to economic, social, political, and cultural development as indivisible and interdependent rights and (2) assurance of the participation, contribution, and benefit of the people of Tibet in the development of each of those rights. China expressly supports the definition of development as a synthesis of all rights and the requirement of peoples’ involvement. Moreover, China particularly links the right to development with the right to self-determination, and thereby with cultural integrity.

94. See International Comm’n of Jurists, supra note 9, at 24 (relating Chinese efforts to suppress Buddhist culture).
95. See Anaya, supra note 2, at 32; see also supra note 79 and accompanying text.
96. Declaration on the Right to Development, supra note 32, art. 3(3). Another claim for Tibetan development autonomy is China’s failure as a state to represent the Tibetans. See Thornberry, supra note 44, at 876 (arguing that despite the limitation of the sovereignty doctrine, if a legal government fails to represent internal peoples, those peoples have a right to exercise self-determination; a state that fails in its duties as a sovereign loses the rights of sovereignty).
97. See supra notes 50–57 and accompanying text.
98. Chinese Delegate Speaks on Human Rights at Geneva Meeting, Xinhua News Agency, Feb. 5, 1992, rebroadcast by BBC, Feb. 8, 1992 (quoting Chinese representative to the United Nations Commission on Human Rights: “[T]he declaration of the right to development . . . is a comprehensive process covering economy, society, culture and politics . . . [and] emphasizes that all human rights and fundamental freedoms are interdependent and indivisible . . . [and state duties require] people as a whole should be encouraged to make concerted efforts in their active participation.”). Moreover, China consistently phrases its development strategy as chosen by Tibetans. See, e.g., White Paper, supra note 5, pt. 2(XII) (“Tibet started to implement the Eighth Five-Year Plan . . . .”).
Chinese development strategies for Tibet show that China has failed to fulfill both of its state duties. China treats the right to development as a hierarchy of rights, placing economic development at the top. China's strategy for economic growth expressly permits the delay of human rights protections. The policy of population transfer, for example, allows China to degrade cultural rights in the name of economic expansion.

China has likewise failed to assure Tibetan involvement in development. Population transfer coupled with educational, employment, and housing discrimination in favor of the Han settlers has ensured that the direct benefits of economic growth do not run to Tibetans. Similarly, China has accompanied its "opening up" of Tibet with increased suppression of Buddhist monks and nuns, the traditional Tibetan political voice. The exclusion of Tibetans from decision making has further resulted in the development of Tibet for China's use, not for the Tibetans' benefit. Investment is concentrated in sectors such as the military that primarily benefit China. Tibetans also charge that increased agriculture production is occurring at the expense of traditional Tibetan crops and lands and that the outputs are intended solely for the Chinese people.

The effects of China's hierarchy of rights and exclusion of Tibetans from decision making and benefits embody the very obstacles to human rights protection that the structuralist approach of the Declaration seeks to overcome: degradation of political and cultural rights.

Library, Omni File (The right to development "implies the full realization of the right of peoples to self-determination.").


101. See supra note 12 and accompanying text.


103. Yojana Sharma, China: Two-Pronged Strategy to Tame Tibet, Inter Press Service, Oct. 15, 1992, available in LEXIS, Nexis Library, Inter Press Service File; see also supra note 9 and accompanying text.


China’s right to administer development policy under the right depends on its fulfillment of its duties in the Declaration. As a result of China’s failure to fulfill those duties, the Tibetan people have a claim under the right to development to the mechanism of group autonomy to protect their cultural integrity rights.

The situation in Tibet illustrates the failure of traditional human rights mechanisms to implement group cultural integrity guarantees. While the Tibetan people continue to struggle against Chinese policies that degrade and destroy their cultural identity, the international community has refused to press a claim for self-determination. The international community could, however, be more receptive to a Tibetan claim for development autonomy because it avoids the issue of secession, attains the goals of structuralist human rights reform, and follows the precedents of analogous grants of indigenous group autonomy. The proposal of a Tibetan claim under the right to development primarily seeks access to international forums; the outcome of such a claim could range from increased international pressure on China to linkages of development assistance with a Chinese guarantee of Tibetan development autonomy. Although the right to development does not resolve Tibetan calls for independence, Tibetans could assure their cultural survival through development autonomy.